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House of Lords

Tuesday, 19 January 2016.

2.30 pm

Prayers—read by the Lord Bishop of Derby.

Introduction: Lord Mair

2.38 pm

Robert James Mair, Esquire, CBE, having been created Baron Mair, of Cambridge in the County of Cambridgeshire, was introduced and took the oath, supported by Lord Oxburgh and Lord Rees of Ludlow, and signed an undertaking to abide by the Code of Conduct.

Drones

Question

2.43 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government what action they propose to address the threat of a drone being flown into a commercial jet or being used to launch a terrorist attack, as highlighted in the recent report of Detective Chief Inspector Colin Smith.

Viscount Younger of Leckie (Con): The Government recognise that this emerging technology creates exciting opportunities for the UK economy, but also new risks for security and safety. A cross-government working group is undertaking a detailed analysis of this emerging threat, including the risks of the use of drones for terrorism and criminal purposes. This work is ongoing and kept under constant review. Initial guidance on tackling the risks has been provided to constabularies across the UK.

Lord Naseby (Con): As my noble friend will realise, as a former RAF pilot I have looked at what is happening around the world. All the leading countries—the USA, Canada, Australia, New Zealand, France and even Ireland—now have restrictions on drones. We can add to that that drones in a world of cyberwarfare make problems even more relatively difficult. In the light of the *Hostile Drones* report, which makes chilling reading, will my noble friend confirm that the Government will act with real urgency, perhaps guided by the latest US registration scheme launched in January and Ireland's—dare I mention it?—SI 563 of 2015?

Viscount Younger of Leckie: My Lords, I am aware of the *Hostile Drones* report. It is informative and generally well written, and chimes very much with the work being undertaken by the cross-government working group. As for licensing, which my noble friend mentioned, particularly in the US and Ireland, the Government and the CAA are talking to the US Federal Aviation Administration and the Irish Aviation Authority about both schemes. I would, however, add a caveat that such schemes are only as good as the enforcement mechanisms behind them.

Lord Berkeley (Lab): My Lords, it was interesting that the Minister said that this is an exciting project. It certainly is an exciting project to keep under review while drones might get into the suction of an air engine when a plane lands at Heathrow. It is nice to know that it is under review, but what can the Government do about catching these drones, short of firing missiles at them?

Viscount Younger of Leckie: Indeed. This is an important issue because the technology is growing at such a pace. We are undertaking a review of how drones will be controlled from a safety perspective, while looking at the opportunities at the same time.

Baroness O'Neill of Bengarve (CB): My Lords, will the cross-government working group also consider the capacity of drones to infringe people's privacy by photographing them in their houses, their gardens or wherever they may be? What enforcement mechanisms might be envisaged there?

Viscount Younger of Leckie: Again, that will be part of the review. When we talk about infringement of personal space, as a matter of good practice, drone operators that process personal data should inform individuals affected of their identity. Operators of drones that collect personal data must comply with the Data Protection Act, unless a relevant exemption applies. We believe that the law is tight in this respect.

Baroness Randerson (LD): My Lords, Colin Smith asserts that there are almost weekly incidents that endanger air passengers because drones fly into the path of aeroplanes, whether deliberately or by accident. What assessment have the Government made of this risk? Do they believe that we now urgently need to update the licensing and training processes relating to drones?

Viscount Younger of Leckie: We are aware of the advance of the technology. The Government are looking urgently at the issues involved. It would be a mistake to rush into legislation at this stage, but it is important to look at all the facts. We are due to report at the end of September on the consultation in this respect.

Baroness O'Cathain (Con): My Lords, why has there been such a delay in getting this consultation together? There was terrific euphoria when the report was first published in March last year and the Government gave a very positive response to it within 13 days. What has happened between then and now? [*Laughter.*] It is not a laughing situation. The tracking and tracing of drones is so important and we have to get on with it. The consultation will be 12 months later than we thought.

Viscount Younger of Leckie: First of all, I salute the work of my noble friend Lady O'Cathain and all other members of EU Sub-Committee B. It is true that the Government responded quickly within 13 days and it is an important subject. However, it is wrong to rush into legislation, and it is right not only to understand what the public think about the operations of drones

[Viscount Younger of Leckie]
but to undertake this full 12-week consultation. The Government are also publishing their own strategy in September, notwithstanding any EU timetable.

Lord West of Spithead (Lab): My Lords, the Minister says that this will come up in due course, or towards the end of the year, but we initially raised the issue of drones way back when we were preparing for the Olympics. There was great difficulty getting a cross-party group set up. Two years ago we were warning of the real risks from terrorism for aircraft. We really must move on this now. There are now highly capable drones that can carry a substantial weight, which you can buy for £2,000 from a supermarket. You can buy whole groups of these. They can also do intelligence-gathering. This is a very real risk and we need to move on it. Would the Minister not admit that we must really make something happen as soon as possible this year?

Viscount Younger of Leckie: Indeed, I think I have outlined exactly what we are doing. It is important that we look at the facts first and then come back with a full report by September, which is not too far away. However, we are not being complacent about the safety issues and the risks concerned.

Lord Tebbit (Con): My Lords, should we not require that any person should have a licence before he may be permitted to buy or operate a drone?

Viscount Younger of Leckie: Yes, it is something that is on people's minds. Of course, the US and Ireland are operating such a scheme but, as I said at the beginning, the question is: can this be enforced? This will also be part of the important review that we will carry out this year.

Lord Hylton (CB): My Lords, does the noble Viscount know that this is the third time for me to raise this subject, and that I have had encouragement from the Royal Society for the Prevention of Accidents? Will the Government ensure that there are total exclusion zones for drones wherever aircraft are taxiing, taking off or landing?

Viscount Younger of Leckie: Yes, and, indeed, the police are very much involved in this. There is a trial being undertaken at the moment around Gatwick Airport. The police are very much part of this, undertaking trials to work out how drones can best be used around public areas.

Farming: Basic Payment Scheme

Question

2.52 pm

Asked by ***Baroness McIntosh of Pickering***

To ask Her Majesty's Government what percentage of the Basic Payment Scheme was paid to farmers by the end of December 2015, and what assessment they have made of the delivery mechanisms of that funding.

Baroness McIntosh of Pickering (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I refer to my interests in the register.

Lord Gardiner of Kimble (Con): My Lords, I declare my farming interests as set out in the register. The Rural Payments Agency began making full payments on the first day of the payment window and by the end of December had paid 51% of eligible claims. It remains on track to pay the vast majority by the end of this month. Rural Payments, the IT system, has been used to process claims and make payments for 2015, and is working well. It will continue to be used for 2016 and beyond.

Baroness McIntosh of Pickering: I am grateful to my noble friend the Minister for that reply. Will he explain what "the vast majority" means in numbers? How will those farmers who have not yet received a letter saying that they will not be paid know when they will be paid? Will he look particularly at any delays that have been caused for those farming common land through issues relating to mapping and registration of rights?

Lord Gardiner of Kimble: My Lords, I do not think that I am in a position to say what exactly "vast majority" means. However, I can tell my noble friend that as of yesterday the RPA had paid more than 57,700 claims—that is two-thirds of the total and some £779 million—and is now clearly focused on paying the remainder as soon as possible. My noble friend is absolutely right that one area where there is a likelihood of payments being somewhat later is that relating to common land, but the RPA is using all its endeavours to get the final payments out as soon as is possible.

Baroness Miller of Chilthorne Domer (LD): My Lords, does the Minister agree that the agri-environment element of the payments has particularly lagged, leading to a fear that there will be a widespread exit of farmers because they simply cannot afford the conservation measures to maintain biodiversity or soil care—all the things that the Government are counting on?

Lord Gardiner of Kimble: My Lords, it is clearly important that agri-environment schemes are well supported as well as the basic payments. I think that the percentage of the latest agri-environment schemes that have been paid has been particularly high, but clearly we need to encourage as many farmers and landowners as possible to ensure that the good custodianship of the land is very much to the fore. I am confident that almost all do.

Lord Christopher (Lab): My Lords, this matter is raised in this House year after year. However, to my recollection, we have never had an adequate explanation of why it happens year after year. The present situation is that the only country in the United Kingdom which is anywhere near closure is Northern Ireland; Welsh hill farmers are desperate for the money. Why does it happen year after year after year?

Lord Gardiner of Kimble: My Lords, I can understand and, with my farming interests, have some sympathy. However, in the past two years 90% of single farm payments were made in the first month. The reason there is a difficulty this year is that the CAP was reformed. It is therefore, unfortunately, extremely complicated. The Government are now negotiating simplifying the CAP. That is why we have got this situation across the United Kingdom this year. However, I note what the noble Lord said about Northern Ireland.

The Lord Bishop of Peterborough: My Lords, I speak as one who, until very recently, has been privileged to serve as a trustee of the Farming Community Network, which supports many farmers with difficulties of this sort. Is the Minister aware, as FCN certainly is, that many of those who have been told they will not receive their payments until after the end of this month—more than two months late—are farming in upland areas, not just common grazing, and are often the poorest farmers in the most need? Is it possible for at least some payment to be made on account? Can the Government assure noble Lords that payments will be made on time, and in full, in the next cycle?

Lord Gardiner of Kimble: My Lords, there are regular discussions with, for instance, the banks and with HMRC about those farmers who will be in difficulties. I endorse what the right reverend Prelate has said: many charitable organisations work with the Government and we wish to support them as much as possible. I believe that next year the lessons will be learnt from what has happened this year. I very much hope that the RPA will have considerable success in 2016.

Baroness Masham of Ilton (CB): My Lords, I declare an interest, as I have a farm. Has the closure of the rural payment office in Northallerton put pressure on the system?

Lord Gardiner of Kimble: There certainly has been, and will continue to be, rationalisation. However, I am assured by the RPA that it has the resources for all the work it needs to do to undertake the payment of this and other schemes. There are between 800 and 1,000 people working on the basic payment scheme, and they are working a 7-day-a-week roster to ensure that as many payments are made as soon as possible.

Lord Grantchester (Lab): My Lords, I declare my interest as a farmer who receives payment. Was it wise that the English RPA scrapped its software in the change from SPS to BPS, whereas the Welsh Government merely adjusted theirs and have been able to cope? I understand many offers of advice from consultees in the industry have been made but have not been responded to. If this disaster is not to be dragged into the payment process for 2016—which the Minister rather blandly mentioned—what are the Government's plans for next year, especially regarding online applications, and when will they communicate them?

Lord Gardiner of Kimble: My Lords, as the noble Lord will understand, there are obviously very many more claimants in England. So far as the IT system is concerned, I understand that the single payment scheme computer would not have been suitable to deal with the considerable complexities of the new system, which is why the RPA invested in the new one. There have been improvements following the experiences of this year. I am confident that, in 2016, the computer system and farmers' ability to apply online will be much enhanced, but we will continue with a paper application as well.

Health: Red Cell Folate

Question

2.59 pm

Asked by ***Lord Rooker***

To ask Her Majesty's Government, further to the remarks by Lord Prior of Brampton on 21 December 2015 (HL Deb, col 2308), whether the letter from the Scientific Advisory Committee on Nutrition gave any indication of how many women aged 16 to 49 in the United Kingdom met the recommendations from the World Health Organisation regarding red cell folate concentration.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): The advisory committee's letter indicates that 14.5% of UK women of childbearing age met the new threshold for red cell folate concentration that has been recommended by the World Health Organization since April 2015. Ministers are reviewing the contents of the letter carefully. They plan to come forward with their response to the committee's latest advice in due course.

Lord Rooker (Lab): I thank the Minister for that Answer but he has just told the House that 85% of women of childbearing age in the United Kingdom failed to meet a major World Health Organization target. The letter says that UK levels are the same as those in the United States of America before fortification with folic acid. Following fortification, US women are now above the World Health Organization target, there have been fewer avoidable abortions, there have been fewer babies with a serious lifelong disability, and the USA is saving half a billion dollars in healthcare costs. The same story is repeated from Canada to South Africa and from Chile to Australia. Worryingly, the same letter says that blood folate levels have gone down so low, it looks like there has been a 25% increase in terminations in England and Wales in the past few years as a result of the current policy of advice only rather than fortification. I say to the Minister: none of the figures in that letter was new. They were known on 20 March last year. The House recesses on 23 March this year. Will we have a decision before we recess?

Lord Prior of Brampton: My Lords, the letter that the noble Lord refers to was received on 20 October last year, so we have had it for a little over three months. It is very important to make the point that it is not that the red cell folate levels of British women have gone down but that the threshold used by the WHO has gone up, from 340 nanomoles per litre to 906 nanomoles per litre. Nevertheless, the noble Lord makes a very strong point. He has made it before, in December. There is a lot of medical and scientific evidence on his side of the argument. There are other arguments that the Government are taking into account.

Baroness Walmsley (LD): My Lords, is the Minister aware that, as I was told this morning by three neural disease specialists, the danger of overmedication with folic acid by fortification is absolutely minuscule—you cannot measure it? In addition, they suggested to me that it is vital that we reduce the number of babies with neural tube defects because, due to our success in the past in reducing the numbers, the specialists and services for such babies are very thin on the ground. We really need to do something about this now.

Lord Prior of Brampton: My Lords, the danger of overmedication with folic acid is small, I accept that. It is not non-existent but it is small. Just so that the House knows the numbers, the number of babies aborted because of neural tube defects is about 400 a year; the number who are born with neural tube defects, alive or not alive, is about 60 a year. It is a very serious issue and one that the Government are taking extremely seriously, but we have to weigh that against the other issues of medicating the entire population.

Baroness Hayman (CB): My Lords, some of us have long memories that go back to 1991, when the MRC study into this issue had to be stopped early because the results were so overwhelmingly in favour of folic supplementation. The lead researcher on that study was Sir Nicholas Wald. More than 80 countries have taken very seriously those results and have taken on board fortification of white flour. In 2015 Sir Nicholas published a paper about the lost opportunity in the UK. Is it not a matter of profound regret, verging on shame, that in this country, where the initial research was done, we are now being told that there will be a decision "in due course"? If I remember correctly, the last time the Minister spoke about this, he said that it would be very early in the new year.

Lord Prior of Brampton: My Lords, I think we are still quite early in the new year. I do not go back to 1991 but the noble Baroness is right: for many years now there has been a large body of scientific opinion in favour of increasing the uptake of folic acid. There is no dispute about that—I do not think there is much science to dispute. The issue is one of balancing the scientific and medical arguments with issues around choice and whether or not it is right to medicate the entire population for the benefit of a fairly small part of it.

Lord Hughes of Woodside (Lab): My Lords, when the Minister says that other views have been taken into account, will he lay to rest today and for ever the idea that the Government will be swayed by those who say, spuriously and nonsensically, that this is mass medication?

Lord Prior of Brampton: The proposal is that bread should be fortified with folic acid. The point of doing it through bread is that most people eat bread and that it would reach the widest number of people. It would be fortifying a product that most people eat; that is the purpose of it.

Lord Hunt of Kings Heath (Lab): My Lords, is the Minister really saying that adding a very small amount to flour is mass medication; is that not overdoing it? I say to him, as I said on 21 December: can Ministers not come to a decision, yes or no? I get the sense that it is no, because he is putting much more stress on the issue of mass medication now than he has ever done on previous questions. I also go back to the answers that his noble friend Earl Howe gave over the last two or three years. Can the Minister not make that decision? The last thing we need would be to refer it yet again to another expert committee for yet more research, when it is quite clear that it would be effective and safe.

Lord Prior of Brampton: My Lords, I can only repeat what I said: we are in the process of making a decision and that decision will be made shortly.

Volkswagen: Emissions

Question

3.06 pm

Asked by ***Baroness Hayter of Kentish Town***

To ask Her Majesty's Government what assessment they have made of the decision by Volkswagen not to pay compensation to United Kingdom motorists who bought cars that were fitted with emissions-detecting software.

Viscount Younger of Leckie (Con): My Lords, the Government's view is that Volkswagen could be liable to compensate consumers for any actual losses they suffer. We are aware of Volkswagen's statement that consumers are unlikely to suffer losses but it is too soon to say whether this is correct. The Competition and Markets Authority has not opened a formal investigation but is continuing to assess whether there is evidence of consumer harm, while liaising with government and other agencies, nationally and internationally.

Baroness Hayter of Kentish Town (Lab): I thank the Minister for that Answer, which at least acknowledges that British Volkswagen drivers have been well let down. They bought what they thought, and for good reasons, was a low-emissions car only to find that Volkswagen had cheated them. Nearly 1 million cars will need to be recalled but their resale value will then go down, yet Volkswagen is refusing to compensate UK owners either for the inconvenience of taking their car back or for the loss of value. Can the Minister tell the House whether he considers that this decision is in line with the new Consumer Rights Act, passed in this House last year? Why will the Government not choose to explain to Volkswagen clearly that misleading purchases should lead to compensation?

Viscount Younger of Leckie: My Lords, the Government take the unacceptable actions of Volkswagen extremely seriously. Our priority is to protect the public as we go through the process of investigating what went wrong and establishing what we can do to stop it happening again in the future. Regarding the noble Baroness's Question, there is no evidence that consumer rights have been breached but if any have, we have legislation in place at the moment in the Consumer Rights Act and the Sale of Goods Act.

Lord Deben (Con): I first declare an interest as a Volkswagen owner. Does my noble friend accept that the real damage done is to the general public by the additional air pollution, which is already very bad,

particularly in London? It seems to many of us that the Government should be taking a proactive stance and insisting that Volkswagen makes proper reparation to society as a whole. Would it not be outrageous if the United States took these steps and we in this country, with our high environmental standards, did not?

Viscount Younger of Leckie: Indeed, and it may be some comfort to my noble friend that the Department for Transport and BIS have been pressing Volkswagen very hard over the past few months. We believe that by February there will be a decision on how UK customers who own Volkswagens are affected. On the question of car emissions, the Government are spending more than £600 million between 2015 and 2020 to support the uptake and manufacturing of ultra-low-emission vehicles.

Lord Stoneham of Droxford (LD): The Government have announced that individual Volkswagen car owners will not be liable for any shortfalls in their car road tax. Have they worked out the scale of compensation which they should be seeking from Volkswagen and can they assure the House that they will not accept discounted Volkswagen cars into the government car pool instead of real money?

Viscount Younger of Leckie: I do not know about that, but as I said, that the Government have been pressing Volkswagen very hard and we need to establish what the actual losses are. There is no question but that if UK owners have legitimate claims for compensation for losses, they should be compensated.

Lord Forsyth of Drumlean (Con): Can my noble friend explain why Volkswagen has indicated that it will pay compensation to owners of Volkswagens in the United States but not in Britain?

Viscount Younger of Leckie: I am very aware of that point. We are trying to establish why the US has done this, but it does have a different emissions regime, and there are fewer Volkswagen cars in the US. We are trying to get to the bottom of that.

Lord Anderson of Swansea (Lab): My Lords, individual motorists cannot be expected to pick up the legal costs for any action against a firm the size of Volkswagen. Who will act as plaintiff and who will support the plaintiffs—the motorists—financially?

Viscount Younger of Leckie: The first thing is to establish exactly what the losses are, which could include a range of things. Hopefully, by February—next month—we will know what the situation is in terms of Volkswagen's statement.

Lord Vinson (Con): My Lords, what Volkswagen did was entirely reprehensible, but there is a technical development here that raises a problem. At the present level of technology, the more you screw down car pollution to lower levels, the more fuel you consume, and there is a very fine balance between the two. I hope any legislation will bear in mind that there is a technical consideration here and that the one balances the other. We could easily find that you produce more pollution rather than less by increasing consumption.

Viscount Younger of Leckie: My Lords, as your Lordships might expect me to say, this involves a complicated device. One of the reasons for the delay, according to Volkswagen, is that it is trying to get to the bottom of the device that it fitted and is now looking to fix. It wants to make sure that the solution does not impact on vehicle performance, fuel consumption or driveability.

Lord Tebbit (Con): My Lords, is it possible that the Americans have been able to take action because they are not subject to European Community law?

Viscount Younger of Leckie: My Lords, as I say, we are looking to get to the bottom of the decision in the US.

Baroness Oppenheim-Barnes (Con): Would my noble friend not agree that so far, there has been no formal statement from the Government that they are pursuing this matter with a view to protecting consumers who may have been hurt, individually or as purchasers in respect of the value of their cars, and that it is time for such a statement to be made, as has been demonstrated by all the questions asked in your Lordships' House today?

Viscount Younger of Leckie: I can reassure the House that much work has been going on behind the scenes. For example, two Secretaries of State—for Transport and for BIS—have met Paul Willis, who is in charge of the sales operation in the UK, and have written to the Volkswagen board on several occasions. They are behind the consumers who may be affected and are taking this extremely seriously.

Ebola: Sierra Leone

Statement

3.14 pm

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, with the leave of the House, I will repeat in the form of a Statement the Answer to an Urgent Question given earlier today in the other place by my right honourable friend the Secretary of State. The Statement is as follows.

"The House will be aware that a new case of Ebola has been confirmed in Sierra Leone. A 22 year-old female student from Tonkolili district sadly died on 12 January. This latest case of Ebola in Sierra Leone demonstrates that we need to stay vigilant. In fact the news came just as the World Health Organization formally declared the Ebola outbreak in west Africa over, following Liberia reaching 42 days without a new case, but it is not unexpected given the context of this unprecedented outbreak.

The new case was identified from a swab taken after death and is currently being investigated. The Government of Sierra Leone have activated their national Ebola response plan, and rapid work is under way to identify and quarantine people who have been in contact with the young woman and to establish her movements in

[Baroness Verma]
the final days and weeks before her death. Teams in five districts are acting on this information. No other cases have been confirmed to date.

The speed of this process reflects the work that the UK has undertaken with the Government of Sierra Leone to develop their national response plan. As today's IDC report states, the UK has been at the forefront of the global response to the Ebola outbreak in west Africa from the very start, leading in Sierra Leone and working hand in hand with the Government of that country. We took on this deadly disease at source by rapidly deploying the best of British military personnel and NHS staff, building treatment centres in a matter of weeks and mobilising the international response. We have worked with the Government of Sierra Leone to build up their health systems and strengthen all aspects of society, including civil society, to allow them to be prepared.

We continue to stand by Sierra Leone, because we have always been clear that there is potential for further cases. That is precisely why our response is now focused on assisting Sierra Leone in isolating and treating any new cases of Ebola before they spread".

My Lords, that concludes the Statement.

3.16 pm

Lord Collins of Highbury (Lab): My Lords, I have previously acknowledged the Government's positive response to Ebola on the ground and the significant role of British volunteers, but today our thoughts must of course be with the people of Sierra Leone. Today in the other place, the Secretary of State stressed getting to the point of resilient zero—steady eradication with monitoring and surveillance, working with communities and education. The most important thing is of course a resilient healthcare system. One important element of that involves health education and training. With no postgraduate training, those who want to specialise are forced to leave the country to pursue further education, and many never return. What steps are the Government taking to support Sierra Leone's health sector recovery plan, especially programmes backed by the royal colleges in this country, to provide continuing professional development for healthcare workers at all levels?

Baroness Verma: My Lords, the noble Lord raises some very important issues about the recovery plan. The UK has committed to £54 million in support of President Koroma's nine-month early recovery and transition plan, which will focus on health, education and social protection—and, of course, economic recovery. We will be standing shoulder to shoulder with our friends in Sierra Leone; we think that that is the right thing to do. The noble Lord is absolutely right that we also need to ensure that, as we gear up to help build resilience, we get others on board to give that support.

Baroness Northover (LD): My Lords, I pay tribute to DfID, NHS staff and others, including Save the Children, for their amazing efforts in Sierra Leone since 2014. As unsafe practices were tackled, one upside was the decline in FGM. How is DfID ensuring that that decline is maintained? What is being done to counter other diseases which are a global threat? I am thinking here, for example, of Lassa fever, which has broken out across Nigeria.

Baroness Verma: My Lords, as the noble Baroness knows well from the work that she did in her former role as a DfID Minister, part of our wider strategy is to ensure that we build resilience, first and foremost, into the health systems. She touches on a very important issue about FGM: ensuring that those practices do not recur once the recovery is in place. We will work very closely with the president on his plan, but also through the wider work that we are going to do through the community-led organisations on the ground to ensure that the work that we did from the Girl Summit going forward does not get lost in the rebuilding of Sierra Leone. As always, with all these issues, it is really about continuing our dialogue with the Government of Sierra Leone to see how we can help them in strengthening their health systems first of all, but also ensuring that we assist them in tackling issues such as FGM at community level.

Baroness Jenkin of Kennington (Con): My Lords, as I think everyone now recognises, mobilisation of communities, as the Minister recognised in her Statement, was and is the most effective and powerful tool to bring Ebola down to zero and eradicate it. Will she confirm that the Government will continue their commendable level of investment in the excellent work of British civil society organisations, which are working with locals on the ground at the heart of communities? I declare my interest as a patron of Restless Development, which does a lot of work in this area.

Baroness Verma: My noble friend is absolutely right. Having community organisations on the ground was key in enabling us to try to restrain as much of the disease as we possibly could. I can reassure my noble friend that that commitment remains and we will continue to work on the ground with community groups, on a programme of intensive community engagement that began in October 2014. As my noble friend knows, we were among the first to be on the ground to respond to the crisis.

Lord Trefgarne (Con): My Lords, is my noble friend aware of the British Army nurse who travelled to west Africa to treat Ebola patients, contracted the disease herself, was brought back to the United Kingdom and restored to health and has now insisted on returning once more? Does not that demonstrate devotion to duty of a quite extraordinary kind?

Baroness Verma: My noble friend is absolutely right. We must of course pay tribute to all those people who put themselves at risk on the front line, including our military personnel and staff of the NHS, among many who have gone there and worked on the ground, putting their own lives at risk. We must also pay tribute to the people of Sierra Leone themselves, who were very much instrumental in being able to restrain this outbreak.

Baroness Masham of Ilton (CB): My Lords, how was it that a swab was taken only after the poor woman died? Surely, diagnosis should have been done when she became ill. Was she not looked after?

Baroness Verma: In this case—investigations are ongoing, so we have not yet come to some concluding outcomes—the woman did not demonstrate the usual symptoms of Ebola. The practice of taking swabs is something that we in the UK have encouraged, which is why we were able to pick up that this lady died from Ebola.

Lord Boateng (Lab): My Lords, since the outbreak of Ebola there has been investment flight from Sierra Leone. Sustainable healthcare systems demand locally generated revenue, and DfID is playing an important role in this respect, too. But what more can be done to persuade our partners in the European Union and, indeed, the United States, to add their voice and, importantly, resources, to the important task of regenerating the economy of Sierra Leone, without which there can never be sustainable healthcare?

Baroness Verma: The noble Lord raises the point about funding for the recovery of Sierra Leone, and Liberia as well. We want to ensure that, as a country, we play our part by pledging and by encouraging our partners. So we will continue to play our part and encourage our partners. We have very much supported the UN Secretary General's high-level panel also to encourage that we do much more collectively and globally. Just to give the noble Lord some assurance, the World Bank has committed $650 million to make sure that, over the next 18 months or so, the reconstruction of those three countries affected by Ebola takes place.

Baroness Hayman (CB): My Lords, following the question from the noble Lord, Lord Boateng, is it not important to recognise that we must not be diverted from the task of rebuilding and regenerating the economy and the health service in Sierra Leone? Does the Minister agree that all the leading authorities warned that individual sporadic cases would be reported and that, while it is tremendously important to deal effectively with them, we should not allow that to colour the judgment that the situation in west Africa is as it was, sadly, a year ago?

Baroness Verma: My Lords, there are two main issues. One is being able to deal with the recovery and making sure that there is sufficient funding and support for us to be able to help strengthen the health systems in countries whose growth was very good before the outbreak but whose systems were not as strong as they should have been—those systems need strengthening. We will probably see the occasional case, but we must continue to encourage others to make sure that we rebuild west Africa in such a way that economic growth continues on a much more sustainable pathway. That can be done only if all global partners come together to be very supportive of what the UK has often done. The UK has led by example. Part of that is our commitment to 0.7% to ensure that our aid budget will always be protected.

The Earl of Sandwich (CB): The Minister spoke about the value of community groups. Is she satisfied that there is proper co-ordination between civil society organisations and government health services? In view of the recent incident, is there perhaps a disconnect between the WHO's analysis and that of the Government of Sierra Leone?

Baroness Verma: My Lords, there is not a disconnect. We have managed to deal with an unprecedented outbreak, but we need to make sure that co-ordination is much better. The UK was able to co-ordinate 10 government departments to work closely alongside other organisations in Sierra Leone. I do not think there is a disconnect, but there is always room to improve and to learn lessons when things have not gone so well. On the whole, we demonstrated that once you strengthen co-ordination on the ground and assist the Government of the day to support their systems, things get better.

Arbitration and Mediation Services (Equality) Bill [HL]

Third Reading

3.27 pm

Bill passed and sent to the Commons.

Regulation of Political Opinion Polling Bill [HL]

Third Reading

3.29 pm

A privilege amendment was made.

Bill passed and sent to the Commons.

Bank of England and Financial Services Bill [HL]

Third Reading

3.29 pm

Clause 21: Rules about controlled functions: power to make transitional provision

Amendment 1

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

1: Page 17, leave out line 21

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, this is an amendment to Clause 30, which in effect will require certain individuals with annuities valued above a threshold to take advice before selling an annuity on the secondary market. Clause 30(3) gives the Treasury the power to make regulations to exempt some individuals from mandatory advice. The amendment changes the nature of that power so that the regulations are made under the affirmative, rather than the negative, parliamentary procedure.

[Lord Bridges of Headley]

On Report, the Delegated Powers and Regulatory Reform Committee recommended that the power to exempt some individuals from mandatory advice should be subject to the affirmative procedure. The Government agree that this is an important part of the consumer support package and that your Lordships should have the opportunity to debate this issue before it is set in legislation. That is why an amendment is being brought forward to change the power so that it is subject to the affirmative resolution procedure.

Along with the power to specify certain individuals who will be exempt from the advice requirement, Clause 30 gives the Treasury the power to specify which annuities will be subject to the advice requirement, including the specification of any threshold annuity value, and a further power to specify what type of advice individuals must have received. Ahead of laying the appropriate secondary legislation, the Government will be consulting later in the year on our proposals for the details of the advice requirement allowed for in these delegated powers. I beg to move.

Lord Wallace of Tankerness (LD): My Lords, I had not at all intended to intervene until the Minister mentioned the affirmative resolution procedure, which of course means that the order will come to your Lordships' House for approval. Does the Minister really mean that—and, if he seeks the approval of the House, is he willing to accept that the House might not approve it?

Lord Bridges of Headley: My Lords, I am sure that the Government will see sense and will wish to acknowledge the views of the House.

Amendment 1 agreed.

Clause 30: Advice about transferring or otherwise dealing with annuity payments

Amendment 2

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

2: Page 25, line 26, at end insert—

"( ) In section 429(2B) (regulations subject to affirmative procedure)—

(a) after paragraph (a) (inserted by section 21) insert—

"(b) provision made under section 137FBA(3);";

(b) the words from "provision made under section 410A," to the end become paragraph (c)."

Amendment 2 agreed.

Clause 32: Duty of Bank to provide information to Treasury

Amendment 3

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

3: Page 28, line 23, after "institutions" insert "or entities"

Lord Bridges of Headley: My Lords, the amendments in this group make minor and technical changes to correct oversights in the Bill. Amendments 3 to 6 deal with the use of the terms "institution" and "group entity" in the new Section 57B inserted by Clause 32. This section requires the Bank to provide information related to resolution plans for institutions and group entities. Subsection (5), which allows the Treasury to direct the Bank not to provide this information in relation to specified institutions, omits group entities. These changes correct this and make consequential amendments to the rest of the clause.

Amendment 7 alters Schedule 2 to ensure that the definition of "banking group company", found in Section 189(1B) of the Financial Services and Markets Act 2000, applies to the use of that term in the new subsection (1ZB) of that section, which is inserted by this part of the Bill, and not just to its use in subsection (1A), as is the case now.

On Amendment 8, as we are ending the PRA's status as a subsidiary of the Bank, Schedule 2 of the Bill removes a series of requirements in existing legislation for consultation between the Bank and the PRA that are no longer necessary. One such requirement, in Section 129A of the Banking Act 2009, was overlooked, and this amendment removes it.

Amendment 8 also reinstates a requirement for the Bank and the FCA to inform each other that they are satisfied that the conditions for application for a bank insolvency order for which they are respectively responsible are satisfied before either can make such an application. The amendment made by paragraph 56 of Schedule 2 to the Bill to Section 96 of the Banking Act 2009 inadvertently removed this requirement.

Finally, Amendment 9 corrects the reference to the Financial Services (Banking Reform) Act 2013 in paragraph 69 of Schedule 2. I beg to move.

Lord Davies of Oldham (Lab): My Lords, I am grateful to the Minister for explaining these amendments, which he has assured the Opposition are purely technical. I would not doubt the word of a Minister in such circumstances at any time, but certainly not at a time when, as will be recognised, the Bill is being considered first in this House. Therefore, if there were any failure to meet the criterion of technical amendments, I have no doubt that my colleagues in the other place would light upon it with some alacrity, so I am happy to support these amendments.

Amendment 3 agreed.

Amendments 4 to 6

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

4: Page 28, line 24, leave out "("specified institutions")"

5: Page 28, line 28, leave out "specified institutions" and insert "institutions or entities to which the direction related"

6: Page 28, line 31, leave out "the specified institutions" and insert "those institutions or entities"

Amendments 4 to 6 agreed.

Schedule 2: Amendments relating to Part 1

Amendments 7 to 9

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

7: Page 48, line 8, leave out ", omit the definition of "bank"." and insert—

"(a) for "subsection (1A)" substitute "subsections (1A) and (1ZB)";

(b) omit the definition of "bank";

(c) in the definition of "banking group company" for "that Act" substitute "the Banking Act 2009"."

8: Page 50, line 33, at end insert—

"( ) In the entry for section 96, in column 2, for paragraphs (a) and (b) substitute—

"(a) Read subsection (2)(a) as "the FCA has informed the Bank of England that the FCA is satisfied that Condition 1 in section 7 is met,".

(b) Treat the references to the PRA in subsection (3) as references to the FCA.

(ba) Read subsection (3)(a) as "the Bank of England—(i) has informed the FCA that it is satisfied that Condition 2 in section 7 is met, and (ii) has consented to the application,"."""

9: Page 52, line 9, column 1, leave out "and Banking Reform Act" and insert "(Banking Reform) Act 2013"

Amendments 7 to 9 agreed.

A privilege amendment was made.

3.35 pm

Motion

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

That the Bill do now pass.

Lord Bridges of Headley: My Lords, I believe it is customary at this stage to thank all those who have helped ease the passage of this Bill through the House. It is fair to say that at times, the passage has not been entirely easy. The list of those I have to thank is therefore long but noble Lords will be glad to hear that I will refrain from an Oscaresque thank you, complete with thanking my mother and bursting into tears, and will simply thank a few people. I thank the Bill team of course, for their excellent guidance and advice, and my excellent Whip and noble friend Lord Ashton, who helped keep me on the straight and narrow throughout. I thank the Governor of the Bank of England, as well as Andrew Bailey and the officials there, and Sir Amyas Morse and officials at the NAO for all the work they did on various parts of the Bill and the negotiations over that.

Those Peers on all sides of the House who were members of the PCBS also deserve my thanks, especially the noble Lord, Lord McFall, and the most reverend Primate the Archbishop of Canterbury, and those on the Cross Benches who made excellent contributions on a range of possible technical issues during the Bill and spared the time to explain to me their thoughts and concerns, especially on the NAO and Bank issue. In particular I thank the noble Lord, Lord Bichard, as well as the noble Lords, Lord Burns, Lord O'Donnell and Lord Turnbull. At one stage in proceedings, one of your Lordships asked for a collective noun to describe three former Permanent Secretaries. The answer is, of course, "a Humphrey".

I thank my noble friend Lord Naseby for his contribution regarding mutuals, and the noble Baroness, Lady Worthington, for her thoughts on the Green Investment Bank and auditing issues.

Finally, of course, I thank especially both of the Front Benches—the noble Lords, Lord Tunnicliffe, Lord Davies and Lord Sharkey, and the noble Baroness, Lady Kramer—for all the time they spent meeting me and discussing detailed aspects of the Bill. Sometimes we agreed and sometimes we did not. But the discussion was always amiable, civilised and, above all, thanks to their efforts, we did what this House is meant to do, which is to scrutinise and test the legislation.

I said at the start of the Bill that I see this process as a form of legislative acupuncture. At times it was undoubtedly a bit painful, but, thanks to the contributions of your Lordships, the Bill leaves this place in better shape than when it began, and for that I am thankful.

Baroness Kramer (LD): I very much join in the thanks, particularly to the noble Lord, Lord Bridges, for the way in which he conducted the work of the ministerial Front Bench. He was always open to meeting and kept us incredibly well informed—frankly, above and beyond the usual. I extend those thanks to the noble Lord, Lord Ashton of Hyde, and to the whole of his Bill team for the generous way in which they handled this piece of legislation. The Government listened, particularly on one key issue which these Benches were concerned about—oversight of the Bank of England—and the Bill will now be stronger for that.

I have to say, very briefly, that there were areas where the Government did not listen, and we will all live to regret two of them. One is the decision to end the reversal of the burden of proof, which would have had a big impact on the culture of banking, and for the better, and the other is the concern we raised over the independence of the FCA. Both those concerns have been very much underscored by the recent disclosure that the FCA has cancelled its review of the culture of banks and by the timing of the way it did so, just a few weeks after the Bank of England parachuted an executive director into the FCA to supervise this area. So we have concerns, which I am sure will be picked up in another place and by the Treasury Select Committee. But I very much thank those who worked on the Bill and who did so with great graciousness.

Lord Davies of Oldham: My Lords, I, too, thank the Minister and his colleague, the noble Lord, Lord Ashton, for the way in which they have conducted the progress of this Bill. We particularly appreciate that the Minister was concerned to arrange meetings at which we could discuss fully, outside the processes of the Chamber, crucial aspects of our anxieties. We were greatly exercised over the issues of the court and its powers and the oversight committee, so we also particularly appreciated the fact that a meeting was arranged for us by the Minister with the chairman or chief officer of the court. That was extremely helpful and it aided us in our consideration of the Bill. So I thank him and his team for their work on the Bill.

[Lord Davies of Oldham]

I also indicate to the Minister that, as a Lords starter, the Bill has further scrutiny to undertake. He will be well aware that my colleagues in the other place will subject the Bill to intensive scrutiny and will seek to find areas where perhaps the Government can be persuaded to think again, not least on the reverse burden of proof and their position with regard to the court. But this has been a constructive exercise. I suppose that it is the Minister's maiden Bill and I congratulate him on his achievement as the Bill is about to pass.

Bill passed and sent to the Commons.

Scotland Bill

Committee (2nd Day)

3.41 pm

Relevant documents: 6th Report from the Constitution Committee, 15th Report from the Delegated Powers Committee

Clause 34: Crown Estate

Amendment 43

Moved by ***Lord Davidson of Glen Clova***

43: Clause 34, page 33, line 18, leave out "may" and insert "must"

Lord Davidson of Glen Clova (Lab): My Lords, I shall speak also to Amendment 46 standing in my name and that of my noble friend Lord McAvoy. These amendments would alter Clause 34, which relates to the devolution of the Crown Estate. Although technical in nature, the amendments are nevertheless important. Not only do they reflect amendments tabled in the other place by my honourable friend the Member for Edinburgh South and the right honourable Member for Orkney and Shetland but they reflect our approach to the Bill more broadly. We fully support the devolution of the Crown Estate but there are a number of outstanding issues on which it would be helpful if the Minister would comment in due course.

By way of background, the Scotland Bill will devolve the Crown Estate Scottish assets and income. The assets include nearly the entire Scottish seabed, 37,000 hectares of rural land, 850 aquaculture sites, the rights to salmon fishing licences, the rights to renewable energy, pipelines and cables on the continental shelf, and residential and commercial properties. In total, they account for 3.9% of the entire Crown Estate revenues and are worth nearly £261.5 million.

Crucially, Clause 34 does not devolve joint investment projects and, before I turn to the specifics of the amendments, I will comment briefly on this. Because only wholly or directly owned assets are devolved, the management of Fort Kinnaird retail park in Edinburgh, in which the Scottish Crown Estate has a 50% interest, will remain the responsibility of the UK Crown Estate commissioners and the revenue that it raises will contribute to the UK Consolidated Fund. When one considers the shareholding that the Crown Estate has in this property, we contend that it should be an asset, in part, of the Crown Estate in Scotland. I would be grateful if the Minister would say whether any assessment has been made of how devolution of the Scottish Crown Estate might affect, indirectly or otherwise, the management or income of Fort Kinnaird.

On the specifics of the amendments, Amendment 43 would replace the word "may" with "must", thereby reducing the Treasury's discretion in making a transfer scheme. This would clarify the obvious intent on all sides of the House to devolve the Scottish Crown Estate assets. We understand the reason for the current drafting is that the Treasury requires legislative consent from the Scottish Government in order to transfer assets.

Amendment 44, proposed by the noble and learned Lord, Lord Wallace, also focuses on this, possibly with some rather more interesting additions. The problem with the current wording may be that, as drafted, even were legislative consent given, which I presume it would be, the Bill does not definitely require the formation of such a scheme. I do not believe that this is the intent. Therefore, this amendment would provide a measure of clarity to these proceedings.

3.45 pm

Further, the transfer of assets and income to the Scottish Parliament was a Smith commission recommendation. The Smith report explicitly uses the term "Parliament". However, this is not reflected in the Bill. Accordingly, Amendment 46 would replace the words "Scottish Ministers" with "Scottish Parliament". During the first day of Committee, we had a great deal of debate about the permanency of the Scottish Parliament. Indeed, on this side, we have continually made the case for this, and it is now beyond any doubt. Although Ministers and Governments come and go, the institution will remain. We believe that the reference to the Scottish Parliament should be consistent throughout all aspects of the legislation, and that is the reason for our amendment.

Clause 34(7)(d) refers to the Scottish Parliament assuming the same role as the UK Parliament under the Crown Estate Act 1961; that being oversight and accountability regarding Crown Estate assets. Would the Minister explain why the Scottish Parliament should not be the transferee of the estate's assets and responsibilities? Were the assets transferred to the Scottish Parliament, that Parliament would then be able to nominate Scottish Ministers for whatever reason might be required. We are concerned that the Government have missed out the middle step; namely, the involvement of the Scottish Parliament. There may be further technical reasons why this is not possible, so I would be grateful if the Minister would respond to these points.

As I observed in my opening remarks, these are minor changes to a clause that we largely support. However, we think they could aid a smoother and more effective transition. It is crucial that as little disruption as possible is caused. So my final question to the Minister on this issue is: what measures are in place to ensure minimal disruption to the staff and tenants whose livelihoods may depend on the successful management of the Scottish Crown Estate and who would expect nothing less? Accordingly, I look forward to the Minister's responses and, with that, I beg to move.

Lord Wallace of Tankerness (LD): My Lords, a number of amendments in this group stand in my name and that of my noble friend Lord Stephen. The first reflects largely what the noble and learned Lord, Lord Davidson of Glen Clova, has just said in respect of the obligation on the Treasury to be just that—an obligation, and not something that it "may" do, rather than "must", and therefore slide out of. The House frequently debates the difference between "may" and "must", but in this situation it is important. It was very clear from the Smith commission that there was an expectation that this devolution would take place. This amendment seeks, in consultation and agreement with Scottish Ministers, to ensure that there should be devolution and that it should not be voluntary or discretionary rather than mandatory.

I readily understand why the Government have set this out in a way that means devolution to Scottish Ministers rather than to the Scottish Parliament. The Scottish Parliament cannot exercise administrative or executive functions and, therefore, it would be necessary to transfer to a body that does have executive functions—namely Scottish Ministers. But I note, too, that the legislative devolution is specifically to amend the Crown Estate Act 1961, which will come within the legislative competence of the Scottish Parliament. It may be wise for Scottish Ministers and the Scottish Parliament subsequently to decide that there should be an independent Crown Estate body, as exists at present, at arm's length from government, rather than leaving the direct administration of such substantial assets, as the noble and learned Lord, Lord Davidson, has indicated, in the hands of those who—I say this in no pejorative way—have a political agenda.

Amendments 49, 50 and 51 are somewhat technical but nevertheless important. They change the procedure set down in the Bill for taking forward these changes. The type C procedure, which is currently in the Bill for the approval of statutory instruments under the Scotland Act, requires the approval of both Houses of Parliament. Although the scheme will require the agreement of Scottish Ministers, under new Section 90B(17), the Scottish Parliament is not required to approve the scheme. However, the type A procedure requires statutory instruments containing the scheme to obtain the approval of both Houses of Parliament and the Scottish Parliament, and I believe that this is more reflective of the Smith commission report. Indeed, at the prompting of the Law Society of Scotland, we believe that the amendment would improve the Bill.

Similarly, Amendment 51 would change the procedure for approval of a variation of the scheme from type I to type A. Clause 34(6) provides that for certain purposes, type I procedures should be used for amendments to the scheme if that procedure designates that a statutory instrument containing legislation is subject to annulment by either House of Parliament. Therefore, changes to the scheme would not be subject to scrutiny by the Scottish Parliament. By changing to type A, the amendment would ensure that the Scottish Parliament would have a role in passing that legislation. Again, that would improve the Bill.

Amendment 48A is somewhat more substantive. It provides for onward devolution to the three islands authority areas, namely Orkney, Shetland and the Western Isles. The amendment, which is in my name and that of my noble friend Lord Stephen, was largely drafted by the islands councils. The Smith commission stated that following the transfer of the Crown Estate to Scottish Ministers,

> "responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities".

In the foreword to the commission report, the noble Lord, Lord Smith of Kelvin, said:

> "There is a strong desire to see the principle of devolution extended further, with the transfer of powers from Holyrood to local communities … The Scottish Government should work with the Parliament, civic Scotland and local authorities to set out ways in which local areas can benefit from the powers of the Scottish Parliament".

The purpose of the amendment is to do just that: not only generally to meet the aspiration of the noble Lord, Lord Smith, in his foreword, but specifically to give real substance to the recommendation that there should be onward devolution of the management of the Crown Estate to the islands council areas. Indeed, the noble Lord also said that other areas may seek such responsibilities, but in his report he specified these three areas.

I anticipate the Minister saying in his answer, "That is not part of Smith. Smith said that it should be done by the Scottish Ministers". Of course, technically, our amendment provides for that but it gives real assurance that it will happen. That is necessary because there is, by and large, some suspicion—let me put it no higher than that at the moment, although many might put it higher—that the present Scottish Government are very much a centralising Government. If they win the elections in May, I do not think we see any signs that they would do otherwise. During the last general election, my party produced a pamphlet entitled *The SNP Have Centralised the Life Out of Scotland*. It goes through a number of services—police, fire, health, local government, courts, colleges and enterprise companies—where responsibilities and powers have been centralised in Edinburgh. The SNP has done the opposite of what many of us wished to see—powers going from Edinburgh to communities in Scotland. With this amendment, we seek to make sure that this becomes a reality and that this devolution is honoured.

I should not put this only in terms of meeting and addressing concerns because there is a positive case as well. The conveners of the three islands authority areas have written to many noble Lords setting out their case. They refer to their policy as set out in the document, *Our Islands, Our Future*, which was launched in June 2013 with the objective of highlighting the distinctive features, including the opportunities and challenges, for the islands communities, and the fact that these may be better achieved through the further devolution of power. Following the launch of that document and initiative, some important steps have already been taken. When my right honourable friend Alistair Carmichael was the Secretary of State for Scotland, he entered into an agreement with the islands councils that there would now be more "island-proofing" of legislation and a better interchange and exchange between officials in the council areas and in the UK Government. Indeed, policy commitments have also been made by the Scottish Government.

[Lord Wallace of Tankerness]

The further devolution of the management functions of the Crown Estate, especially in coastal waters, will be an opportunity to promote subsidiarity and to enhance the well-being of our islands communities. I have something of a track record on this from the time when I was the Member of Parliament for Orkney and Shetland and the Member of the Scottish Parliament for Orkney. My dealings with the Crown Estate were not always smooth, especially when it tried to impose levies on local slipways because part of the slipway went over the foreshore. There were also rows, debates and disputes as to whether Udal law applied or not. In some cases we succeeded in showing that Udal law applied and therefore the estate had no rights at all. The estate also tried to charge fees for berthing in marinas, along with the virtual production tax that it put on fish farms. It is fair to say that my experience over recent years is that there have been some improvements, but there is nevertheless a general belief that the communities of the islands would be far better at managing these local marine resources themselves. This is an opportunity genuinely to give substance to localism and promote the sustainable use of the marine resource, not least with regard to aquaculture and renewable energy.

The question might be asked: are the islands councils capable of exercising these functions? One needs only to look at what both Orkney Islands Council and Shetland Islands Council have done over the past 40 years in implementing the Orkney County Council Act 1974 and the Zetland County Council Act 1974. That was private legislation designed primarily to address issues arising from the development of the oil industry and the infrastructure in the islands areas to support it, but in practice it is very relevant to tackling the development of aquaculture in those communities. The works licences that were granted by the local authorities were in many respects far more considered and robust in dealing with the issues than was the work done by the Crown Estate, from which rental agreements had to be sought, and which played what might be described as the planning permission role in areas that were not covered by the two local Acts. It is worth noting that the Crown Estate very much relied on the work of the islands councils in granting works licences when it came to issuing its own rental agreements. Indeed, the planning arrangements that were set up to deal with the works were subsequently applied to the rest of Scotland. Orkney and Shetland provided the model for the rest of the country in planning arrangements for the inshore marine environment.

I do not doubt that there is both the capacity and the capability within the council areas to exercise these powers in a responsible and imaginative way that will bring benefit to the communities. I hope, therefore, that the Government will be sensitive and responsive to this amendment and that the Minister will be willing at the very least to meet representatives of the islands authorities before the Report stage. This is an opportunity not only to ensure that what the Smith commission proposed actually happens, but also, as an initiative, to try to give real substance to the idea of localism, thus bringing real benefits to our islands communities.

4 pm

Lord McCluskey (CB): My Lords, I have added my name to several of these amendments and I need add nothing to what has been said by the two noble and learned Lords in support of them. However, perhaps I may draw attention to one thing. As has already been made clear in relation to two of these amendments, the Bill appears to depart expressly from the clear recommendation or agreement that appears in the Smith report, paragraph 32 of which states:

"Responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament".

Similarly, as the noble and learned Lord, Lord Wallace, just said, there is a provision which appears to be departed from. Amendment 48A relates to further devolution to local communities. The provisions in the Bill show that a recommendation or an agreed decision in the Smith report is not written in stone. Hitherto, the Government have made a great point of saying that the Smith commission must be enacted in full. Here we have two instances, at least, where the Government have departed from, and indeed contradicted, what the Smith report advised. Are we to take it that, if the Government come to the view that Smith did not get it quite right in some way for some clear, sound reason, the Smith recommendation need not be followed? Will that apply to other provisions in the heads of agreement relating to other matters in respect of which the Government have hitherto followed the Smith line?

Lord Gordon of Strathblane (Lab): My Lords, I shall intervene briefly on two points. First, as regards the discussion about "may" and "must", while I concede that "may" sounds too permissive and does not adequately reflect Smith, it could be argued that "must" sounds as if one needs to coerce an unwilling UK Government. Surely, the word "shall" would be the obvious alternative.

Secondly, as regards the point made by the noble and learned Lord, Lord Wallace, while I agree entirely that the island authorities are wholly competent to manage the Crown Estates, and I hope they will be allowed to do so, the agency for handing over the power must be the Scottish Parliament. For this Parliament to insist in advance that it goes is not devolution, it is compulsion.

The Earl of Kinnoull (CB): My Lords, I shall speak to Amendments 45 and 47. First, I thank the Minister and his officials for the generous amounts of time they have given to date to discussing these matters. These amendments arise from my concern that the Bill is not consistent with the Smith commission agreement and would make Crown Estate assets politically available ones, rather than things held independently for the people of the nation. The wording of the amendments is illustrative only.

As has been observed, the Crown Estate's core constitutional document is the Crown Estate Act 1961. That document, however, is a cold discussion of constitution and functions and does not address how the Crown Estate works in practice, especially how it works together with Ministers. That is in the HM Treasury and Crown Estate framework document, which is publicly available on the website. That document,

which is a model of clarity, makes it abundantly plain that the Crown Estate assets are to be managed on an arm's length basis. Paragraph 3 states that,

"it is not an instrument of government policy, it is a public body".

The values of the Crown Estate are clearly set out and include stewardship. The document states:

"Stewardship is deeply engrained in our culture; because of our history and because of our heritage, we act at all times as good stewards of the properties we manage. We strive for the best standards of management: in our parkland and gardens; in our farmland and our forestry; in the marine environment; and in our buildings and streetscapes. So our commercial approach is supported by a clear recognition of our stewardship responsibilities".

Nothing in the Smith commission agreement suggests in any way that any party to that agreement sought to change the arm's-length basis that the Crown Estate operates under, or the values by which the assets are managed, including that of stewardship.

I turn to the phrases in the Smith commission agreement, especially paragraph 32, which the noble and learned Lord, Lord McCluskey, just read from. In this, I detect not one iota of any agreement that seeks to change what I just said about the arm's-length nature of the relationship between the Government and the Scottish Crown Estate. I ask the Minister my first question: does he agree with my assertion?

Secondly, the commission agreement is in respect only of the economic assets of the Crown Estate, which presumably is not all the assets. Will the Minister explain why the Bill currently refers to all the assets, as the noble and learned Lord, Lord McCluskey, said? If this is a change to the Smith commission agreement based on sound reasoning, then would the Minister agree that this type of logic might apply in other situations?

Thirdly, the agreement sees the transfer of management to the Scottish Parliament, as has just been discussed, but if the Minister argues that such transfer is not possible, as I suspect he will, then would he agree that it would be much more in keeping with the Smith commission agreement to maintain the arm's-length relationship between the Government and the Scottish Crown Estate, using language similar to what I have proposed?

My amendments do not address onward devolution. I am very much in favour of this and I found the speech of the noble and learned Lord, Lord Wallace of Tankerness, compelling. My rather less compelling thought had been that the new Scottish Crown Estate commissioners should make suitable provision for this, in line with the Smith commission agreement and, indeed, with Richard Lochhead's own words in his document, *Administration of the Crown Estate in Scotland—Case for Change,* at paragraph 21:

"In particular, there is widespread support in Scotland for an approach to land management which seeks to support communities—particularly in rural and isolated areas—taking responsibility for their own futures".

I can only think that he and the SNP would therefore not object to onward devolution being in the Bill.

I do not believe that my amendments are in any way inconsistent with the Smith commission agreement; the Bill's clauses as currently cast are. I would transfer the management of the Scottish Crown Estate assets to a similarly run independent body, so that these important things cannot be used for political purposes, and so that their stewardship continues to be managed on a long-term basis for the people of Scotland.

Lord Sanderson of Bowden (Con): My Lords, I support the thrust of the amendments from the noble Earl, Lord Kinnoull. The Crown Estate is an independent, commercial business. It is extremely well run and, of course, it pays its profits to the Treasury. It is a great shame that we do not have anyone from the Scottish National Party in the Chamber so that we can hear what they have to say about this future arrangement. It would be much better if they were here, but we have to imagine how they will view this whole operation. In supporting the noble Earl, Lord Kinnoull, I hope that they realise that it is not really an arm of government that we want to see in Scotland, but a separate board reporting to the Government and to the Scottish Parliament as to how they are getting on. In supporting the noble and learned Lord, Lord Wallace, I hope that that particular board would have a highland spring in its step.

I turn to the amendment from the noble and learned Lord, Lord Wallace. Having been a Minister for the Highlands, I know only too well that the relationship between the Crown Estate and the Highland councils was not always a smooth-running affair. Of that I am quite certain. However, I strongly support what the noble and learned Lord said about the future arrangements now that we are to have a transfer of functions in relation to the Scottish Crown Estate. I hope that this will be borne in mind by the Scottish Government when they determine how they will run this whole affair. As the noble Lord, Lord Gordon, said, no doubt there has to be a central board, but the people in the islands should also be included in the arrangements going forward. Dare I say that the Glenlivet estate, in the Moray district—which was in the hands of the Forestry Commission but is now very much better run, if I may say so, by the Crown Estate—should also be included in the arrangements going forward?

I have one other thing to say, which has a bearing on what has already been said by the noble and learned Lord, Lord Davidson. Fort Kinnaird, on the edge of Edinburgh, is, in fact, a shopping centre. I will be interested to hear what the Minister has to say about this because Fort Kinnaird is in a different position from that of all the other interests that the Crown Estate has in Scotland, because it is part of a joint fund with other sovereign funds which own that property and properties south of the border as well. The arrangements that the Crown Estate arrives at with its partners in many places, particularly in Regent Street—it owns just about the whole of Regent Street—are built on trust between the various parties to those funds. I hope that the whole question of Fort Kinnaird and its works is left well out of the arrangements for the transfer to Scotland of the Crown Estate, so that it can continue with its present arrangements under the fund, because that is going well and I see no reason at all why that part of the operation should be devolved.

The Earl of Dundee (Con): My Lords, I should also like to support these amendments, including those in the name of the noble and learned Lord, Lord Wallace

[The Earl of Dundee]
of Tankerness, and the noble Earl, Lord Kinnoull. In combination they seek to advance two main purposes: first, to enable the Crown Estate's successor body to remain as independent of government and the control of Ministers as the current Crown Estate body already is; secondly, for the new Scottish Crown Estate body to include commissioners properly representing Scottish regions and localities. As has already been explained, such proposals correspond closely to the advice of the noble Lord, Lord Smith of Kelvin, and reflect his strong advocacy of avoiding centralisation as much as possible.

Baroness Liddell of Coatdyke (Lab): My Lords, perhaps I might raise a specific point which I had intended to raise under the group of amendments beginning with Amendment 65 on renewable energy. In an odd way, it comes back to the joint investment projects which my noble and learned friend Lord Davidson and the noble Lord, Lord Sanderson, raised. My point relates to offshore renewable energy. I draw attention to my entry in the register of Members' interests as a non-executive director of the Offshore Renewable Energy Catapult.

The Offshore Renewable Energy Catapult is a government-funded technology facilitator funded by Innovate UK, which, of course, is part of the Department for Business, Innovation and Skills. It is based in Glasgow and has developments in other parts of the UK. In particular, it has just taken over a development at Methil in Fife. The kind of joint investment projects I am seeking protection for, and clarification of their future status, are ones that probably have not yet taken place. If we are going to get investment in cutting-edge technology such as offshore wind, wave or tidal, some government money will have to be put into it. Will the Minister be so kind as to look at what protections there would be for investments made by UK government-funded agencies, perhaps in partnership with the private sector—in the way that the noble Lord, Lord Sanderson, outlined with Fort Kinnaird—to ensure that there is no diminution in the value of those investments as we move forward?

This is quite a technical point and it may be that the Minister would prefer to write to me. But it is the kind of thing which, in terms of precedent, requires a degree of clarification at this point. It may be an arcane point, but now is the time to get such points sorted out.

4.15 pm

Lord Lang of Monkton (Con): My Lords, a number of points have been raised on this group of amendments. Amendment 43 refers to "may" and "must". When I was a young, dynamic junior Minister in the Scottish Office, I once tried to change "may" to "must" in a Bill that we were bringing before Parliament. I was told by my officials that: "In effect, Minister, 'may' means 'must'". This was, of course, in the premiership of my late lamented friend Baroness Thatcher. I rather like the triangulation, offered by the noble Lord, Lord Gordon of Strathblane, that "shall" is probably better than either of them. No doubt the Minister will have an answer to that point.

I support the noble Earl, Lord Kinnoull, on Amendments 45 and 47 and echo what has been said by my noble friends Lord Dundee and Lord Sanderson. This is an important issue because centralisation—to which the noble and learned Lord, Lord Wallace, drew attention—is a very alarming trend that is taking place in Scotland. We see it threatening the universities. I had a hand in the universities when I was Secretary of State: I created their separate funding council in Scotland and took part in expanding university activities. To see anyone intervening in the independence of the universities worries me greatly.

One can see it in the police, too. Again, I made changes to the police force when I was Secretary of State but I resisted any suggestion of centralising, which I thought was a seriously wrong step. I would have liked to have privatised Scottish Water, but I was able to set up three separate corporations. Once they had created a record of performance, they would have been able to follow the English ones—already in the form of corporations—into private ownership. Sadly, I was no longer in power, and nor was my successor, my noble friend Lord Forsyth, when that point was reached.

There has been a trend, not just confined to the present Government but over time, for the devolved Parliament not to devolve further: not to decentralise but to centralise. That is why I feel strongly that we do need, as the noble Earl suggested, a separate Scottish Crown Estate commission. Indeed, I had rather assumed that that would be forthcoming. I regret to say that I do not have the Smith commission report with me now and I cannot quote the wording, but I was under the impression that the noble Lord, Lord Smith, anticipated some form of further decentralisation affecting this organisation. I do not believe that he thought that it should pass into the maw of the Scottish Government, for them to despoil or develop as they think fit. It has been immensely successful over the years and it deserves to be maintained, as my noble friend Lord Sanderson said. It should, of course, be accountable to the Scottish Parliament and its Ministers, just as happens in the United Kingdom with the Crown Estate.

On Fort Kinnaird, I echo what my noble friend Lord Sanderson said. This is a separate venture, not a wholly-owned part of the Crown Estate Commission. To intervene in a joint venture with an outside commercial body, which is maturing well and is part of a good, well-established relationship with that body, would jeopardise the interests of both the outside partner and the estate commission itself. Therefore it was and remains right not to interfere with the arrangement but to allow it to continue. To force some kind of disposal might jeopardise the venture itself and the Scottish Crown Estate commission to some extent. That cannot be in the interests of anyone involved in this debate. So I support what the noble Earl, Lord Kinnoull, said and I hope that the Minister will respond favourably.

Lord Hope of Craighead (CB): Just as a footnote to the point that noble Lords have made about Fort Kinnaird, one can see from the Crown Estate commissioners website the structure of the venture that has been described. The Crown Estate commissioners themselves have,

"a 50 per cent interest in an English Limited Partnership which owns Fort Kinnaird Retail Park in Edinburgh".

The venture is a partnership. The ownership and presumably the management of Fort Kinnaird are in the hands of the partnership and I take it that the commissioners draw a revenue out of that arrangement.

That takes one to the essence of the role of the commissioners, as described on their own website, which is one of management of the resources in order, as they put it,

"to deliver the best value over the long term".

Of course, the interest for the UK Government at present is in the revenue. The commissioners make it clear that their function is to pay all the "annual revenue profit" to the Government. I would have thought it absolutely crucial to maintain that position, that in so far as the assets are concerned, they are managed in the broad interest of maintaining the assets for the best value. Of course, the revenue would then be transmitted to the Scottish Government, as would be consistent with the present position. That distinction between capital and revenue management and payment is absolutely crucial to the point that various other noble Lords have been making.

Lord Mackay of Drumadoon (CB): As my name can be found in some proximity to the amendments that are being discussed in this opening round of speeches, I do not intend to go into any great detail about what we have heard. I am, however, struck by the fact that people are talking as if the best way forward will involve a significant measure of respect and agreement and will not give any excuse for a deterioration in the relationship between the voters, which was to some extent apparent when devolution came along.

It falls to me, in view of one of the speeches that we have heard, to declare an interest that during a period of years when I was actually a Member of your Lordships' House, prior to becoming a High Court judge in Scotland, I spent quite a lot of my time working with companies in the electricity industry. It fell to me to give them advice when they sought it and to work with them on a practical basis when they set about seeking the erection of a new power station or some other building associated with a power station or the erection of new electricity wires to take electricity to different parts of Scotland and, indeed, further afield.

I appear in this debate having received a brief from the Law Society of Scotland, which takes an interest in these matters. It is clear from what has been suggested to me that it is not alone in encouraging agreement. On that basis, I invite Members of your Lordships' House to rely on the proposals which, as I say, are proximate to my signature.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): My Lords, I thank all those who have contributed to this debate: the noble and learned Lords, Lord Davidson, Lord Wallace, Lord McCluskey, Lord Hope and Lord Mackay; the noble Earls, Lord Kinnoull and Lord Dundee; and the noble Lord, Lord Sanderson, and the noble Baroness, Lady Liddell. We have had some very good contributions and I am very sympathetic to the intent of many of the points that have been raised.

The Bill's provisions on the Crown Estate were debated at length in Committee in the other place and some of the points raised then have also been raised today. As has already been mentioned by a number of your Lordships, the Law Society of Scotland, which I met last week, has also taken a close interest in these clauses and has suggested amendments, some of which have been taken up by noble Lords. In particular, noble Lords have raised issues around the way in which we have sought technically to give effect to the Smith agreement, the importance of establishing an arm's-length body, double devolution, and specific issues around Fort Kinnaird and other topics. I welcome this opportunity to set out the Government's position and approach to these clauses.

As noble Lords will be aware, the Smith commission agreed that responsibility for the management of the Scottish assets of the Crown Estate would be devolved. The agreement also stated that the Scottish Government should receive the revenue generated from the management of those assets, as has already been referred to. The Bill therefore provides for the existing Scottish functions of the Crown Estate commissioners to be transferred to Scottish Ministers by way of a transfer scheme, which will be set out in a statutory instrument made after the Bill receives Royal Assent. The Bill also provides that the revenue from the Scottish assets will be paid into the Scottish Consolidated Fund after the transfer.

In readiness to take over the management functions after the transfer has taken place, the Bill also enables the Scottish Government to make arrangements in advance of a transfer, for example to establish a management body and appointments to that body—I will return to that in a moment to pick up on what the noble Earl, Lord Kinnoull, said—via an Order in Council made by Her Majesty, and subject to the affirmative procedure before the Scottish Parliament. Following the transfer, the Scottish Parliament will have competence to legislate about the management of the Scottish assets, which will enable it to legislate in particular for further devolution to the islands and other areas seeking such responsibilities, as the Smith agreement recommended. At this point I can confirm to the noble and learned Lord, Lord Wallace, that I would be very happy to meet the islands councils. I will come back to double devolution in a moment.

Turning first to some other points that have been raised, in looking at Amendment 43 I liked in particular my noble friend Lord Lang's comment about dynamic junior Ministers and the distinction, if there is one, between "may" and "must". The parties opposite are seeking to make it mandatory for the Treasury to make the transfer scheme. Amendment 44 would make it mandatory for the scheme to be made, following agreement with the Scottish Ministers. First, I reassure noble Lords that the clause already provides, at subsection (17) of new Section 90B, that the Treasury cannot make the scheme without the agreement of Scottish Ministers. The majority of the scheme is not expected to be contentious but for those aspects which need to be negotiated, we think it right that agreement is reached between the Treasury and Scottish Ministers.

[LORD DUNLOP]

The clause as drafted, with the use of "The Treasury may" together with the requirement for the consent of Scottish Ministers, provides the right incentives for both parties to reach agreement and for a level playing field in the negotiations. The UK Government represent the interests of all people in the United Kingdom and, if this amendment were made, the ability to represent these interests would be constrained as the Treasury would be under a statutory duty to make a scheme, the discharge of which could be fulfilled only with the co-operation of a body beyond its control. As the scheme contains important protections for defence and national security, it is imperative that both sides are able to come to an agreement on the detail.

Secondly, the Treasury still cannot necessarily make the scheme even after the agreement of Scottish Ministers, since both Houses of Parliament must also approve the draft scheme before it can be made by the Treasury. I reassure the Committee that the Government are committed to making a scheme. Implementing in full the Smith commission agreement is a manifesto commitment; the provisions relating to the Crown Estate are an important part of that. However, actions speak louder than words. For example, we made an outline of the scheme available to the House last summer and in November we placed a copy of a draft scheme and memorandum of understanding in the Libraries of both Houses. Officials are currently in discussion to reach agreement on the detail of the draft scheme. After the draft scheme is agreed, it will be brought before both Houses of the UK Parliament and, if it is approved, it will be made by the Treasury and the transfer will occur on the date specified in the scheme. I hope that I have been able to reassure noble Lords on the Government's commitment in this regard.

4.30 pm

The noble and learned Lords, Lord McCluskey and Lord Mackay of Drumadoon, and other noble Lords, referred to Amendment 51. As with the amendments on the language in the clause, amendments relating to the type of procedure to approve the scheme were also tabled in the other place. I am pleased to confirm that the Government's approach is to recognise the importance of this transfer, which is why Clause 34(5) provides that the Crown Estate transfer scheme must be approved by each House of Parliament. This is the usual draft affirmative procedure—the type C procedure. The Crown Estate transfer scheme will contain important protections for critical national infrastructure, including protections for defence and national security. A number of these important protections are reserved matters, and for this reason it would not be appropriate to require that the transfer scheme and any amendments to it are subject to the approval of the Scottish Parliament. However, let me be clear that the scheme must be approved by Scottish Ministers before it is made. Furthermore, the transfer scheme will be subject to the scrutiny of MPs and Peers from all parts of the United Kingdom.

I now turn to the amendments in the name of the noble Earl, Lord Kinnoull, who spoke passionately about stewardship and the future arrangements of the Crown Estate. Amendments 45 and 47 seek to address concerns about the arrangements which will govern the management of the Crown Estate in Scotland in the future. Other noble Lords have expressed views on this matter. Your Lordships will be aware that the Smith commission agreement stated that responsibility for the management of the Scottish assets of the Crown Estate will be transferred to the Scottish Parliament. However, the Scottish Parliament is a legislative rather than an executive body and, for that reason, is not equipped to undertake the management functions. Hence the clause confers the ability to legislate in relation to the management of the Scottish assets on the Scottish Parliament, but the management functions relating to the Scottish assets are to be transferred to Scottish Ministers, to an executive body or to such other transferee body as they nominate.

The noble Earl's amendments suggest a more directive approach to the devolution of management of the Crown Estate in Scotland, including specifying that there should be Crown Estate commissioners and setting out their powers and functions. Of course I fully understand why the noble Earl has laid these amendments, and the good intent that lies behind them, but if we really intend for devolution to be meaningful, we cannot tie the hands of the Scottish Government in the way set out in these amendments. We cannot, on the one hand, devolve the management of the estate and, on the other, dictate the way it is managed. It is right that the Scottish Government are able to manage the Crown Estate in the best interests of the people of Scotland and it is equally right for the people of Scotland and the Scottish Parliament to hold the Scottish Government to account for that.

Having said all that, my understanding is that the Scottish Government's initial intention is to transfer the management functions to a single organisation for the short to medium term, which is not entirely dissimilar to the current arrangements for the Crown Estate. As the Committee will know, the current manager of the Crown Estate, the Crown Estate Commission, is an independent commercial organisation. It is not an instrument of government policy, but nevertheless it is a public body. The Treasury is its sponsor department and has general oversight of the Crown Estate's business.

I hope it will give the noble Earl some reassurance that, to facilitate a similar approach, the Scottish Government requested that we make an amendment on Report in the other place, which we did. Clause 34(9) enables the Scottish Government to put in place preparatory arrangements in advance of the transfer by means of an Order in Council. We have amended Clause 34(10) to make it plain that any such Order in Council may establish a body to undertake the management of the Scottish assets. The power includes the ability to make any necessary appointments to such a body. We made this amendment to ensure that the Scottish Government have the power they need to make all the arrangements necessary for the transfer. We want to do everything we can to facilitate the smooth transfer of management.

After the transfer, the Scottish Government intend to run a public consultation to establish the long-term future of the management of the Scottish Crown Estate assets. I am sure that the Scottish Government,

who follow the proceedings of this House very closely, will have heard the contributions and the sense which this House is conveying on the matter. I agree with the noble Earl that Scottish assets should be managed responsibly. Stewardship is vital, and it is the duty of this House and of the people of Scotland to call on the Scottish Government to be clear about their plans for the future management of the assets.

I now turn to the issue of so-called double devolution and Amendment 48A. The noble and learned Lord, Lord Wallace, has spoken eloquently about so-called double devolution of the Crown Estate. I know that this is something that his party advocates; indeed, it was raised in the other place by his right honourable colleague. Devolution within Scotland is an aspiration shared on these Benches. As my right honourable friend the Secretary of State for Scotland said in a recent speech:

"Devolution is not worthy of the name if it stops at the gates of Holyrood".

However, although I acknowledge the sentiments behind the amendment, I hope that it will not come as a surprise to the noble and learned Lord to learn that the Government do not support it. As the Secretary of State for Scotland said in the same speech, with respect to the proposal that the UK Parliament should legislate directly for double devolution:

"That is the right intention, but the wrong approach".

Indeed, as the Government stated in the other place, we believe that the Scottish Parliament should decide how further devolution within Scotland will occur. The Secretary of State has said:

"The Scottish Parliament and Scottish Government are responsible for local government in Scotland and it is their responsibility to drive that devolution onwards".

We must all hold them to account for that. I have been encouraged by what Minister Lochhead said in front of the Scottish Parliament: that he recognises that there is desire on the part of local communities to take on in their area the functions of the Crown Estate.

Lord Wallace of Tankerness: I am grateful to the Minister for giving way and for the way he is responding. Does he accept that there is a difference between the amendment moved by my right honourable friend Alistair Carmichael in the other place, Amendment 48, which was withdrawn, and the one we are now debating, which provides that the scheme for double devolution would be a Section 90B scheme, which, as the Minister has been at great pains to emphasise, will take place only with the agreement of Scottish Ministers? The amendment makes subsequent provision that it will be Scottish Ministers who make the transfer. So Scottish Ministers would be very much involved. Indeed, if the Minister were to accept my amendment to,

"leave out 'C' and insert 'A'",

the Scottish Parliament would have a role, too.

Lord Dunlop: I note what the noble and learned Lord says, and I will reflect on his point; I am sure that we will continue to discuss it.

The clause 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 transfer. The Scottish Government have already made commitments to devolution to island communities. In the document *Empowering Scotland's Island Communities*, which has already been referred to, the Scottish Government have committed to ensuring that 100% of the net income of the islands' seabed is passed to island communities. The Scottish Government have also said that they intend to consult on the future arrangements of the Crown Estate. Therefore, as I said, although I am sympathetic to the sentiments that have been raised about this issue, the Government do not believe that it is appropriate for the Bill to set out any onward arrangements for devolution to local communities. That is a matter for the Scottish Parliament. I look forward to hearing more from the Scottish Government on their further plans as they develop them.

I turn to Amendment 46. Clause 34 provides for a transfer scheme that would transfer all the existing Scottish functions of the Crown Estate commissioners to Scottish Ministers or to a person nominated by them. The amendment seeks to change the entity to which the transfer of those executive functions is made from Scottish Ministers to the Scottish Parliament; several noble Lords referred to this.

I note that the right honourable colleague of the noble and learned Lord opposite also tabled this amendment in the Commons in Committee. The Smith commission agreement stated that responsibility for the management of the Crown Estate and the revenue generated from those assets would be transferred to the Scottish Parliament. However, the Scottish Parliament is a legislative rather than an executive body, as I have already said, and for that reason it is not equipped to undertake the management functions that are currently exercised by the Crown Estate commissioners. The Law Society of Scotland also observed that the transfer is to the Scottish Ministers rather than the Scottish Parliament, and noted that there are good practical reasons why this should be so—not least that the Parliament does not exercise its executive powers.

Lord McCluskey: The Smith commission report states in paragraph 32 that what was to be transferred to the Parliament was not the management but the "responsibility for the management", so Parliament would then decide what agency, if other than the Scottish Executive, would manage the estate. Surely, that is the important point.

Lord Dunlop: We feel that in the clause, in giving the Scottish Parliament the legislative competence but then facilitating the executive competence of the Scottish Government, we have got the balance right.

As I was saying, the clause transfers management functions relating to the Crown Estate to the Scottish Ministers, which means that the Scottish Parliament has the ability to legislate in relation to such management functions. That gets the right balance and gives effect to the Smith commission agreement in what it intended to achieve.

I turn to some of the specific points that were raised —in particular, Fort Kinnaird, which I believe some people thought was a Ministry of Defence base but turns out to be a shopping centre in Edinburgh. I very much agree with what my noble friends Lord Lang and Lord Sanderson have said about this and the

[Lord Dunlop]
importance of not upsetting joint arrangements built on trust. The management of all the Crown Estates, wholly and directly owned Scottish assets, will be transferred under the transfer scheme. Fort Kinnaird, as has already been said, is not wholly and directly owned by the Crown; it is held by an English limited partnership in which the Crown Estate commissioners manage interests alongside other commercial investors. The partnership owns property in other parts of the United Kingdom, and Fort Kinnaird has never been wholly and directly owned by the Crown. It was brought into the partnership by the commissioners' joint venture partner, the Hercules Unit Trust, and is managed by British Land. Revenue from the Crown Estate's interests in Fort Kinnaird will therefore continue to be passed to the UK consolidated fund for the benefit of the UK as a whole.

I am very happy to confirm for the noble Baroness, Lady Liddell, that I shall take her specific point away and write to her on the offshore renewables catapult. The noble Earl, Lord Kinnoull, talked about protections for the assets of the Crown Estate. The current managers of the Crown Estate commissioners are under an obligation to maintain an estate in land, so it is appropriate to pass on this obligation as part of the transfer of management. The new manager may make changes to the pool of assets that make up the estate under its management; it can sell some assets but must reinvest the proceeds, bringing new assets into the estate. But the new managers must maintain an estate in land; they cannot convert the estate in its entirety to liquid assets to fund public spending. An estate in land in the ownership of the Crown must be retained for the future; that is an important point of stewardship.

I hope I have been able to provide some clarity on the approach and reassurance on the Government's commitment to make a scheme. Therefore, I ask the noble and learned Lord to withdraw his amendment.

4.45 pm

Lord Davidson of Glen Clova: My Lords, this has been a useful and quite technical discussion. I thank the Minister for his clarifications, particularly on the use of the term "may". I am particularly obliged to the noble Lord, Lord Lang, for his historical analysis identifying that "may" means "must". I pondered whether that means that "must" means "may", but that is doubtless a question for another day. I was also attracted by my noble friend Lord Gordon clinging to the word "shall". That seems to have a certain helpfulness to it. I trust the Minister will reflect on the point made by the noble and learned Lord, Lord McCluskey, about the Scottish Parliament and responsibility. It certainly chimes with the notion behind the amendment this side advanced. I beg leave to withdraw the amendment.

Amendment 43 withdrawn.

Amendments 44 to 47 not moved.

Amendment 48 had been withdrawn from the Marshalled List.

Amendments 48A to 51 not moved.

Clause 34 agreed.

Clause 35: Equal opportunities

Amendment 52

Moved by ***Lord Davidson of Glen Clova***

52: Clause 35, page 37, leave out lines 6 to 23 and insert—

""The subject-matter of Part 11, Chapter 1, of the Equality Act 2010 (public sector equality duty).

(none) Equal opportunities in relation to the Scottish functions of any Scottish public authority or cross-border public authority including appointments to the board of any Scottish public authority. The provision falling within this exception includes provision that reproduces or applies an enactment contained in the Equality Act 2006 or the Equality Act 2010 without affecting the enactment as it applies for the purposes of those Acts. It does not include any modification of those Acts, other than modifications of the types specified in paragraphs (a) to (e)—

(a) provision that supplements or is otherwise additional to provision made by those Acts, and which may enhance but may not diminish the protection and promotion of equal opportunities afforded by the provision made by those Acts;

(b) in particular, provision imposing a requirement to take action that the Acts do not prohibit;

(c) provision that extends application of the existing powers and duties of, or grants additional powers to, the Equality and Human Rights Commission in respect of provisions made under any part of subsection 149(3) of the Equality Act 2010 (public sector equality duty);

(d) provision that requires the Equality and Human Rights Commission to attend the proceedings of the Scottish Parliament for the purposes of giving evidence and to send each annual report of the Commission to the Scottish Ministers and that requires the Scottish Ministers to lay each annual report received before the Scottish Parliament;

(e) provisions in relation to candidates at an election for membership of the Scottish Parliament and a local government election in Scotland.""

Lord Davidson of Glen Clova: I rise to speak to the amendment standing in my name and that of my noble friend Lord McAvoy. This amendment has a variety of different effects, but the overall intent is to ensure that the Scottish Parliament has the capacity to—I use the term my noble friend would have used had he been here—smash the glass ceiling of equality in public and political life.

The amendment makes provision for the Scottish Parliament to have legislative competence in respect of the public sector equality duty. It also makes provisions for equality of opportunity in relation to the functions of Scottish and cross-border public authorities. It clarifies that the Scottish Parliament can make modifications to the Equality Acts 2006 and 2010, but only in so far as they enhance the protection and promotion of equal opportunities. It makes provision for the powers of the Equality and Human Rights Commission to be applied in relation to any modifications to the aforementioned Acts as well as increasing the accountability of the commission to the Scottish Parliament. Crucially, it would also allow the Scottish Parliament to bring forward the necessary competence for gender quotas in relation to candidates standing for the Scottish Parliament and at local government elections.

The Bill before us already includes the ability to legislate for women's representation on public boards, which of course is welcome, but we want to see that go

further. We want to ensure that there is a commitment to bring about equality in every walk of Scottish life, including in politics itself. We are now in a position where the economic case for women's equality in public life has been made and won. It could not be clearer. One of the contributors to this change in attitude is found in the work of my noble friend Lord Davies of Abersoch. His contribution to the debate should not be understated. In his final report he stated:

"It is a sign of our evolution ... that few British business leaders now ask why we need more women at the top, the business case is raised less and less as energies are now focused on how to achieve women in leadership positions and how to sustain the change".

He also says:

"The business case is even stronger today as Chairs report on the positive impact women are having at the top table, the changing nature of the discussion, level of challenge and improved all round performance of the Board".

However these successes should not be limited to one particular field. Scotland has come a long way on equality, with women leading the majority of the political parties in the Scottish Parliament, a female First Minister and a female Presiding Officer. But we say that that is still not good enough. In the Scottish Parliament only 36% of MSPs are women, while local government is falling way behind, with apparently only around 20% of women elected councillors. It is this discontinuity that lies behind the notion of candidate quotas in parliamentary and local elections.

I stress that this is not a party-political point, nor should it be. For us to bring about a change in culture and attitudes, we need support from all political parties and buy-in from a cross-section of our society. This is why the tireless work of campaigns such as Women 50:50 is so important. I pay tribute to its contributions in this field and thank it for its assistance in advance of Committee.

At present there are too many barriers preventing women reaching their full potential, in Scotland and indeed across the UK. The low number of women studying STEM subjects and the prevalence of low pay among women in Scotland fortify this point. One is seeking with this amendment to address this particular obstacle. Kezia Dugdale, the Labour leader in Scotland, is doing just that, along with Members across the Scottish Parliament, with her commitment to ensuring that at least half of Scottish Labour's new candidates for this year's Holyrood elections will be women. It is a crucial commitment, but we now need the tools to get on and deliver on a wider scale. We believe that this amendment is the mechanism for doing that. I beg to move.

Lord Stephen (LD): My Lords, I shall speak to the amendments in my name and that of my colleague, my noble and learned friend Lord Wallace of Tankerness. As has been stated, Clause 35 relates to the important issue of protection from discrimination and the promotion of equality of opportunity. These are fundamental markers of a fair and decent society. The protections in the law should be strong, and the meaning and effect of Clause 35 must be clear. I believe that we have not yet achieved the parity that is both important and required.

The Equality Act 2010 is widely held to be perhaps the best anti-discrimination law in the world. Thanks to the Act, wherever you live or work in Great Britain, you have a right to fair treatment regardless of your sex, race, age or sexual orientation or if you are disabled. Clause 35 needs to be explicit that the important protections in the Equality Act will be maintained right across Great Britain, and that modifications should be permitted by the Scottish Parliament only where they enhance the protections in the present legislation. As currently drafted, Clause 35 does not yet achieve that. While there is an attempt to differentiate between modifications to the Equality Act 2010, which are not permissible, and additions, which are, these provisions lack the required clarity. I thank the Equality and Human Rights Commission for its support and advice in framing these amendments.

Amendment 52A would make it absolutely clear that the Scottish Parliament had powers to increase protection from discrimination, harassment and victimisation by Scottish public bodies by, for example, adding new protected characteristics, prohibiting dual or multiple discrimination or enhancing remedies. It would also ensure that existing productions could not be eroded in Scotland.

The public sector equality duty is a positive duty, requiring public authorities and those delivering public functions to have regard to how they can promote equality of opportunity. It has great potential to play a transformative role for those experiencing disadvantage and discrimination. Amendment 52A would give the Scottish Parliament greater freedom to require Scottish and cross-border bodies that deliver public services in Scotland to do more to tackle entrenched inequality. We have already seen how the stronger specific equality duties in Scotland have driven greater transparency on the pay gap, for example, which means that it is clearer where action now needs to be taken. To devolve legislative competence for the general equality duty would give the Scottish Parliament far greater freedom to require its public service providers in Scotland to do even more positively to promote equality of opportunity.

The amendment would also ensure that the Smith commission commitment on gender quotas is delivered, while ensuring that the Scottish Parliament could not go beyond the extent to which positive action is permitted by EU law. We want to increase the efforts made to ensure that women have fair representation on public boards, in Scotland and elsewhere in Great Britain, but this must not be achieved through disproportionate barriers to participation by men.

On political representation, Amendment 52A, taken together with Amendment 52E, would enable the Scottish Parliament to allow political parties to take stronger action to ensure greater diversity in their selection of candidates for the Scottish Parliament and Scottish local government elections. However, the Scottish Parliament would not be able to legislate to extend the use of shortlists restricted to those sharing other protected characteristics. While this approach may be appropriate for women, who make up over 50% of the population, it would be disproportionate if it were to be used for far smaller groups, as it would thereby exclude very large sections of the population from such shortlists. These amendments reflect the position in the Equality Act 2010, which was widely debated and agreed by all parties at the time to be a proportionate, fair and appropriate position.

[Lord Stephen]

Amendment 52B relates to diversity on public boards. It would remove an interpretation of the term "protected characteristic" which would limit the ability of the Scottish Parliament to encourage diversity on public boards with regard to any characteristics not currently protected by the Equality Act 2010, such as marital status. The Scottish Parliament should have the power to go further than the current protections, should it wish, on this important issue. Amendment 52C may be covered by the government amendments, and I look forward to the Minister's clarification on this and his response to the other issues that I have raised.

Lord Dunlop: My Lords, I echo what the noble and learned Lord opposite and the noble Lord, Lord Stephen, said. The Government are committed to safeguarding equality, tackling discrimination where it arises and promoting transparency; for example, in pay. That is not to say that supplementary initiatives and protections in addition to those offered by the Equality Act do not have a part to play, as the Smith commission saw.

The equality provisions in the Bill relate to public sector bodies in Scotland and will enable the Scottish Parliament to make provision for the promotion and enhancement of equality in the public sector without any extension to the private sector. That is an important point to make; I know that that issue was raised by the House of Lords Constitution Committee. It is important to remember that the Smith commission was explicit that the Equality Act 2010 as a whole is to remain reserved. The Government are confident that the Bill ensures that the benefits of a cohesive framework of discrimination law remains across Great Britain.

In delivering Smith, the equal opportunities clause strikes the right balance between conferring greater competence on the Scottish Parliament for safeguarding and promoting equalities in public bodies and the importance of preserving a GB-wide legal framework. The Government's delivery of paragraph 60 of the commission agreement ensures that we continue to reserve the 2010 Act while providing the Scottish Parliament with the ability to legislate for specific provisions such as gender quotas. Through the general exception that we are providing, the Scottish Parliament will be able only to add to and supplement the 2010 Act. It will not be able to reduce protections but, instead, will be limited to increasing and promoting protections in relation to public bodies.

5 pm

On the specific issue of board appointments, the Scottish Parliament will be able to modify the 2010 Act if necessary—for example, to introduce gender quotas. The Government are confident that this is the right approach and that it delivers the benefits of devolution while, as I said, retaining the GB-wide equality framework.

Amendments 52 and 52A to 52E, tabled by the parties opposite, would have a number of effects. First, the public sector equality duty would be fully devolved. The Smith commission did not call for further devolution of the public sector equality duty and indeed specified, as I said, that the Equality Act 2010 should remain reserved. This does not mean that the Scottish Government are unable to act in this area. While the PSED as a whole is reserved, there is already some devolved executive competence.

Scottish Ministers already have wide-ranging devolved powers, for example, under the PSED, which enable them, through the setting of specific duties, to require Scottish public authorities to update and publish equality statements, report on their performance in relation to equalities and add bodies that are subject to the devolved duties. Scottish Ministers can, for example, require gender pay gap information to be published by Scottish public authorities—something the Government are also planning to implement for larger private employers across Great Britain. These provisions, which have undergone revision as a result of wide-ranging engagement with stakeholders and the Scottish Government, build upon these existing powers and will give the Scottish Government new freedom in setting equality and diversity requirements for public bodies.

The removal in Clause 35 of the statutory obligation for Scottish Ministers to secure the consent of the Secretary of State before they can specify Scottish public authorities is in keeping with the Smith commission's agreement on the devolution of further equalities powers in respect of public bodies. However, devolving the duty itself is a step too far and risks creating additional burdens for private and voluntary sector bodies that provide services to the public sector. This could occur through the imposition of excessive contractual requirements. For example, requiring Scottish public bodies to ensure that private service providers report on their gender pay gaps as a contractual condition would be burdensome, especially to smaller employers. I remind the Committee that the review in 2013 of the operation of the public sector equality duty by my noble friend Lord Hayward highlighted the risk of creating barriers for smaller charities or companies tendering for public contracts.

The Smith commission did not agree to devolve PSED and the Government are committed to continuing the benefits of nationwide equality coherence, with scope for national differentiation through specific duties where appropriate and workable. Full devolution of the PSED would alter this careful balance.

Secondly, Amendment 52 would enable the Scottish Parliament to confer new functions on the Equality and Human Rights Commission. The commission, which was established through the Equality Act 2006, is a reserved body under the Scotland Act 1998, with no legislative competence resting with the Scottish Parliament. The commission is independent of, but funded by, the Government. At this point, I acknowledge the important work of the EHRC in Scotland as in the rest of Great Britain. The Government are committed to retaining the EHRC's status and its key role of promoting consistency across the country in the enforcement of anti-discrimination laws.

The Smith commission did not call for further powers to be devolved to the Scottish Parliament in respect of the EHRC, which is, and will continue to be, a reserved body. The Government do not think that it would be appropriate to impose, or permit the Scottish Parliament to impose, new enforcement requirements or duties on the EHRC when the nature and application

of any new Scottish legislation remains unknown. The EHRC already has a significant role in providing advice to the Scottish Parliament. It has a Scotland commissioner and a Scotland committee, which has the delegated powers of the commission to advise the Scottish Government on the effect of legislation or a proposed change in the law. Officers of the EHRC and the commissioner already appear before the Scottish Parliament, and the commission sends its annual report to the Parliament. We believe that this is an appropriate level of involvement and engagement.

It might be convenient for the House if I introduce at this point government Amendments 52AA to 52AF and 52CA. These are technical amendments that remove unnecessary references to the 2006 Equality Act, which have no effect on the current drafting. The Equality Act 2006 has partly been superseded by the Equality Act 2010, and it now mainly contains provisions relating to the operation of the Equality and Human Rights Commission. As set out in the Scotland Act 1998, the EHRC is, as I have already said, a reserved body and will remain so. The Scottish Parliament is not able, therefore, to replicate or supplement the provisions of the 2006 Act, so we are proposing to remove the reference to it in Clause 35. I appreciate that noble Lords have queried the misleading reference to the 2006 Act in the clause. The Government's proposed amendment will ensure that there is no misunderstanding going forward.

Thirdly, I turn to Amendments 52 and 52A, which would enable the Scottish Parliament to introduce equality requirements to elections to political office. Shortlisting electoral candidates on the basis of sex and diversity reporting on candidates are provisions in the Equality Act 2010, which will remain reserved. If the intention of the Smith commission was to devolve equal opportunities in that regard, this would have been made clearer in its conclusions. In fact, it made the opposite position clear, stating that,

"the Scottish Parliament will have no powers over the regulation of political parties".

Section 104 of the Equality Act 2010 allows registered political parties to make arrangements in relation to the selection of election candidates to address the underrepresentation of people with particular protected characteristics in elected bodies. Section 106 of the Act gives a Minister of the Crown power to make regulations requiring registered political parties to publish diversity data for candidates. Although Section 106 has not been commenced, there is nothing to prevent political parties in Scotland, or elsewhere in Great Britain, reporting on the diversity of their candidates on a voluntary basis. Indeed, this may be an area for lively political competition.

Fourthly, Amendment 52 would allow the Scottish Parliament to create new protected characteristics for board appointments and quotas. The Government believe that the equality provisions in the Bill deliver the intent of the Smith commission agreement in what is a complex area of law. The clause is the result of careful consideration and reflection on comments of stakeholders, including the Scottish Government, and we are confident that it strikes the right balance. The Smith commission stated that devolution of equal opportunities relating to public bodies should not be limited to provision for gender quotas. The Government took notice of that and we are giving the Scottish Parliament the ability to go further. An example is the ability of the Scottish Parliament to introduce new protected characteristics on top of the nine already in the Equality Act 2010, which include sex, race and disability. This would give the Scottish Parliament greater flexibility when imposing new equality requirements on public and cross-border bodies in Scotland that exercise devolved functions.

The drafting of Clause 35 does limit the more specific exception for board appointments on public bodies to those protected characteristics already listed in the Equality Act. This does, however, include eight other characteristics, over and above the specific requirement of Smith. The two exceptions in Clause 35 call on some variation in their detail but still provide the Scottish Parliament with devolved competence, as detailed in Smith, and more. This is to ensure that the provisions do not become a barrier to recruitment, an issue that the noble Lord, Lord Stephen, raised; one might argue that having more than two or three concurrent quotas would make it more difficult to satisfy them and recruit suitable candidates for board appointments.

I hope that I have been able to clarify the position, and I ask that the parties opposite withdraw their amendment.

Lord Davidson of Glen Clova: I thank the Minister for his explanations both generally and in relation to the Government's technical amendments. We on this side are pleased to note that Her Majesty's Government have no ideological objection to gender quotas, and we will take that away and consider it. Accordingly, I beg leave to withdraw the amendment.

Amendment 52 withdrawn.

Amendment 52A not moved.

Amendments 52AA to 52AF

Moved by ***Lord Dunlop***

52AA: Clause 35, page 37, line 14, leave out "the Equality Act 2006 or"

52AB: Clause 35, page 37, line 15, leave out "those Acts" and insert "that Act"

52AC: Clause 35, page 37, line 18, leave out "those Acts" and insert "that Act"

52AD: Clause 35, page 37, line 20, leave out "the Acts do" and insert "that Act does "

52AE: Clause 35, page 37, line 22, leave out "those Acts" and insert "that Act"

52AF: Clause 35, page 37, line 23, leave out "those Acts" and insert "that Act"

Amendments 52AA to 52AF agreed.

Amendments 52B and 52C not moved.

Amendment 52CA

Moved by ***Lord Dunlop***

52CA: Clause 35, page 37, line 32, leave out from first "Act" to "are" in line 33 and insert "2010 and any subordinate legislation made under that Act"

Amendment 52CA agreed.

Amendments 52D and 52E not moved.

Clause 35, as amended, agreed.

Clause 36 agreed.

Clause 37: Tribunals

Amendment 52F

Moved by ***Lord Wallace of Tankerness***

52F: Clause 37, page 39, leave out lines 22 and 23

Lord Wallace of Tankerness: My Lords, this amendment is in my name and that of my noble friend Lord Stephen. It relates to the devolution of tribunals, which we very much welcome. There is much administrative sense in bringing together under one umbrella organisation the different tribunals in relation to reserved and devolved matters, although quite clearly there is still a reservation, which we support, for matters involving national security. Clearly, we have a new arrangement under the Tribunals (Scotland) Act 2014, with the courts and tribunals services coming together. Therefore, there is an umbrella organisation that will allow currently reserved tribunals to be devolved. I suspect that it would not make sense to transfer them all at once. That is why we have this scheme.

It is a complex provision. On the one hand, it appears to unreserve tribunals but only to the extent that they are provided for in a subsequent Order in Council. We unreserve with one hand and re-reserve with another, possibly with something akin to a Section 30 order to devolve them at a later stage. Again, I do not necessarily quibble with that means of doing it: the Government face a complex challenge. The Law Society of Scotland raised questions at an earlier stage about whether the position in the Bill as originally introduced in the other place was consistent with meeting the Smith commission recommendations. It is readily acknowledged that there was a significant redrafting of these provisions when the Bill was in another place.

Amendment 52F would remove the employment tribunal and the Employment Appeal Tribunal from the scope of the Order in Council referred to in new sub-paragraphs (4) and (5). As I understand it, new sub-paragraph (1) would be given full effect immediately with regard to the employment tribunal and the Employment Appeal Tribunal, bearing in mind that these tribunals are outwith the jurisdiction of the Tribunals, Courts and Enforcement Act 2007, so they would not qualify to be incorporated in an Order in Council where there might be a qualified transfer. The amendment is to seek the Government's view. If the tribunals remain subject to a qualified transfer, could the Government try to insist on conditions such as that the current fee structure and charges for people seeking to access employment tribunals could be stipulated in any qualified transfer? We think that it would be far better if these matters were now devolved to the tribunal service in Scotland.

5.15 pm

Amendment 52G seeks to clarify new paragraph 2A(8)(b)(i), which provides that an Order in Council under this clause may contain provisions which are designed to secure,

"consistency in any respect in practice or procedure or otherwise between the Scottish tribunal and other tribunals".

It is acknowledged that consistency of practice and procedure between a Scottish tribunal and other tribunals in an area such as employment law or otherwise may be desirable, but to have such a catch-all provision allows a broad range of consistencies to be applied and may indeed be interpreted as somewhat limiting the decision-making power of the tribunal judges. It is therefore incumbent on the Government, in bringing forward this proposal, to make clear what they mean by "or otherwise". It would be unfortunate if what is being sought by this is some kind of uniform decision-making.

I can see a strong case for consistency where there is UK-wide legislation between what happens in Scotland and what happens in England, but there is a difference between seeking consistency and imposing uniformity. For years we have had company law where there can be a different interpretation in the Court of Session from the English Court of Appeal, albeit that the same company law applies across Scotland. Cases used to be able to go to the House of Lords and now to the Supreme Court, and we would get a consistent decision that applied across the country, but if one takes criminal matters where there is UK-wide law such as in road traffic legislation or the Misuse of Drugs Act, unless there is a compatibility issue such cases in Scotland would not come to the Supreme Court. You could well end up with different interpretations north and south of the border. Indeed, that has been the situation since, dare one say, 1707 and it has not meant that the heavens have fallen in.

As I say, under existing legislation and in the present situation with tribunals, different decisions can be reached. There was a case in 2013 from the Upper Tribunal Asylum and Immigration Chamber to the Inner House of the Court of Session—M Ab N and KASY v The Advocate-General for Scotland and the Home Secretary. In that case the learned Lord Eassie said:

"I am naturally very conscious of the undesirability, in a matter of United Kingdom wide jurisdiction, of the courts in its respective constituent parts of the United Kingdom reaching divergent decisions. But it respectfully seems to me that in a situation such as the present appeals, in which the Court of Appeal in England and Wales appears not to have been favoured with the very full and much wider ranging submissions with which we were favoured and in which the issues are relatively new and not the subject of well settled authority, there is good reason wherefor a judge in one of those constituent parts should state his differing conclusion".

Even under the law as it is at the moment, it is possible to come to different conclusions, and I think that we would be very concerned indeed if the words "or otherwise", as they appear in this part of the Bill, were in some way or another to try to impose a means by which there would be uniformity.

Amendment 52H seeks to delete new paragraph 2A(7) and is in many respects a probing amendment. That particular sub-paragraph provides that other tribunals

can be added to the list of tribunals whose functions are subject to the qualified transfer after this paragraph comes into force. It may be that this is future-proofing, but if it is more than that, it would be helpful if the Government would explain which tribunals are envisaged to be covered by this provision so that we are in a position to assess whether such a wide-ranging power is necessary.

As we are dealing with tribunals, I have one or two questions to ask of the noble and learned Lord, Lord Keen, who I believe will be responding to the debate. I recall having engaged with the tribunal judges in Scotland and I found that considerable importance was attached to the fact that, quite understandably and properly, there was a benefit in giving tribunal judges in Scotland the opportunity to sit from time to time in tribunals in England and Wales and vice versa. The learned experience was helpful to them in their work. In taking forward orders under this Bill, is it the Government's intention to ensure that such reciprocity can continue? Perhaps the noble and learned Lord would look at the provisions under Section 50 of the Social Security Administration (Northern Ireland) Act 1992, which makes provision for commissioners from other jurisdictions within the United Kingdom to sit as deputy commissioners in Northern Ireland on social security tribunals. Likewise, there is provision in the 2007 legislation for those who are eligible to sit in Northern Ireland as deputy commissioners to sit on tribunals in Great Britain. It would be interesting to know whether the Government have it in mind to ensure that there is such reciprocity after the devolution of tribunals to Scotland.

Clause 37 makes it clear that this devolution is,

"so far as those functions are exercisable in relation to Scottish cases".

Under new paragraph 2A(2), "Scottish cases" are to be given a meaning by "an Order in Council".

If one takes, for example, immigration and there is a backlog, say, in Bristol, from time to time it is possible to shift some of the workload to Glasgow. It makes sense because, at the end of the day, the important thing is that those who are appealing to the tribunals should get their cases dealt with as swiftly as possible. That transfer of cases from Scotland or to Scotland, which is possible at the moment, has been to the benefit of those who are using the tribunal system. One would hope that it is still possible under the new arrangements to facilitate that but I would be interested to know how the Government intend to do it.

The clause states that provision may be made for an order for conditions relating to staff and accommodation. Clearly, there will be important matters with regard to staff and their entitlement. I hesitate to suggest that members of the judiciary fall under the definition of staff but there is an important issue here with regard to the judiciary. As regards tribunal judges, particularly those who serve in the Upper Tribunal in Great Britain appeals, can the noble and learned Lord the Advocate-General indicate what discussion there has been as to whether they wish to be transferred to the Scottish Upper Tribunal? Will they enjoy the same salary structure and pension arrangements as they have as judges in the Upper Tribunals in Great Britain? Will the Scottish public have access to the same level of judicial expertise under the new Scottish system as they do at present under the GB system?

Finally, the regulations are to be published. I think that it had been hoped by the Law Society of Scotland that we might have had an opportunity to see at least a draft regulation in respect of one of the tribunals to be transferred. I apologise if that has already been done and made available, but that I have not yet seen it. Perhaps the noble and learned Lord in his reply would indicate whether one has been put in the Library so that we can have an opportunity before Report to see what content these regulations will have. I beg to move.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords—

Lord Davidson of Glen Clova: I know that the noble and learned Lord is enthusiastic to get to his feet. We on this side see some force in the amendments in the name of the noble and learned Lord, Lord Wallace, but I will confine myself to only one aspect. He observed that the question of fees in employment tribunals and Employment Appeal Tribunals might arise in a different sense were these tribunals to be fully devolved. We see the current employment tribunal fee system, which has been widely criticised by legal professionals, academics and so on, as constituting a real and true barrier to justice.

If employment tribunals are fully devolved, Scottish Ministers would have the capacity to establish in the process, in conjunction doubtless with the trade unions and ACAS, the possibility of scrapping the fees that currently apply in Scotland. Perhaps the Minister might agree that that would improve access to justice in Scotland.

Lord Keen of Elie: I am obliged for the scrutiny that your Lordships' House has given Clause 37, in particular to the noble and learned Lord, Lord Wallace of Tankerness, for highlighting issues with respect to tribunal practice and procedure.

Let us be clear: Clause 37 provides a mechanism for enabling the transfer of functions of reserved tribunals to the Scottish tribunal system. The clause recognises the implications not only of paragraph 63 of the Smith commission agreement, but of paragraph 64, which recommended that the law providing for the underlying reserved substantive rights and duties governing the matters heard by these tribunals would continue to be reserved. Therefore, Clause 37 provides that these functions should be transferred by means of an Order in Council. That provides a degree of flexibility that would not otherwise be available. As the noble and learned Lord, Lord Wallace, observed, it is not really practicable to contemplate the transfer in one unit, as it were, of all these functions. The Order in Council will provide for the transfer of those functions, subject to conditions, that may be necessary to ensure the continuing effect of delivery of overarching national policy, and the underlying rights and duties that arise in areas of the law that continue to be reserved.

Amendments 52F and 52G are concerned with the transfer in respect of the employment tribunals and employment appeal tribunals. It is considered appropriate

[Lord Keen of Elie]
that this should proceed by way of Order in Council. Indeed, a draft Order in Council has been made available for consideration regarding this matter.

Let me assure the Committee of two things. First, any conditions or restrictions included in an Order in Council must be approved by both this Parliament and the Scottish Parliament before such an Order in Council can be made. Therefore, there will be scrutiny of any conditions attaching to such a transfer in both Parliaments. That is a consequence of the amendment proposed by Clause 37(2), which means that the form of Order in Council will be subject to the approval specified as "Type A" in Schedule 5 to Part III of the 1998 Act. Secondly, the Government do not agree that the terms of transfer of all reserved tribunal functions should be completely unqualified. There are circumstances in which it will be appropriate to ensure that functions can be undertaken in a way that maintains some continuing effective delivery of reserved legal matters—that is, of overarching national policy.

In these circumstances, it is proposed that an Order in Council in respect of employment tribunals will allow for consideration by the Scottish Government of the matter of fees in respect of those tribunals. That is not to say that in every instance where there is a transfer by means of Order in Council the matter of fees will not be addressed, but in the case of employment tribunals and employment appeal tribunals, I can say to your Lordships that the matter of fees will be for the Scottish Government and will not be reserved in any respect.

Reciprocity between the tribunals is a matter that will be worked out in the context of each Order in Council, and will certainly be the subject of discussion with the Scottish Government so far as any transfer is concerned.I am not aware at present of there being any specific statutory provision for such reciprocity to take place. I am aware that, as a matter of practice, tribunal judges, who are tribunal judges within the UK tribunal system, sit in both Scotland and England. There may be distinct benefits in attempting to ensure that that continues.

5.30 pm

The matter of Scottish cases is to be addressed by Order in Council. At present it is contemplated that steps will have to be taken to ensure that forum shopping does not occur on the part of persons seeking recourse to tribunals within the United Kingdom. For example, in the matter of employment tribunals, it is contemplated that jurisdiction in respect of the Scottish tribunals will be determined by reference to place of business, place of residence, the place where a person is normally employed and the place where the incident or incidents in question took place. But, again, because of the flexibility allowed for by a proceeding in the form of an Order of Council, that can be dealt with on a case by case—or, at least, tribunal by tribunal—basis.

The noble and learned Lord, Lord Wallace of Tankerness, also mentioned the matter of staff, albeit he hesitated to include tribunal judges in that term. Be that as it may, there has been engagement with the tribunal judiciary within Scotland on this matter and there is no intention that members of the United Kingdom judiciary should be obliged to take one step towards Scotland, or one step towards the United Kingdom. It will be a matter for them whether they decide to join the new Scottish tribunal or remain within the United Kingdom Tribunals Service.

Going forward, there is the question of access to judicial expertise. That is a further reason why the term "or otherwise" appears in Clause 37, because it may be necessary over and above the issue of practice and procedure to ensure suitable conditions over transfers so that a certain level of judicial expertise can be maintained within tribunals. To take a simple example, it may be a matter of concern that the Scottish Government might want to dispose of expert legally qualified tribunal judges in one area and substitute for them lay members or a lay panel. Therefore, it is important to consider that again on a tribunal by tribunal basis.

I hope that has addressed the questions raised by your Lordships. I note the points that have been raised and will consider them but at this time I invite your Lordships—

Lord Wallace of Tankerness: The noble and learned Lord has not addressed Amendment 52H and what other tribunals it is anticipated may be covered in future.

Lord Keen of Elie: That is, as it were, a known unknown at this stage. There are no particular tribunals in mind so far as that is concerned. However, if further tribunals are created, it is contemplated that they should not transfer automatically but should be subject to the same conditionality that is thought appropriate for existing tribunals. It is at that level of generality. It is not contemplated that there is any particular tribunal that will be addressed by that provision. I hope that answers the noble and learned Lord's question and invite him to withdraw the amendment.

Lord Mackay of Clashfern (Con): On the point made by the noble and learned Lord, Lord Wallace of Tankerness, about taking cases from England, where the delays in particular situations can cause difficulties, and bringing them to Scotland, the definition of a Scottish tribunal in new sub-paragraph (11)(a) is as one,

"that does not have functions in or as regards any other country or territory, except for purposes ancillary to its functions in or as regards Scotland".

I wonder whether there is any difficulty in relation to what I would have thought was a good idea—namely, to have the possibility of cases being referred to Scotland where that would help scheduling. However, it would be necessary for the law to be applied if a case was transferred to be the law that would be applied before it was transferred.

Lord Keen of Elie: I am obliged to the noble and learned Lord, Lord Mackay of Clashfern. First of all, of course, we are dealing with reserved matters. If we were dealing with immigration, for example—a matter of reserved law—there could be circumstances in which the application of Scots law led to a different outcome from the application of English law. I notice that new sub-paragraph (11) in Clause 37 talks about the meaning of a Scottish tribunal, but that, on the face of it, does not appear to determine the scope of its jurisdiction to hear cases from outside Scotland. It is more a question of what is a Scottish case in that context. That is

something that can be looked at, I suggest, in the context of each Order in Council for the transfer of each tribunal. There may be room to facilitate the transfer of cases in the manner suggested. That is something that we will take away and consider.

Lord Wallace of Tankerness: My Lords, I very much thank the noble and learned Lord, Lord Keen, for his response and the noble and learned Lord, Lord Davidson of Glen Clova, for his comments. On the question of fees, which we both raised in relation to employment tribunals, I think we probably believe that we got a satisfactory answer from the Minister. Indeed, I am very grateful to him for the replies that he gave us. In his further elaboration in his response to the noble and learned Lord, Lord Mackay of Clashfern, he indicated that the Government would be looking at—and, I hope, achieve—a situation whereby the Orders in Council will allow for the transfer of cases between jurisdictions to alleviate backlogs. It may well be that it applies the other way, too. Then we might be faced with a situation where a Scottish case could be heard in a jurisdiction furth of Scotland. No doubt, an Order in Council would be sufficiently well crafted to deal with that situation as well. The noble and learned Lord is right: I suspect that at the moment there is no statutory provision to allow reciprocity of the judiciary because, of course, we have a Great Britain tribunal system. Where there is legislation, it relates to Northern Ireland—for example, in relation to social security. I would hope to see the kind of provision that has been made for reciprocity with Northern Ireland apply in any orders that are brought forward with regard to the transfer of tribunals to Scotland.

With regard to the term "or otherwise", the noble and learned Lord suggested that that related to judicial expertise. I think elsewhere in his response to the noble and learned Lord, Lord Mackay of Clashfern, he accepted and acknowledged that there could be situations where Scots law was different. That is reassuring. While I think it is absolutely right that there should be a common approach—indeed, the Smith commission recognised that when you are dealing with UK statutes, it is desirable that there should be a common approach—nevertheless there will be circumstances where the respective courts take a different view. It would be unfortunate if that were closed down.

I apologise that I had not seen the draft Order in Council before coming into the Chamber. I am not sure that the Law Society of Scotland had seen it either. If the Minister would like to indicate where one might find it, that would be very helpful. If he cannot do so today, he can certainly write to us and that will be satisfactory.

Lord Keen of Elie: I undertake to advise the noble and learned Lord as to where a copy of the draft Order in Council can be obtained.

Lord Wallace of Tankerness: That would be helpful. In these circumstances, I beg leave to withdraw the amendment.

Amendment 52F withdrawn.

Amendments 52G and 52H not moved.

Clause 37 agreed.

Clauses 38 to 41 agreed.

Amendment 53

Moved by ***Lord Davidson of Glen Clova***

53: After Clause 41, insert the following new Clause—

"Obstructive parking

(1) In Part 2 of Schedule 5 to the Scotland Act 1998, in section E1 (road transport), after "Exceptions", insert—

"( ) The subject matter of sections 19 to 22 of the Road Traffic Act 1988 (stopping on verges, etc, or in dangerous positions, etc).

( ) The subject matter of section 41(5) of the Road Traffic Act 1988 (regulation of construction, weight, equipment and use of vehicles) in so far as it relates to the making of regulations making it an offence to cause or permit a vehicle to stand on the road so as to cause any unnecessary obstruction of the road."

(2) After section 51 of the Road Traffic Offenders Act 1988 (fixed penalty offences), insert—

"51A Offences under the Road Traffic Act 1988

(1) Any offence in respect of a vehicle under regulations made by Scottish Ministers under section 41(5) of the Road Traffic Act 1988 (regulation of construction, weight, equipment and use of vehicles) is a fixed penalty offence for the purposes of this Part if it is specified as such in those regulations, but subject to subsection (2).

(2) An offence under an enactment so specified is not a fixed penalty offence for those purposes if it is committed by causing or permitting a vehicle to be used by another person in contravention of any provision made or restriction or prohibition imposed by or under any enactment.

(3) Before proposing a change in regulation of a subject matter falling under this section, Scottish Ministers shall—

(a) consult the Secretary of State, and

(b) publish and lay before the Scottish Parliament an assessment of the impact on road safety of any difference between the proposed change in Scotland and road traffic rules in other parts of the United Kingdom.""

Lord Davidson of Glen Clova: My Lords, I rise to speak to Amendment 53 standing in my name and that of my noble friend Lord McAvoy. At present, the Scottish Parliament has control over much of road safety. Indeed, the Smith commission recommended the following:

"Remaining powers to change speed limits will be devolved to the Scottish Parliament. Powers over all road traffic signs in Scotland will also be devolved".

Clauses 39 and 40 reflect that recommendation by devolving full powers over the making of road signs and speed limits. However, as third sector organisations and Members in the other place have made clear, the Scottish Parliament does not have legislative competence over pavement parking. Amendment 53 would rectify this anomaly. The intended result is that parking offences such as parking on pavements, or by dropped kerbs, and double parking can be enforced by the Scottish Parliament.

At first blush, this may seem a somewhat picayune topic. However, I am grateful to both Mr Joe Irvin, on behalf of Living Streets Scotland, and the organisation Guide Dogs Scotland for their briefing, which demonstrates that this is a matter of significance. Pavement parking can be dangerous for pedestrians, especially people with sight loss, parents with pushchairs,

[Lord Davidson of Glen Clova]
wheelchair users and other disabled people. People with sight loss are particularly affected, as they can be forced into oncoming traffic which they cannot see. A survey by Guide Dogs Scotland showed that 97% of blind or partially sighted people encounter problems with street obstructions, and 90% of those experience trouble with vehicles parked on pavements. Pavements are not designed to take the weight of vehicles, and cars cause paving to crack and the tarmac to subside. This damage makes pavements uneven, creating a trip hazard for pedestrians, particularly the blind and partially sighted.

The cost of repairing pavements is, of course, a burden for local authorities. In London, there has been a general prohibition on pavement parking since 1974. Local authorities are responsible for civil parking enforcement and they have powers to make exceptions on a street-by-street basis. As my honourable friend the Member for Edinburgh South has said:

"Legislation to harmonise the law on pavement parking would mean that there is one law for everyone and would send a clear message that putting pedestrians in danger is not acceptable. Parking on the footway should only be permitted where a local authority determines that it is both necessary and safe to do so".

I trust that this point, at least, resonates with the Government's ambition to give local authorities greater autonomy over their own affairs. The amendment would allow parking legislation to proceed in the Scottish Parliament and enable local authorities and police to manage the streets more as communities wish.

Responding to a debate on this issue in the other place last month, the Parliamentary Under-Secretary for Transport stated that,

"it would not be without new cost burdens for local authorities. They would have to remove any existing local prohibitions, taking down signage, and then review every road in their areas to establish where limited footway parking should still be allowed, to avoid congestion, before going through the process of passing resolutions, putting down road markings, and erecting appropriate signage".—[*Official Report*, Commons, 4/12/15; col. 659.]

However, these concerns do not take into account the savings that would be made in maintenance costs for local authorities which, as we know, have to spend millions of pounds a year on repairing cracked pavements which have been damaged by vehicles.

The amendment would resolve any issue of competency and enable an impact assessment of the changes in comparison with the rest of the UK, which might have an overall benefit for understanding. This is significant, because recent efforts, including two Private Members' Bills—and an upcoming Department of Transport round table on the issue—have focused wholly on England and Wales. In his response, will the Minister at least give an undertaking that relevant Scottish representatives will be invited to these discussions in future? Both the Scotland Office and the Scottish Government agree to the principle of devolving these powers, subject to agreement. There is agreement from this side of the House. I beg to move.

Lord Steel of Aikwood (LD): I support subsection (3) of the new clause proposed by the amendment moved by the Official Opposition. I hold a number of offices in motoring organisations and I support the thrust of the clauses which the Committee has just passed, and the one we are discussing now, which give the Scottish Parliament more jurisdiction over road traffic management in Scotland. However, I hope when that happens they will be sensible and not introduce differences for difference's sake, remembering that motorists in this country travel frequently across the border from England into Scotland and vice versa. It would create an intolerable situation if they were to go out of their way to make differences for the sake of it. I like subsection (3) because it requires that, before Scottish Ministers make any change in regulation, they should consult the Secretary of State and,

"publish and lay before the Scottish Parliament an assessment of the impact on road safety of any difference between the proposed change in Scotland and road traffic rules in other parts of the United Kingdom".

That is an important safeguard and I therefore support the amendment.

5.45 pm

Lord Foulkes of Cumnock (Lab): I also support the amendment which was moved so eloquently by my noble and learned friend Lord Davidson of Glen Clova. When the Chair called Lord McAvoy, one or two of us at the back thought that the noble Lord's diet had suddenly worked remarkably well, but then we realised it was the noble and learned Lord, Lord Davidson of Glen Clova. Some noble Lords may be thinking that I am the last person to make any comments about avoirdupois. There is nodding from the noble Lord, Lord Kerr of Kinlochard.

I cannot think of anyone better to answer this debate on parking than the noble Lord, Lord Dunlop—assuming that he is going to answer it. I hope he might be able to give the Committee an assurance. Responsibility for road signs was devolved to the Scottish Parliament and Government. Over the last few years, we in Scotland have seen cuts in education and further education; we have seen problems in the health service and with cancer treatment; we have seen the failure to implement the promised reduction in class sizes to 18 in Primary 1, 2 and 3. Those are just three of many cuts that have taken place, yet, for an astonishing reason, the Scottish Government have found money to make road signs in Gaelic everywhere throughout Scotland. I can understand why it would be justifiable in the Western Isles, parts of the Highlands or maybe in wee corners of Glasgow. My noble friend Lady Ramsay tells me that there are parts of Glasgow where Gaelic—or something akin to it—is spoken. However, all over Fife, Edinburgh and the Borders, railway and road signs are all in Gaelic and the cost is absolutely enormous. There are about 60,000 people in Scotland who speak Gaelic, but every one of them also speaks English, so what is the purpose? I also understand that in translating some railway and town names, it has not been easy to find a Gaelic equivalent. No doubt they have paid interpreters, translators and brilliant entrepreneurs of the language a huge amount of money to find a suitable Gaelic equivalent for some Scottish place names.

I hope the noble Lord, Lord Dunlop, can assure the Committee that, if we do devolve pavement parking, the fault notices for people who park cars improperly on the pavement do not have to be printed in Gaelic as well as English.

The Earl of Kinnoull: I wonder if the noble Lord can advise the House what the Gaelic for "Cumnock" is.

Lord Foulkes of Cumnock: That would take some time. I am not a Gaelic speaker. I can speak in Doric if required. I remember my granny used to call me a "daft loon".

Noble Lords: Oh!

Lord Foulkes of Cumnock: I see that has received some approval, even from the Liberal Front Bench. I know that the noble Lord, Lord Stephen, has a skill in the Doric that is unrivalled in this House. When I got upset, my granny used to say, "Dinna fash yersel"—and I didna. I will be getting a note from *Hansard* at the end of this.

All I am seeking is a hope that when we do agree, as I think we should—my noble and learned friend Lord Davidson, talking about blind people and others, in a serious vein, eloquently put the case that this matter should be dealt with by the Scottish Parliament—we will not have expensive notices in Gaelic as well as in English.

Lord Lyell (Con): I declare a case of anger solidarity with the noble and learned Lord, Lord Davidson of Glen Clova. He mentioned parking in Edinburgh to me at the weekend. But I notice, and your Lordships will see, that the amendment refers to "stopping on verges, etc". That might be part of the Road Traffic Act 1988 but since the noble and learned Lord and I are both much acquainted with that great artery of Angus, the B955, which crosses both his parish and mine, I wonder quite what "stopping on verges" can be.

I quite understand that there could be problems in Edinburgh or urban districts with guide dogs and the rest on the pavements, but I also wonder whether there is a problem in Scotland which there is not in England. Perhaps when my noble friend the Minister winds up, he could explain whether there is a difficulty in Scotland, let alone in Edinburgh. For goodness' sake, let us not get into speaking in Doric or Gaelic—let alone in the wilds of Angus—but is there a problem and can he sort it out in my mind? Certainly, as far as the noble and learned Lord, Lord Davidson, and I are concerned, there is a strong case of anger solidarity, and I hope my noble friend can resolve it.

Lord Forsyth of Drumlean (Con): My Lords, perhaps I could add to the anger solidarity by disagreeing with my noble friend and the noble Lord, Lord Foulkes. The Gaelic language is an important part of Scotland's culture. Indeed, when I was Secretary of State, I did a great deal to promote it. The whole point of devolving power to the Scottish Parliament, if we are going to allow for differences on matters such as road signs, is so that it can do stuff like this.

The noble Lord is constantly telling me about the importance of being sensitive to the fact that the Labour Party has been destroyed in Scotland, that people have voted for the SNP and we have to take account of those cultural differences, and why devolution is important. He cannot will the means and then complain about the results. The reason that Scotland is covered in signs in Gaelic is the same reason that Ireland is covered in signs in Gaelic. It is a wish on the part of nationalist Administrations to reflect the national culture. In that respect, I agree with them entirely. The more it creates interest in and understanding of Gaelic, and the more people realise the extent to which the Highlander should be on our conscience, the better, as far as I am concerned. I support the amendment.

Lord Sanderson of Bowden: My Lords, I think there ought to be a bit of border solidarity here. I agree entirely with the noble Lord, Lord Steel, about the ability to have agreement north and south of the border on various matters relating to roads. For example, if you go through one village, as I do on my way to the train, there is a 30mph limit—that is in England, of course—and in Scotland it is 40mph. In the context of this amendment, which I agree with, we want to be sure that any changes that are made should ensure that it is not going to be too difficult for us to cross the border.

Lord Empey (UUP): My Lords, I was somewhat amused by the views of the noble Lord, Lord Foulkes of Cumnock, because road signage is something with which we are all too familiar, unfortunately. We have one little twist in the tale for the noble Lord. We have a system whereby a Minister who happens to hold the relevant portfolio for traffic signs will put the signs up in both languages—indeed, some of them are up in three languages, if you include Ulster Scots—but when there is a change, the new Minister will take them down.

Lord Berkeley (Lab): My Lords, perhaps we need an amendment stating that all road signs about broken pavements should be in two languages.

To return to the issue of broken pavements, I thought that the noble Lord, Lord Lyell, was beginning to imply that there were not many pavements in Scotland and you had to walk on the muddy verges or get splashed by cars. I do not think he meant that. There are just as many muddy roads in England, Wales and everywhere else as there are in Scotland, I am sure. There is an argument for saying that issues such as broken pavements and enforcement should be devolved locally. Why should we here decide on the legislation for parking offences such as causing a broken pavement or double parking? The incidence of it is just as bad in Scotland as in England.

I commend the amendment, and Living Streets for giving us some very good information on it. It is relevant that the consultation in Scotland received the fifth-highest number of responses of any Scottish Parliament Member's Bill; 95% of responses were in favour of this parking legislation. That demonstrates a lot of interest in having the change proposed in the amendment. I see no reason why the local Edinburgh government should not be allowed to prohibit parking on footways and pavements and at dropped kerbs, and double parking of vehicles. Clarification is needed of what the offences are and who should enforce them.

There is a similar issue in England and the situation is awful, actually. We have had many debates about what enforcement is carried out for various alleged crimes. It is like the PCSOs, who are allowed to fine bicycles for going through stop lines but are not allowed

[Lord Berkeley]
to fine cars. They are all going through stop lines—what is the difference? It would be nice if one day, the UK Department for Transport got on to this but in the mean time, I cannot see any reason why the Scottish Government should not be responsible for these local issues.

Lord Dunlop: My Lords, first, I pay tribute to the noble Lord, Lord Foulkes, for his ingenuity in taking the debate in a different direction from the one I was expecting and on which I have been briefed. In social media Twitter-speak, road signs are trending in the House of Lords.

Returning, with the House's indulgence, to the new clause proposed in Amendment 53, introduced by the noble and learned Lord, Lord Davidson, this seeks to address questions that have been raised about the Scottish Parliament's ability to tackle the issue of inconsiderate parking on pavements. This issue was raised by the shadow Secretary of State for Scotland, the Member for Edinburgh South, who was at the Bar earlier to listen to the debate. He tabled an amendment in the other place, which has been re-tabled for consideration by this House.

It is clear, as the noble and learned Lord, Lord Davidson, said, that this is a matter of great concern to many people, including people with disabilities, as well as the elderly and parents with pushchairs, who can find their way blocked by vehicles parked without due consideration for others who require access to the pavement.

Your Lordships may be aware that this is a complicated issue for which the devolution settlement has not been clear. There have been a number of attempts to bring legislation forward in the Scottish Parliament to tackle this, but they have not succeeded due to doubts over the legal competence of the Scottish Parliament in this area. In September 2014 the former Member for Edinburgh North and Leith, Mark Lazarowicz, tabled a Private Member's Bill in the Commons to attempt to address this issue. At the time, the Government gave assurances that we would do what we could to address it, although we explained that the Scottish Government would need to be clear about what measures and powers they would support.

6 pm

To that end the Secretary of State, who was then in his capacity as Parliamentary Under-Secretary, wrote to the Scottish Government in December 2014 seeking their views. Since then he has remained committed to resolving this issue, which I know is an important one for many people. We need to ensure that there is clarity and that the Scottish Parliament has the necessary powers. To try to resolve this issue, the Secretary of State wrote to Derek Mackay, the Scottish Transport Minister, in June 2015 to ask that he engage with us to work out how to take matters forward. UK Government and Scottish Government officials have been working to address the detail of this complex issue. This Government remain committed to resolving it, and I reassure your Lordships that we are discussing possible solutions with the Scottish Government. We are making progress but, as I have said, this is a complex area of law and we want to make sure that we get it right.

In response to the noble and learned Lord, Lord Davidson, both Governments will of course ensure that we engage with the appropriate and relevant groups on this matter. If it proves possible to conclude the discussion on the detail shortly, the Government will consider an amendment to the Bill. We will, however, continue to look at all avenues by which this can be achieved, and I will be happy to provide this House with an update on progress at Report.

It is not clear that the amendment we are discussing would amend the law in a way that would address the issue. On that basis, I do not believe that it represents the best way forward but I again reassure your Lordships that we are working to resolve this as quickly as possible. Given that we are discussing this issue with the Scottish Government, and given our expressed preference to resolve it, I urge the noble and learned Lord to withdraw his amendment.

Lord Davidson of Glen Clova: I thank the Minister for his reply. I would observe, however, that the noble Lord, Lord Steel, made a good point about the temptation within the Scottish Parliament to legislate difference for difference's sake. One trusts that as the Scottish Parliament matures, it will resist that temptation. When it comes to resisting temptations, I will resist that to involve myself in the discussion either of Gaelic or the B955, and accordingly I seek leave to withdraw the amendment.

Amendment 53 withdrawn.

Schedule 2 agreed.

Clause 42: Policing of railways and railway property

Amendment 53A

Moved by ***Lord Empey***

53A: Clause 42, page 45, line 44, after "property" insert "; but this exception does not apply in relation to the abolition or dissolution of the British Transport Police"

Lord Empey: My Lords, before I commence, perhaps I could just follow up on a serious note the point made in the last discussion. I think that we are all in favour of the promotion of minority languages, but the danger we have seen is that a genuine love of a language has been seized upon and used as a badge of difference. That is the risk attached to all these things.

I tabled this probing amendment because I was slightly puzzled and concerned at the potential direction of travel that could be achieved by the outworkings of this clause. First, as I understand the Bill at present, it does not in and of itself alter the existing arrangements for policing railways and transport as set out, but it provides the potential for a subsequent point at which the Scottish Parliament and Government could take over responsibility for the functions of the British Transport Police, its chief constable and senior officers and of course for its equivalent of a police authority. We all know that we live in dangerous times; I just wonder whether we are trying to fix a problem that does not exist here.

I am not aware of there being a series of complaints about the conduct of the policing of transport in Scotland. As far as I can see from the figures, the police are bearing down well on crime—crime on railways, as I understand it, is diminishing in Scotland—but there are two or three areas that would concern me. First, where policing functions are devolved to the Scottish Parliament, it is natural that there will be an interest in all matters pertaining to police, but I think we would have to acknowledge that transport policing is not a geographically based function. Indeed, it is the very opposite of that, and a specialist series of skill sets are required to perform its functions. One of the most significant of those skills is of course counterterrorism, because transport links are used regularly by terrorists to carry out their activities. Sadly, we have seen in the last few months in Belgium and France, as we saw previously in Spain and other countries, attempts being made to use the transport network to promote terrorism. So people who have an expertise in that area and are used to dealing with it in transport terms have certain skills.

Sadly, another thing that has happened is that transport networks have attracted people who have sought to end their lives. That can also cause huge distress and great disruption. We also know that people traffickers and other elements use transport networks to fulfil their functions and carry out their nefarious activities. I am a little concerned that here we have a service that is being performed and, as far as I can see, performed well. I am not aware of complaints about the operation of the British Transport Police, as they apply to Scotland. We can also tell that when certain crimes are committed, the precise jurisdiction in which they are carried out can be unclear. We are talking about a border which is not immediately obvious to a passenger.

I would also like the Minister to tell the Committee, in the circumstances where the Scottish Parliament decided to take over responsibility, would a British Transport Police officer have the power of a constable in Scotland? Would that person be able to function on the Scottish side of the border, in circumstances where Police Scotland would be the authority in charge and responsible? Is there not the potential for huge confusion here? It is important that the Committee teases this out at this stage so that when we come to Report and so on, we have clarity. Are we trying to fix a problem that does not exist?

There is a unique skill set in policing not only the railway network itself but the stations and associated estate that go with it. It is difficult for a service that has existed for many decades, and built up that expertise, all of a sudden to transfer that expertise to a geographically based police service that quite naturally thinks and deals with things in a totally different way. Given also that we are talking about a GB-wide network which respects no border—in so far as railways, in particular, pass through borders without any distinction between one area and another—surely there is some sense in having consistent and coherent policing of that network.

That is not to say that the Government and Parliament in Scotland would wish to exclude themselves from any interest in these matters—of course they would be interested, and quite rightly so—but what purpose is being served by this if there is no evidence that a problem actually exists? If there is no evidence that crimes are going undetected or that there is a major failure here that needs to be addressed, I would just be concerned, as we had some experience of this in our own jurisdiction. We had to wait for over three years before we could get political agreement to get the National Crime Agency going in Northern Ireland because people had a political issue with it—not a policing issue with the NCA but a political one. In circumstances that included people trafficking, smuggling and potential terrorists coming and using our area as a backdoor into the United Kingdom, it was not the policing issue that was at the top of the agenda.

Why has this particular issue been given such prominence? It is inconceivable that proceeding to change and hand over these functions to Police Scotland would have no potential effect on the United Kingdom. This is not something that has no implications for the rest of us, for the following, simple reason. If criminals originate on the Scottish side of the border, what are the co-operation and communication issues going to be? Are we suggesting that a Scottish police constable would be on the train as it left Scotland, and does that mean that there has to be a British Transport Police officer when it gets to Cumbria in charge of an investigation or tracking a criminal or a criminal gang? These are the sorts of questions that we have to ask, and this Committee is the right place to ask them.

Virtually all parties are committed to the implementation of the Smith commission, and I am not in any way trying to stand in its way, but where there is an issue which could affect all of us, it is fair to say that we are perfectly entitled in this Parliament to ask these questions and to seek explanations. I beg to move.

Lord Forsyth of Drumlean: My Lords, I rise to support the amendment of the noble Lord, Lord Empey, as this is a crucial proposal in the Bill. The origins of it were in the Smith commission's report, following which the Government said:

> "How rail transport is policed in Scotland will be a matter for Scotland once the legislation is passed".

I noted that last year Scotland's Justice Minister said:

> "It's been the Scottish government's view that this would be better if it was integrated into Police Scotland given that it would sit alongside our national police service".

At one time, we had local police forces which commanded respect and were extremely efficient, and a system that worked very well in Scotland. My old constituency in Stirling, where I live, had the Central Scotland Police, which was the smallest in Scotland; there was also a Highlands police force. Those forces were able to deal with issues while understanding the culture, background and nature of the areas to which they were responsible. That worked extremely well, but the system has been smashed up with the creation of this national Police Scotland force. It was going to save a lot of money, but the result has been a complete disaster. We lost the first chief constable in a series of controversies over arming the police, the inefficiency of the service and various other matters. We have seen infighting and disruption in the governance body responsible for Police Scotland, with the resignation of the chairman. The whole thing has been a disaster from every point of view.

6.15 pm

In my view, it is a matter of constitutional concern that we now have one policeman in charge of the whole of Scotland, reporting to the First Minister and the Scottish Government, rather than the diversity which we had before, which provided a safety valve and security for operational independence. I know for a fact that, certainly under the previous First Minister, the temptation to get involved in operational matters was not always resisted, which is a disgrace. Talk to any policeman in Scotland and they will tell you that morale in the police force is at an all-time low. I remember Scotland's police force as being well respected and in touch. We had none of this. It has come about from ill thought out reorganisation.

Clearly, we cannot unwind the clock and set back what has been done. It is obviously of great importance that the new chief constable is given every support and encouragement to try to bring about the changes that are necessary, so that we do not have the kind of appalling circumstances which we had in Stirling, where someone lay by the side of a motorway for three days after their accident had been reported, or with the elderly lady who went missing in Glasgow, where there were failures of communication. Worst of all, the people at the top then picked on some person way down the line, trying to pin the blame on them for a botched reorganisation with disastrous consequences.

Lord McFall of Alcluith (Lab): Does the noble Lord not agree that one of the real problems a number of years ago was when they got rid of the local police stations and introduced a centralised call centre? Now you phone a central place in Scotland, which is unaware of the locality and the issues in it, and where there are complications with communications. I saw that when I was a Member along the road there. That was the start of the real problem, which led to this centralisation. The more we get back to local police stations and local reporting, so that we can go into our stations and report issues where they understand the local area, the better. We are on the wrong track.

Lord Forsyth of Drumlean: I entirely agree with the noble Lord. He is absolutely right. In my old constituency of Stirling, we used to have a police station in my own village; we had them in Balfron and elsewhere, but they have all disappeared. We now have two wildlife policemen who are going around trying to find someone to prosecute for something—without much success, I am told, and at vast expense. All of this is absolutely in the face of what local people say they want, which is local policing and local involvement. One of the great ironies of this whole devolution project is that it was supposed to be about returning power to local people, but the Scottish Parliament seems to have been absolutely concerned to centralise everything and to take a very authoritarian view.

This proposal to break up the British Transport Police —I am now on the amendment—is an absolute classic example of the failure of thinking which has brought such disaster to Scotland's police force. British Transport Police has been there certainly since the 1850s, when it was realised that a railway would enable criminals to move around the country and that it was necessary to have a police force on the trains with the authority to act wherever its officers were. That system has worked brilliantly; it is one of the great success stories.

The truth of the matter is that the reason that the nationalists do not want to have the British Transport Police is because of the "B" in British Transport Police. Perhaps we could just call it something else—perhaps we could call it the "National Transport Police" —and then we could get agreement that it makes sense to have a cross-border force run on a cross-border basis. It has done the most brilliant work, not all of it publicised for obvious reasons, on drugs hauls that have been taken from trains at Glasgow that have come from the south, on the movement of terrorists and others who threaten us, and on the integration of the Glasgow underground with the London Underground and the whole of the transport system. The BTP is a group of people organised in four divisions—there is a Scottish division—who understand and have the expertise to deal with the intricacies of policing a transport system. That is a success, and for it to be smashed up would be crazy.

I know that the Minister will say that the amendment is unnecessary and the clause does not actually provide for the breaking up of the British Transport Police, but we know that that is what the Scottish Government intend to do. In doing so, they will undermine not just the security of people in Scotland, as the noble Lord, Lord Empey, said, but the security and enforcement of law in the United Kingdom as a whole. This is not a matter which should be subject to devolution; this is a matter of national, United Kingdom interest. I very much hope that the Government will drop it from the Bill. The rather throw-away line that we got from the Smith commission, which showed no understanding of what the British Transport Police has been doing, is, to say the least, a disappointment.

The fact that the Justice Minister in Scotland should announce that he wanted to get rid of the British Transport Police and integrate it into the Scottish police with no consultation whatsoever, and in the face of strong opposition from former commanders in Scotland, who actually did the job, but who are ignored, is unacceptable. I very much hope that the Government will feel able to accept the noble Lord's amendment or, even better, drop the whole thing altogether.

Lord Wallace of Tankerness: My Lords, my noble friend Lord Stephen and I tabled clause stand part debates on Clauses 42 and 43 because it is important that the Government should justify to the Committee why they are taking this step, not least given the remarks of the noble Lords, Lord Empey and Lord Forsyth. After all, I am told that the British Transport Police has reduced crime on Scotland's rail network by 56% since 2005, compared to an overall reduction of crime in Scotland of 38%, so it is clearly doing something right.

Paragraph 67 of the Smith commission report states:

"The functions of the British Transport Police in Scotland will be a devolved matter".

That is a slightly different thing from saying that the British Transport Police shall be devolved. We really ought to have an explanation from the Government as to why they have chosen this form of devolution. It is

complex. No doubt the Minister will give a fuller explanation, but until legislative competence has been devolved, which is what I understand Clause 42 is intended to do, the Scottish Parliament cannot make provision for what will happen and the British Transport Police will continue as a cross-border public authority under Section 88 of the Scotland Act 1998. The Minister may want to indicate what that means in practice. Does it mean more than that UK Ministers are obliged to consult about appointments and the like and that reports must be laid before both the UK Parliament and the Scottish Parliament?

The Scotland Office briefing note that was given to noble Lords at a very worthwhile briefing way back in November said that this was a first step. We want to know what the next step and subsequent steps will be. Considerable concern has been expressed about this provision.

It is no secret that I am a pretty strong home ruler, but I cannot say that the devolution of the British Transport Police was ever near the top of my agenda of things that needed to be devolved. One wonders where it came from. Perhaps the secret is in what the Scottish Justice Minister said, in what sounds very much like empire-building, whether on his part or that of Police Scotland, to try to subsume the British Transport Police. That is the concern: that the British Transport Police is to be subsumed into Police Scotland. As the noble Lord, Lord Forsyth, indicated, Police Scotland seems to have enough on its plate at present, although I agree with him that the new chief constable must be given the opportunity to try to restore both morale in his force and confidence in the public.

The speech of the noble Lord, Lord Forsyth, was very passionate, raising the constitutional issues of having a single national police force. I just wish that he had spoken to the Conservative Party in the Scottish Parliament—and that the Labour Party in the Scottish Parliament had taken cognizance—because the Liberal Democrats were the only party in the Scottish Parliament that stood against the creation of a national police force.

Lord Forsyth of Drumlean: I did, but, for extraordinary reasons, it decided not to take my advice.

Lord Wallace of Tankerness: Plus ça change, plus c'est la même chose.

I am uncomfortable about the arguments about what might happen when devolution takes place—that is an argument for a different forum—but clearly, devolution is not the same as abolition. As I said, the Smith commission said that it should be the functions of the British Transport Police that are devolved. The British Transport Police Federation made a submission to the Scottish Parliament's Devolution (Further Powers) Committee in which it set out a number of options.

One option consisted of proposals of a legislative administrative nature, which would devolve policing and embody in statute arrangements by which the Scottish Government could give direction to the BTPA and specify direction of railway policing, but the model would provide that the chief constable of the British Transport Police would engage with Scottish institutions in the same way as the chief constable of Police Scotland does at the moment. Responsibility for pensions, employment contracts and defraying the cost of policing to the rail industry would remain with the British Transport Police Authority, although the Scottish Police Authority would have great involvement at strategic and planning level. Another option was to achieve devolution by administrative rather than legislative means, maintaining the responsibility on the BTPA to pass on the cost of the force to the rail industry, as well as responsibility over employment matters and pensions.

The Government owe the Committee an explanation of why they adopted this particular form of devolution, given that it was the functions of the British Transport Police rather than the police themselves that the Smith commission recommended be devolved.

We should not lose sight of what the British Transport Police is and what it brings to the service. Interestingly enough, it is not responsible to the Home Office; its sponsoring ministry is the Department for Transport. That is important. It means that it has particular training and skills which are different from the rest of the police force. Can we be assured that in any scheme for transfer, particular provision will be made to maintain those skills—for example, dealing with level crossing incidents and trespass? We have heard about drugs and terrorism—although I know that those who work within Police Scotland in liaison with the Metropolitan Police and others are very important. The noble Lord, Lord Empey, mentioned investigations of suicides—the tragedies that happen on our rail network.

The briefing made available to the Scottish Parliament committee stated that under Operation Avert, which is being promoted by the British Transport Police at the moment, there has been a 30% reduction in suicide attempts over the past year. That is very valuable, and we need reassurance from the Minister that it will not be lost.

What engagement has there been with staff? I understand that there are about 50 civilian posts and 230 police officers with the British Transport Police in Scotland. They are not tied to the police pension scheme; there is a separate, private pension for British Transport Police officers. Will the provisions safeguard the employment and pension rights of serving officers? What are the financial implications?

The Scotland Office briefing states that the British Transport Police costs are met through charges for the policing services it provides. Will the secondary legislation allow for train companies to be charged? If so and there is an incorporation into Police Scotland, how can we ensure that charges made to railway companies will go to provide the services to the rail network and not just into a pot used to fund other policing services? It is important that we are given some reassurance that they will go to services relating to railways and railway properties.

The notion of cross-border institutions, which appears in the Scotland Act, is sometimes not fully understood. You can have a service and a function that literally is cross-border—that is, it operates in Scotland as well as England but is a reserved matter, not run by a cross-border authority. Here we have, as a result of Clause 43, something that is both; it will be cross-border

[LORD WALLACE OF TANKERNESS]
institutionally and very literally cross-border in what it does. That point was well made by the noble Lord, Lord Empey.

6.30 pm

An estimated 20 million passenger journeys started by people in Scotland go cross-border—so what will the relationship be if Police Scotland is to be responsible for trains north of the border and the British Transport Police remains responsible for what happens on the same trains when they cross the border at Gretna or just before or just after, depending on in which direction you are going, near Berwick-upon-Tweed? These are things that at the moment do not necessarily bother us, because the system works with a unified British Transport Police. When responsibility is divided, it will not be through malice or ill will, and no doubt there will be umpteen co-operation agreements—but when you have a divided force, the chances of something going wrong or someone slipping through the net must surely be enhanced.

The Minister has to indicate why this form of devolution was proposed and how he will address the many very serious concerns that have been expressed about how it might work out in practice.

Lord McCluskey: I spent more than 50 years in the criminal and civil Scottish courts, as an advocate and prosecutor and as a law officer and a judge, and I never encountered any problem arising out from the British Transport Police. I support the point made by the noble Lord, Lord Empey, that there is no problem here to be dealt with. The second point simply relates to paragraph 67 of the Smith commission report, which, as the noble and learned Lord pointed out, refers to the functions of the British Transport Police and says that they will be a devolved matter. There is no reasoning whatever behind that; we do not know where it came from or where it was supported, even by the Liberal representatives on the Smith commission. I would be interested to hear from some of them what the reasoning behind that was, because it is not detectable from the Smith report.

Lord Sanderson of Bowden: I, too, have grave concerns about this part of the Smith commission report, in paragraph 67, on the functions of the British police in Scotland being a devolved matter. We have heard from somebody from Northern Ireland on this whole question of security, which is so important. Why, if we have something that works as the British Transport Police does, do we change it? It is very dangerous to change it in this Bill—and I hope that my friend on the Front Bench will be able to give us a reasonable answer.

Lord Berkeley: I wonder whether it would be useful to reflect on some of the things that the British Transport Police currently does. Like it or not—and most people like it—we have some very highly congested railways in this country. Sometimes the trains go very fast, and some of them are freight. Here I declare an interest as chairman of the Rail Freight Group. Some of the passenger ones go even faster. One thing that the BTP does is make sure that people do not trespass on the railway, be it in towns, countryside or whatever. There have been one or two occasions when the local police force—I cannot say where—has trespassed on the railways and put their own lives and other people's lives at risk by not knowing how the trains work. The BTP knows how the trains work.

There is the issue of suicides, as noble Lords have mentioned, and the issue of graffiti. None of us likes graffiti on trains. Where does the graffiti get put on? It gets put on in depots. Now depots are where the trains get parked when they are not used, and they are lovely places to go into because you can hide from people and probably not be seen. Most have fences around them, but some have electrified lines. People who do not know could hurt or kill themselves. The BTP is involved in all that. Then there is the question of passenger crowd control; we have all seen what happens when there is underground congestion, and they stop people going down there. London Underground does it all, but if there is beginning to be a problem and the police feel that they need to be there, they are there—and they know how to deal with crowds. Noble Lords have probably read about some of the issues facing London Underground at the moment, because of the growth in traffic. Wrong action by a policeman or policewoman who does not know the layout of Underground or mainline stations can put lives at risk, again—and that is the kind of knowledge that the British Transport Police has built up over the years. Level crossings and the deaths that happen there—that is another piece of knowledge that the BTP has.

It would be a great shame to lose this specialist knowledge. Railways are different from roads. Everybody knows what happens on roads, and how you try to avoid problems, and the police are very good at it. On railways it is different, and there is a different type of control because if a driver sees something he cannot stop, unless he is very lucky; he has signals but, if somebody is on the line, he cannot stop. That is going to get very nasty, because trains are not designed to stop on a penny.

Having a national force is highly desirable. I agree with all noble Lords who have spoken who have said that they cannot see any reason for changing it. But let us also look at frontiers. There have been problems in the past, which I am sure my noble friend Lord Faulkner will talk about. Can the BTP be in hot pursuit outside railway property? The noble Lord, Lord Empey, mentioned that. It has got better these days, but there is still a problem; there certainly will be a problem if there is a kind of frontier for police between Scotland and England. I travel a lot on the continent, usually on railway activities, and we have all seen the problems between France and Belgium and the apparent lack of communication between the police forces of those countries. The solution that they have come up with is to have police or security checks at all the stations approaching the frontiers. Heaven help us if we have that between Scotland and England; whatever happens in future, we need our trade and our passengers to get through. But the fact remains that, as other noble Lords have said, if there is a need to go across between England and Scotland it needs to be done in the easiest possible way and nobody should stop the expertise of the British Transport Police from being able to do it.

I personally see no reason why this is thought a good idea. The suggestion of the noble Lord, Lord Forsyth—that we should get rid of the word "British" and turn it into a national force—would probably be a good compromise. But I worry seriously whether the BTP's expertise on railway matters, stretching from John O'Groats right down to Cornwall, would be affected in any way, with the result that the non-specialist police person, doing their best, gets into trouble on the railways in pursuit of whatever they are trying to do.

Lord Forsyth of Drumlean: I was not suggesting that the name would be changed—I was saying that it might suit the nationalist agenda.

Lord Hope of Craighead: When the Minister replies on Clause 43, could he give us some other examples of cross-border authorities? As I understand Clause 43, it does not abolish the British Transport Police or alter its functions in relation to Scotland; they will be devolved, if Clause 42 is passed. But it would help the Committee if we had some examples of other cross-border authorities, so we can grasp what kind of things we are dealing with. From points that other noble Lords have made, it may be that we are not really comparing like with like in talking about the kind of cross-border authority referred to in the Scotland Act—or the Orders in Council passed under it, presumably under Section 88(5). They are relatively simple creatures, which do not have implications of the nature described by other noble Lords. But some examples of other cross-border authorities would help us to grasp the implications of this very significant clause. I hope I am not asking the Minister to do something for which he is not prepared, but if he could write to us and give us examples at a later stage, that would be very helpful.

Lord Faulkner of Worcester (Lab): This has been a remarkable debate, and I am sure that British Transport Police officers will be delighted by the degree of support expressed for them in all parts of the Committee, starting with the splendid speech from the noble Lord, Lord Empey, who was followed by the noble Lord, Lord Forsyth.

I shall correct one thing the noble Lord, Lord Forsyth, said. He said he thought the force had been around since the 1850s. That is not right. The force was started in 1825, in the earliest days of the railways. It predates a great many of our normal civil forces. The reason the railway police were formed in the first place was because criminals discovered that by getting on the new-fangled trains they were able to get away from the scene of the crime much quicker than they could by any other means. It was therefore necessary to have a force that was able to operate across county boundaries and country borders.

I find it extraordinary that this proposal to lose that ability should come forward now. I should remind your Lordships that breaking up the British Transport Police has been tried once before. It was done around the year 2000 by somebody called Ken Livingstone, who was Mayor of London. He was anxious to hand the duties of the British Transport Police over to the Metropolitan police force because he felt he had some control over it. The Government of the day, after some deliberation, decided that that was not a sensible thing to do and it was much more sensible to build on the skill and expertise of the British Transport Police; extend its jurisdiction, to which my noble friend Lord Berkeley referred, where necessary; give it, after some reluctance, the opportunity to arm a limited number of its officers, which it had asked for; and, above all, encourage it on what it did really well, such as combating scrap metal theft. The BTP led the government task force on that subject and made a huge contribution to reducing the incidence of metal theft after Parliament passed two important pieces of legislation which regulated that business.

Lord Berkeley: My noble friend is too modest to say that he led that legislation through Parliament.

Lord Faulkner of Worcester: That is very kind of my noble friend, but I do not think it matters who claims credit for what. What matters is that the outcome of those deliberations was an improvement in the situation in which the British Transport Police played a crucial role. I find it utterly inexplicable that these two clauses are in the Bill. I am sure that in due course they will give the Scottish Parliament with a nationalist majority the opportunity, effectively, to nationalise the BTP in Scotland. It would be a terrible mistake, and I hope the Minister will agree to come back on Report and have these clauses removed from the Bill.

The Earl of Kinnoull: My Lords, my interest in this was sparked by a conversation with an SNP MP in December in a passageway in the other place. I asked him whether he thought Police Scotland was ready for the British Transport Police, to which he answered that he was sure there would be some teething problems. I find that very worrying because teething problems essentially mean damage to the citizens of the UK, either because some young lady has been thumped or because drug smugglers or terrorists have got through.

In my commercial career, I spent more than 10 years as the director of mergers and acquisitions for a FTSE 250 company. Over Christmas, I thought about how complicated the demerger of the British Transport Police would be. I will not bore the Committee with a lot of what I thought, but I have done demergers as well as acquisitions, so I know. There would be TUPE, which would be horrible because there will be only one human resources department and one accounting department. There would be career progression problems for the existing staff because there would be a disproportionate number of chief superintendents one side of the border or the other. There would be only one training establishment for each type of training and there would be difficulties with that.

In particular, there is the thing that has caused me problems professionally throughout my career, which is everything to do with data. There would be an enormous discussion about who owns what data. Eventually there would be a decision on that, and then there would be enormous problems over the sharing of those data. Those problems would partially have been inserted by Parliament. All that would lead to an immense decrease in the effectiveness of the force. You would end up with two human resources departments, two IT departments and two sets of expensive management

[The Earl of Kinnoull]
sitting on the top. You would not only have an enormous one-time cost, there would be continuing enormous additional costs and a decrease in effectiveness. That is a jolly bad result for citizens of the UK north and south of the border.

This is an area where the parties who turned up to the Smith discussions probably forgot that, although they were empowered to talk about things going to Scotland, they were not empowered to think about things that would potentially damage English members of our union.

6.45 pm

Lord Forsyth of Drumlean: Is there not another complication: the fact that the financing comes from the operators? Who pays what would be an interesting discussion. The noble and learned Lord, Lord Wallace, made a point about how one would ring-fence the funds. That would be a good discussion.

The Earl of Kinnoull: It would be interesting and very lengthy. I thank the noble Lord for yet another item in the list. I am sure that if one sat down one could prepare a demerger list of horrible problems that would tax people for a very long time.

Earlier, we spoke about the Crown Estate and the fact that it appears that where the Smith agreement has got it wrong there is some wriggle room for making some small changes in the Bill. We came across a couple of them in the transposition from the Smith agreement to the provisions of the Bill that deal with the Crown Estate. I suggest to the Minister that this is another area where there could be some wriggle room. Alternatively, we could go for some sort of fudge with a dual reporting line so there would be a unitary, single British Transport Police with agreed rights of reporting, scrutiny et cetera that went to Scottish Ministers in respect of Scottish staff as well as to UK Ministers at the same time.

Lord Empey: That was how our problem with the National Crime Agency was resolved: through reporting mechanisms. Our policing board would receive reports from the chief officers of the National Crime Agency. That is precisely the mechanism that was used, and that eventually got the consensus.

The Earl of Kinnoull: I am very grateful for that as well. In my commercial career, that option has sorted out a number other problems and is a very useful technique. I would be very interested to hear the Minister's views on what I have just said and on everything that everyone has said in what has been a very interesting debate on this vital area.

Lord McAvoy (Lab): My Lords, I apologise to the Committee for not being able to be here for start of the proceedings. I was away officially on Whips' business. I thank my noble and learned friend Lord Davidson of Glen Clova for holding the fort so well.

The Bill makes the functions of the British Transport Police a devolved matter. I associate myself with all the praise expressed for the British Transport Police and its record since 1825. I have no hesitation in doing so.

I have only one comment to make about the contribution by the noble Lord, Lord Empey. I fully understand where he is coming from; he is ad-libbing about the language situation in Northern Ireland. The situation is a wee bit more hopeful than he has perhaps indicated: there are classes in Irish in solid unionist east Belfast, so there are glimmers of hope.

In the opening contribution from the noble and learned Lord, Lord Wallace of Tankerness, he regretted and bemoaned that the Labour Party did not do what he wanted it to do in the Scottish Parliament. I can understand that disappointment and possible resentment, because the Labour Party here had to stand back and watch for five years as the Liberal Democrats backed every vicious and vindictive proposal on welfare put forward by a Conservative Government, with never a word against.

Clause 43 devolves executive competence in relation to the policing of railways in Scotland by specifying as a cross-border authority the British Transport Police Authority, the chief constable of the British Transport Police, the deputy chief constable of the British Transport Police and the assistant chief constable of the British Transport Police. This is in keeping with the Smith agreement, which states:

"The functions of the British Transport Police in Scotland will be a devolved matter".

That was agreed. I understand also the suspicion and resentment that some Scottish National Party people seem unfortunately to be expressing the desire to get rid of the word "British". I regret that. If that is their motivation, it does not say much for them, and we should concentrate on the core of the matter.

Designating the British transport bodies as cross-border public authorities means that appointments to the British Transport Police Authority or to the offices of chief constable, deputy chief constable or assistant chief constable will in future be able to be made only in consultation with Scottish Ministers. I know I should not have to say this but it should be on the record: devolution is devolution. You cannot agree the principle of devolution and then object to its effects. Devolution is devolution.

Lord Forsyth of Drumlean: Will the noble Lord give way?

Lord McAvoy: The noble Lord was a bit slow to intervene tonight.

Lord Forsyth of Drumlean: Yes, devolution is devolution, but, as was made clear earlier in the debate, this is a matter that affects the security of the whole of the United Kingdom. The noble Lord knows very well that the SNP Justice Minister has indicated that he wants to break up the British Transport Police. Is the Opposition Front Bench really supporting this in the face of all the evidence that has come from the trade unions and the former leaders of the British Transport Police? Surely that is an extraordinary position for it to take.

Lord McAvoy: The noble Lord, Lord Forsyth of Drumlean, always takes a keen interest in the position of the Labour Front Bench. The fact is that the Labour Party supports the Smith commission, as do the Liberal Democrats and the Conservative Government.

There is consensus. I know the noble Lord does not really like being described as a consensual figure—he would probably regard it as an insult—but devolution is devolution and it can, will and should be worked out in that atmosphere. I know the noble Lord is a bit puzzled by that, but I have accepted devolution and he should do the same and move on.

In March last year, as the noble Lord has indicated, the Scottish Justice Secretary signalled the Scottish Government's intention that the BTP's functions would be transferred to Police Scotland following the passing of this Bill. Once the power is devolved to the Scottish Government, that is of course a decision for them to make and to justify to the Scottish public, the Scottish electorate and the communities within Scotland. Having said that, in recent months there have been a number of legitimate question marks over the way in which the Scottish Government have chosen to manage the resources of the police force in Scotland since we have had this Police Scotland set-up, with police stations being shut—as my noble friend Lord McFall of Alcluith has mentioned—call centres being closed and much-needed front-line police doing back-office functions. I make it clear that this is no reflection of the phenomenal work that our police officers do on a daily basis. However, we should view this as a further opportunity, and I have no objection to it, at the very least to assess all the possible implications of a merger between Police Scotland and the British Transport Police.

Lord Berkeley: If my noble friend is suggesting that it is Labour Party policy to devolve the British Transport Police, does the same apply to railways? I was not aware of that. Network Rail could be separate, of course; we could even have a separate gauge. I thought the whole idea was that we should actually have an integrated system.

Lord McAvoy: I thought I had all the trouble in front of me, but I have some behind me here as well.

Lord Forsyth of Drumlean: From everyone.

Lord Faulkner of Worcester: With lots more to come.

Lord McAvoy: We will see about that. The facts of life are that the Labour Party is a democratic institution. We have arrived at support for devolution. The Smith commission worked very hard to come up with the answer to it, as much as possible, and that is what we support. Perhaps my noble friend Lord Berkeley will explain to me later the effects of this on the intricacies of gauges. It is funny, and I laugh as well, but we are dealing with a serious matter. The Labour Party supports devolution and all its consequences. At the end of the day, whether folk like it or not, it is ultimately the Scottish people who will decide. I trust the people. Sometimes that backfires on us, like last year, but I trust the Scottish people because I am a democrat and Scotland under devolution is a democracy.

Lord Empey: I know that the noble Lord is a great supporter of devolution; he has indicated that on many occasions. I support it too. However, what we are talking about is not yet devolved, and that is quite a distinct difference. In many cases, where something has been devolved we can complain about how it has been operated, but this is not yet devolved, unless the Minister and the Government are treating the Smith commission as if it were a treaty—in other words, it is unamendable—in which case there is no point in bringing it here.

I understood that the function of Parliament was to examine legislation. While all the parties—unwisely, it seems to me—are basically supportive of the general principles here, there are specific issues. It is not simply the people of Scotland who will be affected by this; it is the rest of the people in Great Britain. That is why I believe there is a difference. If—with, one hopes, the maximum consensus—we can actually find something better, such as our compromise over the National Crime Agency, I would hope that the Labour Party would support that. I am not trying in any way to rubbish devolution. I know that the commitments were made, although I am quite sure that the noble Lord would have preferred if some of them had not been. Judging by his expression, I believe I am right there. Nevertheless we have a responsibility, and I think that this matter should be pursued.

Lord McAvoy: I thank the noble Lord, Lord Empey, for his contribution, but no one said that there should be no discussion. The facts of life are that in the House of Commons no one moved an amendment to the contrary. We did not move one. We have moved one here because we want more information about attitudes and, perhaps, information regarding discussions with the Scottish Government. None of the unionist parties in the Commons moved an amendment, nor did the Liberals; in fact no one did, so there must have been general acceptance in the Commons for the principle. No one said then that nothing should be changed from the Smith commission, though we will wait and see how that goes. Discussions will take place but I do not think they will make any progress. This idea has been thought through by the Smith commission and in the Commons, which is the supreme House of Parliament, and no one has seen fit to move the amendment, except us—to be fair, I think that the Liberals have come in for this reason as well—in order to get further discussion on it.

We share some of the concerns about the Scottish Government's record on the single police force; we do not like it and have very grave doubts about it. However, there are strong views to take into account, including those of the British Transport Police, and in particular those of officers employed in Scotland, as well as the unions. Both have expressed concern about the implications for staff and passengers if these special policing skills were to be lost—and it would be wrong for that to happen.

7 pm

However, from the outset we have made clear that at the very heart of our approach to the Bill is a commitment to ensure that we get the very best deal for people in Scotland. It is therefore vital that the same level of services and protections which have up to this point been in place while the Scottish public travel is maintained. We must all play our part, not just in a debate here to get a bit of attention but to

[LORD MCAVOY]
scrutinise this to make sure that it goes ahead. We all have a role to play in this; the Scottish Government need to account to the people for their actions, and we here can help do that. These specialist services and the expert knowledge of the British Transport Police must continue to have as strong a presence following the devolution settlement as they have today.

Finally, can I ask the Minister a question which I do not think anybody else has asked tonight? What discussions have he and his colleagues had with their counterparts in the Scottish Government to be assured that the changeover does not have the teething problems referred to by the noble Earl, Lord Kinnoull?

Lord Dunlop: I thank your Lordships for what has been a set of powerful and knowledgeable contributions to this debate. Many of the points raised by noble Lords have great force. To address directly and upfront what the noble Lord, Lord McAvoy, asked, I can say that we meet regularly with Scottish Ministers—later this week the Secretary of State is meeting Deputy First Minister John Swinney—and these matters are obviously the subject of those meetings. I will ensure that the strong feelings that have been expressed in this House are conveyed to the Deputy First Minister and to other relevant Scottish Ministers.

The task of policing the railways in Great Britain is carried out by the British Transport Police, as has already been discussed, the priorities of which include tackling crime on the railways, minimising disruption to the railway as a result of crime or other incidents, and ensuring that passengers feel safe and secure on the network.

I was going to touch on history, but the noble Lord, Lord Faulkner, has already beaten me to it, and when it comes to railway or transport history I am very wary of tangling with him.

The BTP currently polices the national rail network in England, Scotland and Wales, as well as the London Underground and some other light rail networks. It operates under a divisional structure, comprising three geographically defined areas: Scotland, London and the south-east, and the remainder of England and Wales. Today a large proportion of the rail network in Scotland is self-contained and is currently policed by just over 200 BTP officers out of a total BTP staff of 3,000 officers.

Lord Wallace of Tankerness: The Minister said "other light rail networks". Does the BTP have any responsibility for the Edinburgh trams?

Lord Dunlop: That is a very good question to which I do not know the answer, but I will be very happy to clarify that point for the noble and learned Lord. Noble Lords have raised a range of important issues, and I will try to cover as many of these as I can in my response.

Lord Forsyth of Drumlean: Could my noble friend tell the House what he thinks is meant by the words in paragraph 67 of the Smith commission report:

"The functions of the British Transport Police in Scotland will be a devolved matter"?

I read them to mean that the British Transport Police will continue and that its functions will be subject to some kind of oversight by the Scottish Parliament, which is not what the Bill provides for. Does he have a different interpretation?

Lord Dunlop: If my noble friend will let me continue, I hope to set out what our approach is here and address some of the points that were raised by the noble and learned Lord, Lord Wallace.

Lord Forsyth of Drumlean: Of course I want my noble friend to address the points that have been made, but could he just answer that point? The noble Lord speaking for the Opposition said that whatever the Smith commission report says is written in stone, but what is in the Smith commission is not consistent with that. Can my noble friend explain what he thinks the commission meant?

Lord Dunlop: What the Smith commission meant is precisely what it said. If my noble friend will allow me to continue, I will expand upon that. To return to the point that was raised about the Edinburgh trams, I understand that they are not obviously policed by the BTP.

The Smith commission agreed that the functions of the BTP in Scotland should be a devolved matter and, as the noble Lord, Lord McAvoy, has already said, that was supported by all five of the political parties which took part in the commission, including the parties opposite. Clause 42 devolves legislative competence in relation to railway policing in Scotland to the Scottish Parliament by adding an exception to the Scotland Act 1998 for the policing of the railways and railway property. Clause 43 specifies the BTP bodies as cross-border public authorities. The designation of the BTP bodies as cross-border public authorities will result in functions relating to those bodies being modified so that future appointments to the BTP bodies will be made in consultation with Scottish Ministers. Other functions with regard to the BTP bodies will similarly be exercised in consultation with the Scottish Ministers unless their effect on Scotland would be wholly in relation to reserved matters.

The designation of the BTP bodies as cross-border public authorities is to ensure continuity before the Scottish Parliament legislates for policing of railways in Scotland. Enacting the clause will not impact on the current operational arrangements for policing of the railway. The BTP will continue to police the railways in Scotland until such time as a transfer of functions is effected. If and when the Scottish Parliament exercises the new legislative competence conferred by Clause 43, it would be necessary that the BTP bodies be designated cross-border public authorities so as to facilitate the appropriate transfer of BTP property, staff, liabilities and contracts in Scotland.

The noble and learned Lord, Lord Hope, asked for other examples of cross-border authorities; one that comes to mind is the Forestry Commission, although I will write to him with other examples.

Upon the completion of the transfer of policing of railway functions to the new Scottish model devised by the Scottish Government, the designation of the BTP

bodies as cross-border public authorities will be removed and the BTP will exercise functions of policing for railways only for England and Wales.

Lord Faulkner of Worcester (Lab): On that point, can the Minister describe to me what will happen with trains that travel between England and Scotland, of which there are hundreds a day? Does the policing of that train change at the border? Does the British Transport Police no longer have any responsibility for ensuring order on that train, and does it then have to rely on Police Scotland to do that?

Lord Dunlop: We anticipate that the BTP will continue to have limited functions in that scenario; I will come on to address that later in my remarks.

Amendment 53A was tabled by the noble Lord, Lord Empey, who spoke with great authority from his Northern Ireland experience. Regardless of how the Scottish Government legislate with regard to railway policing, the British Transport Police and the British Transport Police Authority will continue to exist in England and Wales. There is no question of abolishing or dissolving the British Transport Police. We also anticipate, as I have just said, a limited but continuing role for the BTP in Scotland, particularly in relation to cross-border services—a point raised by the noble Lord, Lord Faulkner—working alongside the new Scottish model. There is already existing co-operation and collaboration between the BTP and Police Scotland. The BTP uses Police Scotland police stations, for example, and Police Scotland can be first responders to rail-related incidents. Inter-force co-operation will be one of the many important issues to be agreed between the UK and Scottish Governments before the BTP's current role and function are changed. The need for this sort of collaboration between different police forces is not confined to railways; it happens every day in other fields.

It is the BTP's Scottish division—its functions, staff and contracts—which would be transferred if the Scottish Government decided to implement a new operational model, and which would be legislated for by the Scottish Government once the necessary legislative competence had been provided through Clause 42 in order for us fully to deliver the Smith commission agreement.

The debate this evening has highlighted the complexities. Both Governments are aware of the complexities of such a transfer and of the need for close collaboration and engagement to work through the details. I reassure your Lordships that this work is already under way and we will keep the House informed as it progresses. The starting point is for the Scottish Government to determine the operating model and to legislate for future policing of the railways. The aim of both Governments, working together, is to ensure an orderly transfer of property, assets and liabilities. Clearly the UK Government will work to ensure continued co-operation during the transfer and afterwards to achieve the best possible outcome. Many of the issues raised by noble Lords this evening—in particular, the noble and learned Lord, Lord Wallace—will be determined as part of this process.

The need to maintain high levels of service should be at the forefront of any planning for an efficient and effective transfer of functions. As the noble Lord, Lord Berkeley, mentioned, BTP officers have a wealth of knowledge and important skills, which it will be important to retain and ensure are reflected in any new Scottish structure. The expectation from the discussion we have had so far with the Scottish Government is that a specialist transport policing unit will be established within Police Scotland. The transfer of experienced officers from the BTP will help ensure that these valuable capabilities are appropriately shared, and we will continue working with the Scottish Government during this important period.

I note what my noble friend Lord Forsyth said about Police Scotland, but I make it clear that, as is consistent with the nature of devolution, it will be for the Scottish Parliament to legislate in relation to the policing of the railways in Scotland and for the Scottish Government to decide how they want the new structure to operate in practice. I think that this echoes what the noble Lord, Lord McAvoy, said. The Scottish Government will be held to account for that by the people of Scotland, as they are currently being held to account for the performance of Police Scotland. That is leading to a review of the governance of Police Scotland.

The noble Earl, Lord Kinnoull, talked of teething problems. The importance of getting this right, both for maintaining the standards of railway policing in Scotland and for preventing any adverse effect on the BTP regarding the rest of England and Wales, will not be overlooked. Given its importance, we expect the transfer of the BTP's property rights and liabilities to take between two and three years.

The noble Lord, Lord Empey, raised an important practical point when he asked whether the BTP would have powers to operate and arrest in Scotland, should it need to follow a criminal across the border. It is a point that I am confident both Governments will discuss and on which they will agree an effective approach as part of the transfer and set-up of new collaborating arrangements so that criminals can effectively be pursued across the border.

I accept that the devil will be in the detail. However, there is no reason in principle why the high standards of railway policing in Scotland cannot continue under a devolved model, and the Government will continue to work with the Scottish Government to achieve this. For those reasons, I urge noble Lords not to press their opposition to the clause.

Lord Wallace of Tankerness: I raised a number of questions, one of which concerned funding. I know that the devil is in the detail but, from his discussions thus far with the Scottish Government, can the noble Lord give us some indication of the United Kingdom Government's ideas regarding the funding arrangements that will be put in place?

Lord Dunlop: As I have just said, this is about devolution to the Scottish Parliament. Following devolution—and this matter will form part of the discussions—it will be for the Scottish Parliament to determine what the charging arrangements will be. However, perhaps I may end on this point. Democratic accountability is absolutely key here. I do not think that the voters of Scotland would be very pleased if the Scottish Government, through the train operating

[LORD DUNLOP]
companies, increased costs to the travelling public in Scotland. For all the reasons I have given, I urge noble Lords to agree to the clause.

7.15 pm

Lord Berkeley: The noble Lord mentioned funding by the train operators. He will be aware that, as the noble Lord, Lord Sanderson, said earlier, 50% of the funding of the BTP UK-wide comes from Network Rail and the other 50% comes from the train operators roughly in proportion to their passenger miles. He said that Scottish train passengers would not want to pay for this, and that will mean that the BTP will have to be paid out of general Scottish financing rather than through the current arrangement. The consequence of that will be that the budget will be cut pretty quickly and everything will be integrated. I would also be interested in knowing how Network Rail's contribution will be arranged. Is it legal and how will it be done? Will it be on the basis of track miles or something else? Those are the sorts of questions to be answered.

Lord McCluskey: Perhaps the Minister would take a short question from me. Is he advising the Committee that Clauses 42 and 43 enact the provision contained in paragraph 67 of the Smith commission report and nothing else?

Lord Dunlop: I am saying that these clauses provide the framework that allows us to go forward, but the Scottish Government have to decide what operating model they want for the policing of the railways in Scotland. I said that I anticipated that it would take two to three years before these functions were devolved, and that is because all sorts of contracts with third parties are involved here—the noble Earl, Lord Kinnoull, talked about pensions. I do not underestimate the complexity involved and I hope the Committee will understand if I do not have specific answers to all the questions; we will be working with the Scottish Government to clarify them over the next two to three years.

Lord Forsyth of Drumlean: I do not understand why the Government are bringing proposals to this House which have not been thought through. It is no good saying, "Oh well, the Scottish Government will need to work this out over the next two years". Does my noble friend not recognise that this matter affects the rest of the United Kingdom? This is about maintaining a perfectly adequate system of policing upon which the larger proportion of the population depends. My noble friend is a Minister in the United Kingdom Government. If he brings forward legislative changes, surely he has a responsibility to explain to us how they are going to affect the United Kingdom. It is a case of the tail wagging the dog if we say, "This is a matter for the Scottish Parliament to decide. You just pass the legislation and we'll try to work something out". Surely my noble friend can see that he is not responding to the points that have been made, which concern the security of the United Kingdom and England in particular.

At the beginning of his speech I asked him a specific question, which has been asked again by the noble and learned Lord. It was whether he thinks that these clauses provide for what is contained in the Smith commission report, which says simply:

> "The functions of the British Transport Police in Scotland will be a devolved matter".

It does not say that there will be legislative control over the British Transport Police or that the British Transport Police will be broken up and there will be a separate Scottish force—it does not say that at all. The noble Lord, Lord Empey, indicated earlier that it would be perfectly possible to give the devolved Parliament some involvement in the British Transport Police without breaking the BTP up.

The clauses we are being asked to support tonight are completely vague as to the outcome. Does my noble friend recognise that he has not responded to the debate and has not dealt with the fundamental question that is being put: what will happen to England and Wales and the rest of the country, and why is it necessary to break up a perfectly efficient organisation in order to meet the requirements of paragraph 67 of the Smith commission report? As the noble Lord, Lord Empey, said, the Smith commission report is not a treaty; it is advice to Parliament and we are discussing a Bill.

Lord Dunlop: In answer to my noble friend, the function of the BTP is the policing of railways, which is the subject matter of these clauses and what we are devolving in this Bill. That is what the Smith report stated and we are committed to delivering that agreement.

Lord Berkeley: Will the Minister answer the question that I put to him a few minutes ago, please, on the financing of the British Transport Police north of the border?

Lord Dunlop: I did answer it, to the extent that there is a plethora of detail that lies behind this. However, it requires, as I said, the Scottish Government, in discussion with the UK Government, to specify what their operating model is. Until we have that, we cannot answer in a lot of detail. I come back to the fundamental point that we are devolving something, and it is for the Scottish Government and Parliament to decide how that will work within Scotland.

Lord Wallace of Tankerness: On that point, and in reflecting on his answer to the noble Lord, Lord Berkeley, and his earlier answer to me, which he has just repeated, does that mean that the Scottish Parliament and Government could load up the charges on Network Rail, which is a pan-UK body, and would that therefore have implications for transport rail users in England and Wales, as well as in Scotland? Does he not think that that is a matter on which the United Kingdom Government should have a view?

Lord Berkeley of Knighton (CB): Just before the Minister answers that question, and at the risk of throwing another Berkeley into the hat and confusing life still further, I have listened to the debate this evening and am confused by the point that the noble Lord, Lord Forsyth, wishes to clarify: how this will affect members of the United Kingdom. I do not really feel that I have got an answer to that. It seems to me that it will affect them, and I wonder what the

Minister feels about that. Although I understand it, the answer he gave does not quite elucidate the problem we have here.

Lord Dunlop: I hesitate at this point in the evening to introduce the concept of no detriment, and I look forward to Committee day 3, when I am sure we will cover this in great detail. However, the UK Government absolutely have an interest in ensuring that whatever devolution takes place in this space does not cause detriment to the rest of the United Kingdom.

The Earl of Kinnoull: The noble Lord, Lord Empey, and I suggested that a solution to this could be a dual reporting structure. I would be happy to explain that afterwards, as I am sure the noble Lord would be. In view of the fact that three or four years of work is stretching before us, which sounds very expensive to me, it might be cheaper just to ask the opposite numbers at Holyrood at one of the forthcoming meetings in the next few weeks whether the pragmatic suggestion of going down the Empey/Kinnoull route might cut the mustard. If it does, it would be a heck of a lot cheaper and, I believe, much more effective. It is a free question. Will the Minister consider at least asking, to see whether they might accept this slightly different approach?

Lord Dunlop: I will certainly reflect on the points that have been raised in this passionate debate. No doubt we will return to this subject.

Lord Empey: My Lords, the noble Lord, Lord Dunlop, is a very capable Minister but, throughout his contribution this evening, not even he has been able to offer one scintilla of rationale for doing this. There is no advantage to be gained; we all know that. It is an ideological path that people have set themselves on and we are dealing with the consequences of that. This is not the opportunity to elaborate on the point that the noble Earl, Lord Kinnoull, made. However, the solution we found was to have the police authority receive regular reports, including personal questioning, and to have responsibility for the actions that would be taken by the NCA in Northern Ireland, which would be answerable to the authority but ultimately under the control of the national Government. A solution can be found somewhere in there. As I said, it is not a matter of depriving the Scottish Parliament of any interest—of course it has an interest—but I feel that we should now proceed to Report. I hope that the Minister will wish to discuss the matter with some of us between now and then. In those circumstances, I beg leave to withdraw the amendment.

Amendment 53A withdrawn.

Clause 42 agreed.

Clause 43: British Transport Police: cross-border public authorities

Debate on whether Clause 43 should stand part of the Bill.

Lord Forsyth of Drumlean: My Lords, I had no intention of speaking on this matter or detaining the House, but I have to say to my noble friend that, in the light of the reply that we got, I feel that I should make a number of points, without repeating the arguments over and over again. It should be absolutely clear to my noble friend that there is feeling in all parts of the House that what is being proposed is neither consistent with the Smith commission proposals nor desirable in terms of the needs of the rest of the United Kingdom to have adequate security and proper policing of our transport systems, particularly for cross-border purposes.

During the debate on the amendment from the noble Lord, Lord Empey, my noble friend was asked to give examples of cross-border authorities. He suggested in his reply that the Forestry Commission was an example of a cross-border authority. I can think of others concerned with the regulation of nuclear activities in the United Kingdom, for example. I am very concerned that a precedent is being set here that devolution means that, in Scotland, it is possible for decisions to be taken and devolved that have implications for the rest of the united Kingdom and which we just have to go along with because the Smith commission recommended it or the Government's interpretation of the Smith commission's proposals are that this legislative provision should be made.

I have no objection whatsoever to a provision that enables the Scottish Government and the Scottish Parliament to have some involvement in the functions and governance of the British Transport Police, as the noble Lord, Lord Empey, suggested. Indeed, I think that that would be highly desirable, if only to end the thought that this is something that should be conducted on a national, individual basis between the constituent parts of the United Kingdom. The joy and glory of the British Transport Police—which after all has done pretty well for nearly 200 years, as I discovered during the course of the debate—is that it operates as a cross-border United Kingdom body.

I gently suggest to my noble friend that he gives some thought to this in the context of his responsibilities as a Minister of the United Kingdom and comes forward on Report with proposals that meet the need to involve the Scottish Government without actually resulting in the destruction of the British Transport Police or its powers and ability to operate in a cross-border way. If he does not do so, I for one will join those who wish to go through the Division Lobbies to substitute something else. That would be very unfortunate. At the moment, our only option is to take these clauses out of the Bill altogether. That would create a difficulty for the Minister and for the noble Lord, Lord McAvoy, who has become the chief protagonist of the idea that everything in the Smith commission report has the status, as the noble Lord, Lord Empey, said, of a treaty that cannot be changed because it was agreed between the Governments.

7.30 pm

Lord McAvoy: I made no such suggestion. If the noble Lord would stop looking astonished at every second word that I say, he may understand what I am saying. The Smith commission was a hard process where five parties took part. He is decrying and insulting

[LORD MCAVOY]
the good faith of the people who arrived at that conclusion. They spent a long time on it and went into a lot of detail. I believe that they did that in good faith and he should stop denigrating the people involved. The proposal was put through that process and arrived at after long consideration, and I support it.

Lord Forsyth of Drumlean: I am not denigrating anybody, but I gently remind the noble Lord that quite a few of those who took part in the process are no longer involved in parliamentary affairs. He says that it was agreed by all the parties, but none of the parties was consulted about this. This was a deal and a negotiation. I wager him a bottle of champagne that very few of the people involved in negotiations even knew that the British Transport Police was largely funded by the transport operators. I suggest that that is the case. The complexities involved would be unknown to them.

The noble Lord knows as well as I do that a problem was created after the referendum. People were desperate to find things to devolve. I can just see people saying, "Oh yes, the British Transport Police can be devolved". The people concerned would not have had a clue about the intricacies of how the British Transport Police was funded. Perhaps the noble Lord is smarter than I am and perhaps he is aware of that, but as Secretary of State I was not aware of the detail of this until I discovered the need to look into it as a result of this amendment. I do not believe for a moment that those people acting in good faith knew the consequences of what was proposed.

Actually, the Smith commission does not require the Government to break up the British Transport Police or to act in the way that is provided in this clause. I ask my noble friend to think again please and perhaps talk to the Scottish Government. There is a compromise to be had that will meet the needs of both sides of the border and the needs of the country as a whole in respect of security—at a time when national security is absolutely at the top of the agenda and the security of our transport systems must be the number one issue of concern.

Lord Faulkner of Worcester: Does the noble Lord agree that consultation of the sort that he just described, which I would warmly welcome seeing established, should also include members of the British Transport Police themselves, the British Transport Police Authority and the British Transport Police Federation, Network Rail, which funds the larger part of its operation, and the train operating companies? There needs to be a proper discussion about the role of the British Transport Police in a devolved Scotland. That has not taken place at all so far.

Lord Forsyth of Drumlean: Indeed, that is why I am so distressed by my noble friend's response and the fact that it has not. We appear to be operating on the basis that whatever is in the Smith commission report, as interpreted by the Scottish Government, is what we do, and nobody has thought through the consequences. I hope before we come to a later stage of the Bill that the noble Lord's suggestion is taken on board and my noble friend comes back with something that we can support. It would be very unfortunate indeed if this House were put in a position where it had to vote against the clause.

The noble Lord, Lord McAvoy, entreats us all to be as positive and committed to this process as possible. He has a part to play by opening his eyes and thinking about the consequences of this for the rest of the United Kingdom. I very much hope that this clause will not stand part of the Bill.

Clause 43 agreed.

Clauses 44 to 48 agreed.

Clause 49: Gaming machines on licensed betting premises

Amendment 54

Moved by ***Lord Bruce of Bennachie***

54: Clause 49, page 51, line 36, leave out from "authorised" to "(or"

Lord Bruce of Bennachie (LD): My Lords, I rise to move this amendment in the name of my noble friends, with apologies to the Committee. I have not taken part in deliberations on the Bill so far because when it was last before the House, I had not made my maiden speech. Noble Lords will, however, understand that I have a very direct interest in it as a former leader of my party in Scotland who negotiated some of the original agreements for the first Scotland Act and the creation of the Scottish Parliament.

These amendments relate to gaming regulations. They have been tabled to try to ensure that the Scottish Government have a clear line of responsibility and that there is no confusion between the two Governments. The first two, essentially, would ensure that the Scottish Government have the right to vary the number of gaming machines regardless of the stake they carry. As it stands, the Bill specifically relates to a stake of more than £10. Our concern is that we need to be able to ensure that there is a clear line of authority, that the Scottish Government have the right to regulate all gaming and that there is no confusion about that.

It is important to recognise where Clause 49 devolves, by way of an exception from the current reservation in Schedule 5 to the Scotland Act 1998, power to vary the number of gaming machines authorised by a betting premises licence granted by a licensing board in Scotland where the stake is more than £10. But the Smith commission specifically stated:

> "The Scottish Parliament will have the power to prevent the proliferation of Fixed-Odds Betting Terminals".

The Committee will understand the pain and disastrous consequences that these machines have caused some people both north and south of the border. That legitimises the reason to ensure that the power exists to regulate them. These machines have been described as the crack cocaine of gambling because they are so addictive. It is possible for people to lose substantial sums in a very short time. It would be unfortunate if there were a diversion of power and authority, which the exception currently in the Bill seems to produce.

That is the first point. These two amendments would remove the limitation of £10 and give the authority to the Scottish Government to regulate and reduce the number of all machines, regardless of the size of the stake.

The second is the exception that basically denies the Scottish Government the right to regulate those licenses that have already been awarded. The current exemption states:

"The amendments made by this section do not apply in relation to a betting premises licence issued before the section comes into force".

Once it becomes apparent that, under the new legislation, the Scottish Government have the power to regulate gaming machines but not to regulate those that were licensed before the power was granted, people in Scotland will likely regard that as a slightly untoward situation.

I appreciate that people will argue that there are difficulties associated with revoking licences that have previously been issued, but it seems to me that that is nevertheless a matter for the Scottish Government to determine in the future. They need to make a judgment as to whether there are any practical difficulties. Why should the current legislation deny the Scottish Government the right to make that decision?

Essentially, these amendments seek to give a power to the Scottish Government to regulate all gaming machines regardless of the stake, to do so in a way that enables them to limit the number of machines, and to be able to make changes to those that were licensed prior to the Act coming into force. On that basis, I commend these proposals and I beg to move.

Lord Davidson of Glen Clova: I rise to speak to Amendments 55 and 57 in my name and that of my noble friend Lord McAvoy. The amendments would require licensing standards officers in Scotland to be recognised as authorised persons who may exercise inspection and enforcement functions under the Gambling Act 2005. In its submission to the Scottish Parliament's Local Government and Regeneration Committee's call for evidence to the inquiry into fixed-odds betting terminals carried out in August last year, the Law Society of Scotland outlined its concerns. Those concerns, previously raised with the Gambling Commission, are whether a licensing standards officer appointed under Section 14 of the Licensing (Scotland) Act 2005 has the power to carry out any of the enforcement activities under Part 15 of the Gambling Act 2005 in respect of both alcohol licensed premises and gambling licensed premises.

Unlike in England and Wales, the licensing authority in Scotland is the licensing board, which has no officers or employees. Licensing standards officers are officers of the local authority, not of the licensing board. This is confirmed in the Gambling Commission's advice note on the role of authorised persons in Scotland and states that the enforcement powers contained in the Gambling Act cannot be exercised "as of right" by an LSO. As an authorised person, an LSO would be entitled to:

"Enter premises for the purposes of discovering whether facilities for gambling have been … provided, whether the premises are licensed for gambling and whether the terms and conditions of any licence are being complied with".

In addition, LSOs would have powers to,

"inspect any part of the premises … to question any person on the premises; to require access to and copies of written or electronic records kept on the premises; to remove and retain items which may constitute or contain evidence".

Additional legislative competence is being devolved to Scotland in this area, and therefore we suggest that it is vital that the Scottish Parliament is given all the necessary resources to manage these increased responsibilities. That, we say, is exactly what Amendment 55 does. The authority of licensing standards officers must be beyond any doubt, and that is what the amendment seeks to achieve.

Separately, I turn now to the issues raised by the noble Lord, Lord Bruce of Bennachie. In setting the £10 limit, we suggest that the Government have failed to meet the recommendations of the Smith commission. We would be keen to know why a £10 threshold has been set. Is it perhaps that the Government wish to roll out a similar policy across the whole of the UK? That may be understandable. However, not only do fixed-odds betting terminals with a stake of less than £10 remain the responsibility of the UK Government but, crucially, the maximum stake threshold does not cover other reserved matters such as the speed of play or the type of game being played. The existence of a threshold would allow addictive casino games to be placed in Scottish bookmakers without recourse to the Scottish Government. That is plainly of concern. What, we ask the Minister who is to reply, is the policy justification for this aspect in Scotland?

Responding to a question on this issue in the other place, the Secretary of State for Scotland said that he was "reflecting" on it. At what stage are those reflections, and might the Minister explain how the Government's proposals are in keeping with the Smith commission's recommendation that the Scottish Parliament be empowered to prevent the spread of fixed-odds betting terminals? I look forward to his response.

7.45 pm

Lord Dunlop: My Lords, perhaps I may set the scene for Clause 49, which refers to gaming machines in licensed betting premises. The provision will give the Scottish Parliament the power to vary the number of high-stakes gaming machines permitted by betting premises licences in Scotland. This power applies to all gaming machines on which players can stake more than £10 per play, which was referred to by the noble and learned Lord, Lord Davidson. At present this is possible on sub-category B2 gaming machines only. These are the machines that are widely referred to as fixed-odds betting terminals. Further, the power conferred by the Gambling Act 2005 on the Secretary of State to vary the number of such machines permitted by new betting premises licences will be transferred to Scottish Ministers.

FOBT machines are located almost exclusively in high street betting shops, and it is these machines with a maximum stake of £100 and a maximum prize of £500 on which recent public interest and debate have centred. This implements paragraph 74 of the Smith commission report which was explicit in saying that the Scottish Parliament should have,

"the power to prevent the proliferation of Fixed-Odds Betting Terminals",

and this clause achieves that.

[LORD DUNLOP]

The Smith commission agreement was explicit in saying that the Scottish Parliament should be able to exercise new functions under the Gambling Act 2005 to increase or decrease the number of FOBTs which are authorised by new betting premises licences. The power is sufficiently broad to permit the Scottish Parliament or Scottish Ministers to reduce the number of FOBTs authorised to zero in a new betting licence. The Scottish Parliament will be able to prevent increases in the number of FOBTs created by the opening of new betting premises, as Smith proposed. Gambling and its impact on society is a topic which the Government understand and take seriously, and we remain alert to the changing dynamics of the wider debate and will act in this area as appropriate.

I turn to Amendments 54 and 56, which seek to extend the scope of gaming machines covered by the clause. These proposals go substantially further than what the Smith commission referred to. They would bring within the scope of the clause all gaming machines regardless of stake size. At present, a betting premises licence issued under the Gambling Act 2005 authorises its holder to make up to four gaming machines available for use. The Categories of Gaming Machine Regulations 2007 provide that this entitlement is limited to gaming machines which fall within sub-categories B2, B3 and B4 and categories C and D. The Smith commission agreement relates only to FOBTs, and the term FOBT cannot be found in the Gambling Act 2005, but it is commonly used to describe category B2 machines by the Government as well as the Scottish Parliament's Local Government and Regeneration Committee. The Smith commission's use of the term FOBT is not shorthand for all gaming machines. FOBT machines are located almost exclusively in high street betting shops, and it is on those machines that the recent debate has centred. As such, the Government consider that the intentions of the Smith commission agreement have been delivered and that it is unnecessary to bring other gaming machines, which have far lower stakes and prizes, within the scope of this clause.

I am grateful for the contribution that was made on Amendment 58. As I have said, the Smith commission sought powers to prevent the proliferation of FOBTs, and the Government have interpreted this to mean the ability to restrain any future increase in the number, thus preventing proliferation—and hence the focus on new licences. Amendment 58 would extend this power to include existing licences as well as new ones. In conjunction with the extensive planning powers which have already been devolved, the clause as drafted will give the Scottish Parliament sufficient levers to tackle high street gambling and the extent of FOBT terminals, as Smith envisaged and which is the focus of public debate. The Government's approach is appropriate and therefore I hope that the amendment will not be pressed.

The noble and learned Lord, Lord Davidson, proposed Amendments 55 and 57, which would allow the Scottish Parliament to include licensing standards officers in Scotland as authorised persons who may exercise inspection and enforcement functions under the Gambling Act 2005. There is already a well-used and straightforward mechanism in Scotland whereby licensing standards officers may be authorised persons for the purposes of the inspection and enforcement of functions under the Gambling Act 2005. The Gambling Commission has very helpfully issued guidance on this. Local authorities are already responsible for determining how their existing officers discharge their duties. Clause 49 does not change that. As such, we consider that the amendments are not necessary.

Again, I urge the noble Lord to withdraw his amendment.

Lord Bruce of Bennachie: I am grateful to the Minister. As he will know, these amendments were proposed by the Law Society. While his response has made clear that he believes, in accordance with the Smith commission, that it is giving the power to regulate new licences for high-value machines, it creates a dilemma, which means that some machines in Scotland will be regulated by the Scottish Government and others would still be regulated by the UK Government. Would it not be more sensible to have a single Government, the Scottish Government, responsible for the regulation of all machines rather than have certain machines over which the Scottish Government have power and others which remain with the United Kingdom Government, causing potential confusion and future conflict?

That was the purpose of the amendment. All I ask of the Minister is that he reflects on the fact that, while I understand the reasonings for the amendments—I am happy to withdrawn mine on that basis—he should recognise that this could create an anomaly in the future which might require him to come back with future legislation. There is some logic in doing it all in one rather than having to come back on another date. I beg leave to withdraw the amendment.

Amendment 54 withdrawn.

Amendments 55 to 58 not moved.

Clause 49 agreed.

Clause 50 agreed.

House resumed. Committee to begin again not before 8.52 pm.

Prisons: Education

Question for Short Debate

7.52 pm

Asked by ***Lord Hanningfield***

To ask Her Majesty's Government what steps they are taking to help improve education standards in United Kingdom prisons.

Lord Hanningfield (Non-Afl): My Lords, I am very grateful for having obtained this short debate on education in prisons. Perhaps I should have added "in England", but, until I heard some of the Scottish debate, I was not aware that education in prisons is devolved to Scotland and Wales. The noble Lord, Lord German, will speak later and he might tell us a bit about the Wales situation. At the moment, a review is being

carried out by Dame Coates on education in prisons. It will report later this year and I hope that this short debate might have some influence. I congratulate Reading Ahead and the Prisoners' Education Trust on all that they do to improve education in prisons. Later this week, there will be a debate in this House on the future of prisons. I hope that this short debate might influence that and that the Minister, when she responds, might be able to say that.

I think that all noble Lords are aware that I have been in prison. I will speak a bit about my experience there. As many will know, I also have lifelong experience in education. I was chairman of Essex Education Services for many years, chairman of the Council of Local Education Authorities and regional chairman for the Further Education Funding Council. After the terrible shock of being sent to prison, I thought that I had better try to do something with myself. I spent a lot of time researching and talking to fellow inmates about how they got there and their own situations. I found that many of the young people—I did not talk much to the older ones—were unable to read and write. I have since been told that the illiteracy rate in prisons is more than 50%. Many people asked me to help them. They brought me letters, particularly solicitors' letters and legal letters, and other things, and asked me to read them to them and to help them understand what was in them, which I was only too pleased to do.

My experience of education in prison was rather ridiculous. I was initially given a 2+2=4 type test. When I was moved to an open prison, I was given the same test. I said that if possible I would like to improve my IT skills. I thought that I would try to do something. I heard nothing more at all, which was a common experience for many people. Education in prison is outsourced and, if it continues to be outsourced, it needs a different specification of what it can do. Education in prison needs to be brought up the agenda enormously. It is an opportunity missed. If only young people in prison could learn to read and do simple mathematics, that could help them to have a career when they get out.

The life of crime of many young people starts very often with an obsession with fast cars. They start with the minor example of pinching a car but graduate to much more serious crime, including burglaries et cetera. That is why I would like to couple my comments on education in prison with vocational training. A quite sensible young man in prison for a first offence had been obsessed by cars. In an open prison, people do a lot of external work and his main external work had been cutting grass and the like. However, when he was given a placement in a garage to train to repair cars, anyone would think that he had won the lottery. His excitement at going to a garage to learn more about cars for a possible career in that area was absolutely fantastic. That is why I want to couple my comments on improving education in prisons with vocational training. We know that the situation is the same in the outside world. We know that education generally has moved to more vocational training for young people. I hope that all speakers today will talk more in that vein, and about how we can improve education and vocational training in prison. It is right at the bottom of what happens in prison at the moment.

In an open prison particularly, the inmates do all sorts of things that help to run the prison. I was in a prison on the Isle of Sheppey. It was a quite well-run place and a lot of inmates did a lot of the work in running it. One could use some inmates for some of the training and education in prisons. Instead of just involving them in reception areas and so on, their talents should be used. If we cannot afford to spend more on prison education, perhaps we should rethink what we do in prisons and train a few more people to do more, which would help these young people get somewhere. Education is right at the bottom of the profile in prisons now. I hope that the contributors to the debate will talk a bit more about how we can raise the profile of education and training in prisons.

As noble Lords might imagine, I found my initial days in prison very difficult. I wish I had been able to have this debate before, but noble Lords will understand that it is quite difficult for me to talk about it. I found it extraordinary. For example, general knowledge is absent in a lot of prisoners. Hardly anyone had heard of the House of Lords. I am not really surprised at that, but so many people asked me, for example, where it is and what it does. Someone imagined that every Lord has a castle, because they asked me if they could borrow mine for a rave. It is quite an extraordinary thing.

Some of these people in prison are fairly intelligent and they could have a much better future if only we could do more for them. We need to think about how we can do more in both education and training in prison. I hope that the contributions to the debate will add to that.

8.01 pm

Lord Addington (LD): My Lords, I thank the noble Lord, Lord Hanningfield, for raising this subject from a unique perspective. I first encountered prisoners en masse when I worked for the Apex Trust about a quarter of a century ago. As a severe dyslexic, it was the first time in my entire life that I had found a group where my literacy skills were higher than the average. If noble Lords look at the prison population, they will find every conceivable educational problem they can possibly imagine by the barrel load.

The average prisoner has finished his formalised education before his 14th birthday. I have one wonderful statistic: that 60% of all prisoners in 2009 were discovered to have a reading age below that of a normal five year-old, if there is such a thing. You get every single problem there. People were saying that 50% of the prison population were dyslexic. They discovered that that is wrong: it is only 30%—only three times the average. I am sure that the noble Lord, Lord Ramsbotham, who is sat across the Chamber from me, will say something about speech and language. Language development is incredibly bad among prisoners. If you cannot talk or do not have listening skills, you cannot access the education system properly—you base that on other problems, social problems. The fact that anybody in this group has any literacy skills would be a surprise. We also know that bad education means that you are liable to get into the prison system, and that you cannot indulge in legal economic activity. There is a cycle here that is quite obvious to everybody. We have to do something about it.

[LORD ADDINGTON]

However, when we talk about education, please let us remember, having identified all these difficulties and problems, that sticking prisoners back in a classroom is not going to work. It just isn't: you do not know it, you cannot react to it. Chalk and talk—the teacher writes something on the blackboard, you write it down—is what I failed at for the first few years of my life. I got away. Some 42% of prisoners were excluded from school permanently. You have to individualise the approach.

The noble Lord, Lord Hanningfield, mentioned the fact that prisoners should be used in education. Some of the most successful education units in prison have been those that use mentoring. I believe that I am patron—I am afraid that one acquires various titles—of the Cascade Foundation, which deals with dyslexia and head injuries. Somebody goes into the prison and talks to and interacts with the prisoners. It means that you can have a conversation with somebody who is not in authority to try to get some sort of relationship and progress. Other programmes such as *Toe by Toe*, or the updated version, work on a similar system. The two groups argue which one is the best. It does not matter: mentoring helps. You have an interaction with someone who is not in authority and does not represent the thing you have failed at, which has defined your life until this point.

If you do not have somebody in the education system who knows how these problems work and can relate them to an adult, you are guaranteeing failure. We have to get specialists in this field to intervene. I see that my time is up, but I have made my point: standard education practices just do not work.

8.04 pm

Baroness Murphy (CB): My Lords, I have witnessed the transformational impact of a sophisticated education programme in a regional secure unit for mentally disordered offenders, but I also know just how difficult it was to extend the learning from that programme to other, similar units. The problems experienced in regional secure units are quite similar to those experienced in prisons.

I welcome Dame Sally Coates' review of this area, but the problems she faces are utterly daunting. Many prisoners, as we know, spend most of their day lying on a bed—a criminal waste of human potential and a lost opportunity to improve their lives. Everyone knows that there is good work, but it is very patchy.

I suppose that my first point is to challenge the Ministry of Justice strategy documents that link education, training and work, as if education's sole function is to enable prisoners to find work and rehabilitation. This is an admirable aim, but education is valuable for its own sake—for example, prisoners learning to read and write. As we have heard, about half of prisoners have very little, except basic, education and cannot read and write, so they cannot write a sophisticated letter, for example. It does not really matter what they are learning, as long as they are engaged in it. That is where the points made by the noble Lord, Lord Addington, about the method of engagement are so important.

My second point is that any serious review will quickly come up against the principal barrier to improvement, which, as I have said, is lack of time spent out of cell. Reduced budgets and staff shortages, coupled with a prison population that shows little sign of falling, conspire to make it difficult for many prisons to offer meaningful education or work. There is also the perennial problem that what prison management wants and what prison officers make it possible actually to deliver may be far apart. Winning the hearts and minds of prison officers is crucial to make education a reality. The Prisoners' Education Trust and the Prisoners Learning Alliance have told us the detail of what is required, but solving this problem will require much more radical action that addresses high prison numbers.

The idiotic introduction of advanced learning loans has wiped out many of the advanced level 3 courses that used to be available to prisoners. It is crazy to apply a loans policy to prisoners to support parity with learners in the wider education system. Prisoners are at such a disadvantage, as we have already heard. The benefits of prisoners gaining higher-level qualifications far outweighs the cost, whether it contributes to their rehabilitation or not.

Finally, we need to change the incentives in prisons for prisoners to take learning seriously. If they are paid more to do menial work then they will take that modern option of sewing mailbags, rather than learning.

8.08 pm

The Lord Bishop of Derby: My Lords, I, too, thank the noble Lord, Lord Hanningfield, for his introduction to the debate, especially for linking education with vocation for people in prison. As the noble Lord, Lord Addington, said, it is a very complex territory with very deep needs. A lot of research shows that the prison population represents people with multiple needs. Therefore, the task of education and vocation will be challenging.

I see the importance of formal education for literacy and numeracy to help people to get jobs. I am all in favour of that, but I want to look behind that at the informal fashioning of vocation and the development of character and confidence, which allows people to enter formal learning. I will draw on my own experience of going into prisons.

I will describe three little pictures. The first is a very moving experience of working with a group of women in a women's prison, exploring with them how important they came to realise the value of structure and pattern was in their lives. Many had come from contexts where there was no structure or pattern at all, just a lot of chaos. The opportunity to think carefully about how people could better live together with the aid of some kind of structure, framework and pattern was very valuable.

I think of another experience that I had recently of taking services in a prison with quite a lot of girls and young women, a lot of whom are loners and have problems with drugs. Nevertheless, they have formed a choir to sing in those services. They love modern music and have become a community. Suddenly, they became confident and acquired an identity through doing something creative and good together. We need to ensure that those kind of opportunities are available.

I come to my third little picture. A number of people in my diocese, myself included, go into prisons and conduct Bible studies and discussion groups. People need space to reflect on their experiences, their stories, the value of patterns and the making of communities through informal activities such as singing in a choir.

Chaplaincy provides a very valuable space in prisons. I hope that the Minister will think about the role of the informal sector in giving people a chance to reflect, grow in a community, appreciate how to make connections and therefore gain the confidence in their vocation to tackle the formal learning that they will need for the world of work.

8.10 pm

Viscount Hailsham (Con): My Lords, the noble Lord, Lord Hanningfield, is to be congratulated on bringing this matter to the attention of your Lordships' House. It cannot have been that easy for him, but it is right that it should be brought to the attention of the public through this House. My experience is not as direct as the noble Lord's, but it is none the less extensive. I was the Prisons Minister at the end of the 1980s, for most of my professional life I have practised at the criminal Bar and, until very recently, I was a member of the independent monitoring board of a local prison.

In a debate of this kind, one has to content oneself with assertions rather than argumentation. I am sorry about that. My assertions will be brief. First, the punishment imposed on a prisoner is the deprivation of liberty and we should be very careful about heaping on prisoners loss or humiliation which is not a necessary incident of that.

Secondly, most prisoners will be released into the community, and it is in our collective interest that they do not resume their criminal ways. Unfortunately, far too many do. One reason for that is that far too many have very limited personal or educational skills. The noble Lord, Lord Hanningfield, spoke about that and he is entirely right. Illiteracy, lack of IT skills, innumeracy, the inability to hold down long-term work—all these make a serious contribution to people's inability to get work.

The purpose of the criminal law is in part to provide for a process of rehabilitation. We do not perform that role very well, but it is part of the purpose—namely, to provide an opportunity for prisoners to have their deficiencies addressed. Therefore, I wholly agree with the proposition that we need to be much more generous in our provision of out-of-cell engagement and education. Whether that involves developing vocational skills, numeracy, literacy or IT skills, these need to be addressed.

Finally, the Secretary of State for Justice has a strategy to reduce the number of prisoners. That is a jolly good thing, too. When I was Prisons Minister, the number was about 40,000; it is now over 80,000, and I am deeply disturbed by that. If we can reduce prisoner numbers, there will be a saving. Inevitably, the Treasury will snaffle some of that, but there might be a portion left. I think it would be the will of this House that some portion of that should go to a more generous provision of out-of-cell activity, and in particular to education.

8.17 pm

Lord Judd (Lab): My Lords, I thank the noble Lord, Lord Hanningfield, most warmly for introducing this debate, for talking with candour about his direct personal experience of what he encountered, and for bringing all that front-line insight into our midst in the House of Lords.

It seems to me that for both economic and, indeed, humanitarian reasons the overriding objective in any relevant and effective penal policy is rehabilitation—it must be. The objective is to try to ensure that as many as possible of those incarcerated can become full positive citizens. How on earth is it conceivable that people can begin to take the road to full citizenship and making a practical contribution to society if they are operating without even minimal education?

However, there is another reason that this is important. So many of those in prison—we do not talk about this honestly enough or frequently enough—are themselves victims and casualties of brutal lives. They have not begun to have the opportunities that we take for granted of being able to enjoy literature and the rest. The point made about the importance of education as an end in itself is terribly important because education is central to people being able to live any kind of full life.

I have mentioned in the House before that for some nine years I had the privilege of being the president of YMCA England. I became fascinated with the work being done with young offenders and used to try to look at it as often as I could. If any of us had experienced just a fraction of what these youngsters have often experienced in their lives, it would be a miracle if we were not in trouble and probably facing imprisonment. It is important to recognise that reality. However, the next thing I discovered was how keen so many of them were to educate themselves. Yes, practical skills matter, but so does education in its own right. They began to see this dimension of life which they had not begun to be able to see before.

I finish on this note: none of this will come cheaply. If it is to be done properly, it must be properly resourced with staff and physical resources. That is not the case at the moment. It does not begin to be the case, and we must face that.

Finally, so far as the future is concerned, I hope that we can make a commitment to rehabilitation in the culture of prison staff and operatives top of our priority lists. It is there in many places but not throughout the Prison Service. That must be our first priority.

8.17 pm

Lord German (LD): My Lords, I also thank the noble Lord, Lord Hanningfield, for introducing this debate, and in an obviously personal manner. The holy grail in offender rehabilitation is an holistic approach which looks at both sides of the prison gate: a structure where education, housing support, skill acquisition, work and lots more issues are regarded as a single matter to be handled properly. Obviously—and unfortunately for us—the holy grail has not yet been reached and this debate offers an opportunity to look at one very specific aspect of that failure.

[Lord German]

I welcome the Coates review and wish it well. In the past, it has been fairly difficult to fully assess the value of prison education and its impact on reducing reoffending, though we have much anecdotal evidence. However we now have the Ministry of Justice's Data Lab analysis of reoffending, published last September, which gives an analysis of 6,000 prisoner records associated with matched comparison groups where one group had received Prisoners' Education Trust grants. Wherever you look at that evidence, whichever subgroup of prisoners you look at, the clear overall picture was that reoffending was one quarter less among those who had had that special educational support. Reoffending rates were down in every subgroup which was measured.

With those results in mind, I would like to press the Minister to give an indication of the actual cash saving which education, in that context, would mean to the taxpayers of this country. We all know the figures for less police time spent and fewer costs to the Prison Service, but now we have some actual hard evidence of the level of reoffending reduction that occurs through giving education. It is important to understand the savings that that would generate—and has generated—for the taxpayer, because that is one way of proving that more needs to be invested in this area.

Much has been said about the need for and the nature of prison education and the potential to attract high-quality professionals, and I understand that this is one of the issues to emerge from the Coates review. I want to press the Minister on the nature of the skills and qualifications which are offered to prisoners. Many of the vocational skills require people to have on-the-job training if they are to get a qualification. For many skills, such as bricklaying, plastering, plumbing and electrical work, that cannot occur inside prison and the qualifications people get need to pass through that gate and be continued outside. This is a plea for having a system where there is continuity between outside and inside the gate.

Dame Sally Coates has said that one of her emerging outcomes is that through-the-gate progression and tracking need to be improved. That is an understatement, because the problem lies wholly in bringing those together. It is more difficult now, with devolution, because responsibility for the education process in Wales lies with the Welsh Government but processes in prison lie with the Ministry of Justice. If this is going to happen, and we are to achieve that holy grail, there has to be a radical rethink of the role and variety of the different organisations and structures which manage this process.

8.21 pm

Lord Ramsbotham (CB): My Lords, in thanking the noble Lord, Lord Hanningfield, for initiating this debate, and declaring my interests as co-chair of the Penal Affairs All-Party Group, which incorporated the now defunct prison education group, and as patron of the Prisoners' Education Trust, I realise that the Secretary of State for Justice has initiated a review of prison education, as other noble Lords have said, chaired by Dame Sally Coates, which has not yet reported. She is addressing the penal affairs group on 23 February.

When I was Chief Inspector of Prisons, I quickly became aware that education was the most important ingredient of successful rehabilitation, and therefore, by implication, reduction in reoffending. However, at that time, the Prison Service funded its own education, individual prison governors being allowed to make cuts in spending without any checks or balances, resulting in the most appalling imbalance between individual prisons in what was available per prisoner per year: £406 per young offender in Brinsford, £1,750 in Werrington in the same county, and £2,500 in Thorn Cross in Cheshire, for example. I therefore campaigned for the Department for Education to become involved, and for ring-fenced funding of a national syllabus for each type of prison, including academic, vocational and social skills education, speech, language and communication training and, not least, access to the arts. There resulted the competitive awarding to individual education providers of offender learning and skills service contracts, of which there have been four exercises in the past 10 years, with a fifth postponed from last year to this. This frequency has precluded long-term investment and caused avoidable instability, and I hope that the next contract letting will be delayed for yet another year to allow advantage to be taken of whatever Dame Sally Coates recommends.

Despite the importance of education, in view of the lack in recent years of educational proficiency of too many prisoners, of all ages and both genders, in addition to the instability of the contracting process, successive Governments have tinkered and micromanaged, rather than allowing individual heads of learning and skills to concentrate on improving local delivery. This has been compounded by cutting resources, not least the numbers of prison staff, who are needed to escort prisoners to and from classes.

I hope therefore that the Minister, in answering the Question posed by the noble Lord, Lord Hanningfield, will tell the House that in his plans for giving more autonomy to prison governors, the Secretary of State intends to furnish them with long-term educational contracts, which will enable local contractors to deliver educational training that is appropriate for prisoners from a particular part of the country, biased in favour of giving them the skills that will help them obtain employment on release.

8.25 pm

The Lord Bishop of Peterborough: My Lords, I, too, am grateful for this debate. I also note with great pleasure a number of changes made to policy and practice in this area by Mr Gove since he became Secretary of State. I gladly thank him and the Government, particularly for allowing prisoners greater and easier access to books. But if educational standards in prisons are to be improved, as they desperately need to be, we still need much more joined-up thinking. I will give two examples.

The first I discovered on a visit I made to a prison during the coalition Government, although I suspect it could just as well have been today. I visited a very impressive unit which trained female prisoners in catering, giving them a range of skills needed for working in that sector. One prisoner told me that she was close to completing a course which would lead to a nationally recognised qualification but that she would not be able

to complete it because she had just been given very short notice of being moved to another prison. I asked her if she would like me to say something to those in authority, to which she replied, "Thank you, but don't bother. We expect this. It's just the way the system treats us". The system should not treat prisoners or anyone else in that way. We talk about a patient-centred NHS. What about a prisoner-centred Prison Service, not least as regards education and equipping for outside life?

My second example relates to the importance of holistic education. Surely the work done to help prisoners change wrong behaviour patterns—important programmes such as restorative justice and resettlement training—should be seen as part and parcel of the whole educational provision and aligned with it. But the funding of these programmes has been reduced and reallocated to the new community rehabilitation companies. Surely this must make the holistic approach—connecting educational provision with behavioural change and rehabilitation—much less likely.

I am grateful that Her Majesty's Government have initiated this review. I urge them to ensure that prisoners get the life-transforming education they need—for all our sakes.

8.27 pm

Lord Marks of Henley-on-Thames (LD): My Lords, the strongest factors in keeping an offender from reoffending after release from prison are a job, a home and a family or a stable relationship. Finding a job helps with finding a home and maintaining stable relationships.

Education in prison can help offenders find employment. It is completely clear that many prisoners have very little formal education before going to prison, as my noble friend Lord Addington said. It equips them with skills but at the same time it improves self-esteem and self-discipline. So it is tragic that December's Ofsted report painted such a bleak picture, with a marked decline in educational outcomes over a year and a rating of "inadequate" or "requires improvement" for 72% of prisons.

Dame Sally Coates' review is therefore extremely welcome. I hope her report will be innovative and adventurous and that she will pay particular attention to diversity of educational opportunities, greater access to distance learning, development of IT skills and part-time release to pursue education where security allows. However, to improve prison education, the Government must find the resources to fund it and the Treasury presently puts far too little effort into evaluating savings later to justify extra spending now. Every offender who finds a job because of education in prison brings savings not only to the prison system but to future potential victims, to the criminal justice system, to social security and the social services, and to HMRC. Why will the Treasury make no realistic attempt to quantify these savings?

Before closing, perhaps I may make one brief point on the youth estate. We opposed the large 320-bed secure college at Glen Parva. We were right to do so and the present Secretary of State was right to scrap it, but the general aim—better education for children and young people in custody, who are now below 1,000 in number—was right. However, they need to be in institutions that are human in size, that meet the difficult health and social needs of troubled young people and that offer genuine and diverse education at a very personal level. Secure children's homes do great work and young offender institutions can learn a lot from them about good educational experiences, albeit in the context of larger institutions. This may be expensive but my point about resources for adult prisoners is just as true, or perhaps even truer, for young people. Every £1 invested in helping a young offender avoid a life of crime earns for us all a generous return in financial and human savings.

8.31 pm

Lord Beecham (Lab): My Lords, I, too, congratulate the noble Lord, Lord Hanningfield, not least because the position in relation to the subject of this debate is clearly serious in many respects.

The last Ofsted report, to which the noble Lord, Lord Marks, referred, made it clear that outcomes were very poor and markedly worse compared with the previous year. The Chief Inspector of Prisons reported that,

"purposeful activity outcomes were only good or reasonably good in 25% of the … male prisons … inspected",

the worst position since 2005. He also said that the overall standard of teaching required improvement or was inadequate in two-thirds of prisons inspected, with the leadership and management of learning and skills falling short in 74% of prisons.

The Prison Reform Trust proposes greater emphasis on employment outcomes. It argues for a presumption that education should be delivered outside the prison, where this could be done safely and the prisoner would benefit. I hope that these matters can be looked at. It also called for "vastly better" access to IT for learning and communication, surely a requisite in these days. The Prisoners' Education Trust has called for greater incentives for pursuing learning, for example by better-paid work, with non-financial incentives also provided and distance learning encouraged.

The University and College Union has pointed to evidence from the United States that prison education yields a 20:1 return for every dollar—I suppose it would be a pound in our case—invested in adult basic, general and post-secondary education. It calls for an urgent reassessment of the funding cap for students, which impacts most on those serving longer sentences or pursuing vocational qualifications. Importantly, it also calls for flexibility so that personal and social development and informal adult learning can be provided, with funding in general set for longer periods to ensure stability. Can the Minister comment on the application of advanced learning loans to prisoners, which the noble Baroness, Lady Murphy, referred to, as applying that loans policy has caused that significant reduction in level 3 learning?

The University and College Union also points to a large difference of £15,000 a year between the salaries of FE college teachers and those teaching in prisons, where only half are on full-time contracts. Worryingly, 50% of those responding to a survey thought it likely that they would look for a new job in the next 12 months. There appears to be the potential for a pending crisis, or at any rate difficulties, in that key area of provision.

[Lord Beecham]

Can the Minister give an indication, not necessarily across the Dispatch Box tonight, of the extent to which peer review is practised in the area of prison education? That has proved a useful tool in other areas, notably local government. How much are external agencies such as probation involved in the planning and oversight of prison education and how much collaboration takes place between institutions? What is the involvement, for example, of the employment service with the process, from helping to design programmes to engaging with prisoners before release?

I very much welcome the Secretary of State's appointment of a review body. We look forward to receiving its report and reviewing progress, perhaps in a year or so's time. Around the House, there is clear support for the initiative and a willingness to debate a way forward.

8.34 pm

Baroness Evans of Bowes Park (Con): I thank the noble Lord, Lord Hanningfield, for securing this debate and talking about his experience, and all other noble Lords for their contributions. I welcome the opportunity to highlight the progress that has already been made and to outline the Government's plans for further reform.

The Secretary of State for Justice is clear that education must be at the heart of our prison system if it is to rehabilitate effectively. That way, we stand a better chance of reducing our intolerably high reoffending rates. I agree as well with the noble Baroness, Lady Murphy, and the noble Lord, Lord Judd, that education is valuable in itself.

As the noble Lord, Lord Hanningfield, said, prisons in Scotland and Northern Ireland are devolved, while in Wales the responsibility for prison education rests with the Welsh Assembly Government. This evening, therefore, I will speak specifically on prison education in England and focus particularly on the adult system.

As we have already heard, the current prison system works to punish prisoners by denying them their liberty, and protects the public by detaining them, but there is no doubt more could be done to rehabilitate offenders. Our prisons must offer them the opportunity to turn their lives around. Much of the current prison estate and the conditions staff have to work in, particularly in older prisons with high levels of crowding, are not conducive to developing a positive rehabilitative environment, which is why we will invest £1.3 billion in prisons to ensure they are places of rehabilitation and not just incarceration.

Education is critical to enable prisoners to change their lives and contribute positively to society. There have been significant improvements in prisoner education over recent years, with participation now at its highest level since we began publishing data. But we absolutely agree that we must go further and ensure that education is at the heart of the prison regime.

As the noble Lords, Lord Marks and Lord Beecham, said, it is of great concern that Ofsted's inspection of prison education confirms that one in five prisons is inadequate in terms of its leadership, management and delivery of education, and that another two-fifths require improvement. Ofsted has long been critical of the standard of prison education, which is one of the worst-performing areas of further education. But at the same time, we should not forget that great work is taking place, and I commend—as I am sure other noble Lords would too—Her Majesty's Prisons Hollesley Bay, New Hall, Askham Grange and Hatfield in particular on receiving outstanding Ofsted reports.

To drive forward reform, as noble Lords have said, the Secretary of State for Justice has asked Dame Sally Coates to lead a review of education in prisons. The review is examining the scope and quality of current provision in adult prisons and in young offender institutions for 18 to 20 year-olds. By way of reassurance for the noble Baroness, Lady Murphy, and the noble Lord, Lord Beecham, it will also look at how we can best support learning at level 3. The noble Lord, Lord Ramsbotham, asked about the future of offender learning and skills provision. Dame Sally will be providing independent advice on new contracts, and we will consider that carefully. In parallel, Charlie Taylor is leading a review of the youth justice system which will also include looking at education.

The adult prisoner population has specific educational challenges, as the noble Lord, Lord Hanningfield, and my noble friend Lord Hailsham identified. In 2014-15, only 9% of adult prisoners assessed at reception were at GCSE standard A* to C in maths and only 13% at that standard in English. As the noble Lord, Lord Addington, said, almost a third of adult prisoners assessed had a learning difficulty and/or a disability.

Dame Sally has a wealth of experience and is being assisted by a panel of expert members including representatives from further and higher education and from the voluntary and community sector, employers, senior government officials and experienced front-line prison staff. As part of the review, Dame Sally and the panel have conducted a wide range of prison visits, where they have witnessed some excellent practice. They were particularly impressed, for example, with the open academy at Her Majesty's Prison Swaleside, where prisoners—mostly those serving long sentences—live, work and study together in support of their learning.

However, as noble Lords have said, it is clear that substantial barriers remain for many prisoners in progressing their learning and skills and ensuring they receive the right support to continue in education or into employment on release. We have received more than 400 responses to our public call for evidence, and initial findings from an evaluation of the current prison education contracts by Ipsos MORI have also been recently presented to the review panel.

The noble Lord, Lord German, asked about the cash savings that improved education in prison could deliver from reduced reoffending. We expect to have more detail on the impact of outcomes of prison education from the Ipsos MORI work that I just mentioned, which will be published in the spring. The Justice Data Lab will continue to provide powerful evidence in its report.

Of course, I cannot prejudge Dame Sally's review, which is due to report in March, but I can say a little more about the areas being explored. Every prison should foster a culture with learning at its heart. With figures showing that more than 100,000 prisoners participated in education in England in the 2014-15 academic year, we have a good base to build on.

However, education must meet the needs of prisoners and lead to real jobs on release. On top of this, prisoners must be motivated and encouraged to participate and engage in their own learning. To achieve this, prison governors, with the right tools, need to be more demanding and creative about the range of education provided in the prisons that they run. This can be done. The panel was particularly impressed by the cohesive relationship between the governor, senior staff and education provider at HMP Drake Hall, where an education offer has been tailored to meet the needs of the establishment's female population, to which the right reverend Prelate referred.

All governors should be freer to engage with a wider variety of partners who can help improve education, building on the work that people such as James Timpson and employers such as Halfords are undertaking via their academies in prisons. Several noble Lords—the noble Lords, Lord Hanningfield and Lord German, the right reverend Prelate the Bishop of Derby and my noble friend Lord Hailsham—mentioned vocational education. Vocational training that meets the needs of employers in the areas to which prisoners will be released is a keen aim for the Offenders' Learning and Skills Service. In the past three years, more than 230,000 vocational qualifications were achieved each year by those serving sentences in England.

There is also clearly an important role for the many innovative charitable partners, such as the Prisoners' Education Trust, the Shannon Trust and the Reading Agency, which are so successful in supporting and encouraging prisoners to read—and, as the right reverend Prelate the Bishop of Derby said, the chaplaincy. A range of education is delivered by National Prison Radio, with a popular book club airing daily. The Prince's Trust provides support to young offenders to raise awareness and encourage self-employment on release, while the Learning and Work Institute has used its government funding to pilot a personal development course to engage female prisoners who are resistant to learning at Drake Hall, Eastwood Park and Low Newton prisons.

Building on the good practice already happening, the review will give fresh thought to routes into prisoner education. Of course, we need excellent teachers. Last year, Jerry Nightingale, a course tutor for a cycle maintenance and repair course at HMP Channings Wood, was awarded Further Education Lecturer of the Year. We want more teachers to consider teaching in prison as part of a rewarding career.

While we await the recommendations of the review, I reassure noble Lords that the Government continue to work hard to improve the quality of teaching and learning in prisons. A good grounding in maths and English is essential if ex-offenders are to find employment on release, which is why we introduced maths and English assessment for all newly received prisoners in August 2014. Where learners are assessed at below GCSE standard—that is, below level 2—and a need is clearly evident, they are strongly encouraged to enrol on an appropriate course, and their sentence plan reflects that. In the academic year 2014-15, 74,700 prisoners were assessed for their levels of maths and English on reception. In the same year, 39,300 prisoners participated in an English or maths course.

Within schools and universities, IT has revolutionised teaching practices. To reflect this, education in prisons does not take place only in classrooms, which I hope that the noble Lord, Lord Addington, will be pleased to hear. The Virtual Campus, a secure web-based system, offers a broad range of skills, education and employment-focused material equivalent to provision outside prison. City & Guilds assessment tools are currently being piloted, giving teachers much more information about the maths and English skills of prisoners. This will allow sound choices to be made about the right teaching and learning approaches.

High-quality education is vital for the rehabilitation of young people who have offended, which is why we have doubled the amount of education in public sector young offender institutions for under-18s, agreed in new education contracts since March 2015.

The National Offender Management Service and BIS have jointly commissioned the Education and Training Foundation to deliver a programme of workforce development for teachers and those with responsibility for managing education in prisons. This is a considerable investment, showing the Government's commitment to driving innovation and standards in the sector. I hope that I have managed to cover most of the points raised by noble Lords; those that I have not covered, I shall to get at with further information.

I shall end by returning to Hatfield, the prison that was last week awarded an outstanding Ofsted report; this shows how much can be done when the right approach is taken. I am confident that the Secretary of State, in light of Dame Sally's recommendations, will move quickly to ensure that prison education is excellent not just at Hatfield, Hollesley Bay and other outstanding prisons but across the entire estate.

8.45 pm

Sitting suspended.

Scotland Bill

Committee (2nd Day) (Continued)

8.52 pm

Amendment 59

Moved by ***Lord Stephen***

59: After Clause 50, insert the following new Clause—

"Business associations

(1) Part 2 of Schedule 5 to the Scotland Act 1998 is amended as follows.

(2) In section C1 (business associations) at the end of the Exceptions insert—

"(c) the law on partnerships and unincorporated associations,

(d) the creation of new forms of cooperative enterprise,

(e) the creation of new forms of mutual enterprise,

(f) the creation of new economic interest groups where the European Economic Interest Group under regulation EEC 2137/85 is not available because the members do not come from more than one state.""

Lord Stephen (LD): My Lords, Amendments 59, 60 and 61, which are tabled in my name and that of my noble and learned friend Lord Wallace of Tankerness, are Liberal Democrat amendments, but they have been

[LORD STEPHEN]
very much inspired by the hard work of the Law Society of Scotland. I thank it and Michael Clancy, in particular, for the detail that has gone into these amendments.

Amendment 59 adds further exceptions to the reservation to the UK Parliament of the creation, operation, regulation and dissolution of types of business association. Under the Scotland Act 1998, the UK Parliament can make law to create business associations, such as partnerships and limited companies. Law can also be made concerning the operation, regulation and dissolution of these associations.

Section Cl of Part 2 of Schedule 5 has a number of exceptions to this reservation. These include the creation, operation, regulation and dissolution of particular public bodies, or public bodies of a particular type established by or under any enactment and charities—your Lordships can see that lawyers have helped me with the wording. A business association is defined as any person, other than an individual, established for the purpose of carrying on any kind of business, whether or not for profit. "Business" includes the provision of benefits to the members of an association. We believe that the exceptions from the reservations should be amplified to include the law of partnership and unincorporated association, and to provide for the creation of various types of new forms of enterprise to allow flexibility for businesses to grow in Scotland.

The Partnership Act 1890 already regulates partnerships in Scotland and recognises in some respects the differences between Scottish and English law in this area. The Law Commissions reviewed partnership law and published a report in November 2003 that dealt with the Partnership Act 1890 and the Limited Partnerships Act 1907, with particular reference to independent personality, continuity of business irrespective of changes of ownership, simplification of solvent dissolution and model partnership agreements. In 2006 the Government announced that they rejected the Law Commissions' recommendations on general partnerships but that they intended to implement the recommendations specifically relating to limited partnerships. That change was carried out by way of the Legislative Reform (Limited Partnerships Order) 2009. However, some of the reforms concerning general partnership reform could be of benefit to Scottish businesses, and an effective means of executing these reforms could be through the Scottish Parliament legislating on these matters. Currently that is not possible, so this amendment would enable the Scottish Parliament to carry out the legislative changes that the Scottish Government may wish to consider and which are contained in the Law Commissions' joint report. The Parliament should also have the freedom to create new forms of enterprise as listed in the amendment.

Amendment 60 would fully devolve the regulation of solicitors, no matter what function they performed, to the Scottish Parliament and allow the Parliament to make law for licensed providers under the Legal Services (Scotland) Act 2010 in the areas of immigration and asylum, insolvency practice or financial services. There is no provision that reserves the regulation of the Scottish legal professions. Nevertheless, in the Legal Profession and Legal Aid (Scotland) Act 2007, which regulates,

"the making of complaints about legal services",

it was provided that that Act did not apply to complaints about the provision of advice, legal services or activities relating to consumer credit, insolvency practitioners, financial services or immigration. This was because the Scottish Government took the view that the supervision of the legal profession when giving advice about these reserved matters or providing services was itself reserved, and was therefore a matter for the UK Parliament to regulate. In other words, the Scottish legal professions are regulated partly by the Scottish Government and partly by the UK Government, according to what advice or services they are providing.

In Section C3 there is an exception from the reservation of competition law that covers the regulation of the legal profession, but that exception applies only for the purposes of that section. The problem is that the provision of advice, legal services or activities relating to consumer credit, insolvency practitioners, financial services or immigration is considered to be reserved. Irrespective of whether this view is correct—the Minister and others may reflect different views on this—it is suggested that the Scottish Parliament should be able to regulate all aspects of the Scottish legal professions. That includes alternative business structures formed between solicitors and other professionals as licensed providers under the Legal Services (Scotland) Act 2010.

Finally, Amendment 61 deletes the reservation to the UK Parliament of regulating estate agents in Scotland under the Estate Agents Act 1979. Estate agency in Scotland works within the context of Scottish land law practice and conveyancing, which is, as we all know, different from the law applicable to other parts of the United Kingdom. Were estate agency in Scotland to be devolved, the Scottish Parliament would be able to make law relating to estate agents which would be more closely aligned to the Scottish legal system and the needs of consumers in Scotland, and which would allow the Parliament to legislate fully for licensed providers comprising estate agents under the Legal Services (Scotland) Act 2010. The inability of the Scottish Parliament to legislate in this area is a stumbling block to completion of the legislative framework for alternative business structures in Scotland.

9 pm

I hope that the Government will give careful consideration to these proposed very detailed and technical amendments, which could improve the regulation of solicitors in Scotland and improve circumstances for consumers in Scotland in these important areas.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): The noble Lord, Lord Stephen, has spoken on a number of amendments which relate to the amendments put forward by the Law Society of Scotland. I echo what the noble Lord said about the role played by Michael Clancy and all his hard work. I can see that he is sitting in the Box this evening, and I met him last week to discuss these amendments.

Your Lordships will be aware that the context of this Bill is, as we have discussed many times, the implementation of the Smith commission agreement. The commission considered a range of areas for devolution, and the amendments spoken to this evening

do not fall within the scope of that agreement. If noble Lords permit, I will briefly explain why, in addition to this, the Government do not support these amendments.

Principally, the UK Government are committed to ensuring that the UK is one of the best places to start up and run a business. To devolve legislative competence for the creation of new business entities or health and safety to the Scottish Parliament would add complexity and confusion to the business landscape in areas where we are already considered world-class. We are also committed to protecting consumers, and to devolve one aspect of the regulation of estate agents would lead to fragmentation of the approach across Great Britain. The Government consider that this would be ineffective and could harm consumers. We are striking the right balance of powers in the Bill while maintaining the strength and security and benefits for British business and for our consumers.

Amendment 59 would allow the Scottish Parliament to legislate for partnerships and unincorporated associations and allow the Scottish Parliament to create various new forms of enterprise in Scotland. The pressures that businesses face are generally the same throughout the UK and, therefore, when considering whether new business entities are appropriate, it is right that we should take a UK-wide view. It would not be right to have competing regimes of business regulations north and south of the border, and therefore I urge the noble Lord to withdraw the amendment.

Amendment 60 is unnecessary because regulation of the legal profession in Scotland is not a matter reserved by Schedule 5 to the Scotland Act 1998. However, the legal profession in Scotland advises on a diverse range of issues, including matters such as consumer protection, for which this Parliament retains responsibility for legislating. The Scottish Parliament does not have the legislative competence to make provision that relates to a reserved matter or modifies the law on reserved matters. This means that the Scottish Parliament cannot make provision specifically targeted, as the amendment proposes, at the regulation of insolvency practitioners, which is reserved by Section C2 of Schedule 5 to the Scotland Act 1998. Given this explanation, I urge the noble Lord not to press this amendment.

Finally, in addition to Amendment 61 being outside the scope of the Smith commission agreement, it is inappropriate. The Estate Agents Act 1979 is just one of the pieces of legislation that apply to the regulation of estate agents in order to protect consumers. Devolving this aspect of consumer protection policy while reserving other aspects, such as unfair and misleading practices, would lead to fragmentation of the approach across Great Britain. This would be ineffective and could harm consumers. Therefore, I urge the noble Lord to withdraw the amendment.

Lord Stephen: I thank the Minister for his response, although clearly he does not agree with me or with the Law Society of Scotland on this issue. He mentioned fragmentation. Another word for that is devolution. The same argument about areas that are considered to be world-class could apply equally strongly to health, education, transport or housing. I can see no inconsistency whatever in saying that throughout the United Kingdom we will have world-class health and world-class education but with differences—substantial differences in some cases—between the Scottish system and the system in other parts of the UK.

It seems to me that the point about business and partnerships was well taken by the Government of 1890 in this country, who made separate provision, as I said in my previous speech. Back in 1890 there was a Partnership Act—I am sure that the Minister will be able to get briefing on this in due course—that recognised the differences between Scotland and the rest of the UK, so what is being proposed here is in no way ground-breaking. It would be interesting to find out the colour of the Government back in 1890 when this measure was introduced, but it was long, long before the introduction of the new Scottish Parliament through the Scotland Act in 1999.

I also differ with the Minister in relation to going no further than, or implementing only, the Smith commission proposals. I think it is fair to say that that has been a pretty constant reference from the Government Front Bench. In quite a few respects the Government already have gone further—for example, the amendment in relation to abortion was not contained in the Smith commission report—so why not go further when it is a sensible measure, when it could be of advantage to Scottish consumers and Scottish business, and when it is something that is quite technical and detailed but has been given a lot of thought by the Law Society of Scotland and would make for sensible, better devolution?

I hope that the Minister might see sense and come back to us at the next stage with some amendments in this area but, for the moment, I beg leave to withdraw the amendment.

Amendment 59 withdrawn.

Amendments 60 to 62 not moved.

Clauses 51 to 53 agreed.

Clause 54: Rail: franchising of passenger services

Amendment 63

Moved by ***Lord McAvoy***

63: Clause 54, page 53, line 38, after "operator" insert "or not for profit operator"

Lord McAvoy (Lab): I am so used to my noble and learned friend Lord Davidson speaking for me that I almost mistimed rising to move this amendment, which would allow for the scrutiny and review of previous tendering arrangements. Amendments 63 and 64 in this group stand in my name and that of my noble and learned friend Lord Davidson of Glen Clova. They are minor but important amendments, which would alter Section 25 of the Railways Act 1993 by removing the prohibition on public sector operators bidding for a franchise in relation to a Scottish franchise agreement. They would also establish legislative review and evaluation procedures.

The Smith commission report states that,

"power will be devolved to the Scottish Government to allow public sector operators to bid for rail franchises funded and specified by Scottish Ministers".

[Lord McAvoy]
The amendment would go a small but significant step beyond that by allowing not-for-profit operators also to bid in the process, echoing what the right honourable Gordon Brown proposed prior to the referendum. The Scottish Government are already responsible for letting and funding the ScotRail franchise. The legal framework for letting the franchise is provided by the Railways Act 1993, the Transport Act 2000 and the Railways Act 2005. These collectively preclude state-controlled organisations from bidding for franchises.

The paradox is, however, that state-controlled bodies from other countries are not precluded from holding a franchise. Members of your Lordships' House will no doubt be aware that as a result of this anomaly, Abellio, an offshoot of the Dutch national state railway, was recently awarded the ScotRail franchise by the Scottish Government. A number of concerns were raised in response to this decision, not least from trade unions because, given the forthcoming proposals outlined in the Bill, the tendering process could have been delayed, after which the franchise could have been awarded to a public or not-for-profit operator. There has been a number of problems, most notably the cancellation of services after pay talks with the train drivers' union ASLEF stalled and staff being offered voluntary redundancy despite Abellio guaranteeing that this would not happen. As the general secretary of the RMT has said:

"Scotland could have taken control of its own railways".

Labour has stated that it believes that:

"The best deal for Scotland is a People's ScotRail, a railway company whose commitment is not to a group of shareholders or a foreign Government, but to the people of Scotland".

In the light of this evidence it is vital that while we move forward in the devolution process we learn from the decisions that were taken in the past. The amendment would facilitate this by allowing the scrutiny and review of previous tendering decisions, not to cause any uncertainty or rock the boat in any way but to learn lessons from how things were conducted. I believe that this is a genuine opportunity to enshrine in legislation the value of critical evaluation in the decision-making process. I beg to move.

Lord Dunlop: It is nice to welcome back to the Dispatch Box the noble Lord, Lord McAvoy. Clause 54, to put it simply, will allow public sector operators to bid for and be awarded rail franchises specified and let by the Scottish Ministers. This will provide greater freedom to decide which organisations are eligible to bid for franchises in Scotland and fulfil the Scottish Government's aspiration to allow public sector operators to participate in the rail franchising market in Scotland. At present, and as with the rest of the UK, not-for-profit entities are not precluded from being rail franchises under the Railways Act 1993. Once Clause 54 is commenced, not-for-profit entities, irrespective of whether they are public or private organisations, will be able to bid for rail franchises, just as other public sector operators will also be able to. As such, the Government do not consider that Amendment 63 is necessary.

Amendment 64 would allow discretion as to whether public sector operators, on commencement of Clause 54, can bid in respect of live procurements where an invitation to tender has already been issued. There are currently no live procurements for Scottish rail franchises. There are two current Scottish franchises: the Caledonian Sleeper services and the ScotRail services. It is the responsibility of the Scottish Government to manage the tendering of these contracts. The ScotRail franchise, for example, the biggest in Scotland, operates over 2,200 train services each day, delivering 92 million passenger journeys each year. In December, it announced a £475 million investment in its rolling stock over three years.

Baroness Quin (Lab): I am listening carefully to what the Minister has to say. Under the arrangements that he has just described, would it therefore have been possible for the east coast main line to bid for running the east coast franchise, which of course it was disbarred from doing? That is, of course, a cross-border railway and it was operating very efficiently, although it was not allowed to submit a tender to run the railway into the future.

Lord Dunlop: Obviously the noble Baroness has stated the facts. I do not want to add to that because she is a great expert in these matters. I am simply talking about this amendment and what would be possible in the future.

To go back to what I was saying, both existing Scottish-related franchises have been in operation since April 2015 and their contracts are for 15 and 10 years respectively. The ScotRail franchise has a break clause after five years—

9.15 pm

Baroness Quin: I am not clear about the implications of what the Minister is saying. He seems to be saying now that it is possible for not-for-profit and public companies to bid for tender to run a railway. Is that the case? It was certainly not the case recently when the east coast railway was not allowed to bid for the continuation of the east coast service. Is he simply describing the situation as it will be in Scotland or as it exists at the moment, not just for Scotland but for the UK? Is he also describing the situation for a cross-border service, which is what the east coast main line is?

Lord Dunlop: Just to clarify, the clause that we are talking about relates to Scotland-only franchises. As I said earlier, not-for-profit entities are not precluded from being rail franchisees under the Railways Act 1993.

To return to what I was saying, both franchises have been in operation since April.

Lord McFall of Alcluith (Lab): If a not-for-profit enterprise is allowed in Scotland, could that not-for-profit enterprise bid for a cross-border railway to the Department for Transport, or would that be disallowed? That is the issue.

Lord Dunlop: I think we are talking about devolution to the Scottish Government and the Scottish Parliament. Therefore, we are talking about only rail services that are in the province of the Scottish Government, not ones that are let through the Department for Transport's process.

Lord McFall of Alcluith: If that is the case, and given the potential decision-making for the Scottish Parliament, it is important for the Minister to go back and get clarification on this issue. This could become a live issue in a short period of time.

Lord Dunlop: I am happy to give the noble Lord the assurance that we will get clarification. I am happy to write to him on that.

To complete what I was saying, the ScotRail franchise has a break clause after five years, but in practice that means that a new competition for either Scottish rail franchise will not occur until 2020 at the earliest. For those reasons, the Government consider Amendment 64 to be unnecessary and that it would only add uncertainty to the clause. Therefore, I urge the noble Lord to withdraw it.

Lord McAvoy: I thank the Minister for that answer. I particularly welcome his indication of interest from the Scottish Government in discussions and negotiations. That shows that sensible and calm negotiations—not looking for aggressiveness on either side—will deliver to the Scottish Parliament and therefore the Scottish Government the powers that he just outlined. That is an important statement to come out tonight.

A couple of things tonight could almost have been interpreted as doubting the ability of the Scottish people to run the services proposed for devolution in the Bill and hopefully in the fiscal framework—time after time. It is a little insulting to the Scottish people to suggest that we cannot run services in a proper and efficient manner. Doubt has been cast on that, denigrating the ability to come forward and run these things. So I welcome the Minister's statement and the positive notes coming from the Scottish Government. I beg leave to withdraw the amendment.

Amendment 63 withdrawn.

Amendment 64 not moved.

Clause 54 agreed.

Clauses 55 to 57 agreed.

Clause 58: Renewable electricity incentive schemes: consultation

Amendment 65

Moved by ***Lord Wallace of Tankerness***

65: Clause 58, page 67, line 21, after "electricity" insert "or heat"

Lord Wallace of Tankerness (LD): My Lords, this group comprises a number of amendments relating to renewable energy. The background is not only proposals for devolution but obviously must be seen against what the Government have done with regard to the Energy Bill, or least what they had done until this House took out the provision relating to the acceleration of the closure of the renewable obligation for onshore wind.

The first set of amendments, Amendments 65, 66, 68, 70, 71 and 72, are concerned with renewable heat incentive schemes. The Smith commission, which of course is holy writ, states at paragraph 41:

"There will 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 to which OFGEM must have due regard. OFGEM will also lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament".

The initial amendments were intended to incorporate references to the renewable heat incentive schemes, whereas the clause as it stands relates only to renewable electricity incentive schemes. I was grateful to the Minister for writing to me on 1 December last to say that he did not think that this set of amendments was necessary. He indicated that heat was,

"not covered by any of the reservations in the Scotland Act 1998, and so should be treated as already devolved".

He went on to say that, with specific regard to the renewable heat incentive,

"the Scottish Government already has a formal consultative role on both the domestic and non-domestic RHI schemes. Section 100 of the Energy Act 2008 states that for regulatory changes to RHI schemes, the Secretary of State for Energy and Climate Change",

had certain obligations relating to the,

"competence of the Scottish Parliament",

and the "consent of Scottish Ministers" but, where there was not a competence within the Scottish Parliament, he had a consultation requirement on Scottish Ministers. Having received the Minister's letter, I decided that it was still better to leave these amendments in so that we could have on the record why renewable heat incentives were not included. I know that their omission has caused some concerns in the industry, but this makes it clear that there is nothing to stop the Smith commission recommendation being given full effect in that regard.

There is, however, an important issue with regard to Amendment 68B. On how many occasions in the course of our debates have we heard the Minister pray in aid, "This is what the Smith commission says and this is what we are delivering"? I am sure that the Smith commission was never intended to be a straitjacket, but that is sometimes how it appears. I shall repeat:

"There is to 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 to which OFGEM must have due regard".

But look at what is in the Bill. It states in Clause 58:

"(1) The Secretary of State must consult the Scottish Ministers before—

(a) establishing a renewable electricity incentive scheme that applies in Scotland, or

(b) amending such a scheme as it relates to Scotland".

Let us turn to the next two new subsections:

"(2) Subsection (1) does not apply to amendments that appear to the Secretary of State to be minor or made only for technical or administrative reasons".

I am actually prepared to live with that. It is probably perfectly reasonable provided that not too wide an interpretation is made of "technical or administrative reasons". But new subsection (3) goes on to say:

"(3) Subsection (1) does not require the Secretary of State to consult the Scottish Ministers about any levy in connection with a renewable electricity incentive scheme".

Where in the Smith commission is that exception made? We have heard how important it is that we should stick rigidly to the commission, yet it does not make the exception that the Government seek to import into this provision.

[Lord Wallace of Tankerness]

Moreover, the Command Paper which was published almost exactly a year ago stated specifically that, in implementing paragraph 41 of the Smith commission agreement, a clause would be included in the Scotland Bill to,

"establish a broad duty on the Secretary of State to consult the Scottish Government on the design of new incentives to support renewable electricity generation, or the re-design of the existing incentive schemes … The duty will arise where the new incentive would apply in Scotland, or any re-design would affect the way an incentive operates in Scotland. It will apply to incentives that are both statutory and non-statutory in nature".

If that had been translated into the legislation, it probably would have been fine. The paper was clear that the reference to existing incentive schemes included the renewables obligation and contracts for difference. There were no exemptions, yet exemptions have been added. The Government have to explain to the House why they are departing in a very material way from the recommendations of the Smith commission. Quite clearly, any levy in connection with the renewable electricity incentive scheme could put a coach and horses through what is given by new Section 90C(1), to be inserted into the Scotland Act 1998 under Clause 58. The Government may have a guilty conscience because they sought to bring about the early closure of the renewable obligation in relation to onshore wind and solar panels with precious little, if any, prior consultation with Scottish Ministers. Therefore, they are trying to cover their tracks by this rather niggardly exclusion that they have sought to put in. The Minister owes it to the House to explain why he has driven a coach and horses through that new subsection.

Again, I wrote to the Minister and asked about the consultation with Scottish Ministers. On 21 December, he helpfully responded saying that,

"similarly to the position on the Renewables Heat Incentive, we have not included a requirement to consult Scottish Ministers on the Strategy and Policy Statement … as the Energy Act 2013 already gives Scottish Ministers a clear formal consultative role in the development of the SPS. The process of designing the SPS requires two rounds of consultations where Scottish Ministers can provide their views on the draft document before it is designated. As legislation already exists to address paragraph 41 of the Smith Commission Agreement, no additional provisions have been included in the Scotland Bill".

It provides us with a rather unusual situation. The Government are saying that something that was already in existence pre the Smith commission is being used to fulfil the recommendation of the Smith commission.

We must assume that the Smith commission was fully aware of what the pre-commission legislative position was because of things such as the British Transport Police. We have been assured that it knew all the implications of what was being proposed. We must assume that it knew the position under the Energy Act 2013.

Lord McAvoy: I am curious about things and about systems. Was there not any report back from the Liberal representatives on the Smith commission to the noble and learned Lord's party?

Lord Wallace of Tankerness: I do not remember the precise detail of what went in when they came forward with this proposal but I presume—I give credit to those who were on the Smith commission, including the noble Lord's own party members—that they did not seek to make a recommendation and that it already existed. I hope that the noble Lord would give due credit to the other members of the commission—the Labour members—that they would not have signed up to something that was already there. That is why I want the Minister to explain why he thinks that the Government's interpretation of that recommendation is satisfied by something that was already in place. Can we not reasonably assume that those who were engaged in this were looking for something more? Indeed, Scottish Renewables is not satisfied that the legislation is sufficient. In an email to me, it said:

"If this recommendation is not to be carried forward through the Scotland Bill, we would like clarification about how any new or improved mechanism will be formalised outside of the primary legislation".

We have to get some indication from the Government as to what more they are doing than what was already in place before the Smith commission sat.

I fully accept that Amendment 73A goes well beyond the Smith commission, so that probably bottoms it out before I even open my mouth. But there is an important point here as well. When the Smith commission was deliberating, it did not know that several months later the Government would pull the rug from under the onshore wind industry, not just in Scotland but throughout the United Kingdom, by bringing forward the date of closure of the renewables obligation. We are entitled to speculate that, if the Smith commission had deliberated after the announcement to accelerate the closure of the renewable obligation for onshore wind and solar, it may well have incorporated something along the lines of what we propose in Amendment 73A.

Amendment 73A says that:

"Within three months of the passing of this Act, the Secretary of State shall publish proposals to transfer to the Scottish Ministers powers on the awarding of contracts under Contracts for Difference and the setting of electricity feed-in tariffs in respect of electricity generation from renewable sources in Scotland".

This is quite a major step, but it is very much within the Government's ability to shape what kind of scheme they would bring forward. We propose this because there are a number of different ways of doing it. There could be a full set of powers through a suitable adaptation of the Energy Act 2013; the Government may wish to limit it to onshore wind to encourage electricity generation by onshore wind; or it could be done by an intergovernmental agreement on budget limits and a restriction on the power to set the strike price.

9.30 pm

The position we have is that there is general support and broad agreement that a single electricity market and climate change policy is in the interest of both Scotland and the rest of the United Kingdom. All sides of your Lordships' House argued that very forcefully during the referendum campaign. There is also agreement that Scotland should be entitled to deploy electricity capacity of its own choosing that enables the efficient functioning of the single electricity market and achieves UK-wide climate change objectives, and that the deployment of renewable technology choices by Scotland should be supported by UK-wide subsidy schemes where such subsidy is required and where Scottish

deployment choices enable an overall reduction in the level of the UK-wide subsidy to deliver climate change policies.

I was the Enterprise and Lifelong Learning Minister in Scotland, and my noble friend Lord Stephen also had a big part to play in getting the offshore wind industry moving in Scotland. Many years of investment in that industry have brought about considerable advancements that have led to the generation of electricity by onshore wind being one of the cheaper forms of renewable energy. There is much scepticism in the industry as to whether the Government will do anything to support the onshore wind industry, but to give Scotland the opportunity to devise its own programme of contracts for difference and to develop the indigenous industries, skills and employment that go with that in a way that would help to reduce the cost to the United Kingdom taxpayer seems to be, by any stretch of the imagination, a win-win situation. I accept that this goes beyond the Smith commission but, as I have said, were the Smith commission deliberating today—in the light of what we have seen since the Government took office in May and brought forward their changes in the initial Energy Bill—one might expect this to be a sensible proposal to come from it. It is one that can suit the Government's agenda, as well as giving meaningful and worthwhile powers to the Scottish Parliament. I hope that it will commend itself to the Minister and that he will see that there is merit in this somewhat different but ambitious and innovative proposal. I beg to move.

Lord Steel of Aikwood (LD): My Lords, I shall speak to Amendments 68A and 69 in this grouping. They are quite different. Amendment 68A simply seeks to put into the Bill a reference to hydro-electricity. I mention this because it is the poor relation of the renewable energy sources. Solar and wind power are mentioned a lot; hydropower is hardly ever mentioned. I am talking about not the big hydro-electric schemes in Scotland, which have made a big contribution to our energy needs, but small hydro-electric schemes. For example, in none of the three big reservoirs that feed Edinburgh, from the old ones, Talla and Fruid, to the new one, Megget, which was built during my time as the local MP—I never thought to raise this at the time, so I plead as guilty as everybody else for overlooking this—was a turbine added to the dam outfall so that energy could be produced.

The argument is that these small schemes produce only enough energy for local consumption, but added together they can be very significant. I recently visited two quite new ones on the River Ettrick and the River Yarrow in my old constituency. I was very impressed by the contribution that they can make to local communities. It is true that, when the wind does not blow there is no energy produced from wind power and that when the sun does not shine solar power does not work, but the water is flowing all the time—rather excessively, as we have seen in recent days, but it is there all the time. Added together, small hydro-electric schemes can make a major contribution to the energy needs of the country. That is why I would like to see it in the Bill in the way I suggest in Amendment 68A. It is a modest amendment but one that I hope might find favour with the Government.

Amendment 69 is the same as the rather more sweeping one that my noble and learned friend has just put forward. Amendment 69 seeks to take out the extraordinary new subsection (3), which says that the Secretary of State does not need to consult Scottish Ministers about introducing any levies for renewable electricity incentive schemes. I simply do not understand why that provision is there. In my view, the more consultation we write into this Bill and the more we make it essential for the Scottish Government and the Secretary of State to consult, the better. I am surprised that this provision appears in the Bill at all and I support my noble and learned friend in seeking its removal.

Lord Dunlop: The noble and learned Lord, Lord Wallace of Tankerness, is very interested in these energy schemes and very knowledgeable about them, and has spoken on other pieces of legislation in this connection. He raised a number of specific points in the debate. I am, of course, very happy to meet him to discuss those further.

Clause 58 creates a formal consultative role for the Scottish Ministers in the design of renewable electricity incentive schemes that will apply in Scotland. Our aim is to ensure the Scottish Ministers are able to comment on the design of new incentives to support renewable electricity generation that will apply in Scotland, or the redesign of existing schemes as they relate to Scotland. The new arrangement provides for a general duty to consult the Scottish Ministers on the design of incentive schemes for renewable electricity which will apply with respect to the existing schemes as they relate to Scotland, and any new schemes that will apply in Scotland.

The noble and learned Lord has tabled amendments that would extend the scope of Clause 58 to heat incentive schemes. We have exchanged correspondence and discussed it further. He has put on the record the response that I gave in my letter, so I will not repeat what he has already said. However, we believe that these amendments would duplicate existing regulations and are therefore unnecessary.

Amendment 67 seeks to amend Clause 58 to require the Secretary of State to consult the Scottish Parliament, in addition to consulting the Scottish Ministers, on renewable electricity incentive schemes, treating the Scottish Parliament as a conventional stakeholder rather than a legislative body. The amendment requires the Secretary of State for Energy and Climate Change to statutorily consult all 129 Members of the Scottish Parliament when making changes to renewable electricity incentive schemes. In our view, this would lead to overly complex and time-consuming consultations that would affect the smooth operation of renewables schemes. For example, were the Scottish Parliament in recess, this could delay the conclusion of a consultation, delaying the implementation of UK government policy. The Government consider the inclusion of consultation with the Scottish Ministers is appropriate. However, Members of the Scottish Parliament are already able to make their views known during public consultations.

Amendment 68B seeks to amend Clause 58 to require the Secretary of State for Energy and Climate Change to consult the Scottish Ministers on amendments to renewable electricity support schemes which are of

[LORD DUNLOP]
a minor nature or are made only for technical or administrative reasons and to consult the Scottish Ministers about any levy in connection with a renewable electricity incentive scheme. The noble and learned Lord took on board the de minimis aspect of the first part of that. As drafted, Clause 58 excludes the requirement to consult the Scottish Ministers on minor, technical or administrative issues. In general, this exclusion will apply to changes unlikely to have a significant impact on generators or potential generators, such as making changes to references to technical documents, or making changes to an application procedure. This amendment would, therefore, lead to overly complex and time-consuming consultations that would affect the smooth operation of the schemes.

Amendment 69 also seeks to amend Clause 58 to require the Secretary of State for Energy and Climate Change to consult the Scottish Ministers about any levy in connection with a renewable electricity incentive scheme. I note what the noble and learned Lord said about that and I am very happy to discuss this further with him. Levies on particular companies—for example, electricity suppliers—are sometimes created to sit alongside renewable energy incentive schemes as a way of funding them. An example is the supplier obligation which requires electricity suppliers to pay for the contracts for difference scheme. Levies to fund renewable support schemes are considered to be a form of taxation and taxation is generally a reserved matter. Devolution of specific tax powers is dealt with elsewhere in the Smith commission agreement

Lord Wallace of Tankerness: I am grateful to the Minister for giving way. My first question is: where in the Smith agreement is provision made for such an exception? Secondly, even allowing for what he says—and I would want to read it and consult on whether it is a legitimate point—does the Minister not think this is drafted very widely? It says "any levy", and could completely negate what is set out in subsection (1).

Lord Dunlop: As I have said, I am very happy to meet with the noble and learned Lord to discuss this specific point and I undertake to do so.

Similarly, Amendment 68A is also unnecessary as the phrase "a renewable electricity incentive scheme" would include a hydropower incentive scheme. I met and discussed this with the noble Lord, Lord Steel, last week. I put on record the importance of small-scale hydro installations. Some 500 of these have been built in Great Britain since the start of the feed-in tariff scheme in April 2010. These installations represent a doubling in the number of hydro sites across the country but a significantly smaller proportion in terms of capacity, as none of these new sites is above 2 megawatts in size. The majority of these are in Scotland, where hydro accounts for 16% of the capacity of all feed-in tariff installations, with solar on 44% and wind on 39%. Going forward, the tariffs should still offer sufficient incentive for well-sited installations, with an estimated return of 9.2%, based on costs supplied by the industry. It is therefore estimated that around 500 further installations could be installed in the next three and a quarter years, to April 2018-19.

Clause 58 ensures that Scottish Ministers will have a formal consultative role on contracts for difference, the renewables obligation and feed-in tariff schemes, all of which incentivise the deployment of hydropower. Therefore, we do not believe it necessary to make specific provision for any of these amendments within the Scotland Bill and I ask that this amendment not be moved.

Amendment 73 would duplicate existing arrangements. The Energy Act 2013 already gives Scottish Ministers a clear, formal consultative role in the development of the Ofgem strategy and policy statement, which gives them an opportunity to influence its content. Section 135 of the Act makes the Scottish Ministers "required consultees" on drafts of the statement and Section 134 also requires the Secretary of State to consult them on the action that she proposes to take following any review of the statement. The current strategy and policy statement arrangements give effect to the Smith agreement and therefore the amendment is unnecessary.

Amendment 73A seeks to introduce a new clause to transfer powers to the Scottish Ministers to award contracts under the contracts for difference scheme and to set the level of feed-in tariffs in respect of electricity generation from renewable sources in Scotland. Publishing such proposals, as well as the transfer of any such powers, goes well beyond the Smith commission recommendations, as the noble and learned Lord himself said, which relate to consulting on establishing and amending schemes that apply or relate to Scotland. In addition, both contracts for difference and feed-in tariffs are Great Britain-wide schemes and do not currently operate in a regionally specific way. This is linked to the fact that we have a GB-wide integrated energy system on which those schemes rely, which has been shown to work well over many years and from which all energy consumers benefit.

Scotland has more than proportionally benefited from financial support from all GB bill payers under current energy policies. Around 9% of the UK population is in Scotland, but we estimate that just over 20% of the support under the renewables obligation as a whole—around £760 million of the total—will go towards funding Scottish renewables projects. For feed-in tariffs, Scotland represents over 10% of the renewable electricity capacity installed to date, particularly in the wind and hydro sectors. In conclusion, I urge the noble and learned Lord not to move this amendment.

9.45 pm

Lord Wallace of Tankerness: My Lords, I am very grateful to the Minister for his reply and I certainly appreciate his offer to discuss this. I very much hope it will be a productive discussion.

There are things here which merit further discussion. In particular, Scottish Renewables does not feel that the Bill has met the Smith commission proposal on consultation on Ofgem's energy strategy and policy statement. Legislation might not be necessary, and I would be interested to pursue that with the Minister. Obviously, the Smith commission included the Deputy First Minister, who had overall ministerial responsibility for these matters during part of his time in office, so one assumes he felt that there was a need to go further than the Energy Act 2013.

I cannot say that I am surprised by the Minister's response to the new clause proposed by Amendment 73A, but it is unfortunate because this is an opportunity to build on the Smith commission in the light of developments that have taken place since. I will take one point of issue with the Minister. He talked about the importance of the integrated UK market and I entirely agree—indeed, I made that point myself. He seemed to indicate that there was no room within that for regional variations. Perhaps he should get those who prepared his brief to ask what has been going on for the past seven, eight or nine years. The renewables obligations have been dealt with on a separate Scottish basis under executive devolution, and this has worked very well. Indeed, my noble friend Lord Stephen and I, and our successors in office, have been able to do some innovative and imaginative things with the ROCs, so the system would not fall apart if there was regional variation. I am disappointed, and perhaps on reflection, the Minister may think there is still a case for that.

I thank the Minister for his offer of a meeting, which I will certainly take up. I am appreciative of that. I beg leave to withdraw the amendment.

Amendment 65 withdrawn.

Amendments 66 to 72 not moved.

Clause 58 agreed.

Amendments 73 and 73A not moved.

Clauses 59 to 64 agreed.

Amendment 73B

Moved by ***Baroness Quin***

73B: After Clause 64, insert the following new Clause—

"Political and economic impact of this Act on the United Kingdom

The Secretary of State and the Scottish Ministers shall, in exercising any power or order provided for under this Act, consider—

(a) the impact of exercising the power or order on the political and economic strength of the United Kingdom as a whole, and

(b) the importance of strengthening the United Kingdom as a whole, both politically and economically."

Baroness Quin: Amendments 73B and 73C are in my name. I am glad there is cross-party support for Amendment 73C from the noble Lord, Lord Shipley, the noble Viscount, Lord Ridley, and the noble Lord, Lord Curry of Kirkharle, whom I am pleased to see in his place. Indeed, the noble Lord, Lord Shipley, has also co-signed Amendment 73B.

Both amendments have been tabled to highlight the issues in the Bill which have implications, and possible implications, for the rest of the United Kingdom. In particular, Amendment 73B refers to the areas bordering Scotland—the north-east of England and Cumbria. Amendment 73C asks for a report from Ministers within a year of the passing of the Act, and an impact assessment of its measures on the areas adjoining Scotland. In particular, it seeks an impact assessment of Parts 2 to 5.

Amendment 73B stresses the importance in implementing the Bill of having regard to the need to help promote the political and economic well-being of the UK as a whole. Many of us are very happy that the referendum result was a strong no, but people in Scotland voted to maintain the United Kingdom in its present geographical form because they wanted to see a successful UK in the future. A commitment to ensure the success of the UK as a whole is therefore important, as well as delivering on the Smith commission and the specific devolution proposals which the Bill contains.

When I tabled these amendments, I had not realised that so many of today's debates would in effect be about them. Many of the debates have been about not only respecting devolution but looking at ways of strengthening the UK as a whole. We had an interesting debate about the future of the British Transport Police. Whatever comes out at the end of this process, I think we would all agree that we need a system which ensures that there is effective policing of our transport network, including on cross-border trains. I say that with some feeling, given that every train I travel on to get from my home in Northumberland to this House is a cross-border train. I certainly want to see the highest safety standards on those trains. Similarly, I would like us to commit ourselves to ensuring that the UK as a whole is successful and, as far as we can, to ensuring its overall political and economic harmony.

When I spoke at Second Reading I said that I supported the Bill, and I do. These amendments, which are probing, do not seek to damage the Bill but arise from the concern we have expressed about the need to promote economic and social solidarity across the UK. A lot of today's discussion has been about the Smith commission and the extent to which it is set in stone. These amendments do not contradict the commission in any way, but they add to the requirements on Ministers regarding the UK as a whole. They would require that the need to improve the union of the UK is adhered to.

We are all influenced by our backgrounds and our ties with particular parts of the UK and, not surprisingly, as a north-easterner I am keen to see that the north-east prospers in the future. It has had a lot of economic upheaval in the past and has been very innovative in recent years, but it certainly needs to improve economically. I would not want any Bill before Parliament to result in worsening the position of one of the UK's poorer regions, so I do not apologise at all for tabling an amendment which is very much related to the north-east and Cumbria.

There were concerns in the north-east at the prospect of a yes vote in the referendum—concerns about what having an international border on our doorstep would mean for us, given the uncertainties about currency and immigration controls, for example. The two countries might have very different immigration policies. There were also concerns about people crossing the border each day for work—in both directions—and people wanting to access health services on either side of the border. Given the outcome of the referendum, we should certainly make a strong commitment to ensuring that people on both sides of the border have access to the facilities and services they need, and that those facilities and services are of a high standard.

[BARONESS QUIN]

Later in our proceedings we will be looking at air passenger duty, but here I will raise one transport issue that is of concern to people on both sides of the border and seems to me a prime candidate for a cross-border project which would help people on both sides of the border: the improvement of the A1 between Newcastle and Edinburgh. When driving last week up to Haddington in East Lothian, I was again very much aware that north of Morpeth almost until you get to Edinburgh, the road is a mixture of dual and single carriageway. That possibly explains why so many of the accidents on that road have been head-on collisions—because people get confused about whether they are on a dual section of the A1 or a single section. The road is, ironically, entitled the Great North Road, but it is anything but that in its present state. What we do not want to see as a result of devolution is less prosperous areas of the UK losing out further, and we need to make a conscious commitment to avoid that happening. That will involve lots of practical measures.

The amendments might seem rather sweeping, but many different issues could be encompassed within them. Earlier, the noble and learned Lord, Lord Wallace of Tankerness, talked about the tribunal system and the usefulness of being able to transfer tribunals from one part of the UK to another in order to avoid backlogs. That seemed to me a small but rather important example of how we should ensure that the UK works better as result of what we are doing.

I would like the Government, in responding, to say two things. First, how do they intend to ensure that the UK will work more successfully in future? In particular, what cross-border projects are they in favour of to ensure that there is some enthusiasm across the border about improving roads, infrastructure and other facilities on which people on both sides of the border rely? I certainly hope that the Government will look sympathetically at the spirit of these amendments, and I look forward to the Minister's reply.

Lord Shipley (LD): My Lords, I rise to speak in support of Amendments 73B and 73C, to which my name is attached. I agree with the noble Baroness, Lady Quin, that the Bill concerns the whole of the United Kingdom and not just Scotland. It has to be considered not just from the perspective of the two Governments—the Scottish Government and the UK Government—but from the perspective of the people living in those parts of the United Kingdom that share a border with Scotland.

Although I support strongly the principles behind the Bill and welcome the proposals to devolve powers, responsibilities and further tax-raising capabilities to Scotland, I am very aware that the level of public spending on Scotland is significantly higher per capita in Scotland than it is in the north of England. To give the figures from the latest year for which they are available, in 2014-15 in the north-east of England the total identifiable expenditure on services per head was £9,347, in the north-west of England it was £9,197, in Yorkshire and the Humber it was £8,660, but in Scotland it was £10,374. These are very different levels of per capita spending, and they need to be explained so that the general public understands the basis for them. I look forward to seeing and considering the fiscal framework when it is published shortly, which I hope will explain these differences. We will then see what impact any changes will have on the operation of the Barnett formula and how far the Scottish Government will need to use their powers over income tax to pay for better public services, where they decide to have them, than are available in the rest of the UK.

The two amendments, Amendments 73B and 73C, reflect this problem. The UK and Scottish Governments should not proceed by disregarding the impact of the fiscal settlement on the rest of the United Kingdom. I hope that both Governments will understand the need for the whole of the UK to be strengthened, not just one part at the expense of another. In that respect, it is very important, as the noble Baroness, Lady Quin, explained, for there to be a report by both Governments on the actual impact on the areas south of the border. I hope that the Minister will recommend that it should become an annual statement, as it would aid public understanding of the devolution agreement.

10 pm

The noble Baroness, Lady Quin, talked about air passenger duty. If the Scottish Government reduced air passenger duty by 50% or 100% to boost Scottish aviation, the impact of such a decision on airports south of the border might be significant. A small outflow of passengers attracted by 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 passenger duty was not reduced there in line with Scotland. One solution that the Minister may be prepared to consider would be to charge much lower rates of air passenger duty for non-congested airports.

The amendments are intended to provide a positive probing of the issues, and I hope that it may be possible between Committee and Report for us to meet the Minister to talk further if that would help.

Finally, there is one other matter. We need to clarify people's rights, whichever side of the border they live on, to access public services across the border if that is easier for them. I hope that, during the passage of the Bill, this matter can be clarified.

Lord Curry of Kirkharle (CB): My Lords, I welcome the opportunity to participate in Committee on the Scotland Bill. I support the comments of the noble Baroness, Lady Quin, and the noble Lord, Lord Shipley. The noble Viscount, Lord Ridley, has also put his name to the amendment.

I support Amendment 73C, requiring the preparation of a report reviewing the impact of Parts 2 to 5 of the Bill on the areas adjoining Scotland, particularly Cumbria and the north-east of England. Having been born and bred in Northumberland, I naturally have a vested interest in its economic welfare, and I am concerned when I suspect that legislation such as this may indirectly, but perhaps significantly, disadvantage the north-east. I was a member of the Adonis review team, which was commissioned to look at the economy of the north-east of England. As a consequence, I am critically aware of the interdependencies between Scotland and the north-east of England.

According to the Scottish Government's figures, which the noble Lord, Lord Shipley, has already cited, £1,200 more per capita of public expenditure is spent in Scotland than in England. The Bill will allow further investment in Scotland, which is good for Scotland—like my colleagues, I do not oppose the Bill—but the consequence could be that the gap becomes even wider, to the economic detriment of the north-east. This is serious in view of the fact that many of the social indicators, geographic challenges and historic dependence on heavy industries are very similar in the north-east of England to those in Scotland.

Not only does the north-east receive some of the lowest funding in England, it borders Scotland, which has the highest spend per capita in the United Kingdom due to the Barnett formula, which will have increased benefits as a consequence of the Bill. The current irrelevance of the Barnett formula has been widely recognised, even by Lord Barnett himself, who called it "grossly unfair" and called for it to be scrapped. It was deeply regrettable that the Prime Minister gave an undertaking at the time of the Scottish independence referendum not to review it. I believe that it should be reviewed and that it is now unavoidable and overdue, and that will become even more apparent if an economic report was prepared and published after one year, as we have suggested in this amendment.

I fully understand that the north-east is included in the northern powerhouse concept. As noble Lords know, we in the north-east have constantly to remind Whitehall that the northern region does not end in Manchester, York or Leeds. Even if the investment promised in the northern powerhouse materialises, it will not compensate for the shortfall in public expenditure. So the north-east is still expected to compete with both Scotland and much of England, despite receiving much lower public support. The noble Lord has mentioned the potential impact on the airport in Newcastle. One could not conceive of a situation where London Stansted was granted special favour over Heathrow—yet that is exactly what may happen between Edinburgh and Newcastle.

I expect the Minister to counter our arguments by referencing the devolution agreement for the north-east. This is very welcome and a huge step forward, but it does not compensate for the differential in funding between the north-east, Scotland and much of England. The north-east is proud of its history; it is making good progress in reducing unemployment and increasing economic growth, but it could contribute even more to the overall economy of the United Kingdom, given a more level playing field. For these reasons, I support this amendment, and I hope that it will be supported by the Minister.

Lord McAvoy: My Lords, I rise to congratulate my noble friend Lady Quin, who is a long-standing friend of Scotland, and tonight has epitomised concerns not only for her own north-east homeland and heartland but also of her fellow citizens in Scotland. She has been a great supporter of Scottish causes throughout the years and a doughty champion for her own north-east area. It is a tribute to her commitment to both these areas that she has been here so long waiting patiently—or maybe impatiently—as the night wore on.

As was the case on the first day in Committee, on the face of it a review is reasonable enough. I accept that these are probing amendments, but we have mild objections on the grounds that they afford no agency to the Scottish Parliament when it comes to the parties to be consulted and the general scope and remit of the review, and it is generally left to the discretion of Secretary of State. When there is a lack of parameters or involvement with the Scottish Parliament, that provides the Secretary of State with considerable scope to set the terms of any convention and what is reviewed.

We think that the answer, or at least part of it, lies in the constitutional convention that we support, which would involve every nation and region in the country being engaged in a dialogue with the people about how power needs to be dispersed, not just in Scotland, Wales and Northern Ireland but in England, too. Quite rightly, there are concerns, particularly in the north-east and Cumbria, and maybe in other parts of England as well, that there is no detriment to their areas with the passing of more devolution to the Scottish Parliament. It is quite right that these concerns are raised; they are representing their areas well in bringing these concerns.

I do not know the noble Lord, Lord Shipley, that well, but I certainly know my noble friend and know that she will be motivated. As the noble Lord, Lord Shipley, said, it is a concern not just for one side of the border but for both sides so that we can all come to a mutual way of working and find forums for agreeing matters of dispute or interest, or problems causing particular tension. I welcome the discussion from both my noble friend Lady Quin and the noble Lord, Lord Shipley, and I commend both of them for bringing this forward for discussion.

Lord Dunlop: First, I echo what the noble Lord, Lord McAvoy, said about the noble Baroness, Lady Quin, who I know to be a doughty champion for the north-east. I support the sentiment behind the amendment; Governments should always consider the impact on the union and, in particular, the economy, when they make decisions. Likewise, before and after making policy, Governments should as a matter of course assess whether any particular region is impacted disproportionately. That is not just my view; it is this Government's stated policy and our approach in practice. Not only that, but there are opportunities for Parliament to scrutinise the Government as they do this and hold us to account. I welcome and encourage that scrutiny.

The UK Government have considered carefully the impact of devolution on the union as a whole throughout the development process for this Bill. The commission set up by the noble Lord, Lord Smith of Kelvin, had that at its heart. One of the principles under which the commission operated was to,

"not cause detriment to the UK as a whole nor to any of its constituent parts".

As the Committee will be aware, the UK Government and the Smith commission rejected candidates for devolution—for example, the devolution of national insurance. I believe it is right that they did, precisely because devolution of such areas could undermine the union. However, the UK Government also believe that devolution to the Scottish Parliament will make it

[LORD DUNLOP]
more accountable to the people who elect it. Our objective has always been to encourage that accountability without undermining the union. Let me reassure the Committee that this Government do not require a legal requirement in the Scotland Bill to ensure that we take these considerations into account.

I hope I can give similar reassurance on how the UK Government consider the impact of policy-making on specific regions and locations. This Government are committed to rebalancing growth across the country, from creating a northern powerhouse to strengthening our great city regions. A number of noble Lords mentioned this. To give a specific example, the UK Government are well aware of the potential impact of the devolution of air passenger duty. That is why we have issued a discussion paper and consultation to engage stakeholders and find a workable solution. There are procedures in place. These policies are scrutinised in Parliament and open to challenge, especially in the other place where MPs can represent their constituency interests in Parliament.

The noble Baroness suggested joint working on projects on both sides of the border. I entirely agree with that sentiment. The borderlands initiative is a good example of that sort of work. The noble Lord, Lord Shipley, raised reporting. I am very happy to look at it as a subject and at how it could be further improved. I am always happy to meet, and I would be very happy to meet him.

While I fully support the sentiment behind these amendments, I do not believe requirements in legislation are necessary. The UK Government are committed to this approach. The fiscal framework and how we put into practice the no-detriment principle were raised by a number of noble Lords. I am certain that we will return to them on our next day in Committee. I urge the noble Baroness to withdraw the amendment.

Baroness Quin: My Lords, I am grateful to the Minister for his reply and to noble Lords who spoke in favour of the amendments and their spirit. I am also grateful to my noble friend Lord McAvoy for his sympathetic reply to the concerns that have been raised. I hope that the Government's commitment to the union and to cross-border projects and ventures will be translated into reality in many practical ways. We look forward to seeing the results of that in coming months and years.

The noble Lord, Lord Curry, mentioned concern that we sometimes have in the north-east that the northern powerhouse seems to be concentrating on areas to the south of us, particularly on Manchester and Leeds. I wish them every success, but we wish to be fully part of the initiative. I am glad that the noble Lord made that point. I am glad that these issues have been aired. I hope that the Government will take them to heart. I beg leave to withdraw the amendment.

Amendment 73B withdrawn.

Amendment 73C not moved.

House resumed.

House adjourned at 10.15 pm.

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