Vol. 769
No. 111

Monday
22 February 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
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22 February 2016

THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE FIRST SESSION OF THE FIFTY-SIXTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE EIGHTEENTH DAY OF MAY IN THE
SIXTY-FOURTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCLXIX**

EIGHTH VOLUME OF SESSION 2015-16

House of Lords

Monday, 22 February 2016

2.30 pm

Prayers—read by the Lord Bishop of Worcester.

Death of a Member: Lord Avebury
Announcement

2.36 pm

The Lord Speaker (Baroness D'Souza): My Lords, I regret to inform the House of the death of the noble Lord, Lord Avebury, on 14 February. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

Retirement of a Member: Baroness Linklater of Butterstone
Announcement

2.36 pm

The Lord Speaker (Baroness D'Souza): My Lords, I notify the House of the retirement with effect from 12 February of the noble Baroness, Lady Linklater of Butterstone, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank her for her much-valued service to the House.

Health: Adult Psychiatric Care
Question

2.36 pm

Asked by ***Lord Crisp***

To ask Her Majesty's Government what is their response to the report *Old Problems, New Solutions: Improving acute psychiatric care for adults in England.*

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, the Government very much welcome this report and are considering its recommendations. We have asked NHS England to reduce out-of-area treatments and eliminate their inappropriate use. NHS England published its independent Mental Health Taskforce report last week, backed by a £1 billion investment announced in January. NHS England will develop standards on access to mental health treatment.

Lord Crisp (CB): My Lords, I thank the Minister for that reply, and I am delighted to see the commitment to parity of esteem between mental and physical health and to the funding allocated last week. Parity of esteem means equal standards for people with mental and physical conditions. The report recommends that requiring people to travel long distances to be treated should be phased out within 18 months, and there is evidence as to why that is a good target; and yet the Government have indicated in their response to the task force that it would take four years to phase it out. Will the Minister explain why that is and say whether there is scope for the Government to reconsider the timing?

Lord Prior of Brampton: My Lords, I reiterate my thanks to the noble Lord for his excellent report: it is 134 pages and reads very well and very quickly. It is obviously highly unsatisfactory that so many people have to travel long distances to get in-patient care. The noble Lord's report shows that, in one month—in September, I think—500 people had to travel more than 50 kilometres to get to in-patient care. It is a priority for the Government and we are considering the noble Lord's recommendations. I cannot give a commitment that we can reduce the four years to 18 months now. I can only repeat that we fully understand the importance of addressing this issue.

Baroness Tyler of Enfield (LD): My Lords, the noble Lord's report rightly points to the need to improve both in-patient care and alternative treatment in the community. Given that, as the report says, the

[Baroness Tyler of Enfield]
cost of one adult acute bed is the same as that of treating 44 people at home, will the Government say what plans they have at this early stage to increase financial incentives to encourage commissioners to get the right balance of provision?

Lord Prior of Brampton: My Lords, if we can improve home treatment and crisis resolution at home it will free up in-patient beds and solve the other problem as well, as people will have to travel less far. That is absolutely critical. I cannot tell the noble Baroness today what NHS England is proposing to do with financial incentives, but I can reiterate that treating more people outside hospital, at home, is a priority for the Government.

Baroness Armstrong of Hill Top (Lab): My Lords, does the Minister realise that there are real problems in many regions? I chair a charity which deals with the most vulnerable—people with complex needs. We have evidence that the number of people whose mental health needs have increased has risen significantly over the past five years, and yet three centres in Tyneside—both residential and day care—which deal with the mentally ill are closing this year. How will we meet those people's needs in such circumstances?

Lord Prior of Brampton: My Lords, reading the noble Lord's report, I was struck that he said in the foreword that he went through times when he was very depressed and times when he was deeply impressed. In a way, that sums up the mental health system—it is fragmented, and there is a high level of variation. We provide fantastic care in one place but terrible care for somebody else, and very often it is not related to cost. I do not know about the particular instances that the noble Baroness has referred to, but I can fully understand that in certain areas it is much worse than in others.

Lord Bradley (Lab): My Lords, I declare my health interests. I, too, welcome the excellent report and recommendations by the noble Lord, Lord Crisp, and his commission, and also the report and recommendations of the Mental Health Taskforce published last week. I would be grateful for clarification from the Minister on the financial commitments that the Government have made on the crucial implementation of the recommendations of both reports. In particular, can he confirm that the announcement of £1 billion each year for mental health services begins in financial year 2016-17; that, for the next four years, that £1 billion will be additional to the £1.5 billion investment in child mental health services which has already been announced; and, finally, whether this £1 billion annually is additional money or part of the £8 billion which has already been announced and allocated to NHS England for all health services?

Lord Prior of Brampton: My Lords, that is a complicated question, or number of questions.

Lord Hunt of Kings Heath (Lab): It is very simple.

Lord Prior of Brampton: No, it is not very simple, or at least it is not simple to me; but then I perhaps have a smaller brain than the noble Lord opposite. It is certainly additional to the £1.5 billion for children and young people. I cannot tell the noble Lord now, without fear of making a mistake, whether it will be £1 billion every year from 2016-17 to 2021. It is certainly £1 billion in 2021. If it is all right, I will write to the noble Lord to confirm and clarify that.

Baroness Finlay of Llandaff (CB): How do the Government intend to monitor the efficacy of this investment, and against what performance indicators will this investment be audited?

Lord Prior of Brampton: My Lords, that is a very hard question to answer. The talking therapies, for example, seem to be effective in about 50% of the cases, and whether they are effective is clearly a clinical decision. As for other standards, we tend to rely, as the noble Baroness will know, on proxies such as waiting times and the four-hour standard, which the noble Lord recommended in his report. We are considering the introduction of a four-hour waiting-time standard for people suffering from psychotic problems, in the same way as we have for physical health.

Lord Foulkes of Cumnock (Lab): My Lords, can I give the Minister an easy question? What discussions has he or any of his colleagues in the Department of Health had with his counterparts in the Scottish Administration to exchange experience and ideas?

Lord Prior of Brampton: My Lords, I am not aware that we have had any discussions in the Scotland Office. However, there is no doubt that in Scotland they are approaching quality improvement extremely effectively. I had a recent meeting with people who have been involved in that, so I can assure the noble Lord that, at that level, if we can learn things from what they are doing in Scotland, we will do so.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister give an undertaking that the very good system of encouraging treatment at home is not at the expense of families where children are the primary carers? When children are trying to cope with someone in very difficult circumstances they are often alone for long periods and are unable to cope with a mother or father whose behaviour can even be frightening.

Lord Prior of Brampton: My Lords, the noble Baroness raises an important point. So much of this comes down to judgment, and so much of that judgment is judged with hindsight. We put a huge onus on clinicians and people working in health and social care to make the right judgments on where to treat people. In normal circumstances, where people can be treated at home rather than in an in-patient setting, that will be best; but there will be exceptional circumstances such as those that the noble Baroness mentioned, where it may not be.

Universities: Freedom of Speech

Question

2.44 pm

Asked by ***Baroness Deech***

To ask Her Majesty's Government what steps they are taking to ensure freedom of lawful speech at universities, in the light of recent disruptions to speeches.

Baroness Evans of Bowes Park (Con): My Lords, the principles of academic freedom and freedom of speech at universities are enshrined in statute. Universities have a clear and unambiguous duty to ensure that legal and lawful views can be heard but, equally, can be robustly challenged and debated. We will continue to support fully those universities which show clear and strong leadership in doing this.

Baroness Deech (CB): Since your Lordships debated this issue last November, incidents of intolerance and violence have continued on our campuses. For example, the silencing of a female Muslim reformer at Goldsmiths; smashed glass, fire alarms set off and the police called at King's College London to stop an Israeli peace activist from speaking; Peter Tatchell at Canterbury and other examples. Will the Minister speak to the vice-chancellors at Universities UK to ensure that the law on freedom of speech is upheld and to ask whether the international reputation of our universities is being damaged? To what does she attribute the stifling of intellectual freedom in our universities now?

Baroness Evans of Bowes Park: The noble Baroness is absolutely right. There is clear guidance to universities about their responsibilities to ensure free and open debate on campus and we will give full support to university leaderships to ensure that legitimate and open debate within the law can take place. It is concerning that we have seen a number of incidents, as the noble Baroness said. Part of the beauty of going to university is the ability to debate, to have your views challenged and to challenge others. We must continue to support all universities in making sure that all students continue to have that opportunity.

Lord Pearson of Rannoch (UKIP): My Lords, do the Government agree that criticism and debate about our religions should be part of freedom of speech at our universities, and indeed elsewhere, but that the lawful line is crossed when adherents to those religions are insulted for their beliefs? Is it not that that becomes incitement?

Baroness Evans of Bowes Park: Universities are uniquely placed to provide intellectual and robust challenge to narratives and they must continue to do this. Of course, students and academics have the right to protest peacefully but this cannot lead to intimidation, harassment or the silencing of those they disagree with. That must be stopped.

Lord Morris of Aberavon (Lab): My Lords, if a proposed speech is known to be unlawful I would understand any appropriate restrictions, but would not succumbing to mob rule to deny freedom of expression be wholly contrary to the ethos and purpose of a university? I speak as a former chancellor of a university.

Baroness Evans of Bowes Park: I entirely agree with the sentiments of the noble and learned Lord. Unfortunately, it has seemed at times that student unions have taken a somewhat inconsistent approach to freedom of speech—actively inviting speakers who promote intolerance but banning and silencing others. As I have said, the Government are supporting university leaderships to make sure that we preserve freedom of speech. It is hugely important and allows students the opportunity to challenge and debate ideas, which is part of the whole purpose of going to university.

The Lord Bishop of Worcester: My Lords, now is not the time for confessions but I would observe that as an undergraduate, I saw things in very black and white terms. I do not now, despite what might be suggested by my attire. I would have loved to have been rebuked by Parliament as an undergraduate. Does the Minister agree that in intervening in situations such as these, we run the risk of being counterproductive?

Baroness Evans of Bowes Park: Universities are autonomous bodies. As I have already said, students and academics have the right to protest peacefully, and we cannot quash freedom of speech. That is why, as I said, we will be supporting universities and making sure that legitimate, lawful debate can take place, that people have their views heard and that views that people may find offensive are robustly challenged.

Baroness Garden of Frognal (LD): What dialogue have the Government had with universities to support freedom of speech, while implementing the guidance that university events should be cancelled unless the authorities are entirely convinced that the risk that views could draw people into terrorism can be fully mitigated?

Baroness Evans of Bowes Park: We have ongoing discussions with universities. All universities submitted the first self-assessment form following the introduction of the Prevent statutory duty in January, and this will be followed in the spring by detailed assessments of their policies and procedures.

Lord Singh of Wimbledon (CB): My Lords, debate should always be conducted in courteous terms but does the Minister agree that words such as "antisemitism" and "Islamophobia" and those relating to any other type of religious phobia should not be used as shields to stifle legitimate debate?

Baroness Evans of Bowes Park: As I said, we absolutely want to support students and universities in ensuring that legitimate, lawful debate and the challenging of ideas happens in our universities. That is a tenet of our higher education system that we are proud of and want to continue. This Government will carry on supporting universities and students who want to continue to participate in such debate.

Lord Clinton-Davis (Lab): My Lords—

Baroness O'Neill of Bengarve (CB): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): In order for me to assist the House, the Member seeking to ask a question has to try to get in. However, I think that the House wants to hear from the noble Baroness, Lady O'Neill.

Baroness O'Neill of Bengarve: Does the Minister have any views about the most effective means by which university vice-chancellors and councils can alter the climate in which some people confuse the passion of their own disagreement with a licence to silence?

Baroness Evans of Bowes Park: There is a good, strong relationship between vice-chancellors and students in many universities. Indeed, as Louise Richardson, vice-chancellor of Oxford University, has said, students must learn to engage with ideas that they find objectionable and be more willing to debate with opponents to try to change their minds. Statements like that from vice-chancellors, encouraging students and making clear the need to debate and argue about ideas, are very positive.

Agriculture: Dairy Farmers

Question

2.52 pm

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

To ask Her Majesty's Government what estimate they have made of the impact on dairy farmers of the latest fall in milk prices.

Baroness McIntosh of Pickering (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and refer to my entry in the *Register of Lords' Interests*.

Lord Gardiner of Kimble (Con): My Lords, increased global milk production, along with the Russian trade embargo and weaker demand in China, has resulted in surplus stocks and downward pressure on worldwide prices. This has had a significant impact on British farmers. Average incomes are expected to fall to £46,000 in 2015-16, although there are considerable variations. Some farmers have sought to offset low prices by producing more. Lower prices for feed, fertiliser and fuel have also helped to reduce farmers' costs.

Baroness McIntosh of Pickering: Will my noble friend agree to review the remit of the Groceries Code Adjudicator to end the gross imbalance between small, often family, dairy farmers and huge processors, many of which are seeking to consolidate, and put an end to the retail price war that is damaging the future of the family dairy farmer?

Lord Gardiner of Kimble: My Lords, I should declare an interest in that I come from a long-standing dairy farming family. I therefore clearly have considerable sympathy with the plight of dairy farmers. The Groceries Code Adjudicator has no powers over prices. However, we are looking at a number of issues in relation to suppliers and processors to see whether there are ways in which we can make improvements. I am pleased that a number of supermarkets—I encourage other chains to do so—see that they have a responsibility to the domestic dairy industry.

Lord Wigley (PC): My Lords, in declaring my interest as noted in the register, may I press the Minister on this issue? He is aware, is he not, that family dairy farms have their backs against the wall? The prices they are getting are not only less than the full price of production but less than the marginal price of production, and hundreds will be going out of business. Will the Government please take this seriously and do something about it?

Lord Gardiner of Kimble: My Lords, I assure the noble Lord that the Government are very concerned about this. Indeed, other Ministers and I have been discussing the matter only today. There are a number of things that government can and are doing. We want to promote more exports; we believe that the export of our dairy products is tremendously important, and more British cheese is going abroad. We think that the Middle East and China are very important markets, and we have trade counsellors in Beijing precisely to encourage exports. A lot is going on, but I am very mindful of what the noble Lord has said.

Baroness Jones of Whitchurch (Lab): My Lords, the Minister said that the Groceries Code Adjudicator cannot adjudicate on prices, and that is the case at the moment. But is not the problem that the Groceries Code Adjudicator does not have sufficient power? I know that a review is going on into her power, but could the Minister clarify whether expanding the power of the Groceries Code Adjudicator is being considered, so that she can intervene in what is clearly an unfair system where people in that sector are being exploited by big business?

Lord Gardiner of Kimble: My Lords, clearly we will be looking at all things. However, the truth is that we are not in a position to start setting prices; that is market driven. We have global overproduction at the moment, and that is the plain economics of it. But we are going to look at all these things and we want to see whether there are ways in which the dairy farmer can be assisted. We think that the dairy farming industry should be more joined up, so that there is strength in its negotiations. Clearly, we want to make sure that supermarkets understand that it is very important to sustain the domestic dairy industry.

Lord Framlingham (Con): My Lords, does the Minister agree that it really is quite ridiculous that the price of a bottle of milk is often less than the price of a bottle of water, bearing in mind the real difficulties that our dairy farmers are now suffering? Will he, as he has already referred to, put real pressure on the retailers and supermarkets to see what they can do to help this industry that is in such dire straits?

Lord Gardiner of Kimble: My Lords, I understand what my noble friend has said. Indeed, quite a number of retailers have introduced schemes to help farmers: for instance, Morrisons Milk for Farmers cheddar, where an additional 34p per 350 grams goes to farmers; Aldi championing British quality; and Waitrose highlighting British sourcing. A number of retailers are doing more, and we want to ensure that, across the piece, there is more support like that.

Baroness Parminter (LD): My Lords, one way for dairy farmers to cut costs is to herd cows into huge sheds where they are given processed food, unable to go out and graze in fields. Do this Government accept mega-farms as the future face of our countryside?

Lord Gardiner of Kimble: My Lords, we certainly see the need for mixed farms. The most important thing is that animal husbandry and animal welfare are at their best whatever size of farming unit it is. SoI would not say that large units are bad and small units are good. The important thing is that there are high animal welfare standards across the piece.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister undertake to look at the policy of Booths supermarkets in the north of England, which have deliberately set out a policy to help dairy farmers? Booths supermarkets package their milk so that customers know that they are giving appropriate support to local dairy producers. Will the Minister investigate that and compliment them?

Lord Gardiner of Kimble: I would be delighted to compliment all those retailers that are taking their responsibilities seriously. What the noble Baroness has said is that it is very important that we improve our labelling. It is very important people know that, when they buy British produce, it is not British-processed produce but produce that is grown in this country.

Baroness Byford (Con): My Lords, may I follow up that comment? The work undertaken by retailers is beginning to have an effect, but part of the problem—I hope that my noble friend will be able to tell us a little more about this—is that only half of that milk ends up as liquid milk. Most of it ends up as processed milk. The difficulty is the amount that we can actually use, so export, which the Minister spoke about, is key. The price that retailers pay is in some ways better than the bulk commodity price; it is the bulk commodity price that is the real problem.

Lord Gardiner of Kimble: My Lords, I am grateful to my noble friend. A lot of retailers are paying 20p or 30p a litre. She is absolutely right to say that one way in which we can help to address the problem is to become much more resilient and much more export focused. We have brilliant produce in this country and we need to export more of it. That is what the Government are working on.

Housing: New Build

Question

3 pm

Asked by ***Lord Young of Cookham***

To ask Her Majesty's Government what has been the rate of new house building starts in the past 12 months.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, housing starts in England in the 12 months to the end of September 2015 totalled 137,490, with completions increasing by 17% over the same period. Under this Government, housing starts and new housing construction output are at their highest annual levels since 2007.

Lord Young of Cookham (Con): I am grateful to my noble friend for that reply. Has she seen the latest review by the National House Building Council, which shows a welcome increase of some 75% in new homes registered over the past six years, but says that there is a very substantial gap between supply and demand? Can she give any assurances that, as the industry recovers and responds to the many initiatives taken by the Government to increase supply, progress will not be impeded, as it has been in the past, by shortages of skilled labour or building materials?

Baroness Williams of Trafford: My noble friend raises the important issue for the housing industry of both brickies and bricks. The Government have been very mindful of that: the DCLG and BIS are working with the Construction Leadership Council to review what skills the industry needs. The research that my noble friend mentions shows that more than 100,000 new jobs were created in England in the past year. We want to go further than that and encourage people who want to go into the industry to be able to do so, in line with our other ambition of creating 3 million apprentices by 2020.

Lord Shipley (LD): My Lords, is the Minister aware that, on the Government's own estimate, household formation is increasing by 200,000 every year, and that 137,000 starts in 2015 do not even meet that requirement, never mind dealing with the current housing crisis, which will require around 300,000 homes to be built over the next few years? Does she regard 137,000 starts as a good start in meeting the Government's objective of 1 million new homes in this Parliament?

Baroness Williams of Trafford: My Lords, I do regard it as a good start. As the noble Lord says, we are committed to 1 million new homes by 2021. That is why the Government have put in such a huge amount of money and doubled the budget for housebuilding over this Parliament to £20 billion, which will include all types of tenure and build.

Lord Lea of Crondall (Lab): Would the Minister care to comment on the fact that, only a mile from here, there is plenty of building going on in Battersea—1.52 million? There is no problem at all—not a land

[Lord Lea of Crondall]
problem or any other problem. So why is there such an imbalance between that phenomenon and affordable housing for everybody else?

Baroness Williams of Trafford: The noble Lord raises the important issue of supply. It is in meeting demand needs and increasing supply that we will start to even out house prices and make them more affordable for younger people—the demographic who have suffered the most from being unable to access the housing market.

Baroness Hayman (CB): My Lords, the Minister referred to apprenticeships as one way of dealing with the skills shortage. May I encourage her to do a little joined-up government and talk to the Ministry of Justice about the training programmes that we have in our prison estate at the moment that deal with the building trade? As we all know, having a job at the end of a prison sentence is the best guarantee against reoffending. Perhaps the Government could talk to some of the big housebuilders about how they could join in with the training programmes in our prisons.

Baroness Williams of Trafford: I thank the noble Baroness for that sensible suggestion. She is absolutely right: the best measure against reoffending once leaving the criminal justice system is to go into a job—to get one's life back on track. I will certainly follow up her suggestion.

Lord Davies of Oldham (Lab): My Lords, the Government are giving with one hand and taking away with another when it comes to skills training. It is all right for the Minister to suggest that all these apprenticeships will be created, but that depends on the companies and organisations being prepared to create them. On the other hand, the Government are slashing support to further education colleges, which are the basis of the skills for a great deal of construction. What does the Minister have to say about that contradiction?

Baroness Williams of Trafford: My Lords, as I said, 100,000 jobs were created in the sector only last year. The Government are encouraging industries of all types to take on apprentices, and they are. I hope we will attain our target by 2020 of 3 million apprentices.

Lord Lexden (Con): Are the Government firmly pledged to increase home ownership in our country?

Baroness Williams of Trafford: My Lords, we are, and I am pleased to tell my noble friend that a report only last week showed that the decline in home ownership that we have seen over the past 15 to 20 years has halted for the first time.

Baroness McIntosh of Hudnall (Lab): Would the Minister care to have another go at answering the question asked by my noble friend Lord Lea? The demand in London is not coming from London itself but very substantially from overseas. The supply is meeting that demand and not the very real demand from Londoners themselves. Does she not agree that the Government really need to address that problem?

Baroness Williams of Trafford: My Lords, it is indeed a challenge. Schemes such as Help to Buy are for UK residents only.

Andrey Lugovoy and Dmitri Kovtun Freezing Order 2016

Proceeds of Crime Act 2002 (Investigations: Code of Practice) (England and Wales and Northern Ireland) Order 2016

Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2016

Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) (England and Wales) (No. 2) Order 2016

Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) (Northern Ireland) Order 2016

Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) (England and Wales and Northern Ireland) Order 2016

Motions to Approve

3.07 pm

Moved by ***Lord Ashton of Hyde***

To move that the Orders laid before the House on 16 and 17 December 2015 and 25 January be approved.

Relevant documents: 14th and 16th Reports from the Joint Committee on Statutory Instruments, considered in Grand Committee on Wednesday 10 February.

Motions agreed.

Scotland Bill

Committee (3rd Day)

3.07 pm

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

Moved by ***Lord Dunlop***

That the House do now resolve itself into Committee.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): My Lords, in light of the amendment to the Motion tabled by my noble friend Lord Forsyth, I want to set out the reasons why we should consider Parts 2 and 3 of the Bill today. I start from the proposition that there is a consensus in this House that wants to see the Bill reach the statute book and the fiscal framework to be agreed, and why should that not be the case? The Bill implements not only the manifesto commitments of the Conservative Party, but the commitments made by the Labour and Liberal Democrat parties as well. Indeed, as my noble friend so rightly reminded us on referendum night, the unionist parties must deliver on the commitments that they made.

Like my noble friend, I understand that the first step in strengthening bonds of trust in Scotland is to keep your promises and to be seen to keep them. The Government want to see a Scottish Parliament that is more financially responsible and accountable than it is today, and to meet the overwhelming desire of the majority of people in Scotland for a Scottish Parliament with more powers within the United Kingdom. I therefore ask the House to consider carefully whether agreeing to this amendment will help or hinder the passage of the Bill in the process of achieving an agreed fiscal framework that is fair to Scotland and to the UK as a whole. I submit to your Lordships that it would not help. Indeed, it would put both in considerable jeopardy. The fiscal framework negotiations are at a sensitive and critical point. There have been intensive discussions between the UK and Scottish Governments throughout last week. These have continued over the weekend and today. Significant progress has been made and, while nothing is ever certain, a deal now seems within reach. Both Governments are very conscious of pressing timetables for both this Parliament and the Scottish Parliament to scrutinise the fiscal framework before the Bill reaches the final amending stages in this House, and to enable the Scottish Parliament to consider a legislative consent Motion.

My noble friend Lord Forsyth is fond of angling analogies. He has suggested that this is a fishy business and the UK Government are being played by the SNP because it has no intention of ever doing a deal. If my noble friend is right, and I do not think that he is, then the effect of his Motion is to let the SNP off the hook. Why? Because it will become clear to the Scottish Government that in legislative terms—I hope I am not stretching the angling analogy too far—we are running out of line. I therefore ask the House not to let the amendment frustrate what must surely be our priority today: to do all we can to support the achievement of a successful outcome.

I understand, of course, the frustration and that discussions are protracted. I am sure noble Lords will understand that this is a challenging negotiation and it is important to do the right deal. The UK Government cannot be pressured to sign a deal at any cost to meet a parliamentary deadline. I believe it is possible to consider in Committee today, and on their own terms, the merits of parts 2 and 3 of the Bill, and to discuss in detail the outcomes the fiscal framework is intended to achieve. This will help to identify issues we can return to on Report, and I assure the House that there will be ample opportunity on Report to scrutinise the fiscal framework if it can be agreed by then. There is no shortage of information on these issues to inform our debate, whether it is independent analysis or information provided to the House by the Treasury.

I also understand noble Lords' frustrations at the confidentiality of the process. However, I do not believe that conducting negotiations in public is conducive to reaching a deal. All that happens is that each party paints itself into a corner, making it more difficult for compromise to be reached. Once the fiscal framework is agreed, the Government are committed to providing Parliament with every opportunity to scrutinise it. In particular, any changes to borrowing and fiscal institutions will require legislation and debate.

While I accept that Smith is a substantial devolution package, I note, finally, that it is not without precedent to consider devolution provisions without all the details being available. The last Scotland Bill—a significant devolution package—was considered and agreed by the House before the block grant adjustment mechanism was agreed. I therefore ask my noble friend not to press his amendment and to help secure the passage of this important Bill and a successful outcome for fiscal framework negotiations. I beg to move.

Amendment to the Motion

Moved by ***Lord Forsyth of Drumlean***

As an amendment to the motion that the House do now again resolve itself into a Committee upon the Bill, to leave out from "House" to the end and insert "declines to consider parts 2 and 3 of the Bill further in Committee until the updated fiscal framework proposed in Scotland in the *United Kingdom: An enduring settlement* (Cm 8990) has been published, as recommended by the Constitution and Economic Affairs Committees in a letter to the Parliamentary Under-Secretary of State, Lord Dunlop, on 28 January."

Lord Forsyth of Drumlean (Con): My Lords, I am grateful to the House for giving me the opportunity to move the amendment. I am particularly grateful to my noble friend the Chief Whip for persuading the House to consider the Scotland Bill in an order that meant we looked at parts 2 and 3, concerned with taxation and welfare, last. I am not so grateful to my noble friend for suggesting, on the whip, that my Motion was a fatal amendment. It is not a fatal amendment. All it seeks to do is to implement the advice of both the Constitution Committee and the Economic Affairs Committee that we should not go on to discuss the Committee stage until we have the fiscal framework. It would be fatal only if my noble friend the Chief Whip thought that we would never ever agree the fiscal framework. As my noble friend the Minister is indicating that agreement is imminent, I do not see why he is so concerned about delaying the Committee stage by a few days. I have to say to him in the gentlest terms, since he used the fishing analogy, that it looks to me very much like a sturgeon is playing him like a salmon.

[Lord Forsyth of Drumlean]

From the very day he was appointed, I have rather unkindly been asking the Minister if he could give an absolute guarantee that the Bill would not be broughtbefore this House for consideration until the fiscal framework was agreed. He said that he hoped that would be the case because he expected it to be agreed by the end of the Summer Recess. We were then told that it would be in November; then, it was going to be in January; and most recently it was going to be on St Valentine's Day—but there he was, sat at a table for two on his own, with no sign of the First Minister turning up to deliver the fiscal framework.

3.15 pm

This is not a minor matter that is just concerned with Scotland; it affects every part of the United Kingdom, and the authority of this House and its ability to conduct its business. My noble friend says that he expects the fiscal framework to be agreed shortly. That is like Billy Bunter's postal order, which is always coming tomorrow. What is the reason for the delay? It is because it has dawned on the nationalists that if you move from a system in which a grant through the Barnett formula is 20% higher per head than in England, to a system where you rely on an income tax base that is not 20% higher than in England, you end up with a very big gap in funding. They have suddenly realised that what they have been asking for is going to result in Scotland having less money and higher taxes. The Government, having committed themselves through the Smith commission—the noble Lord, Lord Smith, is not in his place—which did not even consider these details, now find that the Scottish Government are saying, "Hang on a second, we are going to lose out", and as a result these negotiations have been going on to try to square the circle.

The fiscal framework sounds like a technical matter, but perhaps I may gently chide my noble friend. The chairmen of the Constitution Committee and the Economic Affairs Committee wrote to him on behalf of both their committees on 28 January, which is unprecedented. That letter was copied to all Front-Benchers and the Chief Whips. It was not circulated to other Members of the House, which is disappointing, but it was posted on the committees' websites. That letter, signed by the noble Lords, Lord Hollick and Lord Lang, a former Secretary of State, stated:

"The Economic Affairs and Constitution Committees continue to believe that the House should not consider in Committee the financial aspects of the Bill until the fiscal framework is published".

My noble friend has not even replied to that letter; as of Friday, the committees had not had a response. I really do think that the Government have to explain why they are choosing to ignore advice—advice which has been on the record since November.

Perhaps I may detain the House a little by taking some of the points that were made by the Economic Affairs Committee, of which I am a member. The report is called, significantly, *A Fracturing Union?* and it states:

"The implications of the Scotland Bill 2015 cannot be understood without reference to the fiscal framework and vice versa. Despite this the Scotland Bill has gone through the House of Commons without MPs having any details of a revised fiscal framework …The Bill should not progress to Committee Stage until the fiscal framework is published".

It goes on:

"The regime for funding devolved services is perceived by many as unfair: in 2014/15 identifiable expenditure per head was £8,638 in England, £10,374 per head in Scotland, £9,904 per head in Wales, and £11,106 per head in Northern Ireland. In the absence of any mechanism to promote fairness based on need, a sense of grievance will persist. The UK Government claims to be seeking an enduring settlement. This will not succeed if the new arrangements take as their starting point the existing inequity and contain no provision to adjust the system over time to make it fairer and to keep it fairer … The fiscal framework will set out how the Scottish block grant should be adjusted to account for Scotland retaining nearly all of its income tax receipts".

The report goes on to explain the different methods which are available to do that, saying:

"Whichever method is chosen could have a large impact on the size of the Scottish block grant: a witness told us that the existing method for doing this under the Scotland Act 2012 would lead to an 'intolerable' reduction".

The House is entitled to know what is being proposed and to debate that in the context of the United Kingdom as a whole.

On borrowing, the report says:

"The fiscal framework would grant Scotland additional borrowing powers. These should be subject to clear limits".

What are the limits? We know not. The report says:

"The Smith Commission suggested there should be no detriment as a result of UK Government or Scottish Government policy decisions post-devolution. Such a principle is unworkable in practice and a recipe for continuing conflict".

I have repeatedly asked Ministers and those who are advocating the no-detriment principle, including the noble Lord, Lord Smith, what the no-detriment principle means. From that Dispatch Box Ministers have said, "We don't know". The Minister has said, when I have spoken to him, "It is all part of the negotiation". We are entitled to know the impact of these things.

The Constitution Committee said:

"Our report on the Draft Clauses noted that there were 'key considerations around the fiscal framework that should be addressed by the Government before these proposals are implemented, and explained to Parliament when a bill is introduced'. These matters, on the face of the Bill, remain unaddressed. Parliament has been asked to vote on devolution of taxation powers and welfare spending powers without a full picture of the implications of these for future central funding of the devolved administrations, of how the block grant will be adjusted to take account of the newly devolved fiscal powers, or of the processes by which funding arrangements will be worked out".

It concluded:

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

I have to say to my noble friend: it is just unacceptable that we should be asked to do this without having that information. Noble Lords can imagine how surprised I was, having seen that information and having seen the work of the committees, to read in the Scottish edition of the *Times* on 15 February:

"A senior Treasury insider said, 'If the model that we are recommending had been in place in 1999, Scotland would have benefitted to the tune of £6.6 billion'".

It is better than Barnett by £6.6 billion. In other words, what is being proposed in secret goes over and above Barnett by £6.6 billion. I do not know whether

that is the Government's position. I certainly do not think that it will go down too well in Wales or in the north of England. Indeed, I can make an argument, on the other side, that Scotland might lose out and that someone living in Scotland might end up paying higher taxes to see a lower standard of public services. This is central to the Bill and it is a disgrace that the Bill is being rushed through in this way without proper consideration.

I understand the politics. My noble friend and the noble Lord on the opposition Bench are terrified that they will be blamed by the SNP for not delivering the Scotland Bill. If my noble friend feels that he cannot accept my Motion, perhaps he might accept an amendment saying that the Act should not commence until we have the fiscal framework and it has been approved by both Houses of Parliament. If, in his reply, he would give an undertaking to do that, that would be a compromise. It is not an ideal. He says he may well get the statement later this week and we may well consider it on Report, in which case, that is fantastic, but both Houses of Parliament should have an opportunity to do that.

I have a final point. I do not know why the Secretary of State for Scotland is not involved in these negotiations. I do not know why Ministers responsible for welfare have not been involved in these negotiations. The Chief Secretary to the Treasury, Mr Greg Hands, not confirming the amount but saying that Scotland would be better off than it was under Barnett under what he was proposing, went on to say, in a letter which my noble friend circulated, very helpfully, at 1 pm today, that he accepts that what is being proposed goes far further than the Smith commission proposals. So, if we are prepared to depart from the Smith commission proposals by making them better, it rather cuts a hole in the argument that we have to implement to the letter what was proposed by Smith. I beg to move.

Lord McCluskey (CB): My Lords, I support the amendment proposed by the noble Lord, Lord Forsyth. I can be brief because he has covered many of the arguments. I wish to make it clear that in my view and, I think, the view of many, the important thing is that this Bill does not concern simply Scotland but the United Kingdom, and in particular the taxpayers in Great Britain. That is why the noble Lord mentioned Wales and, of course, the north of England.

The general view is that Scotland has for many years been subsidised by taxpayers in the rest of Great Britain. That view is inconvertible and I think that the Treasury strongly supports that opinion. Whether that subsidy has been justified is a different question that I will not go into at this stage. The underlying issue is not the interpretation of a word such as "detriment", which does not mean too much, although, if you ask the people of Wales, they will tell you that they recognise it when they see it arising from this Bill. The real underlying issue is whether taxpayers in the rest of the United Kingdom, and certainly in the rest of Great Britain, should continue to subsidise the Scots and, if so, at what level and on what basis. The issue underlying that is whether it is time for this House to face up to the weaknesses of the Barnett formula and begin to ask whether it is proper to make need the sound basis for supplying tax money to different regions of the United Kingdom.

We have waited for the fiscal framework since May 2015, when the Bill was introduced in the House of Commons. I agree with the noble Lord, Lord Forsyth, that we cannot do our job without the fiscal framework. However, my one reservation about the amendment is that I fear it would let the SNP off the hook because the truth of the matter is that it cannot live with devo-max on any basis other than an improved subsidy; and, if it cannot live with devo-max, it certainly cannot live with independence. Therefore, the argument on this matter is very important because it reveals the basic weakness of the Scottish National Party's position. I hesitate to give it an excuse for blaming us and condemning us in the usual terms as being unelected et cetera. Therefore, I invite your Lordships to support this measure but I hope that, ultimately, the noble Lord will withdraw the amendment.

Lord Hope of Craighead (CB): My Lords, the point that the noble and learned Lord, Lord McCluskey, made at the end of his brief speech seems to me to support the position that the Minister is urging us to adopt. The last thing we want is to be seen to be delaying the progress of the Bill through Parliament. As I listened to the noble Lord, Lord Forsyth, what occurred to me was the lack of clarity over how today's debate will be affected by the absence of the fiscal framework. The Bill proceeds in stages, of course. We are looking today at the Committee stage and the fine wording and tuning of the various clauses in Parts 2 and 3. For the moment, I do not see how the wording of those clauses will be affected by the fiscal framework. At a later stage, the noble Lord may propose that we should not allow these clauses to go forward in the Bill. However, that could be done on Report; it does not have to be done today. If, as the Minister said, there is a prospect of the fiscal framework being agreed tomorrow so that we have it before us on Report, I do not see why the points made by the noble Lord, Lord Forsyth, cannot be examined at that stage, too, or, as a last resort, at Third Reading. Given the nature of today's debate, I respectfully suggest that the balance of advantage is to proceed to maintain the parliamentary timetable, which is crucial if we are to do our job of supporting the Smith commission.

3.30 pm

Lord McAvoy (Lab): My Lords, I wish to make it clear from the start that the Labour Party will not support the amendment in the name of the noble Lord, Lord Forsyth of Drumlean. The facts of life are that the future of the United Kingdom is at stake, and while I certainly would not accuse the noble Lord of exaggeration, it is becoming clear that with his oratorical skills—I do not think anyone in the Chamber can match him, although some Members on my side are a match for him in maintaining a position—he seems to be succeeding in creating an atmosphere of crisis. With all due respect, he has taken a drama and made a crisis out of it. I do not say that he exaggerates, as that would be unfair and untrue, but a sense of calm,

[LORD MCAVOY]
reason and responsibility has to pervade this Chamber. We are speaking about the future of Scotland and of this United Kingdom.

The Minister has made the point that there is a precedent because the last Scotland Act proceeded to implement matters with the detail being discussed later. Quite frankly, apart from the procedures of this House, the practical effect of the noble Lord's amendment to the Motion being passed would be to kill off the negotiations and the chance of reaching a successful conclusion to these important discussions. I believe that this amendment has been devised to kill off the Scotland Bill, the fiscal framework procedure and the progress being made in Scotland.

Lord Elton (Con): Can the noble Lord explain why accepting the amendment should kill off the negotiations? Surely it should accelerate them.

Lord McAvoy: I can understand why the noble Lord makes that point, but the nation and country of Scotland is awaiting the results of these negotiations. Whether the noble Lord likes it or not—and I certainly do not—passing the amendment would send this message to Scotland: "Westminster's not agreeing. Westminster's kidding you on. Westminster's conning you. They don't mean it and here they are obstructing Scotland yet again".

Lord Forsyth of Drumlean: All my amendment does is say that we should not proceed with the Committee stage until we have the fiscal framework. It does not say that we should not proceed with the Bill or should not pass it. If the noble Lord's argument is right, why would it not have been interpreted in the same way when we decided to delay consideration of Parts 2 and 3 until today?

Lord McAvoy: The noble Lord will have to accept that I do not agree with him on this, and I do not think he will agree with what I am about to say. The arrangements are designed to facilitate the passage of the Bill and the fiscal framework discussions. Quite frankly, I do not believe that that is the noble Lord's intention; I believe it is his intention to kill off the discussions.

The atmosphere in Scotland is one of mistrust. I try not to make political points, but the result of the 2015 general election was, I maintain, a direct result of the Prime Minister's triumphalist press conference in Downing Street the morning after the referendum when he sent the message, "English votes for English laws", and hostility towards those who had voted yes. There was a sea change in Scotland, where all Labour Party seats were wiped out with the exception of one. We were seen to be conniving and in collusion with a Conservative Prime Minister.

On the other side of the coin, we have got the SNP, with its grievance culture, which is determined to attack Westminster and cast doubt on Westminster's good intentions—unfairly, because I believe that the intentions here for Scotland are good on both sides of the House. I also think that there was an element of scare story when the noble Lord mentioned that I, the Labour Party and the Conservative Party were terrified of Scots. Terrified of my own people? I respect their desire. I respect their wishes—it is our job to facilitate them—and I believe that that is also the position of the House of Lords.

From the Cross Benches, the noble and learned Lord made it plain that the fiscal framework can still be discussed on Report. This is not a panic measure. This is not ifs, buts or maybes. This is the calmness for which this House is renowned. There will be plenty of opportunity if we can get these discussions to a conclusion. Certainly the indications give hope that we can get the conclusions.

Lord Hamilton of Epsom (Con): Does the noble Lord accept my noble friend Lord Forsyth's argument that Scotland will lose out if it comes to a settlement that abolishes the Barnett formula and makes it rely on income tax in Scotland?

Lord McAvoy: The time to discuss the fiscal framework will be when public announcements are made. With all due respect to the noble Lord, Lord Hamilton, we can discuss it until we are red or blue in the face. We are not discussing anything that is there in front of us. This House must be allowed to get on with facilitating the Bill, facilitating the people of Scotland getting the Bill, guarding—

Lord Pearson of Rannoch (UKIP): Does the noble Lord accept that he is making the Scottish people sound really stupid, whereas in actual fact they are highly intelligent and perfectly capable of following the argument of the noble Lord, Lord Forsyth? I suspect that they would support him because they may get a proper deal in the end.

Lord McAvoy: The noble Lord, Lord Pearson of Rannoch, is absolutely right. The Scottish people are too intelligent to be fooled. That is why they will never vote for UKIP. I do not like making political points when the future of the country is at stake, but there we are.

Noble Lords: Cheap!

Lord McAvoy: Cheap? I have been called worse. I take the point of view that we must be allowed to get on with this. I urge the Labour Party, and I am sure that everybody in this House urges both negotiating teams, to come to a conclusion. It is hard; it is difficult. However, we should not underestimate the task that that team is facing, nor should we underestimate the task that the Government are facing in getting this Bill through. We on the Labour side of the House believe that this Bill must go through. This amendment is a distraction. It is not quite right in the threats that it makes. We should get on with the Bill as quickly as we can.

Baroness Buscombe (Con): Before the noble Lord sits down, does he agree that it would be sensible at least to respond to what my noble friend Lord Forsyth has suggested in urging the Minister to consider and bring forth a sunrise clause, to ensure that at least we can go through this process in the knowledge that this Bill will not pass until this framework is published and considered by your Lordships?

Lord McAvoy: With due respect to the noble Baroness, that would send the message to Scotland from this House, from Westminster, that I have been arguing against for the last five or six minutes. That would be interpreted as Westminster reneging on its commitment to Scotland. I do not accept that argument but that is the argument that would win the day because in my opinion—the noble Baroness will have to take my word for it—that is the mood of Scotland in listening to Westminster.

Baroness Buscombe: It may assist the noble Lord if he were to remind those who seem to mistrust this House that the Smith commission comprised purely Scottish representatives. It is therefore wrong to say that our Prime Minister was in any way not supportive of the Scottish coming out of this with a fair deal. We have all accepted this process thus far. By having a commission—whose results we have all accepted—to decide the future of our overall relationship, but in which only Scotland was represented and not the rest of the United Kingdom, we have made a huge step forward in trying to show Scotland that we care about its future.

Lord McAvoy: The noble Baroness has not addressed my response that the mood in Scotland is such that, correctly or incorrectly, that sort of behaviour would be seen as Westminster tricks or deviousness. That is how it would be seen and there would be a massive reaction against it. This is a massive development for this United Kingdom of ours, in dangerous times when we need to keep a cool head. I may take stick for this elsewhere, but there we go. We have confidence in the capacity of the Scottish Government and the United Kingdom Government to come forward with an arrangement that will guarantee the future of this country.

Lord Hughes of Woodside (Lab): My Lords, I hesitate to enter this debate, especially as it has been going on for a long time and I have always opposed Scottish devolution. I accept what has happened, that changes have to be made and that we have to move forward. However, the noble Lord, Lord Forsyth, makes an interesting point and if he forces a Division, I shall certainly support him in the Lobby.

As this debate has proceeded today, I have become more and more alarmed. We must choose our words very carefully. When my noble friend Lord McAvoy says that the Bill must go through, that is not the same as saying that, "This Bill must proceed". We need an absolute guarantee that the Bill will not reach the statute book until the fiscal agreement has been reached; otherwise it will face opposition at every stage. Anyone who raises a question is accused of deliberately trying to stop the Bill going through and to stop the Scottish people getting their own way. Nothing could be further from the truth. We want to see a lasting settlement that will avoid the procedure whereby it seems that, almost every five minutes, the Scottish National Party demands greater concessions which it is given and which it accepts and hails as a great victory. The next day it says, "We have been sold down the river again". If the debate on the future of Scotland is to be proceeded with solely on the basis of the attitude that the Scottish National Party takes, we are doomed to disaster.

This House and this Parliament have a responsibility, and we should proceed on that basis. When the Minister gets to his feet, he should at least give a categorical assurance that, if we reach Report and still do not have a fiscal agreement, that Report stage will not proceed until the agreement is reached. If he cannot go that far, he should at least go so far as to say that the Bill will not go on the statute book until that agreement is reached and agreed by Parliament.

The Earl of Kinnoull (CB): My Lords, I thank the noble Lord, Lord Forsyth, for enabling us to have this debate on the sorry state of the timetabling for this important constitutional matter. I want to make just three points.

The first concerns precedent. The Bill is the first of a series of devolutions in the UK and obviously precedential in its financial settlement. It is also precedential in terms of all the Bill's contents. I hope that the one thing where it is not precedential is in the extraordinary process which has led to us being in this debate today. Your Lordships' House is justly proud of its ability to scrutinise legislation, to bring to bear its considerable powers of analysis to improve that legislation and to test the thinking behind every provision within it. That scrutiny process is multi-layered and the Committee stage is an extremely important layer of it, and I would strongly resist the giving-up of it. The scrutiny process has been honed, through centuries, to the effective peak that there is today.

We aim to produce legislation that will stand the test of time. This Bill is likely to last a very long time, so we need to proceed carefully. I hope that the House will agree with me that, in a constitutional matter such as this, it is especially important that the full spectrum of the House's abilities are employed, given that it is a new settlement within the United Kingdom and will definitely be precedential on the other devolution settlements under consideration.

3.45 pm

I turn to the fiscal framework itself. Quite rightly, the two negotiating parties are not providing a running commentary. I know of no reason to believe that the parties are not negotiating on an entirely bona fide basis, so there can be no blame on the part of one party or another for the slow speed of progress. But slow it has been; and what commentary there has been in the press has emphasised the complexity of the issues. Indeed, that is emphasised in the report of the Economic Affairs Committee. Does the Minister agree that that complexity means there is all the more reason that the full, multi-layered scrutiny process, both in Westminster and Holyrood, is allowed to take place?

Finally, I ask the Minister: what is the tearing hurry? All the parties to the Smith agreement have been treating it as a matter of utmost good faith that they will get to an agreement. For those involved it is an instance of that British maxim, dictum meum pactum. During the Committee stage so far—and I have been present for almost every minute—all the

[The Earl of Kinnoull]
amendments and the debate, from all sides of the House, have been entirely consistent with the Smith commission agreement. Indeed, the only bit in the Bill that seems to be potentially inconsistent is the Henry VIII clause which we will debate later today. We will learn more about that, I am sure. There is a great certainty in this House that the Bill will be enacted, and enacted on a basis that is consistent with the Smith commission agreement. I therefore believe it would be far better in the long term for the citizens of Scotland and the United Kingdom to afford the Bill proper scrutiny, both here and in Holyrood. If that means that it passes into law in May, not March, then so be it.

Lord Turnbull (CB): My Lords, I, too, share many of the concerns raised by the noble Lord, Lord Forsyth. We have reached a point where the House is being asked to approve that certain taxes and welfare measures should be devolved, but nothing is being said about the framework in which they are to be operated. I do not accept the proposition put forward by the noble Lord, Lord Hope, that we can divorce the two, nor do I accept that the precedent of the previous Scotland Act of leaving certain details to be settled after this stage is appropriate. What is at stake are billions and billions of pounds and the distribution of those between the different parts of the United Kingdom.

We have been told nothing about two vitally important elements of the fiscal agreement: the method for adjusting the Barnett formula to take account of the new distribution of taxes and the regime for borrowing and debt. We know that there is a dispute over two different methods of adjusting the block grant. Noble Lords will be pleased to know that I am not going to attempt to explain those now, but no Minister in this House or the other place has attempted to explain what the two approaches are and the merits of each. Despite that, and contrary to the assurances given, the completion of Committee stage has been scheduled to proceed. It is extraordinary that a major change in constitutional arrangements, both political and financial, is being sought without either House having a chance to see the detail of what is proposed or, importantly, to take a view on its effectiveness or fairness. It has been pointed out that this is not simply a bilateral matter between Scottish and UK Ministers: it has implications for the whole country.

The other place may be content to allow all this to glide by unremarked, but I believe that this House has higher standards. It has always prided itself on ensuring that matters of constitutional significance are properly scrutinised. At the moment, that is not happening.

If an agreement is reached in the next few days, even though it has been a case of "Mañana, mañana" so far, the Government need quickly to come up with a process that allows the Bill to be scrutinised before final assent is given to it. For example, if this is effectively delayed until Report, will the rules of Report be modified to adopt the rules of Committee—for example, with noble Lords being able to speak a second time? That has been done before, I think in the case of a financial services Bill. Alternatively, a separate consent Motion could be provided, which is something that the Holyrood Parliament itself intends. Something needs to be done because it is not acceptable to allow the Bill to be finalised and matters of this importance to be sorted out thereafter.

Lord Selkirk of Douglas (Con): My Lords, I should mention first that I was an MSP for the first eight years of the Scottish Parliament. I want to make a series of small points. The first is that an agreement between the Government and the devolved Scots Administration should not be beyond the wit of humankind, even in difficult circumstances. I hope that the Minister will keep negotiating and that his efforts will be rewarded with success.

I thought that the noble Lord, Lord Forsyth of Drumlean, not only made a persuasive case but made a particularly important point when he suggested that an amendment could be made saying that the Act must not commence until the fiscal framework was in place. My understanding is that the Bill cannot be implemented in the absence of an agreement as it requires a consent Motion in the Scottish Parliament. Without an agreement, no consent Motion will be passed. I hope that the Minister will look very carefully at my noble friend's proposal.

Lord Forsyth of Drumlean: My proposal was that the Act should not commence until this House and the House of Commons had approved the fiscal framework. My noble friend is right that the only parliament that is going to be able to consider this Bill in the context of the fiscal framework is the Scottish Parliament, and that seems a bit odd to me.

Lord Selkirk of Douglas: My noble friend's suggestion does not seem to have the disadvantages of the amendment, which I will come to in a moment, and I hope that it will be looked at sympathetically in some form because it could be an important step forward.

There is of course frustration in the Scottish Parliament about this. The convener of the Devolution Committee, Bruce Crawford MSP, recently stated there would be "a substantial impact" on the ability of the Scottish Parliament to go through the process of proper scrutiny. Obviously he was referring to what he regarded as unreasonable delays. He expects the teams from Holyrood and Westminster to appear before his committee tomorrow to give a full explanation of their position on a fiscal framework, whatever the circumstances. There is a strong group of 15 Tory MSPs in the Scottish Parliament. To the best of my knowledge they want the Bill to proceed, and they are the third largest group.

My concern is based on two factors. This could become a major issue in the forthcoming elections to the Scottish Parliament on 5 May. If there is no agreement, the Scottish electorate will most certainly want to know who to blame. If the Bill fails because the Scottish Government shrink from accountability then the SNP will have to take responsibility, but if the Bill fails because the noble Lord's amendment delays it unreasonably then this House and unionist parties could become a lightning conductor for criticism.

My most important reservation is that the amendment could lead to a serious weakening of the United Kingdom. Noble Lords may wonder what the Scots

really want. I think that the answer is given in three ways: in opinion polls, in the referendum and in the recent general election. My interpretation of the referendum was that there is a decisive majority in Scotland for the United Kingdom. That means that the Scots will want to keep the UK intact, which should be remembered and never forgotten. My interpretation of the general election results in Scotland was that it was a clear indication that a large majority of the Scottish people wish to have a Scottish Parliament with increased powers and responsibilities, and within a reasonable timescale. I do not wish this House to do anything that would give the SNP a major propaganda coup during an election because I am a passionate supporter of the United Kingdom.

There are three difficulties with the amendment. First, it could be used to prevent the promises made by the Prime Minister and other party leaders being fulfilled. That could easily enrage the Scottish electorate on the basis that promises should be kept. The second difficulty is that the timing is not totally convenient because the Scottish election campaign will pick up on this and it could become a major issue. The third and most important consideration is that the United Kingdom probably stands a very much better chance of long-term survival if we do not unreasonably delay this Bill. In short, it is the kind of amendment that could trigger the law of unintended consequences.

Finally, I had the privilege of working under my noble friend Lord Forsyth in the Scottish Office. I have no hesitation in saying that he was a very strong, powerful and highly effective Secretary of State, frequently coming up with extremely interesting and exciting new ideas. I will mention one of them as an example. He wished the Stone of Destiny to be returned to Scotland and he got his way: that was a tremendous achievement. The Stone of Destiny was put in a "Stonemobile", and there was a terrific reception in Edinburgh Castle. Of course, the Scots were not going to be satisfied merely with a stone: they wanted more. I recall a story that when the Stone of Destiny was originally pinched from Westminster Abbey by some youngsters of a nationalist disposition, and the police were searching for it, a Scotsman from the back of beyond telephoned the police and said that he knew who the thief was. The police officer went round to see him and took out his notebook, and the old man said, "It was King Edward I".

As I have said before, finding a really satisfactory way forward in this area is very much like walking a tightrope. The noble Lord, Lord Smith of Kelvin, put it very well when he said:

> "The new powers set out in the Scotland Bill will lead to a transformation of the powers held by Holyrood and it would be a terrible shame if they were to fall away at this late stage".

My noble friend Lord Forsyth of Drumlean has put forward an amendment that might be entirely logical, but the potential disadvantages, in my view, outweigh other considerations. Above all, we at all times have to keep in mind the essential need to protect, maintain and sustain the United Kingdom.

Lord Purvis of Tweed (LD): If the House will allow me to make a brief observation about the process, I will not detain it much longer. I believe that this Bill should proceed today to the clauses. It is a balanced judgment: the noble and learned Lord, Lord Hope, made a very valid point in saying that the amendments on the Order Paper would not have been meaningfully impacted upon even if there had been an agreement. However, the question is whether there would have been amendments in light of the agreement if it had been made in a timely manner. That means that the Minister needs to give a bit more information when he winds up this short debate on the amount of scrutiny that is going to be afforded to the fiscal agreement, not only in this House but in another place. Half a day of Report stage might not, I venture, be sufficient.

To paraphrase many whom I have heard over the past 24 hours, we need to progress with a heavy heart, because we are in unfortunate circumstances. They are unfortunate because there has been considerable press coverage, even though the Minister had said that this was a negotiation in private. However, the circumstances of these negotiations go far beyond the previous legislation to which he referred. The adjustment of the block grant will now require a permanent and significant constitutional mechanism given the very large extent of the powers that will be transferred to the Scottish Parliament, and it requires considerable scrutiny. Later on we will debate the adjustment, not only for fiscal powers but for welfare powers, and its financial implications. For the first time, the Scottish Government will have current revenue borrowing powers, which, similarly, are part of the negotiations. Most important, however, is that these discussions are pertinent not just to Scotland—the implications will be much wider for the constitutional arrangements we have across the whole of the United Kingdom.

4 pm

It is a pleasure to follow the noble Lord, Lord Selkirk, who in the Scottish Parliament we always referred to simply as "Lord James". I was a Member of the Scottish Parliament with him and a member for five years of the Finance Committee, and I know that there is considerable pressure on its processes as well. I will avoid the obvious political ramifications of this, given the imminence of the Scottish Parliament elections. We need to set aside the politics of this, and I commend the noble Lord for doing so when he comes to this House. I will offer only one bit of advice to the noble Lord—I know that he does not need it, as he is more experienced than I am. To negotiate in private with the SNP is rather different from negotiating in private with any other political party across the United Kingdom. Therefore, when he says that he wishes to conduct all of this in private I respect his view, but privacy was not entirely clear in the letter from the First Minister of Scotland when she sought to define the principle of no detriment. There has been scant information from the UK Government as to its view of this. Finally, given that we will now use forward projections, and the significance of these for population, tax revenue forecasts, and so on, simply to rely upon Treasury forecasts and often competing Scottish Government forecasts does not bode well for future adjustments and negotiations.

Therefore, all we have had so far has been in the public domain, whether it has been briefings from the Treasury to newspapers rather than factual information

[LORD PURVIS OF TWEED]
presented to Parliament, or the positioning of the Scottish Government rather than information they have presented to the Scottish Parliament. We may all agree with the concept of fairness to taxpayers but we need to know the details of how it has been defined by each side. The lack of civil society contributions and academic review draws my attention to the fact that we cannot conduct such discussions like this again in the future. The time is absolutely right for a UK independent fiscal commission, given that there are significant implications for Wales, the cities and local authorities, which we are debating in Parliament. For the Government, if it is not Edward I's contribution, it should be "go home and think again" on some of these issues with regard to reviewing our constitutional frameworks.

I hope that when the Minister winds up he will give more information about the scrutiny that this will be afforded. The Chief Secretary to the Treasury told the Scottish Affairs Committee that he could foresee a situation in the Commons where there would be a day's debate and the fiscal agreement would be referred to a Select Committee. Will the Minister indicate whether that is still the Government's intention and what level of scrutiny we will have? When, as I hope, we proceed with this stage today, we need to make sure that the fiscal agreement, with its significant implications for the long term, is afforded proper parliamentary scrutiny.

Lord Elton: My Lords, we should be coming to a conclusion, so I do not wish to detain your Lordships for long. However, I remark that my noble friend Lord Selkirk, in a wonderfully elegant and skilful speech, invited your Lordships, not unreasonably, to delay the Bill. What gives my noble friend Lord Forsyth's amendment weight and reason is the joint letter from the two chairmen of the two senior committees of this House, which has scarcely been addressed in this debate at all. They have both said, after considerable deliberation, that it would not be proper or wise for us to proceed until we have the fiscal framework before us. We therefore have to find some means of doing that—if possible keeping within the timetable, which is an unreasonable one. It was not unreasonable to start with but it has become so because of the extraordinary foot-dragging of the seeking of the agreement itself. That is not our fault.

It is also important to remember that we are here for a purpose. It is the reasonable purpose of seeing that the legislation we pass is fit for purpose and does not handicap unnecessarily or unfairly any part of the United Kingdom. From what I have heard this afternoon I understand that that is something we cannot fairly do until we have the framework.

What other devices are there to achieve this compromise of timing? I am sure it is already in my noble friend the Chief Whip's mind but there is, of course, the device of recommitting clauses that have been taken in Committee at a later stage when circumstances change. I remind the noble and learned Lord, Lord Hope—I hope I have got my procedure right—that the clause stand part procedure is in Committee and therefore there are no opportunities to suddenly excise a clause that has already been voted in. It is asking to decide the same issue twice in opposite senses. Therefore the idea of a recommital which gets round that decision seems a reasonable one. I put that to your Lordships as well as my noble friend Lord Forsyth's plan B, as it were, which also has its merits, but I think they are less good because there would be less chance to do anything with this Bill once it is on the statute book.

Lord Stephen (LD): My Lords, all of this emphasises the need for more open government. We have very limited information on the fiscal framework negotiations and neither Government have won plaudits for transparency and openness. From the UK Government there has been little more than, "We met. Good progress was made," and possibly, occasionally, an overview of the agenda. I quote from the meeting held as recently as last Friday. This is supposed to be us coming to the end of the negotiations:

"MINISTERIAL MEETING ON SCOTTISH GOVERNMENT'S FISCAL FRAMEWORK – 19 FEBRUARY 2016"—

the title takes up more space than the minute of the meeting, which states:

"The Rt Hon Greg Hands MP, Chief Secretary to the Treasury and John Swinney, Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy met in London today. They had a useful further discussion on Scotland's fiscal framework. The discussion made progress in a number of areas. The two governments have not yet been able to reach an overall agreement".

This is the sort of information that we as parliamentarians are being asked to rely on. The UK Government appear to believe that this is the best way to conduct these intergovernmental negotiations. I suspect that a major reason for this is the Treasury, which has a long track record of secrecy in all matters and doubtless feels that this has served its purposes well over the decades. The annual Budget negotiations with spending departments is probably the best example of this. By default we accept that the Treasury tends to be secretive, but I do not believe that this makes for good government. The more open we can be, the better. People should be encouraged to get more involved in politics and helped to understand government and the issues facing Governments. Too much is still done behind closed doors. This is a very big issue for the future of Scotland and the United Kingdom. So far everything has been done behind closed doors.

There is another dimension to this beyond the issue of secrecy. At both UK and Scottish levels we have been asked to, "Trust us, we're the Government". Governments, however, can be trusted only so far and Governments are ultimately answerable to the people and to the parliaments. Their powers are not, and must not be, unfettered. There can be real advantages to openness, particularly when they are dealing with, and are answerable to, the parliaments.

However much we may wish to support the passage of this Bill, there will come a point when we have to say that we need to see the fiscal framework, at least in its final draft form. This week we are reaching that final point with the Bill. We are supposed to move on from the Committee stage today to Report on Wednesday, but the negotiations between the Scottish and UK Governments are still to be concluded. Indeed, it is widely reported in the media that there is still a dispute.

As parliamentarians in this Chamber, we have not been told the detail of this dispute but it is certainly all about the detail of the formula to be used, or indeed which formula is to be used, to calculate the funds to come to Scotland once the new tax-raising powers have been introduced. Surely there is bitter irony in negotiating this with an SNP Government, because with independence there is no formula and no safety net. The situation as we all understand it is that all that is swept aside: goodbye Barnett, goodbye population weighting and goodbye all forms of protection.

It seems inconceivable that we can proceed to complete Parliament's consideration of the Bill without much greater openness and clarity on this issue and on the fiscal framework and all its clauses in general. Ideally, the terms of a final agreement need to be revealed to us. However, failing that and accepting that the UK Government cannot force a final agreement, we need to see the full draft of the fiscal framework identifying the area, or areas, of dispute and explaining the different proposals of the two Governments. Without that, the progress of the Bill is in serious danger of grinding to a halt, so I am very sympathetic to the view of the noble Lord, Lord Forsyth.

My noble and learned friend Lord Wallace of Tankerness has suggested, for example, that we might be able to pass the Bill subject to a commencement order, which would require a legislative consent Motion from the Scottish Parliament. The noble Lord, Lord Forsyth, has suggested another possible approach today in the event that we cannot reach a final, agreed position on the fiscal framework. All these arguments carry considerable force and a lot of work needs to be done on this in the coming hours. However, all of us know that stopping the Bill now, and stopping it in the House of Lords, would have huge practical and symbolic consequences, which could threaten the delivery of the extra powers promised to Scotland ahead of the Scottish Parliament elections in May. There would be the most profound political consequences. So, as we have listened carefully to the noble Lord, Lord Forsyth, we should listen carefully to the Minister's response.

Lord Hughes of Woodside: I accept the point that the noble Lord has made about the dangers but does he not see that that is precisely what the SNP is playing for: to prevent an agreement before the election, as that is what it will fight the election on?

Lord Stephen: If that is the case, we must flush the SNP out on this, and we must be transparent and open about the progress that has been made and what is being offered by the UK Government in terms of the fiscal framework. The UK Government must be prepared to defend their position as fair and reasonable.

Whatever the result today, I believe that the arguments for greater openness and transparency on the fiscal framework will apply with even greater force when we reach Report. That will be the critical stage for the future success of the Bill.

Lord Hollick (Lab): My Lords, the Economic Affairs Committee, which I chair, and the Constitution Committee both concluded after extensive inquiry that, in the absence of any information about the fiscal framework, it will be impossible for the House to assess whether the Bill will cause detriment to all or part of the United Kingdom. As the noble Lord, Lord Forsyth, pointed out, we are talking about billions of pounds which could move between the rest of the United Kingdom and Scotland, so this is no small matter.

I think the Government have accepted the logic of that position, which is why we are taking Parts 2 and 3 out of order in today's Committee. In his opening remarks, the Minister said that there will be ample opportunity on Report to scrutinise the fiscal framework. If, as he has hinted and as newspapers have reported, the fiscal framework is to be published in the next few days, would he agree that ample scrutiny can take place only if the procedural rules of Committee stage are applied to Report stage? Will the Minister confirm that he and his noble friend the Chief Whip will press for that?

4.15 pm

Lord Darling of Roulanish (Lab): My Lords, I have a great deal of sympathy with the remarks made by many Members of this House on the importance of the fiscal framework. It is no exaggeration to say that, without it, this entire legislation will fall apart—it is the most important part of the Smith settlement. It is deeply regrettable, therefore, that here we are at the parliamentary equivalent of the 11th hour and we still do not know what it is or what is in it.

Although I have some sympathy with those who are involved in negotiations, I have to say that as a non-Conservative and non-nationalist, I am not altogether sure that I am happy about the prospects for my country—either Scotland or the United Kingdom—being determined by two sets of negotiators, one of which wants to break up the United Kingdom and the other of which, the Conservative Party, has made a series of wrong calls since 19 September 2014. Talking of which, I must declare an interest in that I am still the chairman of Better Together, which is in the course of being wound up but has not been quite yet. As I said, I have a great deal of sympathy with what is being said, but it would be a mistake for this House to be seen to delay or block matters today. I hope that when the Minister comes to reply, he will give an absolute undertaking that the House will have the fiscal framework by Report, which must be imminent.

This is not just a matter for the Scottish Government and the UK Government. There will be many people outside in different parts of the UK who will have comments to make because this will determine not just how much tax is raised but how the balance is to be achieved between different parts of the United Kingdom and how adjustments are to be made, not just this year but in five years' time. It would be very difficult to see to whose credit it was, or whose fault it was, that the tax take went up or down from that expected. This will determine who is paying for the welfare measures that are being devolved and, if no adjustments are made to them, who bears the cost of that. Also, it will determine the amount of borrowing and on whose account the borrowing is done. Is it on the part of the Scottish Government? Is it on the part of the UK Government? Is it temporary? What are the constraints? These are massive considerations. I heard

[Lord Darling of Roulanish]
what the noble Lord, Lord Stephen, said about the Treasury, but the Treasury is not always as curmudgeonly as he might suggest and sometimes has the nation's best interests at heart—at least it did for a period in the past.

It is important that we get these things right. We cannot overestimate the importance of the fiscal framework, which is why I hope that the Minister, with whom I had the pleasure of working very closely over the last few years and who is, I am quite sure, not the villain of the piece, gives us an undertaking that we will have the fiscal framework.

I struggle to see how it is going to work. If we do not get it right, we could simply be storing up problems for the future and providing rich and fertile ground for those who seek out grudges and grievances as a way of life to feed on for many years to come. I do not want to see that happen, but I am very conscious that discussions are taking place not in the spirit of good will because, at the end of the day, these are two parties with opposing objectives. This is important, and I urge the House not to block the measure at this stage, especially if the Minister can give the undertaking that I think most of us want.

Lord MacGregor of Pulham Market (Con): My Lords, I wish to intervene very briefly. We are indebted today to my noble friend Lord Forsyth for bringing this before the House. As a former chairman of the Economic Affairs Select Committee, a current member of the Constitution Committee and a former Chief Secretary to the Treasury, like the noble Lord, Lord Darling, with whose comments I very much agree, I would like to stress the absolute importance of this House being able to discuss the fiscal framework in some form or another, and its huge implications for the future of both Scotland and the rest of the United Kingdom, before the legislation is finally implemented. I support those who are making the point that, once the fiscal framework is published, we must have the opportunity to discuss it thoroughly before we can go further.

Lord Hain (Lab): My Lords, I want to briefly support my noble friend Lord Darling and, indeed, endorse the point made by the noble Lord, Lord MacGregor. It arises, in a way, out of a question that he put to me when I was giving evidence to the Constitution Committee. It is this: we have allowed tax devolution to leave the station without any clear idea of what the destination is.

I am an enthusiastic devolutionist. As Secretary of State for Wales, I brought in the Government of Wales Act 2006, and I was instrumental in helping to win the 1997 Welsh referendum—albeit very narrowly; it was a hard fight. My concern is one that I do not see being addressed in the Bill, certainly not until we have the fiscal framework, at least, before us to scrutinise. It is this: 40% of the wealth of the United Kingdom is generated in London and the south-east. So what happens if parts of the UK—across the UK, not just in Wales and Scotland but in the north-east of England, Cornwall, and other parts of England that are not as wealthy as the south-east and London—are offloaded from the ability to benefit from redistribution, and the fairness involved in that redistribution?

The Government's present ideology seems to be, "You have the powers to raise your own taxes, and it's on your heads". And if that particular part of the UK, be it Northern Ireland, Wales or Scotland, cannot raise what it previously raised, that is tough. I do not think that is a future for the United Kingdom that will command the support of all the nations and citizens of Britain and Northern Ireland. Therefore, although I cannot support the amendment of the noble Lord, Lord Forsyth, I want to leave on the record a severe reservation about where this is all leading.

Lord Mackay of Clashfern (Con): My Lords, I would like to say a word or two about the fiscal framework, which I agree is fundamental. The difficulty of it cannot be underestimated. This is a situation in which an authority has a grant-making power, and a power to raise taxes in order to raise the money for that grant—but at the same time, it is making a grant to a body that has a power to raise taxes itself. We have had this problem in the United Kingdom for a long time in relation to local authorities. Nobody needs to be told that every year local authorities have difficulty in accepting what central Government allocate to them. The Scottish Government have had that problem too, with refusing to allow local authorities to use their tax-raising powers under the community charge.

This is a very difficult situation, and I am not at all confident that it is possible to arrange things in a way that will work for all time in this fiscal framework. There is an element of prophecy involved, as we can see from what has been said about the need to take account of how the Scottish population is ageing; of course I am very much part of that factor myself, and I am very conscious of it. The important thing is that there are various powers, and it is difficult to see that they could be effectively regulated for all time coming. I know of no country in the world that has a very satisfactory arrangement for local government. Germany, for example, has inter-state relationships, and relationships between the states and the federation. The United States has problems of that kind too. We have before us the same sort of problem, in a different context. This is a very difficult thing to do—and I do not believe that the powers can be granted without knowledge of what that power arrangement is going to be, if it is possible to reach it.

On the other hand, as the noble and learned Lord, Lord McCluskey, said, it would be a mistake for us to use the power of this House to get the Bill in place before the deadline for the parliamentary elections in Scotland. If we were to do that, I think it would be regarded as something that the House of Lords had done to destroy the vow.

Lord Dunlop: I thank all noble Lords who have taken part in the debate for their contributions. Before I address some of the points that have been raised, may I first make a correction? It came as something of a surprise to me to hear that I had not responded to the noble Lords, Lord Lang and Lord Hollick. I certainly signed lots of letters and I understand that

those were sent off in early February, and copied to the leaders and Chief Whips of the main political parties and the Convener of the Cross-Bench Peers.

Lord Forsyth of Drumlean: I apologise to my noble friend if that is the case, but I asked the Clerk to the Economic Affairs Committee if we had received a reply to the letter from the two chairmen and was told last week that we had not. Certainly, it has not been circulated to committee members.

Lord Dunlop: Well, it was certainly signed off by me, and my understanding was that the letters had gone off, but we will check that.

We want to secure the passage of the Bill and reach agreement on the fiscal framework. We can all agree that we want the focus at the Holyrood election to be on how the powers in the Bill are used. A number of noble Lords said that this House's holding up consideration of the Bill would hinder the outcome that we all want and put the Bill's timetable at unnecessary risk.

A number of noble Lords, including my noble friend, raised substantive points about the fiscal framework. One strong reason for proceeding today into Committee is so that we can have a debate and consider these matters in more detail. I very much agree with the noble and learned Lord, Lord Hope, that Report gives us an opportunity to consider these matters further. I was particularly interested in the suggestion by the noble Lord, Lord Hollick, which was also made by the noble Lord, Lord Turnbull, about using Committee rules at Report. I undertake to ask my noble friend the Chief Whip, who has been listening very closely to this debate, to speak to the usual channels to see if using Committee rules at Report can be agreed.

The Government are working flat out to get a fiscal framework agreement. As I said in my opening speech, there has been intensive discussion, which continues today. I remain optimistic that a deal can be reached soon. But today is not the day to speculate about what happens if we do not reach agreement and what options we might have to consider in that scenario. I therefore ask my noble friend not to press his amendment.

Lord Forsyth of Drumlean: My Lords, was that it? We have had a splendid debate with a lot of suggestions. I think there was a consensus that we could not put this Bill on to the statute book without having discussed the fiscal framework. It is interesting that former judges such as the noble and learned Lords, Lord Hope, Lord McCluskey and Lord Mackay of Clashfern, are advising us on the politics of the situation in Scotland and I am arguing about the constitutional implications. I feel that my expertise is more limited than theirs on both counts.

Of course, I understand why the noble Lord, Lord McAvoy, feels that if we were to delay consideration of the Bill, the SNP would complain that unelected Peers were interfering in the democratic decisions of the Scottish people and the Prime Minister's vow—which, incidentally, was the *Daily Record*'s vow—had not been delivered. The noble Lord questioned my motives and said that I wanted to kill the Bill. I understand that the Bill will go on to the statute book; that will happen. But I want a stable, lasting framework that will end this business of the nationalists pretending that Scotland gets a bad deal out of the union and, at the same time, the other parts of the United Kingdom to feel that they are treated fairly. That is the objective, and the fiscal framework goes to the heart of that. Far be it from me to give advice to the Labour Party, but perhaps it should stop running away in Scotland and confront the nationalists for what they are and on what they say.

My noble friend said that the fiscal framework may be agreed before Report. The noble Lord, Lord Darling, for whom I have considerable admiration and respect, suggested that perhaps we might consider it on Report, but Report is the day after tomorrow is it not? Is the fiscal framework going to be agreed tomorrow? If so, perhaps it might have been sensible to delay Committee until Wednesday and then we could have had Committee with the fiscal framework. If my noble friend is right that the fiscal framework is imminent, clearly, it would be silly to delay Committee today and to accept my amendment—I am still speaking in favour of it, by the way—I can see that.

However, it was then suggested by the noble Lord, Lord Turnbull, and others, that perhaps we could change the rules. It is perfectly open to me or any other Member of the House to bring forward a Motion on Report to say that we should recommit the Bill to Committee. Therefore, there is no reason for me to press my amendment today if, indeed, we are going to get the fiscal framework on Report. If we are not, and if the view of the House is that the Bill ought not to reach the statute book without an opportunity for the House of Commons particularly, as well as ourselves, to consider the fiscal framework, then it is open to my noble friend to accept an amendment in Committee today. There are several amendments—I have one of them—stating that there should be a sunrise clause whereby the Bill will not come into effect until the fiscal framework has been agreed by both Houses of Parliament.

The noble Lord, Lord McAvoy, thinks that that would provoke hysteria in Scotland. I do not see why. The Bill will get on the statute book and they will get what they want. If it does not get on the statute book, it will be because of the intransigence of the SNP in agreeing the fiscal framework. One of the most important speeches was made by the noble Lord, Lord Stephen, who talked about the importance of transparency. We have also had speeches from a former Chancellor of the Exchequer, a former Permanent Secretary to the Treasury, a former Cabinet Secretary—they are both the same person—and all have advocated that we look at this issue.

4.30 pm

I have to say to my noble friend—my father used to sell second-hand cars so this is no aspersion on second-hand car salesmen—that trying to approve the Bill without the fiscal framework is like buying a shiny car and not being allowed to look at or start the engine. It simply will not do. My noble friend heard voices from every quarter of the House—from those who are ardently pro-devolution, those who are against devolution

[Lord Forsyth of Drumlean]
or have been, those who predicted we would get into this mess, and others who thought it might not end like this—and the general view is that the House should not be asked to send the Bill for Royal Assent unless the fiscal framework has been debated and agreed. I hope the Government will give further consideration to this matter and take account not just of the widely expressed views in the House, but of the detailed reports from both committees. I beg leave to withdrawn my amendment to the Motion.

Amendment to the Motion withdrawn.

Motion agreed.

Clauses 13 to 18 agreed.

Schedule 1 agreed.

House resumed.

European Council
Statement

4.35 pm

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Prime Minister in another place. The Statement is as follows:

"Mr Speaker, I would like to make a Statement on the agreement reached in Brussels last week, but first let me say a word about the migration crisis which was also discussed at the European Council. We agreed that we needed to press ahead with strengthening the EU's external borders to ensure that non-refugees are returned promptly and to back the new mission to disrupt the criminal gangs working between Greece and Turkey who are putting so many people's lives at risk. I made clear that Britain will continue to contribute, and will step up our contribution, in all these areas.

Turning to Britain's place in Europe, I have spent the last nine months setting out the four areas where we need reform and meeting all 27 other EU Heads of State and government to reach an agreement that delivers concrete reforms in all four areas. Let me take each in turn.

First, British jobs and British business depend on being able to trade with Europe on a level playing field, so we wanted new protections for our economy to safeguard the pound, to promote our industries—including our financial services industries—to protect British taxpayers from the costs of problems in the eurozone and to ensure that we have a full say over the rules of the single market while remaining outside the eurozone. We got all those things. We have not just permanently protected the pound and our right to keep it but have ensured that we cannot be discriminated against.

Responsibility for supervising the financial stability of the UK will always remain in the hands of the Bank of England. We have ensured that British taxpayers will never be made to bail out countries in the eurozone. We have made sure that the eurozone cannot act as a bloc to undermine the integrity of the free trade single market, and we have guaranteed that British business will never face any discrimination for being outside the eurozone. For example, our financial services firms—our number one services export employing over 1 million people—can never be forced to relocate inside the eurozone if they want to undertake complex trades in euros just because they are based in the UK.

These protections are not just set out in a legally binding agreement; all 28 member states were also clear that the treaties would be changed to incorporate the protections for the UK as an economy that is inside the EU but outside the eurozone. We also agreed a new mechanism to enable non-eurozone countries to raise issues of concern, and we won the battle to ensure that this could be triggered by one country alone. Of course, none of these protections would be available if we were to leave the EU.

Secondly, we wanted commitments to make Europe more competitive, creating jobs and making British families more financially secure, and again we got them. Europe will complete the single market in key areas that will really help Britain: in services, making it easier for thousands of UK service-based companies like IT firms to trade in Europe; in capital, so that UK start-ups can access more sources of finance for their businesses, and in energy, allowing new suppliers into our energy market, meaning lower energy bills for families across the country.

We have secured commitments to complete trade and investment agreements with the fastest-growing and most dynamic economies around the world, including the USA, Japan and China, as well as our Commonwealth allies, India, New Zealand and Australia. These deals could add billions of pounds and thousands of jobs to our economy every year, and, of course, they build on the deals we already have with 53 countries around the world through which Britain has benefited from the negotiating muscle that comes from being part of the world's largest trading bloc.

Country after country have said to me that of course they could sign trade deals with Britain, but they have also said that their priority would be trade deals with the EU. By their nature, these EU deals would be bigger and better, and a deal with Britain would not even be possible until we had settled our position outside the EU. So for those Members who care about signing new trade deals outside the EU, we would be looking at years and years of delay.

Last but by no means least on competitiveness, one of the biggest frustrations for British business is the red tape and bureaucracy, so we agreed that there will now be targets to cut the total burden of EU regulation on business. This builds on the progress we have already made, with the Commission already cutting the number of new initiatives by 80%, and it means that the cost of EU red tape will be going down, not up. Of course, if we were to leave the EU but ultimately achieve a deal with full access to the single market, like Norway, we would still be subject to all the EU's regulations when selling into Europe, but with no say over the rules. As the former Europe spokesman for the Norwegian Conservative Party said:

'If you want to run Europe, you must be in Europe. If you want to be run by Europe, feel free to join Norway in the European Economic Area'.

Thirdly, we wanted to reduce the very high level of migration from within the EU by preventing the abuse of free movement and preventing our welfare system acting as a magnet for people to come to our country. After the hard work of the Home Secretary we have secured new powers against criminals from other countries, including powers to stop them coming here in the first place and powers to deport them if they are already here. We agreed longer re-entry bans for fraudsters and people who collude in sham marriages and an end to the frankly ridiculous situation where EU nationals can avoid British immigration rules when bringing their families from outside the EU.

This agreement broke new ground, with the European Council agreeing to reverse decisions from the European Court of Justice. We have also secured a breakthrough agreement for Britain to reduce the unnatural draw that our benefits system exerts across Europe. We have already made sure that EU migrants cannot claim the new unemployment benefit, universal credit, while looking for work. Those coming from the EU who have not found work within six months can now be required to leave. At this Council we agreed that EU migrants working in Britain can be prevented from sending child benefit home at UK rates. This will apply first to new claimants and then to existing claimants from the start of 2020. We also established a new emergency brake so that EU migrants will have to wait four years until they have full access to our benefits.

People said it was impossible to achieve real change in this area and that a four-year restriction on benefits was completely out of the question, yet that is what we have done. Once activated, the emergency brake will be in place for seven years. So if it begins next year, it will still be operating in 2024 and there will be people who will not be getting full benefits until 2028. All along we have said that people should not be able to come here and get access to our benefits system straightaway—no more something for nothing—and that is what we have achieved.

I am sure that the discussion about welfare and immigration will be intense, but let me just make this point. No country outside the EU has agreed full access to the single market without accepting paying in to the EU and accepting free movement. In addition, our new safeguards lapse if we vote to leave the EU, so we might end up with free movement but without these new protections.

The fourth area where we wanted to make significant changes was to protect our country from further European political integration and to increase powers for our national Parliament. Ever since we joined, Europe has been on the path to something called ever-closer union. It means a political union. We have never liked it, we never wanted it, and now Britain will be permanently and legally excluded from it. The text says that the treaties will be changed to make clear that, and I quote,

'the Treaty references to ever closer union do not apply to the United Kingdom'.

So, as a result of this negotiation, Britain can never be part of a European superstate.

The Council also agreed that ever-closer union, which has been referred to in previous judgments from the European Court of Justice, does not offer a legal basis for extending the scope of any provision of the treaties or of EU secondary legislation. People used to talk about a multi-speed Europe. Now we have a clear agreement that not only are different countries able to travel at different speeds but they are ultimately able to head to different destinations too. I would argue that that is a fundamental change in the way this organisation works.

We have also strengthened the role of this House and all national Parliaments. We have already passed a referendum Act to make sure that no powers can be handed to Brussels without the explicit consent of the British people in a referendum. Now, if Brussels comes up with legislation we do not want, we can get together with other parliaments and block it with a red card. We have a new mechanism finally to enforce the principle that, as far as possible, powers should sit here in Westminster, not in Brussels. So every year the EU now has to go through the powers it exercises and work out which are no longer needed and should be returned to nation states.

In recent years we have also seen attempts to bypass our opt-out on justice and home affairs by bringing forward legislation under a different label—for example, attempts to interfere with the way the UK authorities handle fraud were made under the guise of EU budget legislation. The agreements at last week's Council ensure that this can never happen again.

The reforms we have secured will be legally binding in international law and will be deposited as a treaty at the UN. They cannot be unpicked without the agreement of Britain and every other EU country. As I have said, all 28 member states were also clear that the treaties would be changed to incorporate the protections for the UK as an economy outside the eurozone, and our permanent exclusion from ever-closer union.

Our special status means that Britain can have the best of both worlds. We will be in the parts of Europe that work for us, influencing the decisions that affect us, in the driving seat of the world's biggest single market and with the ability to take action to keep our people safe, but we will be out of the parts of Europe that do not work for us: out of the euro, out of the eurozone bailouts, out of the passport-free, no-borders Schengen area, and permanently and legally protected from ever being part of an ever-closer union.

Of course, there is still more to do. I am the first to say that there are still many ways in which this organisation needs to improve, and the task of reforming Europe does not end with last week's agreement. But with the special status this settlement gives us, I believe the time has come to fulfil another vital commitment this Government made, and that is to hold a referendum. So, I am today commencing the process set out under our referendum Act to propose that the British people decide our future in Europe through an in/out referendum on Thursday 23 June. The Foreign Secretary has laid in both Houses a report setting out the new settlement that the Government have negotiated. This fulfils the duty to publish information set out in Section 6 of the European Union Referendum Act 2015. As the Cabinet

[Baroness Stowell of Beeston]
agreed on Saturday, the Government's position will be to recommend that Britain remains in this reformed European Union.

This is a vital decision for the future of our country. We should also be clear that it is a final decision. An idea has been put forward that if the country votes to leave we could have a second renegotiation and perhaps another referendum. I will not dwell on the irony that some people who want to vote to leave apparently want to use a leave vote to remain. But such an approach also ignores more profound points about democracy, diplomacy and legality. This is a straight democratic decision—staying in or leaving—and no Government can ignore that. Having a second renegotiation followed by a second referendum is not on the ballot paper. For a Prime Minister to ignore the express will of the British people to leave the EU would not just be wrong, it would be undemocratic. On the diplomacy, the idea that other European countries would be ready to start a second negotiation is for the birds. Many are under pressure for what they have already agreed. Then there is the legality—I want to spell out this point carefully for the House because it is important. If the British people vote to leave, there is only one way to bring that about, and that is to trigger Article 50 of the treaties and begin the process of exit. The British people would rightly expect that that should start straightaway.

Let me be absolutely clear how this works: it triggers a two-year time period to negotiate the arrangements for exit. At the end of this period if no agreement is in place, then exit is automatic unless every one of the 27 other EU member states agrees to a delay. We should be clear that this process is not an invitation to rejoin; it is a process for leaving. Sadly, I have known a number of couples who have begun divorce proceedings, but I do not know any who have begun divorce proceedings in order to renew their marriage vows.

I want to explain what would happen if that deal to leave was not done within two years. Our current access to the single market would cease immediately after two years were up, and our current trade agreements with 53 countries around the world would lapse. This cannot be described as anything other than risk, uncertainty and a leap in the dark that could hurt working people in our country for years to come. This is not some theoretical question; this is a real decision about people's lives. When it comes to people's jobs, it is simply not enough to say that it will be all right on the night and we will work it out. In the weeks to come we need properly to face up to the economic consequences of a choice to leave.

I believe Britain will be stronger, safer and better off by remaining in a reformed European Union: stronger because we can play a leading role in one of the world's largest organisations from within, helping to make the big decisions on trade and security that determine our future; safer because we can work with our European partners to fight cross-border crime and terrorism; and better off because British businesses will have full access to the free-trade single market, bringing jobs, investment and lower prices.

There will be much debate about sovereignty—and rightly so. To me what matters most is the power to get things done for our people, for our country, and for our future. Leaving the EU may briefly make us feel more sovereign, but would it actually give us more power, more influence and a greater ability to get things done? No. If we leave the EU, will we have the power to stop our businesses being discriminated against? No. Will we have the power to insist that European countries share with us their border information so we know what terrorists and criminals are doing in Europe? No, we will not. Will we have more influence over the decisions that affect the prosperity and security of British families? No, we will not. We are a great country and whatever choice we make we will still be great, but I believe the choice is between being an even greater Britain inside a reformed EU and a great leap into the unknown. The challenges facing the West today are genuinely threatening: Putin's aggression in the east; Islamist extremism to the south. In my view this is no time to divide the West. When faced with challenges to our way of life, our values and our freedoms, this is a time for strength in numbers.

I end by saying this: I am not standing for re-election; I have no other agenda than what is best for our country; I am standing here today telling you what I think. My responsibility as Prime Minister is to speak plainly about what I believe is right for our country, and that is what I will do every day for the next four months. I commend this Statement to the House".

My Lords, that concludes the Statement.

4.53 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for repeating today's Statement, which is hugely significant for the future of our country and its place in the world. I am also grateful to the Chief Whip for allowing some additional time for Back-Bench contributions and questions.

Clearly, anyone could be forgiven for thinking that the UK's relationship with the EU was the only issue discussed at the European Council over the weekend. I am grateful that, in the Statement she repeated today, the noble Baroness made it clear that other issues were also debated. It must be immensely frustrating for other countries that issues such as migration, Syria and Libya have not received the same degree of interest as our referendum has. Perhaps that makes a profound point, because those are obviously issues where European and international co-operation are absolutely vital and crucial.

On our role within the EU, the Prime Minister is clearly relieved that a deal has been done and that he has been able to announce the date for the referendum, although at times over the weekend it was all looking slightly dodgy. We were told that, following the completion of negotiations, there would be an English breakfast on Friday morning where the deal would be finalised and then the PM would travel back for a Cabinet meeting in the evening. However, as that breakfast became brunch, brunch became lunch, and lunch became dinner, it was clear that there were still a few sticking points. When we saw Angela Merkel rushing out for a bag of chips as sustenance we knew there was still some way to go. Perhaps the Prime Minister thought

that he could starve them into submission. Finally the deal was announced—not exactly what he had asked for but, as any experienced negotiator will confirm, that is the nature of negotiations. The deal had significant changes that certainly cannot be dismissed as unimportant, although some have tried. Then, for the first time since 1982 during the Falklands crisis, the Cabinet met on a Saturday.

There is an historical connection here, in that it was Harold Wilson, the first and until now the only Prime Minister to hold a referendum on the European issue, who is said to have once remarked:

"A week is a long time in politics",

though his referendum campaign lasted just half the time of ours. If a week is a long time, the next four months of campaigning are going to seem like an absolute eternity. There will be discussions and deliberations and, as leaflet after leaflet extolling the views of one campaign or another is handed out and posted through letterboxes, recycling bins are going to be full to overflowing.

I predict some excellent debates and factually based communications that will inform and enlighten. I also predict nonsense, scaremongering and bad temper. We shall also have some moments of pure theatre. The "will he/won't he" performance of Boris Johnson's announcement last night was clearly designed to create the maximum spectacle and drama, and he succeeded in that. He was obviously aware of the deliberate impact that that would have on the Prime Minister.

However, for most of us this issue has to be more than just about personalities and theatrics. It has to be about more than who can shout the loudest or get the most celebrities signed up to their campaign. It is more—so much more—than Mr Cameron's deal. Support for that view has come from surprising sources. It was almost incredible to hear Chris Grayling yesterday morning on the radio saying that it was a relief rather than difficult to declare his opposition because he, like many others, had made up his mind weeks ago, but had done the right thing and let the Prime Minister continue his negotiations. The right thing? Whatever the Prime Minister returned with was never going to get the support of the very people—his Cabinet and his party—he was trying to please. When, on 2 February, we had that previous Statement I expressed our view that too much of the Prime Minister's negotiating position had been targeted at his own internal party problems, whereas the only objective must always be the national interest and the key issues that impact on people's everyday lives.

I am not suggesting that the deal is not helpful. People will have their own views. However, there are so many other issues that are crucial to the UK and to Europe on which we should be taking a lead. We should be exerting our influence and trying to create the kind of EU in which we can take great pride. The Labour Party and the trade unions played a strong role in ensuring that issues such as employment rights, guaranteed paid holidays, paid maternity leave and protection for agency workers were kept out of any renegotiation. Those rights are far too important to be lost or weakened.

The same applies to consumer and environmental protections that have a real and tangible impact on many if not all of us. That includes the cutting of data roaming costs for mobiles and for using the internet, the improvement of air passengers' rights, clean beaches and bathing water—good for our well-being and a boost to local economies—and how we deal with and dispose of waste. Thanks to EU legislation, on those kind of issues we all benefit. Indeed, given that the air quality here in London and other parts of the UK continues to fall short of EU clean air standards, it would clearly have been more beneficial to the public health of our fellow citizens if the Government had engaged more proactively on this front.

I watched with incredulity yesterday as Iain Duncan Smith claimed that we would be safer out of the EU, as being part of it increased the threat of Paris-style terrorist attacks. Is this the same Iain Duncan Smith who supported the Government's proposals to opt out of EU measures to deal with crime and policing, including terrorism, and then found out, along with the rest of his party, that they had to opt back in to everything because it actually worked? It worked because it made us safer.

For so long, Brexit campaigners have been telling us that EU citizens travel to the UK in order to get benefits. Then, when the Prime Minister reaches an agreement to cut these, the argument shifts to being that it will not make any difference. You cannot have both sides of the argument at the same time. As this campaign progresses, let us have the kind of debate that can make us proud as a country and as a Parliament. Let us try to recapture some of that vision and promise that was in the hearts and minds of those who first conceived that a way to peace and prosperity was a Europe—which was then divided and devastated by two wars—that would work together with common principles and values for the benefit of all citizens. Let us have a debate of vision and of facts. We should recall that in 1961, our application for membership was vetoed because it was felt that we would be too dominant and powerful through our relationship with the Commonwealth and the US. Yet today we maintain those strong and special relationships alongside our membership of the EU.

None of us would claim that the EU was perfect. We all recognise where it has been weak and where change is needed. But would it not benefit this country if we could again be seen as a powerful figure on the European stage—a powerful country that would take a lead within an EU that works better for working people, strengthens businesses small and large, and brings ongoing and better reform? Why should we not seek to build human rights, employment rights, consumer and environmental protections into future Europe-wide trade treaties? Taking on workers from other countries should never be used as an excuse to drive down wages or disadvantage local workers. Rather than merely seeking greater control for ourselves, why should we not seek to stop the pressure from Brussels to deregulate and sell off public services? That is a matter for national Governments. Why are we not pressing across the EU for a more humanitarian and strategic response to the thousands of refugees seeking asylum, with far too many losing their lives in the process?

[Baroness Smith of Basildon]

Whatever the outcome of the referendum on 23 June, the EU is still going to exist just 21 miles from the shores of Dover and across the border in the Republic of Ireland. That is a fact of life. If we vote to leave, we will still have to manage that reality while our businesses, large and small, that want to trade within the EU will still have to abide by its regulations, which the United Kingdom will have no part in making. During this referendum we will hear a lot of talk about sovereignty, independence and what it means to be a nation state in the ever-changing world of the 21st century. We have already heard quite a bit about patriotism. I so hope that neither side in this debate will seek to claim ownership of patriotism or denigrate anyone else's.

As I said earlier, and I am sure that I speak for many Members of your Lordships' House, I hope that the debate will be more informative and enlightening than it is misleading and ill tempered. However, my plea is deeper than that. Already today, we have heard the news that the pound is falling in value, partly from the uncertainty of Brexit and partly because of a Government who are now seen as divided and preoccupied. This makes the need for a constructive, positive debate not just important but absolutely essential. Four months is a long time. The Government must not be so preoccupied with this debate that they lose focus on other issues. The debate has to be about the future of the UK and not that of the Conservative Party, as entertaining as that may be, because this is not about entertainment. This is a huge decision that faces each and every one of us. In the Statement which the noble Baroness repeated, there was the comment that this is not just a theoretical question but a real decision about people's lives. We entirely concur with that statement.

The British people deserve a proper debate ahead of 23 June. My party has set out its position clearly and with conviction. We look forward to making the case for a stronger, open and confident Britain remaining as an engaged, challenging and leading member of the EU.

Lord Wallace of Tankerness (LD): My Lords, I, too, thank the noble Baroness the Leader of the House for repeating the Prime Minister's Statement. At the outset, I declare my registered interest as a member of the board of Britain Stronger in Europe. I say gently to the noble Baroness, Lady Smith of Basildon, that twice in her remarks she talked about four months being a long time. A number of us in your Lordships' House who are veterans of three and a half years on the Scottish referendum would think four months a relative relief.

Those of us on these Benches very much welcome the Prime Minister's successful renegotiations in Europe last week. The hard work that he put in, not only last week but in the weeks leading up to it, was very evident and it is fair to say that what he came away with exceeded many people's initial expectations. We also welcome the willingness of other EU member states to work with the United Kingdom to reach this compromise. That demonstrates the degree of good will towards the United Kingdom from other EU Governments, and their commitment to maintaining British membership. I was delighted yesterday to hear the Prime Minister setting out, at long last, the strategic case for the United Kingdom continuing its membership of the European Union. It was very welcome, too, that the Prime Minister took the opportunity in his Statement to knock on the head the fanciful idea that, in the event of an out vote, there could be a second renegotiation and a second referendum.

The referendum vote in June will be of the utmost significance. It will settle not only Britain's relations with Europe, but our place in the world. We very much believe that the United Kingdom will derive strength from being seen as a team player and engaged in international affairs. It is an illusion of sovereignty to suggest that, if we come out, we will somehow get sovereignty back. Liberal Democrats are firmly committed to the United Kingdom's place in the European Union. We are united in our belief that the United Kingdom is better when it is united with our colleagues in Europe. In an uncertain world of challenges and threats, I also believe that Europe is better and stronger for having the United Kingdom in it as a member state.

We have spoken from these Benches on a number of occasions about how we will use the campaign to speak about the positive case for Britain remaining within the EU. In the EU, Britain can thrive. Together, we will be a stronger and more prosperous nation, securing jobs and creating opportunity for our children and grandchildren. We have created together the world's largest free trade area, we have delivered peace, and we have given the British people the opportunity to live, work and travel freely. History shows that Britain is better when it is united with our European partners. Together, we are stronger in the fight against the global problems that do not stop at borders. We can combat international crime, fight climate change, and together provide hope and opportunity for the future.

It is worth reflecting for a moment on the creation of the European Union and its lasting legacy. After decades of brutal conflict on the continent, European nations came together in co-operation. To this day, neighbours and allies support each other in what remains the world's most successful project in peace. We remain stronger together in continuing the fight against terrorists who despise our liberal and modern way of life. Will the noble Baroness the Leader of the House take the opportunity to repudiate the alarmist comments made by her colleague, the Secretary of State for Work and Pensions, when he said that remaining in the EU exposes Britain to a Paris-style terrorist attack? Does she agree that it is only by working in co-operation with our international friends and neighbours that we can combat such threats to our security?

Britain is already stronger and better off trading and working with Europe. We are part of the world's largest single market, allowing British businesses to grow and prosper. Our people have more opportunities to work, travel and learn than ever before. Staying in the EU gives our children and grandchildren greater prospects, and the best chance to succeed. Does the noble Baroness share my concerns, therefore, at the dramatic fall in sterling today—referred to by the noble Baroness, Lady Smith—which we believe was driven in great part by fear of Brexit? Does she agree

that the threat of leaving the EU is already costing British businesses and that it would be much worse for British exporters if we were to withdraw from the world's biggest single market? Can the noble Baroness indicate when we will get the Government's report on EU membership under Section 7 of the European Referendum Act that Parliament passed towards the end of last year?

This country's place in the world depends on our getting on well with our neighbours, who share our values and interests. Does the noble Baroness the Leader of the House agree that this referendum is about the kind of country we want to leave to our children and grandchildren, and about how we think of ourselves as a country? Does she agree that issues such as climate change and the natural environment are better tackled when we come together to think about the world we want to leave to future generations?

There has been speculation about a statement or an initiative on sovereignty, which was lacking from the Prime Minister's Statement today. Before going down that particular road—it may just have been a ruse to try to bring Boris on board—will the noble Baroness reflect that in fact further piecemeal constitutional meddling of that kind may end up with consequences more damaging than the ones they seek to resolve? Will she give the House an indication of the Government's thinking on that?

Finally, will the noble Baroness confirm that this is, indeed, a once-in-a-generation decision and that there is only one opportunity to show that the United Kingdom is not a country that is isolated and sidelined but one that is open, outward-facing and proud of its place in the international community, and that an out vote means taking the United Kingdom back and an in vote means taking the United Kingdom forward?

Baroness Stowell of Beeston: My Lords, I am grateful to the noble Baroness, Lady Smith, and the noble and learned Lord, Lord Wallace of Tankerness, for their remarks and their support for what the Prime Minister has negotiated in Europe this weekend.

I shall start by reflecting on the significance of the events at the end of last week. On Friday my right honourable friend the Prime Minister did something that many people had predicted was not possible: he delivered a legally binding, irreversible renegotiation of our relationship with the European Union. In doing so he secured a new settlement, carving out a special status for this country that gives us the best of both worlds and means that we remain in the parts of Europe that work for us—the noble Lords have talked about some of them—around making sure that we are stronger and safer. That most definitely includes security: although we retain our responsibility to national security, we benefit from the co-operation of our partners in Europe in terms of protecting ourselves from terrorism. Through his renegotiation my right honourable friend has secured terms that mean we will be better off because of increasing competitiveness and the securing of the completion of the single market. He has also made sure that we stay out of the parts that are not in our best interests and have frustrated us for too long.

Having secured all that, we now need to get on with our other commitment to deliver to the British people the opportunity that they have long waited for to have their say on whether Britain should remain in or leave the European Union. The noble Baroness made reference to four months and the time between now and the referendum taking place. I note what the noble and learned Lord said about the length of time of the Scottish referendum campaign. I say to noble Lords that the reason why it is four months is that we are reflecting the proper processes and steps that it was agreed in the European Union Referendum Act should take place between now and the referendum happening. That process has started today: the statutory instrument confirming the date has been laid. That will be debated in both Houses and is subject to an affirmative resolution. Today we have also published the White Paper, which meets one of the requirements of the referendum Act regarding the other information that we as a Government are required to produce. That will happen, in line with the Bill, 10 weeks before the referendum takes place. So that is all in train.

With regard to other points raised by the noble Lords, I say to the noble Baroness, who talked about wanting to see the UK remaining a powerful figure within Europe as a result of the referendum, that I agree with her. We are a powerful player in Europe now and that is what we want to remain. She made the point that the European Union would continue to exist even if the United Kingdom voted to leave. She is absolutely right: if this country decided to come out, the European Union would still be there. As my right honourable friend the Prime Minister said when he was being interviewed yesterday, one of my Cabinet colleagues said on Saturday when we were discussing his renegotiation, "This utopia might sound fantastic but I bet that when you got there, there would still be a European Union". It is a place that will exist because other people would be members of it even if we were not.

The noble Baroness said it would be important that between now and the referendum taking place the Government continued to govern, and that there are other matters of greater importance to the people of this country. I agree with her about that; we have important business to conduct and will continue to do so.

The noble and learned Lord made reference to the effect on the currency markets. In my view, such an effect between now and the referendum taking place would be about uncertainty: we are now in a state where there is a debate going on and there is some uncertainty about the result of that referendum. What I, the Prime Minister and the Government are arguing is that, by voting to remain in the European Union, we would provide certainty for the future of this country. If this country decides to leave the European Union, it would create a long period of uncertainty.

As to the noble and learned Lord's question about the sovereignty of Parliament, we have already, in the last few years, protected the sovereignty of this Parliament by passing that Act in 2011, which means that never again can any Prime Minister give away powers to the European Union without coming back to this country and giving the people a say. The very fact that we are having a referendum later this year, in June, is also an

[Baroness Stowell of Beeston]
act of sovereignty. It also means that the people of this country are in charge of their own destiny. I very much believe and hope that the result of the referendum will see that we remain strong and secure in our future, having the best of both worlds, which means being part of a reformed Europe, but also being in charge of our own destiny and taking advantage of the changes that the Prime Minister has been able to negotiate.

Lord Taylor of Holbeach (Con): My Lords, we are now into an extended period of 40 minutes, which reflects the importance of the Statement made by my noble friend the Leader of the House. We will make the most of that time if noble Lords, with a little bit of self-discipline, restrict themselves to short questions. On top of that, we will be able to go around the House in our usual way.

5.17 pm

Lord Hague of Richmond (Con): My Lords, now that the negotiations conducted by the Prime Minister can be subject to intense scrutiny and analysis, does my noble friend agree that it is very important that all possible alternative arrangements with the European Union be subject to an equivalent degree of scrutiny and analysis? Is it not the case that, as even many of us who are long-standing critics of the EU have to recognise, there would be a basic choice between leaving the single market in order to escape its requirements, freedom of movement and regulations, and staying in the single market with those same requirements and regulations? Would that not represent a loss of sovereignty rather than the recovery of sovereignty?

Baroness Stowell of Beeston: My Lords, I do not think the House will be surprised to hear me say that I very much agree with my noble friend. He is absolutely right: anybody campaigning for Britain to leave the European Union will have to spell out what that means and what they are suggesting the people of this country would be voting for. They need to be specific about the model that is being proposed. If it is a model like Norway, they need to explain to the people of this country that there is no cost-free alternative; that is important for people to understand. There is not another way in which there is no disadvantage. It is quite possible for the United Kingdom to survive and prosper outside of the European Union, but we believe that Britain would remain stronger in the EU, and it is for others to make their case as to what "leave" means.

Lord Kinnock (Lab): My Lords, does the Leader of the House agree that it is neither pessimistic nor defeatist for us to argue for the United Kingdom to remain in the European Union? It is total commitment to advancing and upholding the stability, security and well-being of our beloved country. It is practical patriotism instead of the risk-riddled leap into the unknown of leaving. Will she therefore dismiss the glib and duplicitous suggestion that voting to leave will somehow compel the European Union to amenably accommodate the economic preferences of the United Kingdom outside the EU? Being pro having cake and pro eating it is an infantile desire, not an adult reality. I hope she will agree that the choice is in or out, not "in, out, shake it all about" and then rashly hope that something helpful will turn up for a country that has abandoned all rights, influence and power by leaving the EU.

Baroness Stowell of Beeston: I certainly agree with the noble Lord that voting to remain in the European Union is very much a patriotic decision. If we cast our vote in that way, we are recognising the power and influence we wield as our country in that European Union, and that we will have both the benefit of being in that Union and—because of what has been renegotiated—greater control of our destiny than we have been able to have up to now. The noble Lord is absolutely right about voting to leave. To vote to leave means to leave, and that will be it: it is about being either in or out.

Lord Hannay of Chiswick (CB): My Lords, in my view the agreement reached by the Prime Minister is both substantive and valuable and I thank him for the efforts he made to achieve that. Can the noble Baroness perhaps cast some light on the views of the Mayor of London, who appears to think that if we vote to remain, that will be a green light for federalism? If that is so, why are all the federalist leader-writers on the continent rending their garments because of the agreement reached last week? Could he perhaps be wrong and, while we are at it, could he just understand that the motto of the European Union is not "E pluribus unum" but "United in diversity"?

Baroness Stowell of Beeston: I think I will leave the noble Lord to get into a battle about Latin with somebody else—I hope he will forgive me, but I will not engage in that. However, I am very grateful to him for recognising that what the Prime Minister achieved in Brussels was substantive and valuable. He is quite right about the reaction in Europe to what the Prime Minister has achieved. Unfortunately, I have only recently been given some quotes so I will not try to read them out, but clearly, the other leaders in Europe have been able to explain to their people that the UK has got itself a new status in Europe, with new terms. They have also acknowledged that, with the exception of the specific carve-out for the United Kingdom on ever closer union, the changes the Prime Minister has negotiated are to the benefit of Europe as a whole—this is not just about a benefit for the UK—and have acknowledged just how hard the Prime Minister pressed them during these negotiations. The noble Baroness referred to the scenes in Europe. I argue that they demonstrated just how difficult it was for the Prime Minister to get this better deal for the UK. On that basis, we can have every confidence in it.

Baroness Ludford (LD): My Lords, I am delighted that the Prime Minister has shifted to making the big, positive, patriotic case for our membership of the European Union; it is perhaps a pity that he has not been making that case over the last decade. Perhaps I may ask the noble Baroness, with a slight note of concern, how the Government will avoid the adverse consequences of what I might call the "be careful what you wish for" aspects. One is the special status she just talked about, which is in some respects a semi-detached

status. How will we make sure that the UK truly is in the lead on EU policy areas such as security and climate change, where we want to be fully engaged? Secondly, although the red card is unlikely ever to be used, there is a danger that it could be used by national parliaments ganging up against the liberalisation of services in the single market in a protectionist way that would not be in our favour. Lastly, on the sovereignty angle—my noble and learned friend Lord Wallace referred to a constitutional court—if the UK Supreme Court becomes a constitutional court that can override Parliament, how will that increase British parliamentary sovereignty domestically?

Baroness Stowell of Beeston: The noble Baroness covered a lot of ground and she will forgive me for not dealing with all those points, in order to allow other noble Lords to get in. She suggested that the Prime Minister is only now making the positive case for Britain's membership of the European Union; I disagree. It is also very important for us to acknowledge that there has been a great deal of frustration among the people of this country about the way Europe has operated for a long time. They have been frustrated at not getting the opportunity to have a referendum. The Prime Minister is being so positive about what he is putting forward to the United Kingdom because he has addressed people's concerns through his renegotiation and is giving them the opportunity finally to have their say. That is an essential and important part of the message that we need to deliver.

On the noble Baroness's other points, what is important about ever-closer union and what the Prime Minister was seeking to address in his renegotiation is that we now have the power—which we never had before—not to be involved in things we do not think are in Britain's interests.

Lord Howell of Guildford (Con): Does my noble friend agree that, however one regards the details of the deal, there can be no doubt that our right honourable friend the Prime Minister has opened up huge new opportunities for the reform of Europe as a whole? As we have reached this point, will she encourage her colleagues in government from now on to put maximum brainpower, energy and imagination into working with the other peoples of Europe to achieve the fundamental reforms the European Union desperately needs in the face of its present crises, and for which most of the people of Europe are yearning?

Baroness Stowell of Beeston: My noble friend makes an important point which the Prime Minister, I and others in government are very conscious of. He is quite right, and as I think I said to him when I repeated the previous Statement, this is not the end but the start of a process of reform. We want Europe to work in the best interests of all its peoples. It started reforming. It started changing. It started reducing some of the regulation and burdens that we know are not in people's interests, but more needs to be done and we will very much support that.

Lord Soley (Lab): Does the Minister agree that, important as the economic arguments are—and I am sure they will take pride of place in the coming months—we must not lose sight of the political and security arguments? Europe is facing challenges in the east from President Putin and in the Mediterranean area and Syria, and there are security problems between the nation states of Europe trying to unite to face those threats, so can she make sure that those arguments are heard? They are profoundly important to the stability of this country and of Europe.

Baroness Stowell of Beeston: I very much agree with the noble Lord. One of the advantages of being in Europe—and for us to make clear to the people of this country—is that we have led the way in some of the action that has been taken in the last few years to make sure that we are more secure, whether it is issuing sanctions against Putin or increasing the co-operation between member states on sharing information to defeat terrorism. That is a very good and powerful reason for us to remain in the European Union and an argument that we must continue to make.

Lord Lawson of Blaby (Con): My Lords, I declare an interest as the present chairman of Vote Leave. Is it not clear that the trivial and inconsequential changes that the Prime Minister has secured—subject to legal challenge, of course—fall far, far short of the fundamental, far-reaching reform which three years ago in his Bloomberg speech he said was necessary? Is it not clear that the referendum on 23 June will be about not whether we wish to remain in a reformed European Union but whether we wish to remain in an unreformed European Union, which, alas, it has proved itself to be? However, there is one thing that I welcome. In his Statement the Prime Minister has admitted—I think for the first time but, if not, it is the first time that I can recall—that the purpose of the European Union is to create full-blooded political union. That is clear in the Statement. However, he says that we shall not be part of it. Maybe we will not be but we will still be shackled to it and will have a quasi-colonial status—that is the closest parallel that I can think of. Is it not the case that the referendum on 23 June will be about whether we wish to be a self-governing, independent democracy?

Baroness Stowell of Beeston: As my noble friend knows, it always pains me to have to disagree with him, but I disagree in particular with his description of what the Prime Minister secured through his renegotiation in Europe. To describe it as trivial and inconsequential is just not accurate. My noble friend is right in that the Prime Minister acknowledges that the European Union is about political union, but he has secured that we are not a part of that—it is in a legally binding document. It is very clear that we are carved out of it. Furthermore—this point has not had much of an airing—not only do we have a United Kingdom carve-out but the document says:

> "The references in the Treaties and their preambles to the process of creating an ever closer union among the peoples of Europe do not offer a legal basis for extending the scope of any provision of the Treaties or of EU secondary legislation".

That is an instruction to the European Court of Justice and it will apply not just to us but to everybody else who is a member of the European Union and does not want to be part of a political union.

Lord Wigley (PC): My Lords, I declare an interest as a board member of Britain Stronger In Europe. Does the noble Baroness agree that there is an overwhelming economic case for us to remain as a member of the European Union? Nowhere is that more the case than in Wales. Over recent years we have seen international companies from Japan, the United States and elsewhere locating there to sell to the European Union. Leaving the Union would destabilise that relationship and undermine our economy.

Baroness Stowell of Beeston: Yes, I agree with the noble Lord. We have to acknowledge the foreign investment that comes into this country and into Wales, a lot of which is from European Union countries. We benefit tremendously from our trade as part of that single market, and we would put that very severely at risk if we were to leave.

Lord Spicer (Con): My noble friend has just talked about a legally binding document protecting our interests. How do the Government then deal with the question of the acquis communautaire and the fact that the so-called watertight legislative protection of our rights in the past has never survived challenges in the court? These matters have to be addressed if some credibility is to be given to this so-called legally binding document.

Baroness Stowell of Beeston: In the interests of time and the fact that many people want to get in, I shall say to my noble friend Lord Spicer what I said to my noble friend Lord Lawson. The Prime Minister has secured, for the first time ever, a return of powers to a nation state. That has never happened before. He has secured that and we can now take advantage of it—something that we have never been able to do before.

Lord Campbell of Pittenweem (LD): My Lords, last week at the Munich security conference the United States Secretary of State, John Kerry, expressed the hope of having a strong United Kingdom within a strong European Union. In the opinion of the noble Baroness, why should the United States attach such significance to our continuing membership of the EU?

Baroness Stowell of Beeston: It does so because it sees how influential we are in the European Union. It sees that we not only have an impact on the very important international and global issues of the day but bring a lot to what happens in the rest of the European Union. That is why the US wants us to stay.

Lord Clinton-Davis (Lab): I speak as a former European Commissioner. It is absolutely essential that we remain in the European Union, expressing our point of view and being able to judge whether something that has been put forward is in our interests. We can say what we like there. To say that we have no influence—an argument advanced by the noble Lord, Lord Lawson—is absurd. I speak from experience. You have to go through all the institutions of the European Union, not only the Commission, and eventually you end up with a compromise. That is not a dirty word. In my view, it is absolutely essential that 28 countries should perform like that and come to a reasonable decision. To experiment in the way put forward by those who oppose remaining in the EU would be absolutely absurd. In my view, membership of the Union is essential and we should have no doubt about that. We do have a voice.

Baroness Stowell of Beeston: It is important not only that we make the strong case for membership of the European Union that the noble Lord has outlined, but that we stress that we are confident in making that case because of the reforms that the Prime Minister has been able to secure. We must not underestimate people's frustration with the European Union, and we were not happy with the status quo.

Lord Bilimoria (CB): My Lords—

Lord Framlingham (Con): My Lords—

Lord Lamont of Lerwick (Con): My Lords—

Lord Taylor of Holbeach: We have not heard from the Cross Benches for some time.

Lord Bilimoria: My Lords, first, perhaps I may just build on what the noble Lord, Lord Campbell, said. Should not the Prime Minister make more of the fact that it means a lot to countries dealing with the United Kingdom that we are part of the European Union? Countries such as India see the UK as a gateway to Europe and I do not think that enough is made of that. Secondly, perhaps I may build on what the noble Lord, Lord Howell, said. The Prime Minister talks about the best of both worlds. You can be a Eurosceptic, as I think I am—I hate the way that the European Parliament works and the fact that it has to go to Strasbourg every month, and I hate the gravy train, the waste of money and the fact that nobody I am aware of knows who their MEP is—and still believe that it is the lesser of two evils, rather than the best of both worlds. Does the Minister agree that it is probably better to stay in the European Union because it is the best of both worlds and the lesser of two evils?

Baroness Stowell of Beeston: Or you might say, "Better the devil you know". Basically, I agree with the noble Lord: you do not have to be a raging Euro-enthusiast and to have been so for donkey's years to support staying in the European Union. As I said to the noble Lord, Lord Kinnock, this is patriotic. We believe very much in the power and sovereignty of the United Kingdom, and we believe that by being in Europe we can have, as the Prime Minister described it, the best of both worlds. As to the point of the noble Lord, Lord Bilimoria, about making more of the way in which we are a gateway to the rest of Europe, I agree with him, and the Prime Minister is already making that case. We have four months to go and he will keep making that case. I hope that the noble Lord and others will help us in that task.

Lord Lamont of Lerwick: Does the Minister recall an interview given some time ago by Jacques Delors in the German newspaper *Handelsblatt* in which he said this:

"If the British cannot support the trend towards more integration in Europe, we can nevertheless remain friends, but on a different basis. I could imagine a form such as a European economic area or a free-trade agreement"?

Does not that show, without prejudging it, that there is an alternative available, or was Delors just completely wrong?

Baroness Stowell of Beeston: My noble friend is right to say that there is an alternative—of course there is an alternative. That is why there are two choices for the British people: to leave or to remain. The alternative—and it may be something like the Norway model—is not inconceivable, but it would not be without cost and is not something that we should walk blindly into without recognising that it brings with it its own disadvantages. We have to be clear what the alternative is. That is what the next few weeks and months will have to be about in this debate: if there is an alternative, what is it?

Lord Foulkes of Cumnock (Lab): My Lords, can I follow up on the particular point that has just been raised and the excellent point that was raised by my noble friend Lord Hain? Since the Minister and I are on exactly the same side—enthusiastically, and for the first time ever, I think—can I ask her a favour? Will she go back to the Cabinet and say, "Let us find some way of requiring these people who are against the present arrangement to put forward their alternatives so that we can examine them in detail"? They need to be required to do that so we can see clearly what the alternative is. If the Cabinet can come up with some kind of arrangement for that, I will give it and the Minister three cheers.

Baroness Stowell of Beeston: It is for those who want to campaign to leave to come up with their arguments and the case for that. It is not for me, on the opposite side of the argument, to try to find a mechanism for them to do so; that is their responsibility. We will go through the process of formally designating the leave campaign and, as part of that process, I imagine that the respective group that is successful will be the one that the Electoral Commission feels has covered all the requirements set out for it.

Lord Framlingham: My Lords, I am sure the Leader of the House will agree with me that the most important thing in the next four months will be to put the arguments—all the arguments—as fairly as possible before the British people. All the Front Benches in this House are for staying in and all the Front Benches in the House of Commons are for staying in. This afternoon, the Prime Minister confirmed that he is going to use the whole power of the Civil Service to campaign to stay in. Does the Leader of the House think that that is entirely fair and right, and should it be of some concern to our House?

Baroness Stowell of Beeston: On the last point that my noble friend makes, the Government have adopted a position and are not neutral on this. We are arguing to remain in a reformed European Union because we believe that that is in the best interests of the people of this country. But, ultimately, it is for them to decide. Like the noble Lord, Lord Foulkes, my noble friend is right to say that the people who would advance leaving have to make their case and be clear in their arguments. To be honest, the inclusion in the campaigns of some very significant figures—potentially from this House and from the other place; I do not know how everybody is going to vote—means that there will be a serious debate over the next few weeks. I think that that is a good thing.

Lord Taylor of Holbeach: My Lords, I wonder whether we might hear from the noble Lord, Lord Low.

Lord Low of Dalston (CB): My Lords, it would be entirely appropriate for the Government to make the case which they support for remaining in the European Union with all the strength at their command. The case for remaining within the European Union does not stand or fall by the details of the deal that the Prime Minister negotiated in Brussels at the weekend. Nevertheless, it is very clear from the Prime Minister's Statement, which the noble Baroness the Leader of the House has repeated for us, that the deal tends much more to the substantial and significant, as was depicted by my noble friend Lord Hannay, rather than the trivial and inconsequential, as portrayed by the noble Lord, Lord Lawson. However, it is probably fair to say that the balance of the media comment and their portrayal of the deal has tended towards the trivial and inconsequential. Given that, will the Minister provide an assurance that the Government will spare no effort to get across to the British people the substantial and significant progress that the Prime Minister has made in persuading the European Union to accommodate the British position and that it does not remain within the Westminster bubble, as we have heard it described this afternoon?

Baroness Stowell of Beeston: I certainly think that the Government have a responsibility to be clear about what they are advancing and to communicate that directly to the people. But I also think that the media play an important part in our democratic process. Noble Lords have been arguing about other people making their case, and it is important as well that, through the media, people get to hear the arguments for and against. I would never stand at this Dispatch Box and criticise the work of the UK media.

Lord West of Spithead (Lab): My Lords, the noble Baroness the Leader of the House will be well aware that there is no doubt whatever that the people of our nation are safer in terms of terrorism and serious organised crime because we are part of the EU. We lead Europol and have the European arrest warrant and all sorts of things. At the grand strategic level of defence, there is no doubt that NATO is most important to us. However, does the noble Baroness agree that Europe is very important to our nation? We have twice saved its bacon in the last 100 years and there is no doubt that, at the moment, there are huge threats. If we left the EU, I think there would be a certain flakiness within it. Does the noble Baroness agree? This is a very bad moment for that to happen. Europe needs us and, if it becomes flaky, the risks from people like Putin and the southern flank would be huge. We need to bear these things in mind.

Baroness Stowell of Beeston: That is why the Prime Minister has said that perhaps the only person who would cheer if we were to vote to leave would be Putin. Clearly, we do not want to do anything that is going to brighten up his day.

Lord Pearson of Rannoch (UKIP): My Lords, will the Minister tell us how this pathetic deal is in any way the fundamental reform of the EU itself that we were promised? For instance, can she tell us how it has reduced the hugely undemocratic powers of the Luxembourg court and the European Commission? The Prime Minister tries to frighten us by talking about leaving the European Union as being a leap in the dark that will, for example, lose us our present access to the single market. Does the Minister accept that Europe sells us very much more than we sell them, that we have 3 million jobs exporting to them but they have 4.5 million jobs exporting to us, and that we are in fact their largest client? Does she accept that they need our free trade very much more than we need theirs? Can she tell us why that trade will not continue, because they will come running after us to have it?

Baroness Stowell of Beeston: No, I am afraid I do not agree with the noble Lord's description of who benefits most, Europe or us, from the relationship. I shall not take up time rattling through all the statistics, but I say this to the noble Lord: in the end, it is about what is of greater benefit to all of us—to the UK and to the rest of Europe. As a trading bloc, we all benefit from the UK being in the European Union. It is not just about how we benefit in this country—although we do. As for the noble Lord's questions about sovereignty, I refer him to what I said to my noble friend Lord Lawson. I really do disagree with what he says about that.

Lord Cormack (Con): My Lords, as we begin four months of campaigning, should we not just gently reflect that the most publicly apparent achievement of eight years of amusing, dynamic, flamboyant leadership in London has been gridlock?

Baroness Stowell of Beeston: No, I do not agree with my noble friend.

Lord Maclennan of Rogart (LD): My Lords, is not the greatest achievement of the European Union, to which we have belonged since the 1970s, the fact that we have had 70 years of peace? After the two world wars Britain was financially at a loss. We lost our empire and we lost our ability to spend, and this is the whole purpose of the European Union being saved. If we left the European Union we would destabilise it, and that might lead to a break-up.

Baroness Stowell of Beeston: The noble Lord certainly puts a clear case for the European Union and for our remaining in it. Much as I agree with what he has said, there is something that cannot be repeated often enough, particularly for those who are undecided—and we must always remember that a lot of people are unsure of which way to vote. So although the noble Lord is right, we also need to emphasise that the European Union does not work quite as we want it to in all areas. That is why we have been renegotiating the terms, and we are now confident enough to advocate staying in.

Lord Blencathra (Con): My Lords, I declare an interest as a supporter of Vote Leave. Does my noble friend agree with me—she probably does not—that the real threat we face, and the huge frightening leap in the dark, would be if we now remained in Europe? Europe has seen that Britain is a bit of a paper tiger. A few years ago we were saying that we wanted fundamental and far-reaching reform. Then we asked for very little, and I am afraid we settled for a lot less. When Europe comes to implement the next treaty change and the Five Presidents' Report, and as it heads for being an ever-tighter federalist superstate, will we not be ignored, mocked, sidelined and completely stitched up?

Baroness Stowell of Beeston: As my noble friend predicted, I do not agree with him. One area that I would point to in order to illustrate my disagreement is what the Prime Minister secured around economic governance. Again, I do not think that it has been properly understood yet how significant the protections that he has secured are—not just for our currency, but for the City of London and our financial services. I assure my noble friend that the other member states, and particularly the French President, were in no way shy about fighting hard to prevent us getting what we wanted, but we secured a good deal for Britain in the end.

Lord Harris of Haringey (Lab): Will the Minister convey to the Prime Minister the relief that we on this side of the House feel—indeed, our sincere congratulations—that he is beginning to put such an unequivocal and clear case for our membership of the European Union? Will she urge him, in the months that lie ahead, to put that case to the whole country, including Labour supporters and people of no party affiliation, and not just to conduct a desperate internal debate inside the Conservative Party?

Baroness Stowell of Beeston: I can certainly reassure the noble Lord that the Prime Minister will do exactly what he has just outlined. This is not about the Conservative Party; it is about the future of the United Kingdom. What we are doing here is what we believe is in the best interests of the people of this country.

Lord Stoddart of Swindon (Ind Lab): My Lords, if the country votes out on 23 June, should not the first action the Government take be to repeal the European Communities Act 1972? That would enable negotiations to take place under Article 50. Secondly, is the Minister aware that earlier this month the original six leaders of the EEC came out and said that it was absolutely essential for Europe to proceed to ever-closer union, including fiscal union? In those circumstances, if Britain is not to be in that particular club, will we stop talking about being at the heart of Europe?

Baroness Stowell of Beeston: As I have already explained, what the Prime Minister has secured on ever-closer union means is that we, the United Kingdom, can be a member of the European Union in a way that

properly reflects what we want from being a member. As the Prime Minister said in his Statement, we never wanted to be part of a political union, and now we have a legally binding agreement, which will be amended in the treaties, to show that we will not be part of an ever-closer union even if other members of the EU decide that is what they want.

Lord Willetts (Con): My Lords, we are rightly told that Britain's future is as a global trading nation. But often, on trade missions abroad, one would find that other EU member states such as Germany and France had been there before us. So will the Minister confirm that membership of the European Union is not an obstacle to fulfilling those ambitions, and that we should not use our membership as an excuse for failing to tackle problems in our own performance?

Baroness Stowell of Beeston: My noble friend makes an important point. I very much agree with him that we have a responsibility always to get the best for Britain, whether we are acting independently and unilaterally or as part of the European Union, and we should never use the European Union as an excuse for our own inefficiencies or inadequacies.

Scotland Bill

Committee (3rd Day) (Continued)

5.58 pm

Amendment 74 not moved.

Clause 19 agreed.

Amendment 75

Moved by ***Lord McFall of Alcluith***

75: After Clause 19, insert the following new Clause—

"Non-budget expenditure and the Scottish Consolidated Fund: further provisions

Before the end of the first month of each financial year, the Secretary of State must lay before Parliament a full record, including minutes of meetings and Ministerial correspondence, of discussions between the Secretary of State, the Treasury and Scottish Ministers relating to the non-budget expenditure to be voted by Parliament authorising the payment of grants to the Scottish Consolidated Fund for that financial year."

Lord McFall of Alcluith (Lab): My Lords, Amendment 75 provides for the process leading to annual settlement between the Treasury and Scottish Ministers of the block grant to Scotland, to the Scottish Consolidated Fund. In tabling the amendment, we focus on transparency and accountability.

I will also speak to Amendment 75A, in the names of the noble Lords, Lord Kerr and Lord Turnbull, on borrowing powers. They may already be in place for all we know and I would like the Minister to enlighten us on that.

Amendment 79F in the name of the noble and learned Lord, Lord McCluskey, seeks the publication of the fiscal framework within 30 days of the Act being passed, if not before. Amendment 79G would expand the role of the Scottish Fiscal Commission, which is welcome, and Amendment 76 in the name of the noble and learned Lord, Lord Wallace, establishes the commission as per the recommendation by the Scottish Affairs Select Committee and the need to review the fiscal framework at least every five years. For that, we need a timetable and we ask: why is a review needed?

The Joint Exchequer Committee, chaired by the Chief Secretary to the Treasury, Greg Hands, has met 10 times already. It has been clouded in secrecy and we have heard already this afternoon about the need to lift the veil on that, particularly on the area of the sticking points. Up to this weekend, there was a daily, unattributed briefing from the Scottish Government, which was largely negative and unspecific in tone, but nothing from the UK Government, for which they should be commended. But that highlights the problem raised by the Economic Affairs Committee, which is that nobody knows what is going on. We need a deal securing Barnett because the powers that are being given to the Scottish Parliament are too important to walk away from. If I have one message for the Minister, it is that we cannot down tools at the moment.

We have had artificial deadlines, the latest being Valentine's Day, or 14 February. This side is telling the Minister to negotiate right up to the end—to 23 March if need be. The powers that the Scottish Parliament will receive are without parallel elsewhere. Keep in mind that the Scotland Act 2012 devolved income tax, stamp duty, land tax and landfill tax, established Revenue Scotland and provided the Scottish Parliament with borrowing powers. Smith has now added income tax, with unrestricted power to set rates and thresholds for tax on non-savings and non-dividend incomes. There is also the receipt of the first 10% of the standard rate of VAT. If the Scottish Government grow the economy, the extra revenue coming from that will be for the Scottish Government and Scottish people alone, and we must not forget the aggregates levy and the airport duty tax.

The income tax that has been devolved is £11 billion. The VAT generated will be, as I mentioned earlier, for the Scottish economy alone, so Smith will result in the amount of revenue that the Scottish Parliament is responsible for being raised to double the amount that it has at the moment, from £8 billion to £16 billion, with an extra £5 billion in VAT revenue. Together, those revenues will account for more than half of the Scottish Government's annual budget and around 40% of all revenue raised in Scotland.

The question that is still pertinent for the Joint Exchequer Committee is: how do we adjust the block grant to take account of the devolution of tax and spend powers? The Scottish Affairs Committee's report, which was excellent, stated that Smith's unanswered question, which we all agree with, was how to index the adjustment to the block grant so that the principle of no detriment and taxpayer fairness is satisfied. That question is unanswered at the moment.

Amendment 75 has to be seen in such a context, where transparency and accountability should be the primary considerations. On transparency and accountability, borrowing is extremely important, as was mentioned in the amendment of the noble Lord,

[Lord McFall of Alcluith]
Lord Kerr. Dr Angus Armstrong said in his evidence to the Scottish Affairs Committee that the question of Scottish borrowing powers is perhaps the most important in the whole debate. In that regard, we support the amendment of the noble Lord, Lord Kerr.

Let us remind ourselves of the capital borrowing powers, which are currently £200 million per year with a £500 million cumulative ceiling. It would be helpful, as the Scottish Affairs Committee recommended, if a prudential capital borrowing regime were introduced and put on a statutory basis. We are mindful that the Scottish Government can borrow from the UK Government, the National Loans Fund and commercial lenders, and can issue their own government bonds. That is important as the bedrock because the National Loans Fund allows the Scottish Government to borrow on very favourable terms. If the Scottish Government can find even more favourable terms, they can go there, but the bedrock is the National Loans Fund. Again, the Scottish Affairs Committee asked for a specific limit on current capital borrowing to be set and for the criteria on which that limit is based to be published. We agree with those recommendations completely.

The amendment in the name of the noble and learned Lord, Lord Wallace of Tankerness, asks for the establishment of a commission, which is another recommendation of the Scottish Affairs Committee. Therein, the need for transparency and independence is essential. We thought a number of weeks ago that the Scottish Government were going along with that line of independence when the Finance Committee under the chairmanship of its convener, SNP member Mr Gibson, said,

"we are strongly of the view that not only should the Scottish Fiscal Commission be independent, but it is vital that it is perceived to be independent. That is why we are calling for the Bill to be amended to strengthen the Commission's role and to give it responsibility for producing the official forecasts".

Only a month later in the Scottish Parliament, the Scottish Government reversed their view on that issue and Mr Gibson did not fulfil that cross-party recommendation from the Finance Committee. The need for a Scottish fiscal commission to be given responsibility for setting the finance and the forecast that the Scottish Government budget is based on is hugely important. We ask the Minister to look at that issue again.

We should remind ourselves of today's report from the Treasury Committee in the House of Commons, which secured, under a freedom of information request, emails from the Treasury to the Office for Budget Responsibility. There is a perception that the Government were leaning on the OBR to ensure that the wording in the terminology was changed to favour Her Majesty's Treasury. I made that point a number of weeks ago in this Chamber when the Chancellor of the Exchequer found £30 billion behind the sofa and the OBR came up with that particular figure. I said then that it was important for Robert Chote and the OBR to underline its independence. If trust in the statistics is questioned at all, trust in the whole of government also crumbles. What applies for the Treasury must apply for the Scottish Parliament, and when we are starting afresh with the Scottish Parliament, the need to underline that independence is really crucial.

Amendment 79G, tabled by the noble and learned Lord, Lord McCluskey, is also crucial because it asks for the independent scrutiny of the public finances. That recommendation by the noble and learned Lord was preceded by an article he wrote in the *Herald* a number of weeks ago, for which I commend him. It was an excellent article. From what we have heard today and from what the noble and learned Lord, Lord McCluskey, has proposed, it is clear that the scrutiny that we are giving the Bill is happening only in this House; it is not happening elsewhere. Therefore, the article by the noble and learned Lord, Lord McCluskey, and the amendments have to be taken very seriously.

The Minister presented us with the letter from the Chief Secretary to the Treasury, Greg Hands, at 1 pm today. I commend the Government and the Chief Secretary for that letter, but we were rather disappointed to receive so late in the day such a detailed letter, which we have had insufficient time to scrutinise. We welcome the fact that it tackles the thorny issue of Scotland's population growth and possible disadvantage to Scotland's revenues if its population grows more slowly than in the rest of the United Kingdom. However, the population in Scotland will grow more slowly than in the rest of the United Kingdom because—and the historian, the noble Lord, Lord Forsyth, can correct me here—it has been doing so since the very date of the Act of Union, and it will continue to do so. That needs to be looked at and therefore we commend the Government for doing so.

I refer to paragraphs 13, 14 and 15 in the letter, which tackle this issue. Paragraph 14 is very clear that, using the Scottish Government's own forecast, Scotland would benefit from around £4.5 billion of growth in taxes from the rest of the United Kingdom in the next decade alone if the proposal that the Chief Secretary to the Treasury put to the Deputy First Minister were accepted. Paragraph 14 also states that if the Scottish Government grow the economy then Scotland will keep those revenues. Paragraph 15 states that the proposals offer a fair deal for taxpayers in Scotland; they are fair for taxpayers in the rest of the United Kingdom; and, to use a Clydeside expression, they are built to last. If that is the case, the only thing missing is the Scottish Government's response. Why are they not agreeing that proposition? I ask for the veil to be lifted a little today. Regarding paragraph 15, given the short notice and the cursory examination we have had of it, it is important that the Minister responds to this.

Logic dictates that we need everything to be cleared up today, and that was argued very skilfully by the noble Lord, Lord Forsyth. However, in this area logic is not everything. There is political reality, and the political reality is that we must encourage this process in every way possible. That is why the Labour Party has bent over backwards to be helpful to the Government over the past few months and, even today, will provide no impediment or give any hint that it will delay or obstruct the Bill. We have a fractured union. That was expressed in the report by the Select Committee on

Economic Affairs, very skilfully chaired by my noble friend Lord Hollick. Therefore, we do not wish to add even one iota to any further cleavage in that area.

The UK in its present form is not an old state, but it is a state comprising ancient nations. We have to be very sensitive to that. I mentioned political reality. An article in the *Daily Record* last Friday by a good friend of mine, Professor Jim Gallagher, looked at the second aspect of no detriment—namely, taxpayer fairness—but the headline for the article was "sleight of Hands", obviously a play on the name of the Chief Secretary to the Treasury. Hopefully, that gives Members an insight that there is a grievance mentality, and it is something we must be very sensitive of. In particular, as an unelected Chamber we must do everything to be positive. That is why, in moving Amendment 75 and supporting other amendments, we hope that the Minister makes progress. As the noble Lord, Lord Forsyth, said, if that progress is to be made before Report then we would welcome the information being put in the public domain as soon as possible. In that spirit, I beg to move.

6.15 pm

Lord Kerr of Kinlochard (CB): I rise to speak to Amendment 75A. I was in meetings in Glasgow this morning and came in during the earlier debate on the amendment to the Motion in the name of the noble Lord, Lord Forsyth of Drumlean. I heard his rousing peroration; I agreed with it. Had I been in the Chamber in time, I would have wished to speak in support of it. I agree with his "sunrise" Amendment 79H, which I guess he will speak to in a moment.

Mine is a much more mundane matter. My amendment concerns borrowing limits. I find that one of the difficulties of handling the Bill in the absence of the fiscal framework is not so much dealing with what is in the Bill as understanding why things are not in it. I do not know why no provision or regime for borrowing is set out. That is why my amendment proposes the principles for such a regime. It is a key element of the Smith commission report that there should be enhanced borrowing powers for the Scottish Government, and I agree with that. The core of Smith is paragraph 95, where the fiscal framework is discussed. The most crucial element for me, apart from indexation, is the borrowing limits—how is borrowing to be done?

We discussed this in the Economic Affairs Committee, and the report of the noble Lord, Lord Hollick, brings out that the committee did not believe that anybody would believe a no bail-outs rule. The committee firmly believes that it is necessary to be seen to stand behind Scottish borrowing. Scottish borrowing will be cheaper. It is clear to all that the United Kingdom Government stand behind it. The clearest way of spelling that out is to have a provision on borrowing in the Bill. I do not argue that we should set out specific limits in the Bill—that, clearly, is a matter for subordinate legislation, as my amendment suggests. However, it seems clear that we must set out the two categories of borrowing in the Bill, that they will be subject to ceilings, and that these will be negotiated and agreed in consultation with the Scottish Government but will be set by Her Majesty's Treasury. That seems practical and commonsensical. It makes for cheaper borrowing for Scotland, which is, of course, also cheaper for the United Kingdom, since the United Kingdom will stand behind the borrowing.

If the borrowing is properly conducted, it will be as part of the United Kingdom's programme. It will get slots in the programme if the United Kingdom wishes to issue bonds. I have no idea how big the increases needed are and what the current limits on Scotland's borrowing powers are, and the Smith commission does not help a great deal on that. It states that,

"to reflect the additional economic risks, including volatility of tax revenues, that the Scottish Government will have to manage when further financial responsibilities are devolved"—

I agree with that—

"Scotland's fiscal framework should provide sufficient, additional borrowing powers to ensure budgetary stability and provide safeguards to smooth Scottish public spending in the event of economic shocks, consistent with a sustainable overall UK fiscal framework".

That is clearly true, but it does not help to define what "sufficient" means. I do not know whether this is a matter of controversy in the current fiscal framework talks, but I think we should be told. Is it agreed that there should be ceilings on Scottish borrowing? Is it agreed that that level should be set by the United Kingdom Government in consultation with the Scots? Has that level been set; that is, has it been agreed?

This is talking about current borrowing, but I must say that I think there will be the need for a considerable increase. My view is that "sufficient" is going to be quite a lot more than the Scots now have, although it is inconceivable that it would be sufficient to deal with ensuring "budgetary stability" and providing,

"safeguards to smooth Scottish public spending in the event of economic shocks".

Let us remember that the oil price on Scottish referendum day was $115 a barrel. That is quite an economic shock, and borrowing in the markets is not a credible way of dealing with it. However, there is a common-sense case for a large increase because of the seasonality of tax income and the need to smooth over the year. That element is clear, but there could be controversy about what the level is, in which case I think we should be told because transparency does matter.

The second kind of borrowing, also covered in my amendment, is borrowing to support capital investment consistent with the sustainable overall UK fiscal framework. I agree that that makes sense. There will be public investment which should be financed by the markets, but I do not know whether that is controversial for Her Majesty's Treasury. I do not know whether the UK Government buy that bit of Smith, or whether there has been a discussion about how much. I do not know whether this is one of the reasons for the hold-up on the fiscal framework, and I think we should be told.

Lord Forsyth of Drumlean (Con): I wonder whether the noble Lord could help me. When he talks about setting a limit on borrowing, are we starting with a new baseline or is it assumed that the existing level of debt has part of it somehow imputed to the Scottish Government, so that we then start from that baseline?

Lord Kerr of Kinlochard: I have not the faintest idea.

Lord Forsyth of Drumlean: Neither do I.

Lord Kerr of Kinlochard: I hope that the noble Lord, Lord Dunlop, knows, but I do not think that any of the rest of us knows what this means in the Smith report. Alas, the noble Lord, Lord Smith of Kelvin, is not here today to tell us.

It could be argued that there is no need to have any of this in the Bill, and I would like to hear from the Government whether that is their view. After all, they could have brought forward a Bill which said nothing about borrowing, despite the fact that it was a key part of paragraph 95 of the Smith report covering the fiscal framework. If it is their argument that there is no need to say anything about borrowing, I want to know why. As I said at the start, I believe that borrowing will be cheaper for Scotland and therefore better for the United Kingdom and Scotland if it is clear beyond doubt that the United Kingdom stands behind it. If it does, it is then clear that the United Kingdom has the right and the duty to set limits on that borrowing. I repeat that those limits should not be in the Bill. They should be set by affirmative resolution of both Houses, but the provision to require that should be in the Bill, and that is why I have tabled Amendment 75A.

Lord Wallace of Tankerness (LD): My Lords, I shall speak to Amendment 76. The points made by the noble Lord, Lord Kerr of Kinlochard, beg questions which I am sure the Minister will seek to answer in terms of the Government's understanding of how the Scottish Parliament's borrowing powers will operate after the passage of this Bill. The Scotland Act 2012 also contained borrowing provisions and I would be interested to know what the dynamic between them is and how they will fit together. This is an important part of the overall arrangement because specific borrowing limits might not necessarily appropriately appear in statute. It is therefore important that the Committee be made aware of what is in the Government's mind.

The amendment I have tabled with my noble friend Lord Stephen seeks a review of the fiscal framework. We tabled it some time ago, perhaps even before the Scottish Affairs Committee came up with a similar recommendation. That was done on the basis that, by the time we reached it and could debate it, the fiscal framework would have been published. Noble Lords will remember that even at Second Reading there was much concern about the fact that we did not have any detail on the fiscal framework. There is a recognition that however much work goes into this—I do not dispute the good will that the Minister has indicated on a number of occasions—there is a possibility, I put it no stronger than that, that it might not actually be perfect. It therefore makes sense that somewhere down the line there should be a review of how the fiscal framework is operating. We say that it should be given at least four years to run, but not much longer. We also propose that this should not be done by one Parliament or the other. In fact—although it is probably quite a novelty, we should not be scared of that—it should be reviewed by a committee that involves Members of the Scottish Parliament and of both Houses of the United Kingdom Parliament. A report should be published with recommendations that are submitted to both Houses of the UK Parliament and the Scottish Parliament. Quite simply, this tries to ensure that once the fiscal framework has had an opportunity to operate, a better judgment can then be made of how well it is living up to expectations.

I do not want to repeat all the points made earlier by my noble friend Lord Stephen in the debate on the amendment to the Motion moved by the noble Lord, Lord Forsyth, but it is absolutely right to talk about transparency. For example, the First Minister of Scotland released a letter to the press in which she set out the Scottish Government's view of the no detriment principle, but we do not have a clue about the United Kingdom Government's view. Anyone who knows the workings of the Scottish Government and the Scottish National Party knows that they are very adept at this. They will get in first so that their definition of no detriment suddenly becomes the currency. The United Kingdom Government will then try to come up with a different definition, but they will be told that they are selling out, and because the Scottish Government got in first and have defined the terms of the debate, that puts everyone else on the back foot. That is why we have been arguing both privately and in the Chamber with Ministers that we need far more information and that the Government need to be much more transparent—not necessarily about the nitty-gritty, small-print detail of where they are at any particular moment but about what they understand by the no detriment principle, for example.

An amendment in this group from the noble and learned Lord, Lord McCluskey, also provides for the fiscal framework by way of a Scottish fiscal commission, modelled on the Office for Budget Responsibility. It is a very worthwhile idea, which the Scottish Parliament has been looking at. However, it falls short of the independence of the OBR that we would like to see, although the noble and learned Lord does seek to address that. Indeed, paragraph 16 of the letter we received at lunchtime today from Mr Greg Hands, the Chief Secretary to the Treasury, to Pete Wishart MP, the chair of the Scottish Affairs Committee, indicates that, "All elements of the fiscal framework are being discussed with the Scottish Government, including the important recommendation of the Scottish Affairs Committee that there is a clear consensus that forecasting should be done by a body independent of Government. We agree with the conclusions of the Finance Committee of the Scottish Parliament and recommend that an enhanced Scottish Fiscal Commission be made responsible for forecasting in Scotland". Perhaps the Minister would care to elaborate on that and how he sees it developing.

6.30 pm

As we move forward on fiscal arrangements for Scotland, Wales and Northern Ireland and on fairness for the whole United Kingdom—including England and its cities and regions—what we probably ultimately need, which is beyond the scope of this Bill, is an independent body, akin to those operating in other federal countries such as Canada and Australia, which tries to take an objective view of how resources should be fairly shared among the constituent parts. I admit that we are not quite at a federal position yet—it is

what my party aspires to—but even before we get there, there is a very strong case for an independent body that would be able to examine such issues.

It may be beyond the scope of the Bill, but it would be good to think that some thought is being given within government to how these longer-term issues may be addressed. Although we are focusing on Scotland and the rest of the United Kingdom and that particular fiscal framework, there is no doubt that, whatever is agreed and whatever position is reached, there will be implications for Wales, Northern Ireland and the cities and regions of England. The sooner we start examining how we can get a more independent body that will try to ensure fairness between all the constituent parts of the United Kingdom, the better. In the mean time, a review of whatever the present negotiations produces four or five years after it becomes operative is surely a very modest proposal.

Lord McCluskey (CB): My Lords, I shall speak to Amendments 79F and 79G. I have in my hands substantial notes. They were designed to enable me to present an elegant speech full of witticisms, insights and—though I did not realise I needed the permission of the noble Lord, Lord Forsyth—even some political comments. I took part in 1978, from the Front Bench, then occupied by a Government of a different hue, in the first Scotland Bill. I have had a long and lasting interest in these matters. Since I prepared this speech on 13 January much has happened. The field which I hoped to plough has become a dustbowl—so many people have walked through it, including in these debates today.

I shall try to keep my comments short, in light of the well-developed arguments, but clearly the fiscal framework has not been resolved. People have alleged that that is because of the complications. I do not believe that for one second. The civil servants involved are highly skilled and competent and have resolved all the complications. The difficulty is that there is a chasm between the UK Government and the Scottish Government in relation to a simple matter: how much? How much is the UK taxpayer going to have to provide to win the approval of the Scottish Government and, secondarily—the point raised by the noble Lord, Lord Kerr—in relation to borrowing powers? That is also very important.

As has been pointed out, the Smith commission report recorded that the representatives of five Scottish Holyrood parties had agreed the devolution of certain powers. Very well. It also said, at paragraph 95:

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

That is not entirely surprising, considering the make-up of the Smith commission. Turkeys do not vote for Christmas. The members were voting for a continuation of the Barnett formula. The report also contained what was plainly a compromise, namely the so-called no-detriment principle in two manifestations, the first of which is vaguely comprehensible and the second of which is certainly not.

The Scottish representatives on the commission—and they were all Scots—were voting in favour because the Barnett formula was plainly very favourable to Scotland and everyone was afraid of the needs test. In fact, noble Lords who have read John Swinney's evidence to the committee of this House on the Barnett formula in 2009 will know that that committee tried to pin him down on that. He would not answer, but simply kept repeating, "We want full fiscal autonomy".

Lord Forsyth of Drumlean: Till he found out what it meant.

Lord McCluskey: Yes—that was, of course, part of the purpose of the article I wrote for the *Herald*, which the noble Lord, Lord McFall, was good enough to refer to.

Plainly, the Scottish Government were perfectly entitled to try to secure the most favourable deal they could. It was they who created this timetable that we are being asked to stick to. The timetable was to enable them to go to the electorate in May and present themselves as having achieved a great victory. They created the timetable and we are all supposed to bow to it. I just wonder about that. In relation to the rush to get it through, it also puzzles me that John Swinney is so anxious to get his hands on extra tax powers because, when the Labour Party in Scotland proposed an extra penny on income tax, he replied, "Over my dead body". Now, we would not wish any harm to the Deputy First Minister, but he has obviously no intention of exercising these tax powers, so what is the rush? It is all to do with the electoral process of the Scottish Government.

Even the devolution of a minor thing, such as the introduction of air passenger duty, could turn out to be worth nothing because, as was pointed out very widely at an earlier stage of the passage of the Bill, Newcastle Airport is going to suffer considerable detriment if all the Scots in the north of England flock to Prestwick, Glasgow, Edinburgh or even further north to take advantage of reduced prices. They are going to suffer a detriment and that detriment is going to have to be met by whom? By the Scottish taxpayer. In other words, the Scottish taxpayer is going to have to find the money to send to Newcastle that has been saved by whom? By the airlines. It is bizarre. The whole thing is slightly mad.

Lord McFall of Alcluith: If I remember correctly, the Chancellor of the Exchequer appeared before the Treasury Committee in January 2015 and, asked about the no-detriment principle for Newcastle and Manchester airports, said it did not apply to them. He pointed to the fact that in the previous year Newcastle Airport had increased its traffic by 12% and Manchester Airport had increased its traffic by 3%, so there was no problem whatever. So we are all in the dark yet.

Lord McCluskey: I fully accept what the noble Lord says; however I argue that there is room for argument as to whether there is a detriment to Newcastle. I just do not know. The Select Committee on Economic Affairs said, as has been quoted already by the noble Lord, Lord Forsyth:

"We agree … that the second no detriment principle is unworkable. It is a recipe for future disagreement".

The only problem is the word "future". It is a recipe for constant disagreement, including future disagreement.

My Amendment 79F includes the provision that the new fiscal framework should be published in full.

[Lord McCluskey]
That is very important. The noble Lord, Lord McFall, mentioned that we have to face political reality: I would not challenge his judgment on that, but I add something else. We also have to face the truth—not just the truth but the whole truth—in relation to the fiscal agreement. We need to know the background and I am sure that if it is not published in full, as it should be, then various means can be found, whether in debate here, by means of questions or by freedom of information requests, to discover the full background. What were the people bargaining about? What was the cause of the delay? My guess is that the cause of the delay was what I suggested before—namely, that they could not agree on amounts of money, so the complications are not real complications but deep disagreements.

As I mentioned in the article to which the noble Lord was kind enough to refer, lying behind these discussions and the problem for the Scottish Government is the following. If the present discussions about the fiscal framework reveal, as I suspect they will, that Scotland needs a substantial subsidy from the taxpayers in the rest of the UK—or at least in the rest of Great Britain—that is a demonstration that Scotland cannot exist without such a subsidy. Therefore, the economic case for independence, which was so bizarre in the original White Paper by the Scottish Government, disappears. In other words, we now know, because of the discussions going on—although we do not know the detail—that the economic base in Scotland is such that the tax yield will be very disappointing. The Barnett formula would, of course, disappear on independence and the oil bonanza confidently predicted at the time of the referendum campaign will continue to prove to be a mirage.

As I say, events have perhaps rather overtaken this amendment but it is time that the Scottish electorate were told the whole truth about the Barnett formula. That is part of this amendment. I have read with great care, and more than once, the proceedings of the Lords committee on the Barnett formula. It was a very powerful committee and the questioning was extremely good. The witnesses who gave evidence were of the highest quality and the lesson of that has to be that if we want to move to a just and fair system, we ought to move to one which is not based on a formula that was never invented for the long term but rather as a device to get through a problem existing in the midst of an economic crisis. We should move to a system based on need in terms of welfare and other things. It is time we were told the truth about that. That is the purpose of the second part of this amendment—proposed new subsection (2).

Detriment is said to be a principle in the Smith commission report. I am afraid that I do not recognise it as a principle. The principle that underlies public expenditure should in my view be the question of need. Public expenditure in different regions should be determined largely in relation to need. It is not a straightforward matter and I need not discuss the difficulties involved in that; we are all well aware of them. Therefore, the information that I seek is to give people the truth. The truth is more important than the political reality.

I can deal briefly with the other matter relating to Amendment 79G. The noble Lord, Lord McFall, has already referred to this and I simply adopt what he said. It is vital in Scotland that we have independent scrutiny of, and reports on, economic forecasts. One of the problems with the referendum campaign was that the government White Paper had some very dodgy statistics and forecasts and the Opposition did not question it sufficiently. In a sense, the Government got away with what they said. We need an independent body. I have suggested the model of the Office for Budget Responsibility. It is not ideal but it is the best model that we have. I deal with the question of independence in the way set out in the amendment. I do not pretend that this is an ideal way to amend the Bill, but the ideas here are such that the draftsmen could with ease convert this into a workable amendment.

The Smith commission talked repeatedly about strengthening the Scottish Parliament. One of its principles was strengthening the Scottish devolution settlement and the Scottish Parliament within the UK, including parliaments' levels of financial accountability. The commission referred repeatedly to independence. I need not quote all the relevant paragraphs. As the noble Lord, Lord McFall, pointed out, the Bill which was before the Scottish Parliament—the Scottish Fiscal Commission Bill—contains a clause which states:

"In performing its functions, the Commission is not subject to the direction or control of any member of the Scottish Government".

However, the Bill declines to give the commission responsibility for providing independent assessments and forecasts for the Scottish economy. So if they are not made by an independent commission, who makes them? The Scottish Government make them.

Kenny Gibson was cited, but it is worth doing so again. He was the SNP chairman who expressed the unanimous view of the committee:

"We are strongly of the view that not only should the Scottish Fiscal Commission be independent, but it is vital that it is perceived to be independent. That is why we are calling for the Bill to be amended to strengthen the Commission's role".

Those who want to read the detail of this will find it in an article in the *Scotsman* of 11 February by Bill Jamieson. When the vote came, the SNP people voted down that proposal by four votes to three. Bill Jamieson's article in the *Scotsman* drew attention to North Korea. I think the SNP is more like a North Korean drill squad: if a commander says, "Do a backward somersault", the words are hardly out of his mouth before they are back on their feet, having done a backward somersault. It is a classic example of the exercise of this rigid discipline within the SNP. If we do not have an independent fiscal commission, we are in trouble.

We have had enough talk of dodgy dossiers and I have had enough of reading out my notes. I hope that I shall move these amendments in due course.

6.45 pm

Lord Forsyth of Drumlean: My Lords, I wish to speak briefly to my Amendment 79H, which I hope provides a way out for my noble friend on the discussions which we have had this afternoon, in so far as it suggests that the Bill, when enacted, should not commence until we have had the fiscal framework laid before both Houses of Parliament and there has been an

opportunity to debate it. If I were the Minister, I would grab that because the prospect of moving another amendment proposing that we should not proceed to Report but should reconvene the Committee stage on Wednesday is something that I do not relish, as I am sure he does not either. However, if we get the fiscal framework tomorrow, there will be an opportunity for us to discuss it and therefore there will no need for this amendment. I very much hope that we will have it.

When I was Secretary of State and the noble and learned Lord, Lord McCluskey, was a very distinguished judge, he gave me a bit of a hard time on the reforms which we planned for the criminal law, which I am delighted to say the Labour Party subsequently implemented when it was in power in the Scottish Parliament. He said that I chided him about getting involved in politics—however, I would encourage him to get involved in politics. He has made a brilliant case for why we need clarity on the fiscal framework. I am prepared to support all the amendments that have been suggested because I have no idea what the Government's position is on what the fiscal framework will be. As regards the proposal to have no detriment, it is the only time in 30 years in Parliament that I have seen witnesses reduced to laughter in giving evidence when they tried to explain what the no detriment principle actually means. Ministers cannot tell us what it means. The noble Lord, Lord Smith, cannot tell us what it means. My noble friend Lady Goldie was on the Smith commission. Perhaps she could tell us what she thinks the no detriment principle means. Without having the fiscal framework and without having a definition of that no detriment principle, it is meaningless.

However, my right honourable friend the Secretary of State for Scotland hit the nail on the head when he said that the Scottish Government want to have their cake and eat it. Perhaps that is what the no-detriment principle means. Perhaps during the recess, instead of negotiating and getting agreement in time for us to discuss it, they have all been off to see Mary Berry so that they can produce more than one cake. The difficulty is that you cannot produce more than one cake. When we were in government a long time ago and, faced with an onslaught from the Labour Party, we struggled to find a way of making devolution work, I had two problems. The first was that I could not solve the West Lothian question. I could not find a way of doing English votes for English laws that would not threaten the union and create all kinds of problems about voting on income tax and the Barnett formula. My second problem was that my officials said that if we were to create a Scottish Parliament and give it these powers, it would have to be responsible for raising its own money. That would mean it would have to be funded on a fair basis, compared to the rest of the United Kingdom, which would mean having a means-based system of funding of the same kind that we use to distribute money to local government, the health service and so on. That would mean the Secretary of State's budget being cut by £4.5 billion.

We were pretty unpopular in Scotland, thanks to the efforts of the Labour Party, which presented us as anglicising Scottish education et cetera—but we will not go there. I thought that coming up with proposals which gave Scotland the ability to pass its own laws and raise its own revenue, but which would result in a reduction in the budget of 25% or so—£4.5 million—would not be particularly popular. I think the Smith commission and others have played around with ideas which seem politically attractive but they have not actually done their homework on the impact these would have. Amidst the language of fiscal frameworks and everything else, it is all very simple: the tax base in Scotland is slightly lower than that in England. Therefore, if you are going to raise your money from the tax base in Scotland you are going to have less to spend. The Barnett formula provides 20% more per head for Scotland than England. It was 25% in my day, but there has been some narrowing. If you take a grant that is 20% higher and replace it with a tax which is 20% lower, there will be a gap. It has suddenly dawned on the Scottish nationalists that their proposal will actually result in less money for services.

It has also dawned on the nationalists that if you give welfare services and the like to Scotland, they have to administer them. They are demanding £600 million to administer welfare services. My goodness, the Labour Party wants to get rid of the bedroom tax; so do the nationalists. There are all kinds of welfare benefits that people would like to see improved. The plan is to spend £600 million on administration, instead of on the benefits. That is crazy, and for what? So that we can say that it is misery made in Scotland because we are spending it on civil servants and a bureaucracy. That is what is being proposed here.

Lord McCluskey: I hope the noble Lord, Lord Forsyth, will forgive me for interrupting him. It sometimes happens the other way round. Does he appreciate that the £600 million is more than twice the amount that the Scottish Government indicated, in the White Paper, as the cost of running the whole of Scotland after independence on 24 March 2016?

Lord Forsyth of Drumlean: I do love the noble and learned Lord, Lord McCluskey, as a politician making these penetrating points. He is absolutely right; it is real. I am relying on what I read in the newspapers, but that is what they are asking for welfare, behind closed doors. They would rather spend the money on superannuated civil servants, just for the sake of saying, "This is being done in Scotland". The money is the issue.

By the way, why is the Secretary of State not doing these negotiations? I was going to ring him up last week to talk to him and he was in Africa on Friday while these negotiations were going on. They are being run by the Treasury. If you are in a spending department like Scotland, the very last thing you want is the Treasury running your negotiations. Unusually, the Treasury appears to be being very generous. It is suggesting that the Barnett formula, which gives Scotland 10% of any increase in expenditure in England, should be extended to income tax and that Scotland should get, as of right, 10% of any increase of income tax that is raised in England. How is that going to go down in England? While the Scottish nationalist Government—who want to put up the top rates of tax—force all these top-rate taxpayers to move south and reduce the size of the tax base, the English are expected to send

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them a cheque to compensate them for the loss of revenue resulting from people moving out of Scotland. They run the benefit system for the disabled and unemployed. If they fail to get people back into jobs or to provide the support, England has to pick up the cost because those benefits are based on performance. No wonder they cannot reach agreement on no detriment or a fiscal framework. This is an argument about having a cake and eating it.

As the noble and learned Lord pointed out, if it agrees the fiscal framework, the SNP is now faced with the horrible prospect of going into a Scottish election and saying either, "We are going to have a bit more independence but we are going to have to make cuts in public services and put up taxes", or, "We could not get these terrible people at Westminster to give Scotland a fair deal". The truth is that there were years of lies when people said that Scotland got a bad deal out of the union and that the Barnett formula was unfair: those same critics now cling to that formula like a life-raft. All those people said that Scotland would be better off if it had more powers. By the way, that is not everyone in the Labour Party or elsewhere. All those people turned a deaf ear when people like Gordon Brown and the noble Lord, Lord Darling, who is in his place, warned that if you move to a system which is completely dependent on income tax—an idea which was, incidentally, produced by the Tories to overstep the Labour Party and the Liberals, but was not thought through—you create a situation where you are dependent on a lower tax base and there is no real electoral connection with defence and other UK-based expenditure. Throw in English votes for English laws and you are damaging the United Kingdom.

The fiscal framework, and how it is agreed, is central to whether or not we get a glue, a cement—a fair and balanced system. That is why the Bill should not become an Act and come into force until both Houses have had an opportunity to discuss it openly and fairly, with people in Scotland—who are entitled to fair dealing—seeing what the realities are and being able to make their choice. It is utterly wrong to go into an election pretending it will be all right on the night. If, at the end of the day, the SNP is able to say, "We got a fantastic deal out of Mr Greg Hands. We got extra money over and above Barnett. Vote for us again", when what matters is long-term future stability, I do not know how long that deal will last; I do not know how it will operate. The Barnett committee, which I served on, and to which the noble and learned Lord, Lord McCluskey, has referred, suggested that, because there is a gap, there should be a 10-year transitional relief and we should move to a needs-based system of funding. I do not know whether that is being proposed or not, but it is essential that we have the opportunity to discuss it.

Why would my noble friend not agree to Amendment 79H, which prevents the commencement of the Bill until we have agreement? What possible reason could he have? The noble Lord, Lord McAvoy, will say that it will be misinterpreted in Scotland and we will be presented as wrecking the Bill. I say to him that it will be proceeding in parallel with the consideration by the Scottish Parliament which is, quite rightly, insisting that it should look at the Bill in the context of the fiscal framework. What is wrong with us proceeding in parallel with it and having a proper debate on both sides of the border? I beg to move.

7 pm

Lord Darling of Roulanish (Lab): My Lords, in the earlier procedural debate we touched on many of the issues regarding whether we should consider the proposals of the fiscal commission. In some ways I am surprised that a number of your Lordships who have spoken tonight have talked almost favourably of the Barnett formula. There is something notable about the Barnett formula. One of the reasons that no one has ever touched it, from 1978 when it was first conceived until now, is that, despite its imperfections and despite the fact that many people in different parts of the UK might have said that it was unfair, it actually worked, because it was designed to pool and share resources across the United Kingdom. One of the major arguments that I and others made during the referendum campaign over the last few years is that one of the strengths of the United Kingdom is that you could make sure that when things turned against one part of the UK, because of its workings, in particular the Barnett formula, you could compensate for that. The Bill, which is soon to be an Act, will fundamentally change that because devolving to the Scottish Parliament the power to raise income tax will require a major adjustment to how Barnett has worked in the past.

One of the problems of reaching an agreement between the parties to change the constitution of our country over a four or five-day period is that it will inevitably result in unforeseen consequences as well as the foreseeable ones. One of the reasons that I want to see this fiscal framework as quickly as possible is that we are going into a completely new era. The Scottish Parliament will have more powers than most other devolved parliaments anywhere in the world. However, in many ways we are going into this new era with our eyes closed, because the debate that ought to be taking place about the consequences of what we are doing in Scotland as well as in other parts of the United Kingdom is simply not taking place. Part of the reason that it is not taking place is that the very framework on which all this will hang will not be published until possibly later this week, or possibly next week, when, as I said earlier, we will be in the equivalent of the 11th hour of the debate here.

I will touch on three areas covered by the amendments. One is income tax. I can see that in year one you can do a calculation that shows how much money will be raised by income tax in Scotland and therefore by how much the block grant is reduced. That is easy, give or take £1 million or £2 million. I pose the obvious question: what happens in five or 10 years' time? How do you apply this no-detriment rule, or try to work out to whose credit it is or whose fault it is that the tax take was not quite what was expected, because Scotland collected either more or less? Any idea, such as that suggested in the White Paper published last year by the previous Government, that somehow you could do this mechanistically and it would not be subject to any politics or anything nasty like that is just for the birds. If we are not careful, what we produce will provide

fodder for all those who want to feed off grievances and find grudges for years to come. As I said earlier, I struggle to see how that is going to be resolved.

The noble Lord who will reply for the Government will probably know the answer to this because presumably he has seen the fiscal document. The rest of us have not seen it. This is pretty fundamental. If you are going to say, as we have agreed, that the Scottish Parliament should have all the money that it raises by income tax and there is a consequence on the ground, what is that consequence?

I make one further point. I do not know the ins and outs of this argument about indexation for ageing. I have every sympathy with concerns about the fact that Scotland's population is ageing faster. Being a supporter of the United Kingdom, I believe that we should pool and share resources. If the Scottish population is ageing more quickly than that of the rest of the UK, the whole point of the United Kingdom is that you can compensate for that. I hope the present Conservative Government are not taking the view that they will devolve and Scotland can live with the consequences.

If you had complete independence, which the noble and learned Lord, Lord Wallace, said would have happened in about three weeks' time if we believed in the nationalist timetable, then we should be in a situation where Scotland was cut off from the rest of the UK and consequences would follow. However, we have not left the United Kingdom. That is why it is important that we continue to maintain the principle that we pool and share resources, but we should be clear as to the basis on which that is done.

This brings me to the point on borrowing on which the noble Lord, Lord Kerr, touched. I agree with him that we need to be clear about under what circumstances and in what amount the Scottish Parliament can borrow. There is a further point. Borrowing to invest is well understood. That is not problematic. The Scottish Government have the power to do that at the moment if they want to. It is borrowing to fund a shortfall in current expenditure that will cause a problem. There is nothing wrong with the Government borrowing when there is an economic downturn, as I know. The present Government know that as well, since they have had to do exactly the same thing. However, suppose the situation was that the Scottish Government had the power to borrow and, as now, there was a shock to the oil price system. If you believe the shock to be temporary—if it is only going last for a year—as the nationalists maintain when you ask them why oil is not, as they told us it would be in the White Paper, $113 a barrel but around $30 or $40 a barrel, it makes perfect economic sense to borrow to make up that shortfall. That is what you would do. However, if it is a structural change—and many people believe that it is a structural change that will go on for maybe five or 10 years—does borrowing then make sense? Under what conditions could the Scottish Government continue to borrow to cover that shortfall as opposed to making other more difficult decisions, such as putting up taxes or cutting spending?

This also begs the question that the noble Lord, Lord Kerr, raised, as to on whose account do you borrow? Are you borrowing on your own account? With the best will in the world, a new Scottish Government are bound to start with a lesser credit rating than the UK simply because they are a new kid on the block and have no track record. Again, being in favour of the United Kingdom I am quite happy that borrowing ought to be done on a UK basis, but if that is to be the case the consequences need to be spelled out. None of these things can be left in the hope that it will all work out okay on the night.

The White Paper published last year assumed that there was good will. You have to bear in mind here that the Scottish National Party exists to make Scotland independent. That is what it is for. That is what it is looking at all the time. Therefore, if you have something that is opaque, where there will inevitably be difficulties, you are simply storing up problems—I should like to say for the future, but no, it is not for the future; they will be there from day one.

Exactly the same points are being made on welfare. As I said during the referendum, I have never understood the argument that Scottish taxpayers, of whom I am one, would want to pay money to people to administer a benefit system, a lot of which is, ironically, being administered in Scotland for the rest of the United Kingdom and providing useful employment. Why do I want to pay more for someone to do that or, for that matter, to collect my taxes?

Leaving aside the collection cost, if you take the actual expenditure on mainstream benefits, a lot of benefits have been devolved to the Scottish Government and that is absolutely fine. However, again, it is unclear to me who in five or 10 years' time would bear the cost if, for example, the policies north and south of the border were different. It is entirely acceptable that they should be different. We are bound to have, as we do now, Governments of different political complexions. However, if, for example, you have an ageing population, all other things being equal, your disability benefits will start to go up. Is that okay? Is that built into the settlement or will taxpayers in other parts of the United Kingdom have something to say about it? I am sure these problems are resolvable, although I note that Professor Bell of Stirling University said recently that no one else in the world has done this.

As an aside, my own preference, having got to the stage that we have, is that we should look at countries such as Canada—big countries that have a federal settlement in many senses but have provinces with different powers. One of the advantages is that when you pay your income tax you can see that some of your tax is going to pay for things such as health and education, but you pay tax to the federal Government for things such as pensions or defence and so on. It is then easier for other things to slot into place—borrowing to fund various activities and so on. We have not looked at that.

It is often said that the British are good at compromising, but what we have here is not devolution being done to any overall template—it is being done on the hoof. When you do things on the hoof, sooner or later you trip up. As I said earlier, this is not just a matter between one political party and another. If this fiscal framework had been published, others from outside could have looked at it and said, "There is a better way of doing this", or, "Have you thought of the consequences of that?". Instead, the public

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north and south of the border have been kept largely in the dark. That is simply going to cause considerable difficulties.

Other issues have been raised as well, such as bailouts and the question of no detriment, which we will need to come to. Equally, the White Paper published last year had examples of what would happen if the UK Government were to raise or decrease expenditure. What would the consequences be? Could you have a situation where more taxes are being paid in one part of the United Kingdom to fund expenditure somewhere else? Again, these are problems to which I have not yet seen the answers.

I heard people say in the earlier exchanges that having an EU referendum campaign lasting some four months was an awfully long time. Having lived through a referendum campaign that lasted some two and a half years, frankly, I would have killed for four months. I fully accept the right of the Scottish National Party to campaign for independence but what I bear in mind is that the majority of people in Scotland were clear that they wanted to stay as part of the United Kingdom. What worries me about this, and until I have seen the fiscal framework I cannot pass a final judgment on it, is that rather than resolving the matter and saying, "That is the settled will of the Scottish people", we have put something in place here that will lead to opacity, confusion and eventually grievance. That is not a way to get a secure settlement. Perhaps the Minister will have words that reassure us on all these points. So far I have not heard them but I look forward with great interest to what he has to say.

Lord McCluskey: The noble Lord said that the Barnett formula works. I doubt that anyone would contradict that. It works, and does so from the point of view of the Treasury for the reasons given: it is simple and clear, and so on. First, does the noble Lord suggest that it works fairly throughout the United Kingdom? Secondly, because of the future governed by this Bill, does he support subsection (2) of the new clause that I propose in Amendment 79F? It calls for the Secretary of State to publish,

"a full description of any agreement whatsoever reached between the … Governments relating to the future of the Barnett Formula or its application, amendment or replacement in the future".

We need to know not whether it worked in the past but whether it worked fairly and how it will work in the future. Does he support that amendment?

Lord Darling of Roulanish: In relation to the Barnett formula, I chose my words carefully. I said that it worked; I did not go on to say "terribly well" or "extremely well" or "without any complaint". If you look at the north-west of England, there is a legitimate complaint there that Barnett treats it the same as it does the south-east of England, when their economies are clearly very different. I know that successive Chancellors looked at the Barnett formula. I looked at it in the halcyon period of the three weeks between taking office and discovering that Northern Rock was on the horizon, which presented me with rather more pressing problems that I had to deal with. But I can see why, it having been there for so long, no one has touched it. I am sure that others in this House will know that the late Joel Barnett often said that he never intended it to last. It was a fix but it worked. However, where I agree with the noble and learned Lord—I will confess to not having studied his proposed new subsection (2) in the detail I perhaps should have done—is that if we are having a new system, we really need to know how it works. What we do not want is what happened in the aftermath of the Smith commission, when everybody signed up to it and the next day it was denounced. That will not work. If we have something that does not work, let us find out now rather than coming to that awful realisation over several months and years to come.

Lord Bruce of Bennachie (LD): I support Amendment 76 but I have sympathy with all these amendments. I think the noble Lord, Lord Darling, has just touched on the value of a federal system, which I suspect the UK will have to come up with if it is to find a stable solution. In the context of Canada, where I spent some time last summer, I was well aware that for years the Albertans complained that they were subsidising Quebec. But right now the Albertans are grateful to have the support of Ontario, as the oil price has collapsed. That is the benefit of being part of a union with the ability to move fiscal transfers around, as the shocks hit different parts of the economy. I suspect that the majority of people in Scotland voted to stay in the United Kingdom because their heads told them that was the reality.

Apart from simple practice, the other issue with the Barnett formula is that, as the noble Lord, Lord Forsyth, said, as a formula it has narrowed the gap between Scotland and the rest of the UK. That is why while it was 25% when he was Secretary of State, it is now 20%. When people talk about the Barnett formula, they are not really talking about that but about the historical difference in spending in Scotland, which predates the formula and has arrived for a variety of reasons. Again, the noble Lord, Lord Forsyth, mentioned the difference in per capita spending but I am sure he would recognise that the whole point of a needs-based formula, if that is what we move to, is that it is not based simply on per capita spending but on needs. We should reflect on the fact that Scotland has 40% of the land area of Great Britain and less than 10% of the population so, for example, the unit costs of delivering services such as small schools to remote islands and highlands are inevitably higher. Any formula must at least acknowledge that.

7.15 pm

Lord Forsyth of Drumlean: It might be worth having a look at the committee report that was done on the Barnett formula, which includes a full analysis of these issues. What is traditionally said about Scotland's broad geography does not actually justify it. The conclusion was actually that Wales gets a rubbish deal, while Scotland is oversupported. But of course, that cannot be changed overnight and it therefore said that we should move towards a transitional system and that funding should be based on needs, in the same way as the Scotland Office—and later the Scottish Parliament—has distributed money to local government, the health service and the rest.

Lord Bruce of Bennachie: I certainly do not repudiate that point, but it is still worth acknowledging the fact because it is often presented in a glib way—by saying that there are not legitimate reasons why some expenditure in Scotland is significantly higher. I have represented a rural constituency and seen the rural schools which people want to keep open, for example. The unit costs for those are much higher than for urban schools, and such examples need to be taken into account.

We are all frustrated by the fact that we are asked to enact the Bill without the fiscal framework being in place. In the earlier debate the noble Lord, Lord Hain, made the point that some 40% of the UK's wealth is concentrated in the south-east. In the run-up to the referendum, when the oil price was very high, the SNP was keen to say how much oil had sustained the United Kingdom, but it conveniently forgot the extent to which the United Kingdom had had to bail out the Royal Bank of Scotland and the Bank of Scotland, which an independent Scotland simply could not have done. The SNP's response was that they were of course no longer Scottish banks, but it would have found some difficulty in arguing that case, had Scotland been independent and those banks been headquartered within their system. There are inequalities of argument in that context.

There is another point that needs to be made absolutely clear. If, in future, taxes fund a significant proportion of what was previously provided by the block grant, and if there is a divergence and different circumstances arise, the reality is that a Scottish Government can do only one of two things: put up taxes or cut services. In fact, they could do both those things. It is right that the people of Scotland should recognise that if they vote for independence, they will find it difficult to maintain what they have at the moment, never mind what the Scottish nationalists promise them, on the basis of the current tax-and-spend regime, and I suspect that that is why the majority voted no. The implications of that are significant.

There is one argument that I find really confusing. I am in favour of the European Union and of the United Kingdom, which I find a very consistent argument, and I am puzzled by people who are in favour of the European Union and against the United Kingdom, or vice versa. At least I and my party have a fairly consistent view on these things: they both involve compromise and negotiation, and both require some form of treaty agreement or contract to settle them. The Minister has to acknowledge that we are getting very close to voting through an Act of Parliament literally in the dark—one that has serious implications for the people of Scotland and is not being properly debated in Scotland. I completely understand the position taken by Labour Front-Benchers—I would not have supported the amendment of the noble Lord, Lord Forsyth, for the same reason—but we are in danger of allowing the argument to be run by one side; we need to hear a balanced argument. We need to hear generosity from the United Kingdom, because the people of Scotland have said that they want to be part of the United Kingdom. I think the UK will say to the people of Scotland, "We want you to stay; we want to find a settlement that works for both of us". It is not good enough simply to say, "You are going to get that tax. It is up to you what you do with it. If it falls short, that is your problem". That is why I support Amendment 76, and the other amendments in the group have a similar intention. Never mind no detriment: we have to recognise that we need a basic, practical, working arrangement that says, if there is clearly an unsustainable disadvantage to the people of Scotland from a formula that has been openly and honestly agreed, we are prepared to revisit it. Amendment 76 gives a framework for doing that.

It is essential that the Minister address two issues. First, he must explain how we can enact this legislation without having formally acknowledged the formula written in both Houses of Parliament and the Scottish Parliament. Secondly, and more to the point, if we are not able to deal with the matter here and these amendments are not accepted, that leaves the Scottish Parliament as the only arbiter of whether this goes ahead. We all know that it is likely to say, "We couldn't get a deal so you have to vote for us, because nobody else will give you a decent deal". However, the truth is that it was offered a pretty generous deal that would have protected Scotland's position in the United Kingdom and given it more powers and control, which it rejected for the simple reason that it was terrified of the responsibility of having to take these issues up with the people of Scotland and explain the reality of the resources it had and how it was going to balance them out. That is the everyday debate of politics everywhere—except, at the moment, Scotland. We are debating this issue in a vacuum, without facing the fundamental reality that Scotland benefits from being part of the United Kingdom. Scotland wants more control over its own affairs. We have an agreement in principle to deliver that, but we do not have a fiscal framework. Whatever framework is introduced, we need to make sure that we have a mechanism for reviewing it genuinely to reassure the people of Scotland and ensure that it will be fairly and independently assessed, and that if there is a clearly unacceptable and unsustainable disadvantage, as determined by independent commissioners, action will be taken to put that right. If we can get that right, we can win the argument.

Lord Turnbull (CB): My Lords, I support Amendment 75A moved by the noble Lord, Lord Kerr, on debt and borrowing. The amendment is founded on the principle that the UK is a union, constitutionally and financially. There is a common currency, single monetary policy, single exchange rate and a banking union. We have some banks that pretend their headquarters are in Scotland, but they are not really. The public finances of Scotland and the rest of the UK are inextricably intertwined. A large part of public services has been financed—even under the new arrangements, when they are unveiled—by grants from the UK or assignment of revenues. Departments of Her Majesty's Government have large budgets that they spend directly in Scotland.

The SNP may not like the fact that the union exists, but it does, and certain consequences follow. When the Economic Affairs Committee took evidence on post-referendum arrangements, there was little appetite by then for full fiscal autonomy. It was always an illusion, but it was thoroughly punctured by the gaps in the oil price. Some witnesses argued that, in addition to sensible

[LORD TURNBULL]
arrangements to deal with short-term fluctuations, Scotland could operate a separate borrowing regime, financed by borrowing in its own name. In effect, that would be policed by financial markets and underpinned by a no bail-out rule. As noble Lords have mentioned, debt issued by the Scottish Government would have its own credit rating with its own risk assessment, and if debt issuance was thought to be excessive its cost would rise and the Scottish Government would be forced to respond. However, most witnesses did not believe this model, given the extent to which the two economies are interlinked, and no one really thought that a no bail-out clause was plausible. Most notably, the noble Lord, Lord Darling, told the Committee that the eurozone has a no bail-out rule that we can see "works very well". I think he was being ironic, but I cannot be absolutely sure. He thought that a no bail-out rule would be,

"unnecessary and downright provocative and actually sound very patronising … I am part of the UK as well; do not tell me I cannot be bailed out by a country that I happen to be a citizen of".

That was strongly endorsed by the Committee.

During the course of the referendum, there was some loose talk that said, in effect, "Vote for us and we will put an end to austerity", but even now in Holyrood there is a recognition that although borrowing policy does not have to be identical to that of the UK, it nevertheless has to be consistent with it and supportive of policy for the UK as a whole. Two things follow from that. First, the amount of borrowing year by year cannot be such as to undermine the Government's overall borrowing objective. Secondly, the stock of debt, relative to some measure of capacity to repay, cannot be such as to raise the spectre that the UK Government might have to intervene. As the noble Lord, Lord Kerr, stated, this amendment does not seek to specify what those various ratios should be. They should rightly be in secondary legislation. Why, then, is the amendment needed? It is needed to entrench the principle that Scottish fiscal and debt policy cannot be decided unilaterally in Scotland. It has to be related to the policy of the UK as a whole and the limits must be set by the Treasury, after consulting the Scottish Government, and should be approved by Parliament. In that way, the amendment fills one of the holes in the Bill, although many are left.

The noble Lord, Lord McFall, mentioned an article, "Sleight of Hand", by Jim Gallagher, who, as many noble Lords will know, is a former Scottish civil servant and is now a professor. However, the noble Lord did not read the last paragraph:

"So I wonder if this is less about fiscal formulae and more about nationalist politics. It's becoming pretty clear that the SNP won't promise another referendum after the next Holyrood election. They think they'd lose. But without it they'll have nothing to talk about. So maybe their aim is to reject the fiscal framework, whatever is offered and so derail the new powers in the Scotland Bill. Then they can spend the next five years arguing about power, not exercising it".

Lord Thomas of Gresford (LD): My Lords, I feel obliged to intervene for Wales for a moment, because there is a very solid Welsh dimension in this. I also feel that I can do so because I was married for 39 years to a lass from West Lothian and I have always known the answer to the question—which is, "Yes, of course, dear". The point that really concerns me is that a deal is being done in secret in Scotland, involving the fiscal framework, which will have implications in Wales. As the noble Lord, Lord Forsyth, said, the Welsh deal on the Barnett formula is rubbish. Every political party in Wales recognises that. The Welsh Labour Government refuse to exercise their tax-raising powers until that formula, or some formula, is revised. I fear that this secret formula or framework that is being arrived at in Scotland will be used as a precedent in Wales when we come to deal with tax-raising powers under the draft Wales Bill, and that we will be stuck with the same sort of system, arrangements and mechanisms as there are in Scotland—but it will be entirely different.

Therefore, I urge Ministers, as my noble friends have done, to allow transparency, so that we may actually have some input. Many speakers in this debate have said that it is unfair on other parts of the United Kingdom. Certainly, it may very well be unfair on Wales: the impact of this fiscal framework in Scotland could devastate Welsh funding for the future. I hope that your Lordships will excuse me for putting in a Welsh voice.

The Earl of Kinnoull (CB): My Lords, I support Amendments 76 and 79G. Like many other noble Lords, I have found much that is attractive in many amendments in this debate, but I am confining my remarks to those two. I note that all the amendments and speeches have been wholly consistent with the Smith commission report.

I support Amendment 76 totally, of course, but I fear that it is something that is needed more than once; in fact, I would repeat it every five years. I see it as part of what, in commercial terms, one would call a feedback loop, which I think one needs to set up for every single devolved Administration. It could be well-structured and formal and allow for a frank examination of every aspect of devolution between Westminster and those devolved Administrations. If we do not set up a feedback loop now, as sure as eggs are eggs, when things go wrong we will set one up in the future. I feel strongly, and I think this will come back in further debates, that a feedback loop is required.

Secondly, I was much attracted by the thinking behind Amendment 79G. However, I would not in fact set up a Scottish fiscal commission; rather, I would expand the OBR to include this. As we expand the number of devolved deals, the problem is that we could potentially end up with a massive number of these commissions, all of which would essentially be umpires and all of which, one assumes, would umpire according to slightly different rules. There would be a great advantage to having one umpire in the UK—it has been pleasing to read today in the press how the OBR has resisted political interference in the recent past—which used one set of rules to examine figures and to report generally to the United Kingdom.

7.30 pm

Lord Purvis of Tweed (LD): My Lords, I add support to my noble and learned friend Lord Wallace of Tankerness's amendment in this regard. It was Baldwin

who said that democracy was government by explanation but, as we discussed in the previous debate, there has not been much explanation of the development of the fiscal agreement. We need to ensure that when it comes to two broadly competing interests—the Scottish Government and the UK Treasury—there are mechanisms for the agreements and their operation to be reviewed in future.

I was a member of the finance committee in Holyrood for five years when it did not have the role of scrutinising the revenue powers of the Scottish Parliament, and I think it will be a positive thing for it to have those powers. In many regards, though, the processes that exist in Holyrood are not fit for the purpose of the powers that are coming its way. The operation of this power, especially and most importantly in the first five years of operation, will therefore be critical. That is why the amendment is of value.

Of course, I agree with the noble Earl about the benefit of building longer-term structures; my party has proposed one potential option for that, which is what the Canadians would recognise as a federal fiscal commission. When there has been a protracted process of discussions between the Scottish Government and the Treasury, not wholly because of a difference in fiscal policy or a different approach to budgetary discipline but because of a political imperative, that is not going to disappear once agreement has been reached. Indeed, it may be compounded once it is in operation, given the difficult situations that may arise.

This afternoon we have all been reading at pace from the Chief Secretary's letter, and I think we have all registered with the Minister our complaint that we should not be having to do that as well as discussing the relevant legislation. However, the recommendation to take forward the Scottish Fiscal Commission into a more independent body is worth while, and I would be interested to hear what the Scottish Government's position is. The problem is that it has already been legislated for in Holyrood, and we will be asking the Scottish Parliament to go back on what it has just agreed to establish a structure that this Parliament will perhaps argue is not fit for purpose. It makes for an interesting dynamic that the SNP chair of the Scottish Affairs Select Committee is proposing this to the SNP chair of the Holyrood committee, which has a different view on this, but that is for them to resolve and we will be interested in their conclusion. Ultimately, as has been referred to before, the experience of the referendum is that the people are asked to believe figures and facts that are put forward by one Government and those that are put forward by a competing one. That puts civil society and the public in an invidious position. If we are locking this into a long-term approach, that does not bode well for the future.

My final comment is that I know it has been hard to separate the politics from the constitutional practice in this. It has been very hard for those who argue for independence, because this is the final aspect of their arguments. They have lost their argument through the people of Scotland voting for Scotland to stay part of the UK, and in many respects they have lost the argument for full fiscal autonomy. The only argument that is left on the table is the long-term form of devo-plus that we have with this Bill. It is quite hard for those who are passionately in favour of independence to recognise that there are structures that could be long-term and stable and could work for the union, because if they accept it then they are undermining their own fundamental approach, so we are asking them to do something that is exceptionally hard for them. So I am not surprised that, to some extent, there has been this to-and-fro.

However, do we want that to be a permanent feature of our constitution and of the relationship with the Scottish Parliament, of which taxpayers on both sides of the border will be the victim? In common with all colleagues in this House who are resident in Scotland, I have received my letter from the Inland Revenue saying that we are now designated Scottish taxpayers and that this is now a real process that is under way. If we want to move away from the situation where the two blocs perpetuate this interest, then we need a regular review mechanism, combined with joint working between the Parliaments, not the Governments—the critical part of my noble and learned friend's amendment. In addition, by taking out the only bodies that are responsible for making the forecasts for revenue and population growth being the two respective Governments, we will be locking in the kind of difficulties that we have been seeing over the past nine months. I hope that the House endorses my noble and learned friend's amendment.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): My Lords, we have had a detailed debate with many authoritative contributions, and I welcome the contributions from all parts of the House. We have covered a lot of ground. I will try to do justice to all the issues that have been raised. No detriment, block grant indexation, borrowing, review, scrutiny, commencement—there is a plethora of them, and I hope that the House will bear with me as I try to cover each one. I shall pick up on the points that individual Peers have made on each of those issues.

To start off, I shall remind us of what we are trying to achieve here. We are trying to rebalance the devolution settlement and to give the Scottish Parliament greater responsibility for raising more of what it spends. Currently that is around 10% of the Scottish budget and, once the Bill is in operation, it will be over 50%. That will lead to a Scottish Parliament that is more financially accountable to the people who elect it. The Scottish Government should be able to reap the rewards, and bear the risks and costs, of the policy choices that they make. That is something that the UK Government think is important, and something that John Swinney, the Deputy First Minister of the Scottish Government, has publicly accepted. The noble Lord, Lord McFall, talked about grievance politics. This is an opportunity to move Scottish politics on from the familiar blame game.

Why does the fiscal framework matter? A lot of noble Lords have said that this is central. I certainly agree with the House of Lords Economic Affairs Committee, which said:

"The fiscal framework will be central to future devolution arrangements".

It is the fiscal framework that provides the financial tools and controls to support the operation of the Scottish Government's new powers. As with the Smith

[LORD DUNLOP]
agreement as a whole, this is about striking the right balance: giving the flexibility to the Scottish Government to take their own decisions, while retaining those fundamental UK strengths. That is what the people in Scotland voted for in September 2014 by a clear and decisive majority. Therefore, it is our duty to deliver a Scottish fiscal framework that is sustainable and consistent, as the Smith agreement says, with the overall UK fiscal framework.

I am sure that noble Lords are on the edge of their seats because we have talked a lot about my next topic: the no-detriment principles. The noble and learned Lord, Lord Wallace, said that he had no idea of what the UK Government's view was of no detriment. Other Peers—the noble and learned Lord, Lord McCluskey, and my noble friend Lord Forsyth—raised the no-detriment principles. The House of Lords Economic Affairs Committee highlights the importance of principles, and the Smith agreement sets out a range of principles against which the fiscal framework must deliver. I would be the first to recognise that these principles set out in the Smith agreement are high level, and it is for the two Governments to agree on how to apply them in practice. Central to the negotiations that have been taking place is how the Scottish block grant adjusts to account for new tax and welfare powers and meets these no-detriment principles.

The first no-detriment principle is that the Scottish Government and the UK Government budgets should be no larger or smaller simply as a result of the initial transfer of tax and spending powers. As the noble Lord, Lord Darling, said, in many ways this is a very straightforward calculation. We have the data, use actual figures for the final year prior to devolution and apply whatever indexation method is finally chosen.

The second no-detriment principle is that there should be no detriment as a result of Scottish Government and UK Government policy decisions post-devolution. There are two legs to this no-detriment principle. The first is that decisions by one Government that directly affect the revenues or spending of the other should be compensated. What does that mean in practice? It means direct effects: so if the UK Government were to increase the personal allowance, that would obviously have an impact on the tax revenues of the Scottish Government that was totally outwith their control. Looking at it in another perspective, if the Scottish Government used their welfare powers in a way that automatically and in a direct way affected benefit passporting in the reserved welfare system, that would be a direct effect. However, the principle is explicitly not to compensate the Scottish Government for the economic consequences of the policy choices that they make: so, for example, if higher tax rates lead to an increase in net migration from Scotland, that would be a consequence of the decisions that the Scottish Government had taken.

The Smith report is very clear about economic responsibility, saying that,

"the revised funding framework should result in the devolved Scottish budget benefiting in full from policy decisions by the Scottish Government—"

Lord Wallace of Tankerness: If there was migration from Scotland as a result of higher tax rates, clearly the population ratio would change, and we are being told that there was much discussion around the concept of per capita. How would the United Kingdom Government and the Scottish Government agree on how many of those who have left Scotland have left as a result of higher taxation as opposed to having to look after elderly parents?

Lord Dunlop: As I was saying, that is an indirect, or behavioural effect. It is not a direct effect: that is the point that I was making. What the adjustment mechanism takes into account is these direct effects. They are things that can actually be calculated, but I will come on to talk about behavioural or spillover effects, which is what I think the noble and learned Lord is talking about.

7.45 pm

Lord Forsyth of Drumlean: Before my noble friend does that, will he actually answer the question? It was: how do you tell which is a direct effect and which is an indirect effect?

Lord Dunlop: One is a direct consequence of a policy decision, so in the example I gave of personal allowances, that is a direct consequence of a policy decision that is outwith the control of the other Government. It is not the behavioural or indirect effect, which is about how people react to a decision that is taken. That is the distinction that we are making.

Lord Forsyth of Drumlean: I am most grateful to my noble friend. May we just take the example that he gave—that was raised by the noble and learned Lord, Lord Wallace—of people leaving Scotland? If we have an SNP Government who decide to put the top rate of tax up to 60% and a lot of the WILLIEs and other people decide, "We are going to move south" and they tell their neighbours, "Actually we are moving south because we want to be closer to our children", how will the Government know how much of the tax base has been reduced as a result of the Scottish Government putting up tax and how much as a result of domestic or other normal movement? There is no way that you can tell that effect. Why would it be appropriate to compensate in those circumstances?

Lord Dunlop: My noble friend misunderstands what I am saying. I am not necessarily saying that those should be compensated for. In the evidence that the Chancellor of the Exchequer gave to the Treasury Select Committee, he said:

"My personal view is that tax competition is something that we should allow".

He is effectively saying that if there are different tax rates north and south of the border, that is something that we should not automatically try to compensate for. Another example relates to childcare. We all remember that at the time of the independence referendum White Paper, central to the retail offer being made by the SNP was its childcare policy. It was a matter of complaint that, were that policy to be successful and increase income tax revenues, the benefit of that would actually flow to the Treasury and not to the Scottish Government.

Under the Smith package, if such a policy succeeded in increasing participation by women in the labour market, the benefits of that would flow to the Scottish Government.

Lord Wallace of Tankerness: Teasing this out, may I give an example that is hypothetical in one sense, because it is historic? During the 1990s, the Conservative Government privatised the water industry in England, and, I think, in Wales. Clearly, the decision was taken by the then Conservative Government not to do so in Scotland. However, after that privatisation had taken place, there were no further consequentials under the Barnett formula for Scotland. The money had to be found to fund the water industry in Scotland in public hands. If the arrangements that we are now talking about had been in place then, and the UK Government had decided to take the water sector into private ownership in England and Wales, which would have led to a decrease in the funding for Scotland, would that have been a detriment for which the Scottish Parliament would have had to be compensated?

Lord Dunlop: No, I do not believe that that would be a detriment in the sense that the UK Government would have to compensate the Scottish Government. The situation would apply; the Barnett formula would apply; the equivalent departmental spending from England would flow through to Scotland. I do not think that this package changes that at all. Although the ownership structure north and south of the border is different, the cost of this on both sides of the border is met in water bills.

Lord Forsyth of Drumlean: The Smith commission report says in paragraph 4a:

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

On my understanding of what these words mean, with the precise example of the water industry, which I have repeatedly asked about in the past, how can my noble friend say what he has just said from the Dispatch Box when the words have a different meaning? Are we to understand that the Government are departing from the meaning of the no-detriment principle as set out there?

Lord Dunlop: No; we are not departing from the Smith agreement at all. It is the function of the negotiations. As I say, these are high-level principles, and the two Governments have to work out how these principles are applied in practice. That is what we are doing. The Barnett formula will continue to operate and determine departmental spending and how that flows through in Barnett consequentials. That will not change.

Lord McFall of Alcluith: The noble Lord mentioned the issue of WILLIEs—people who work in London but live in Edinburgh. If the Scottish Parliament put up the rate of tax and these individuals then decide to pay themselves in dividends, that would be tax competition, and therefore the Scottish Government would not be compensated. Am I correct?

Lord Dunlop: As I said, as regards tax competition, that would not be counted for in terms of compensation. I hope that I have made that clear.

Lord McCluskey: May I ask about a point on the language used by the Minister? He drew a distinction between direct and indirect detriment but I look in vain in the Smith commission report for these adjectives. I know that my noble and learned friend has a copy here, as do I. What is the basis for the Minister drawing a distinction between direct and indirect detriment?

Lord Dunlop: As I said, the Smith agreement is a set of high-level principles. The negotiations are about how the two Governments apply those principles in practice. When, as I hope, the fiscal framework is agreed shortly, the noble and learned Lord will see how the two Governments have reached an agreement as to how these principles will apply in practice. That is what the discussions that have been going on for the past months have been all about.

Lord McCluskey: Is that expression "high-level principle" a euphemism for low-level politics?

Lord Dunlop: No; it is the responsibility of the two Governments to work out this package of powers and how the fiscal framework will work in practice, which is what we are doing.

Lord Purvis of Tweed: I am anxious to make time before the Minister moves on from this specific aspect of indirect detriment—I know that he will come on to behavioural aspects soon. Will there be one body which will define what these indirect impacts are, with choices north and south of the border, or will we see a perpetual process of two Governments having disputes about how they will define what the indirect consequences are of policy choices north and south of the border?

Lord Dunlop: No; we will not see disputes, because that is the process we are involved in at the moment, which is to reach an agreement on how all these aspects operate. That is what we are doing. When I say that I am optimistic that we will reach an agreement, that is on the basis of the discussions we have had so far and the issues that remain outstanding.

I will move on to the second leg of the second no-detriment principle, which is to do with taxpayer fairness. Changes in devolved Scottish taxes—for example, income tax—should affect public spending only in Scotland, and vice versa for equivalent taxes in the rest of the UK. What does that mean in practice? It means that taxpayers in Newcastle and Liverpool will not fund even higher levels of public services in Scotland not available to them. The noble and learned Lord, Lord McCluskey, touched on some of these issues in his recent *Herald* article, which has already been referred to. The other aspect is that Scotland does not inadvertently gain a double benefit, via Barnett consequentials and a fixed proportion of any growth in tax revenues from the rest of the UK.

[Lord Dunlop]

In conclusion, therefore, in this part of what I intend to say, some block grant adjustment mechanisms work better against different principles, and the UK Government's approach is to find a mechanism that performs well against all of them. Each principle is not perfectly met in every respect, which is what we are trying to deal with in the negotiations that are going on at the moment.

Lord Kerr of Kinlochard: Has the Minister looked at that bit of the Economic Affairs Committee report, where the committee comes to the view that it is easy to understand the first no-detriment principle at the outset—the ab initio principle—but that the attempt to legislate for or to operate a no-detriment principle down the years is a will-o'-the-wisp: it cannot work? If this is what is holding up the fiscal framework, call it off—it will not work. You cannot distinguish over time whether the tax take went down because of the tax measure, a change in the Scottish economy or in the world economy, or in the oil price, so you have a recipe for a continued debate, with the argument going round every time if you are trying to say that there must be no detriment down the years. Abandon it—it will not work. The Smith commission did not say how it would work, and I do not for a moment believe that it thought it would work. It is a lovely principle to get people to agree and then they can go home, but we are doing something different now.

Lord Dunlop: We very much recognise what that report says, which is that if you interpret the no-detriment principle as applying absolutely literally to all effects, whether behavioural or indirect, it is very difficult to arrive at a single solution. However, these are the issues that are being addressed in the negotiations, and when the framework agreement is published the noble Lord will see how the two Governments have addressed those issues.

On the block grant indexation mechanism, Smith says that,

"future growth in the reduction to the block grant should be indexed appropriately".

There has been much talk about the need to avoid endless wrangling. We are therefore trying to make this process as mechanical as possible. The issue is how much of the growth in relevant taxes in the rest of the UK will benefit Scotland post-devolution.

With new powers come new responsibilities, and, as has already been mentioned this evening, the debate is around appropriate allocation of responsibilities between the UK and Scottish Governments and what is a fair division. The UK Government continue to manage UK-wide risks and the Scottish Government manage marginal Scotland-specific risks. To give an example, if there is a UK-wide recession, there will be a smaller block grant deduction to shield Scotland from UK-wide impacts because the growth in UK taxes will be lower. We have achieved agreement before with the Scottish Government for the Scottish rate of income tax, which is indexed against movements in corresponding UK Government tax.

The key issue, which has been raised in the debate by the noble Lord, Lord McFall, and other noble Lords, is how population change is managed. The UK Government will continue to manage the impact of UK-wide population change in all devolved areas. We are looking for the Scottish Government to manage marginal Scotland-specific changes. The Scottish Government already manage these changes within Barnett, and John Swinney, when he appeared before the Scottish Parliament Finance Committee last summer, accepted this.

The UK Government's proposal, which is contained in the Chief Secretary's letter, addresses this population concern and we are prepared to share the risk. The model we have tabled recognises that Scotland's share of income tax revenue is less than its population share and it ensures that, like Barnett, the tax adjustment takes account of changes in Scotland's population. So if Scotland's population share falls then so will the tax deduction.

However, let me be clear: we cannot agree something where the Scottish Government are not accepting their fair share of population risk. Why? If it is right that Scotland retains all the growth in its own tax revenues, then it is difficult to explain as fair that a fixed proportion of growth in the rest of the UK's own devolved tax revenues is added to the Scottish budget irrespective of how good or bad are the policy choices of the Scottish Government and the relative performance of the Scottish economy as a result.

8 pm

Lord Wallace of Tankerness: This is the point I was trying to get at before. The Minister has just said it; he may correct me, and I apologise as it is complex. He said that, if the Scottish population falls and is a lower proportionate share of the population, there would be a lower tax deduction. But if that population has fallen because of the tax policies of the Scottish Government, why should there be a lower tax reduction?

Lord Dunlop: I think we are reflecting at the outset that Scotland produces a lower proportion of total UK income tax. We are applying that comparability factor from the outset. The Scottish Government will still bear population risk. If there is deviation from that initial situation—whether it is a result of their policy choices—that is how they would bear the population risk.

Lord Darling of Roulanish: Can the Minister explain another point he raised? I am puzzled how it will ever be possible within a reasonable timescale to properly assess whether a measure taken by either the UK Government or the Scottish Government resulted in higher growth and therefore a higher tax rate or the other way round. The Minister must know that most of these matters are in dispute, sometimes for years, because no one can be really sure why a tax take went up or down. There can be a hunch or a feeling, but these things are contested maybe even decades after they happen. Given that this is a settlement that has to fix the grant every year, I am just wondering how you do it.

Lord Dunlop: As I said, the agreement will set out the mechanism by which these matters are determined, so in that sense we will have reached agreement. That will avoid the perpetual wrangling. If you like, that is one of the complexities that we have been wrestling with and why it is taking time—

Lord Darling of Roulanish: I have one more observation. I am just wondering how, in the case of the SNP, perpetual wrangling can be written out of the script.

Lord Dunlop: A good start is if we actually get an agreement that, I hope, we can announce in the not too distant future.

Lord McFall of Alcluith: Can I press the Minister on this? We have three models in front of us—the per capita index deduction, the index deduction and the levels deduction. Do I take it that the Minister has ruled out the per capita index deduction because there is too much of a bias to Scotland in terms of its population going down and it being rewarded excessively? Looking at the Chief Secretary's letter, it would seem that the Government from paragraph 13 onwards have looked at the levels model and the index model and decided to provide another hybrid model to the negotiations for the SNP. Is that what the Government are doing? Given paragraph 13, I asked earlier what the response of the Scottish Government has been. Are they warm to that hybrid model now?

Lord Dunlop: The Committee will understand that at a very delicate time in the negotiations I do not want to comment on the state of the negotiations in detail. It is clear from the Chief Secretary's letter that we have indeed tabled what the noble Lord described as a hybrid model.

I shall pick up on a point made by the noble Lord, Lord Forsyth. We are seeking to avoid—I think the Secretary of State for Scotland put it this way in a recent debate—the Scottish Government wanting to have their cake and eat it and have a slice of everyone else's cake while they are at it.

I now turn to borrowing, which was raised by the noble Lords, Lord Kerr, Lord Darling and Lord Turnbull. I should say at the outset that we have a lot of sympathy with what this amendment seeks to achieve.

Lord Forsyth of Drumlean: I have a question before my noble friend moves on. I accept we have had a good go on this but I am still—perhaps I am just not smart enough to understand this—struggling to understand the Government's position. It once was that, if Scotland is responsible for particular services, it should be responsible for raising the money and have direct accountability. What appears to be happening now is that the Government are trying to find some kind of Barnett-like top-up to the tax base. How is that going to go down with people in England? How will it take account of changes in England? For example, suppose a large number of migrants come into the country and live in the south-east of England and increase tax revenues and the tax base relative to Scotland, will that mean that there has to be money sent north of the border to maintain some kind of parity? I just do not understand how this will work. Can my noble friend explain?

Lord Dunlop: If there is faster population growth in the rest of the UK, that obviously will not just increase tax revenues. It will also increase demand for public services. This negotiation is all about a fair allocation of risk. As I said, at this delicate time of the negotiations I do not want to comment in detail about particular aspects. We will publish this agreement if and when we can get it and I will be very happy at that point to discuss and debate with my noble friend on these matters.

I have great sympathy with what the amendment tabled by the noble Lords, Lord Kerr and Lord Turnbull, seeks to achieve. It is centred on the Scottish Government's resource and capital borrowing powers and this is an important part of the negotiations. The noble Lord, Lord Kerr, asked whether this is a matter of great controversy. I do not anticipate—if we can reach agreement soon—that this issue will cause great controversy. In detail on resource borrowing, Smith talks about sufficient and additional powers to,

"ensure budgetary stability and provide safeguards to smooth … public spending in the event of economic shocks".

The current powers of the Scottish Government are that they can borrow up to a total cap of £500 million for this purpose and an annual limit of £200 million for cash management and forecasting error in devolved tax revenues. The rationale for more in this area is the increased risk and volatility from a greater scale of tax devolution, although I again stress that this is a marginal Scotland-specific risk. This needs to be proportionate. Mindful of the need to deliver sustainable UK public finances, as the noble Lord, Lord Turnbull, said, Scottish borrowing is included in UK borrowing.

When we look at these borrowing powers, we need to look at the other tools that are available to help manage the risks—the possibility of building up a rainy-day fund and the block grant adjustment mechanism itself. We also need to cater for Scotland-specific shocks if the Scottish economy is in recession while the UK economy continues to grow. That is a relatively rare event—I think it has happened three times in the last 20 years. We need to do this to protect against relative underperformance leading to worse economic outcomes through higher taxes or lower spending during recession. I pick up on a point that the noble Lord, Lord Darling, made: it is explicitly not a facility for the Scottish Government to borrow to fund current spending in normal times. That would absolutely undermine fiscal responsibility and accountability.

On capital borrowing, Smith talks about sufficient borrowing powers to support capital investment. He asked the two Governments to look at a similar prudential borrowing regime used by local authorities. The current powers involve a total cap of £2.2 billion and an annual limit of 10% of the capital grant, which is currently about £3 billion, so we are talking about £300 million per annum. All borrowing needs to be complemented by fiscal rules to ensure consistency with the overall UK fiscal framework.

The noble Lord, Lord Kerr, specifically asked about legislation. The Scottish Government's existing borrowing

[Lord Dunlop]
powers are provided for in the Scotland Act 1998 as amended by the Scotland Act 2012. Any changes to the purposes and circumstances for which the Scottish Government have permission to borrow to reflect the transferred risks may require amendments to primary legislation. I assure noble Lords that we will review further what primary and secondary legislative changes may be needed in the light of a fiscal framework agreement, including additional independent scrutiny of the Scottish Government's public finances, to which the noble and learned Lord, Lord McCluskey, referred. Both Houses of the UK Parliament will have an important scrutiny role.

Lord Turnbull: Will the Minister clarify a matter for me? When he talks about additional primary legislation, is he talking about bringing forward an amendment to this Bill or about a new Bill to be brought forward on some other occasion? It really belongs in this Bill.

Lord Dunlop: As I said, it depends on the timing of an agreement. Obviously it would be preferable, if possible, to provide amendments for this Bill, but that depends on our reaching an agreement and the timing of that agreement.

Lord Kerr of Kinlochard: The noble Lord said that this is not the most controversial element. In fact, he implied that it was not controversial at all. In that case, do we have to wait for all the difficult bits of the fiscal framework to be agreed before we see the easy bits coming out if there are outcomes there? My noble friend Lord Turnbull is right that this Bill would be better if there were a provision in it on borrowing. I do not know whether my language is correct but this is different from the 1998 Act. We are explicitly laying down the mechanism for settling these limits because it is a reasonable assumption that there will be much more borrowing. I think it is desirable to amend the 1998 Act and, if we are going to do that, why not do it in this Bill?

Lord Dunlop: The difficulty is that you cannot separate out one element of what is an overall package. Both Governments have agreed that nothing is agreed until everything is agreed. Therefore, I do not think it is possible to pluck out just one aspect and to move ahead with it on a different timescale.

Lord Forsyth of Drumlean: Perhaps I might get the politics of this right. The proposal is that we absolutely have to get this Bill on the statute book before the Scottish elections but, come those elections, we will be able to say that there is another Bill coming down the track to deal with these matters, and we may or may not have the detail on that. Is that not going to defeat the object? Was not the position of both Front Benches earlier this afternoon that we had to deliver the vow and say that we had delivered it? If another piece of primary legislation is coming and as yet we do not know what it is going to say, does that not undermine the whole strategy?

Lord Dunlop: No, I do not believe that it does. My noble friend is asking me to comment on hypotheticals. We are engaged in trying to reach an agreement in as timely a fashion as we can to ensure that we have proper scrutiny of the fiscal framework in the context of the passage of this Bill.

I am conscious that time has been moving on and I shall be very happy to return to some of these topics on another occasion. However, I just want to pick up on a couple of points.

8.15 pm

Lord McFall of Alcluith: There does not seem to me to be a need for separate legislation on borrowing. It is very important that the Minister clarifies that point now, otherwise we will just be chasing shadows afterwards.

Lord Dunlop: As I said, what we require in terms of legislation for borrowing depends on the final agreement. I do not think I can say more than that at the moment.

I shall conclude on a couple of points. Smith calls for a review and the Government support that idea. We are in a new world and it is right to assess how the fiscal framework and fiscal devolution work in practice and whether they impact fairly and equitably on the finances of Scotland and the rest of the UK.

I have already mentioned independent fiscal scrutiny, and the amendment from the noble and learned Lord, Lord McCluskey, addresses this. It is certainly the case that the UK Government strongly support a robust independent Scottish Fiscal Commission. That would include the capacity for that body to undertake independent forecasts—it would not just, as it were, be marking the Scottish Government's homework. That is one of the key issues in the fiscal framework negotiations.

Finally, on commencement, my noble friend's amendment is relevant in proposing a sunrise clause if we are unable to agree a fiscal framework. As we have already discussed, we are working hard to agree a fiscal framework. As I said earlier, I do not think that it is helpful to speculate what options would be open to us if an agreement cannot be reached. My noble friend suggested one option, and other options have been suggested as well. We will take those ideas away and set out our conclusions on Report. I therefore ask noble Lords not to press their amendments.

Lord McFall of Alcluith: I beg leave to withdraw my amendment.

Amendment 75 withdrawn.

Amendment 75A

Tabled by ***Lord Kerr of Kinlochard***

75A: After Clause 19, insert the following new Clause—

"Borrowing powers

(1) Section 66 of the Scotland Act 1998 (borrowing by the Scottish Ministers etc.) is amended as follows.

(2) For subsections (1A) and (1B) substitute—

"(1A) Subject to subsection (1B), the Scottish Ministers may borrow by way of loan or by the issue of bonds (but not bonds transferable by delivery) any sums required by them.

(1B) Borrowing by Scottish Ministers shall be subject to—

(a) annual limits; and

(b) an overall ceiling.

(1C) The annual limits and the overall ceiling shall be set by regulations made by the Treasury, following consultation with Scottish Ministers.

(1D) Regulations under subsection (1C) may not be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.""

Lord Kerr of Kinlochard: I understand the Minister's point about nothing being agreed until everything is agreed. That seems to me a very reasonable point to make. However, that applies to the numbers, the levels and the ceilings; it does not apply to the principle of limits and having them in the Bill. If that is not controversial, I really think that on Report we ought to see it, not necessarily in my language but in some language, in the Bill.

Amendment 75A not moved.

Amendment 76 not moved.

Clause 20: Disability, industrial injuries and carer's benefits

Amendment 77

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

77: Clause 20, page 23, leave out lines 4 to 12 and insert "a disabled person or person with a physical or mental impairment or health condition in respect of effects or needs arising from that disability, impairment or health condition."

Lord Davidson of Glen Clova (Lab): My Lords, I rise to speak to Amendments 77 and 79 in my name and that of my noble friend Lord McAvoy. The focus of Amendment 77 is the current definition of "disability benefit" used in the Bill. The concern is that this may place unnecessary limits on the kind of replacement benefit that the Scottish Government have the power to introduce. The fear is that it may not allow the Scottish Government to introduce a benefit to assist people with very low-level disabilities or those for whom the effect of their disability is largely financial.

We moved this amendment in relation to carer's allowances at Committee stage in the other place following concerns raised by third-sector organisations. The concern from both Inclusion Scotland and Citizens Advice Scotland has been that the definition of disability might,

"restrict the autonomy",

of the Scottish Parliament,

"to construct a new system based on empowering disabled people to lead active and productive lives and promoting the human rights of disabled people and independent living".

Amendment 77 would offer an alternative, broader, more flexible definition of "disability benefit" that would, among other things, allow the Scottish Parliament to introduce a benefit to assist people with low-level disabilities or those for whom the effect of their disability is largely financial.

The Government brought forward an amendment on Report in the other place regarding the "carer's allowance" definition. However, they do not appear to have done the same in relation to the "disability benefit" definition. True it is that the Ministers, the noble Lords, Lord Dunlop and Lord Freud, have both written to this side of the House trying to clarify the Government's position. The letter we received from the Minister includes the following,

"by including the phrase 'normally payable' at the head of the definition, the provision gives the Scottish Parliament the necessary flexibility to create exclusions or create special categories, for example to enable provision for people who are terminally ill or those with lower needs".

I do not, of course, doubt in any way the accuracy of the Minister's statement, but on this side we are still keen to get assurances from the Minister on the Floor of the House and confirmation that the Scottish Government could introduce a benefit to assist people with very low-level disabilities or those for whom the effect of the disability is largely financial. That, in a nutshell, is the position that we adopt in relation to Amendment 77.

Amendment 79 provides for the devolution of the Access to Work scheme. This was an amendment that we moved at Committee stage in the other place. As my honourable friend the Member for Edinburgh South observed in the other place:

"Access to Work provides practical advice and support to disabled people, and their employers, to help them to overcome work-related obstacles resulting from disability".—[*Official Report*, Commons, 30/6/15; cols. 1429-30.]

The devolution of the programme to local authorities would certainly allow there to be better tailoring to local needs.

Access to Work is closely aligned with employment support. Several charities, including Inclusion Scotland and the Wise Group, are in favour of Access to Work being devolved to Scotland. ENABLE Scotland observes that the Access to Work scheme is one of the most important elements of the employment support system for disabled people. It gives various examples, such as the British Sign Language interpreters working for deaf employees.

ENABLE Scotland states its position as believing that,

"the devolution of Access to Work is necessary to deliver integrated and accessible Employment Support in Scotland".

Its position, which we share, is that Access to Work,

"does not currently integrate well with employability programmes",

that are sometimes not fully delivered by the Department for Work and Pensions. It continues:

"For example, if you are a person on Work Choice you can use Access to Work to get pre-employment support in interviews or agree support whilst transitioning into work. Persons supported by the Employability Fund … do not have access to that support and face increased negotiation and bureaucracy to get the support … Given that post-devolution the employability programmes will not be delivered by the DWP, failure to devolve Access to Work in parallel will limit access for Scottish jobseekers and increase bureaucracy for specialist support organisations and employers".

The Scottish Council for Voluntary Organisations also supports the devolution of Access to Work. It takes the view that that is necessary to create the integrated accessible form of employment support that it considers, as do we, should be created in Scotland. A women's charity in Scotland, Engender, has also identified support for devolution of the Access to Work scheme, which it says is necessary for improving overall support for disabled people.

[Lord Davidson of Glen Clova]

There are four questions that the Minister could assist us by answering. I do not expect immediate direct answers to them all; an answer in writing, in the usual terms, would be fine. These questions are as follows. First an integrated package of employment support measures is essential to ensure the best outcomes for disabled people—I assume that there is no disagreement about that. So what effect will absence of Access to Work in the devolution package have on outcomes for disabled people?

Secondly, will the Minister address the points raised by ENABLE, supported by the SCVO? It says that failure to devolve Access to Work in parallel with the Work Programme and Work Choice will,

"limit access for disabled jobseekers in Scotland and increase bureaucracy for specialist support organisations and employers".

Thirdly, does he believe that Access to Work complements the employment support programme already being devolved to Scotland? Finally, if the Government are committed to keeping this programme as a reserved matter, does that not make an even stronger case for a Joint Committee on welfare devolution to be set up? That idea is covered in a further amendment, tabled by my noble friend Lord McAvoy.

A number of amendments tabled by the noble Lord, Lord Kirkwood, seem to have a broadly similar intent—to prevent the UK Government from clawing back top-up benefits paid by the Scottish Government through means-testing reserved benefits. We on the Labour side have similar concerns. The Scottish Government should be able to make top-up payments to individuals who have had their payments unfairly reduced, suspended or withdrawn under the UK Government's sanctions regime.

We accept that Her Majesty's Government have tabled a significant number of amendments for Report stage that mean that the Scottish Parliament appears to have complete power to create new benefits in devolved areas and top up existing benefits—which, of course, we fully support. However, Labour outlined in the other place our wish for the Scottish Government to be able to make payments to those who have been sanctioned. The Minister may well have already covered that position. Certainly in meetings with him, which were extremely helpful, it has been suggested that the question in relation to sanction is already covered by the legislation. None the less, as with the previous amendment, it would be extremely useful for us if the Government were to confirm that for the record.

We would support Amendment 77J, tabled by the noble Lord, Lord Kirkwood, on definitions of "short-term". We tabled an amendment in another place, but did not pursue it as we had assurances that the position would be covered by the legislation. Nevertheless, our argument in Committee has been that the inclusion of phrases such as "short-term" would appear to limit the scope of the Scottish Parliament to take action in these areas. In the instance of discretionary housing payment and other discretionary payments, the Government have told us that, in their interpretation, a discretionary payment is a short-term payment. Our argument was that a discretionary payment is just that—a payment made at the discretion of and according to parameters set by the relevant Government. We respectfully suggest that further clarification would be useful from the Minister in that area.

We support the amendments in this group proposed by Her Majesty's Government, as these are primarily of a technical nature. I beg to move Amendment 77.

8.30 pm

Lord Kirkwood of Kirkhope (LD): My Lords, it is a pleasure to follow the noble and learned Lord, Lord Davidson of Glen Clova, and support the amendment in his name. I am pleased to take the Minister into the slightly calmer waters of Head F1 of Part II of Schedule 5 to the Scotland Act 1998.

I am pleased to see my favourite Minister, the noble Lord, Lord Freud, who has taken the trouble to observe and listen to these amendments, which I appreciate because this is important. I want to make one preliminary point. The most important thing that the Minister can do for me this evening is to give an undertaking that the new-found spirit of co-operation and good working relations that is now evident between Whitehall departments, the Scottish Government and the community of pressure groups who apply these provisions on behalf of their clients will continue. My perception, which is strong because I have been working with these people all my professional life, for the past 35 years, is that at the beginning people in Scotland thought they were getting short shrift, to put it mildly. This is a DWP issue. The impression—this is their perception, not mine; I am simply reporting it—is that they were getting no proper consideration or understanding in what was being proposed by the Government. I think that has changed. From my experience with the current Minister and his team, I am much assured that the consideration that has now been given to these clauses in this important part of the Bill is much better. But we need to continue to work hard at getting a good relationship with the people who are implementing the provisions north of the border. The presence of the noble Lord, Lord Freud, underlines the fact that the Government have got that message. I have now got that off my chest.

I am speaking to the amendments in my name, beginning with Amendment 77A. I will not, however, move Amendments 77D or 77G. I was getting carried away with my enthusiasm for peppering the Marshalled List with probing amendments and inadvertently misdirected myself. I managed to eliminate the UK's reserve power for discretionary payments in universal credit. I had no intention of doing that, so I will take away from the Minister the pleasure of saying that I got that substantially wrong because I have just realised that myself.

The best way that we can make progress in the Committee is for the Minister, in dealing with all my amendments and those of the noble and learned Lord, Lord Davidson, to take this opportunity to clarify how the provisions should be interpreted.

The one thing of which we should try to persuade people north of the border is that they need not necessarily be suspicious about everything. Some of this legislation is in quite dense language and a lot of it will have to be spread out into secondary legislation to

make it work. The view in Scotland is that people in London are trying to have a narrower rather than a wider interpretation of the deployment of these powers. I do not believe that is true. That is why, as I said, it is important that Ministers give this serious attention.

The people who have been briefing the Committee, such as the Scottish CPAG and the Scottish Federation of Housing Associations, have done a very good job. They are anxious to avoid gaps—that is what they are good at—and they have managed to achieve that by identifying some of the amendments on the Marshalled List this evening. They do not care where the powers lie or who is deploying them. They want to make sure that they can look after their client groups as best they can in the circumstances.

As the noble and learned Lord, Lord Davidson, has already managed to do some of it, I am going to just sketch through some of the amendments in my name. They are all probing amendments. They are designed to capture the Minister's attention and I think they have successfully done that: he has spent some serious time getting to grips with the concerns. Amendment 77 is a very good example of this. I knew in my heart that winter fuel payments were included because they are part of the regulated Social Fund but it is not explicit in the Bill. At an earlier stage, people in Scotland were not content to take at face value that the words,

"expenses for heating in cold weather",

would naturally and automatically import the winter fuel payments scheme in Scotland. Therefore, the purpose of the amendment—and it illustrates why I am speaking to these amendments—is to enable the Minister to say on the record from the Dispatch Box that that is the case. If he can do that, I would be grateful.

The amendments to Clause 22 seek confirmation on how top-up powers will be used and clarification on clawback powers. The use of the word "discretionary" in the title of Clause 22 caused some confusion because discretionary by definition means what it means. That could be usefully clarified by the Minister. Could he explain exactly what Clause 22 sets out to do? The amendments to Clause 23 and the two or three subsequent clauses are trying to get an understanding of exactly how the sanction restrictions will effect discretionary payments such as discretionary housing payments, crisis grants, community care grants and top-up payments. If he can help us understand that, the Minister will be doing us a favour.

The amendments to Clause 24 attempt to bottom out what power the Scottish Government currently have under the Welfare Funds (Scotland) Act 2015. It is the view of the people I have talked to that there should be support for families facing "exceptional circumstances", which the Scottish Government, in spite of the fact that they have the Welfare Funds (Scotland) Act 2015, feel they do not have the competence to cover. I would be very interested—I think the same question was raised by the noble and learned Lord, Lord Davidson—to learn more about that as well.

In Clauses 27 and 28, I am really nervous about concurrent jurisdiction powers. I do not know how these will be implemented. It is a much smaller-scale problem than financial frameworks and so on, but we need a clearer understanding of how these things will work. I understand that the department thinks that they are well dealt with in Clauses 27 and 28, but I do not think that that is necessarily the case. The power to delay is an opportunity cost in terms of access to universal credit. If the Government did decide that they had to take advantage of the delaying power, that might mean, for months if not years, that people in Scotland were denied access to some of the advantages of universal credit—because there are some—and that would not be a cost-free decision for the Government to take.

I want to spend a moment on Amendment 79ZC on the Social Security Advisory Committee. I am genuinely puzzled by the Government's approach to this because, as I read the Bill as currently drafted, they are excluding any role for the SSAC in relation to social security issues in Scotland. The Minister will know that the primary legislation for the SSAC was a 1980 Act later consolidated into the Social Security Administration Act 1992. Those provisions gave the SSAC an exactly parallel role in relation to the Social Security Agency in Northern Ireland. These two statutory accountabilities have been running in parallel ever since the SSAC was set up. Hitherto in Northern Ireland there was automatic parity with GB, so there was no real issue about any policy matters, but following last year's fresh start agreement, it is obvious to anyone paying any attention to what is going on in Northern Ireland that the Northern Ireland Executive and the Northern Ireland Assembly now wish to introduce substantive changes to their devolved social security arrangements, so the SSAC statutory role there will now involve providing advice on devolved arrangements in one part of the United Kingdom.

My question is this: if that is appropriate for devolution in one of the nations of the United Kingdom, what is the Government's rationale for wanting to take a diametrically opposite view for elements of social security now devolved in Scotland. It does not make any sense and I believe that there is a strong case for ensuring that the SSAC is able to take an overview of the way the UK social security system is evolving in the context of some elements being devolved to Scotland and Northern Ireland. It is certainly essential to have a single statutory independent UK body that can provide oversight of the rollout of universal credit in different ways in three parts of the United Kingdom, because that is what is happening, and of the implications of the way the exercise of the fully devolved powers in Scotland and Northern Ireland are impacting on the effectiveness and coherence of the social security system across the whole of the United Kingdom. I would be pleased to have a Government response to that.

Finally, Amendment 79ZD is the "Lord Freud" amendment, which I am now trying to promote everywhere I can because pilot schemes and test and learn have proved their value beyond any doubt in the policy area of universal credit. We should be encouraging Scottish Ministers and the Scottish Parliament to adopt them as they develop some of these important new social security powers. I understand that the government response might be, "It's up to Scottish Ministers; it's not up to us to tell them", but it would be a good idea to make that explicit in the Bill as often and as clearly

[Lord Kirkwood of Kirkhope]
as we can. Perhaps the Minister will take some time in his response to clarify some of these amendments. That would do a great service to the understanding of the provisions of Part 3 of the Bill north of the border.

Lord Purvis of Tweed: My Lords, I thank my noble friend for tabling these amendments, in particular Amendments 77N and 77R. As he has said, these provisions take us in a direction in which we have not travelled so far under devolution. That is quite understandable because this is a very significant transfer of powers.

The use of the phrase "operating concurrently" has the potential to raise not only some constitutional issues, but practical issues in the relationship between the two Parliaments. If my understanding is correct, this will be a novel area where this Parliament is able retrospectively to amend what is in effect devolved legislation. Obviously that would be done in circumstances where agreement has broken down. The Scottish Government will have had a view on the practicability of implementing the powers that have been transferred to them, on who is able to receive universal credit and when. That cannot be done unless with consultation with the Secretary of State.

That is, of course, reasonable: it is an area where there was considerable political disagreement before the Bill came to Parliament, when the Scottish Government claimed that there were veto powers. I think there has been significant movement on both sides, so we have moved away from that political disagreement, but this situation may arise where the Scottish Government have a view, the Secretary of State has another and, in effect, if the Secretary of State believes that the Scottish Government are wrong, it is open to this Parliament to retrospectively amend devolved legislation. That would be a high-profile set of circumstances, so my noble friend is justified in asking the Government for a bit more information as to how the Secretary of State would define "practicable". An enhanced requirement for the Secretary of State to state why he thinks measures would not be practicable to implement is very reasonable. As my noble friend said, the power to delay implementation is a significant power, in addition to the relationship that it would have with the Scottish Parliament.

8.45 pm

Some lack of clarity remains as to whether, if that is amended devolved legislation, there would be a requirement on the Scottish Parliament to change the regulations it had made, or whether it effectively becomes a UK piece of legislation. If that is the case, it is no longer the responsibility of the Scottish Parliament to change it subsequently, if there are to be amendments. Clarification from the Minister on that would be helpful. One unintended consequence may well be that, if there is a regulation from this Parliament to amend a Scottish Parliament regulation, it in effect becomes a piece of UK legislation and not devolved legislation. Further clarification on those points would be greatly welcome.

Lord Dunlop: I thank the noble and learned Lord, Lord Davidson, for raising the amendments in his name and that of the noble Lord, Lord McAvoy. I also thank the noble Lord, Lord Kirkwood, for setting out the areas where he hopes for clarification. I will try to address the points that have been raised.

Turning first to the definition of disability, the purpose of Clause 20 is to devolve the policy space and to provide financial support to meet the extra costs arising from disability. The clause is designed to give flexibility to the Scottish Government to design their own approach with regard to policy, the criteria that are applied and the scope. The way we have done this, and implemented what Smith called for, is to define the main common features of existing benefits and the circumstances in which benefits are "normally payable". To give the noble and learned Lord, Lord Davidson, the assurance he seeks, this is not intended to impose restrictions or obligations on the Scottish Government; they should be free to set their own agenda.

I understand that stakeholders are concerned that Scottish Ministers will interpret this clause more narrowly—for example, with regard to whether it covers terminal or fluctuating conditions such as cancer or MS. I assure the noble Lord that there is sufficient flexibility in the clause to address exceptional cases—for example, to relax conditions for the terminally ill. The term "significant adverse effect" is designed to be a very broad definition. It is not completely limitless but does not include something that is minor, trivial or negligible, and will be for the Scottish Government to determine. The clause is also drafted to prevent payment of benefit where a person is in receipt of fully funded care in a care home, for example.

Amendment 79 seeks to expand the Scottish Parliament's employment support powers to include discretionary awards under the Access to Work scheme. The UK Government do not support this amendment for two principal reasons. Access to Work is one of the key tools available to Jobcentre Plus to provide practical support to overcome work-related obstacles arising from disability and is not a centrally contracted programme. As a result of changes made in the last spending review, there will be a real increase in the Access to Work budget that will allow support for an additional 25,000 disabled people nationally.

I will address one of the noble Lord's further questions and get back to him in writing on some of the others. Access to Work is integral to the Jobcentre Plus offer. It is a grant scheme assisting disabled people in paid employment or with a job or work trial and is awarded for a period of three years. In some cases, the DWP and employers share costs. It is important to have consistency of treatment where big employers have employees receiving support under the scheme in different parts of the country. There is, of course, nothing to stop the Scottish Government choosing to introduce similar forms of support for disabled people in addition to Access to Work, should they wish to do so.

Amendments 77C, 77D, 77E and 77F, in the name of the noble Lord, Lord Kirkwood, concern the topping up of reserved benefits. Again, I recognise the concern that has been expressed that Scottish Ministers will

interpret the term "discretionary" too narrowly and apply it on a case-by-case basis rather than this being left to the discretion of the Scottish Parliament. I stress that the Scottish Parliament will have discretion with regard to these payments. As the noble Lord mentioned, this issue applies in the context of a whole range of measures where the Scottish Government are able to fill in any perceived gaps in UK provision and to tailor welfare to specific Scottish circumstances. The range includes top-ups to reserved benefits, discretionary housing payments, other discretionary assistance and the power to create new benefits in devolved areas.

Clause 22 gives the Scottish Parliament power to legislate for top-up payments to people in Scotland entitled to any reserved benefits, including universal credit, tax credits and child benefit. These payments are outwith the UK social security system and all that that entails. The Scottish Parliament does not need to obtain prior permission from the UK Government to make these top-up payments. However, in accordance with the Smith agreement, conditionality and sanctions within universal credit will remain reserved, so the Scottish Parliament will not be able to legislate for top-ups to offset a reserved benefits reduction as a result of an individual's conduct, whether that is non-compliance with work-related requirements or recovery of benefit overpayment.

I can reassure the noble Lord that just because someone is sanctioned it does not mean they cannot get a payment for other reasons, such as emergencies. That is absolutely clear from what this clause is trying to do. I can also reassure the noble Lord that there is no automatic offsetting of top-up payments with reductions to reserved benefits, as per paragraph 55 of the Smith agreement. The Secretary of State for Scotland has written on this matter and said that,

"the UK Government agrees with the principle of not automatically off-setting new benefits with reductions elsewhere, as set out in para. 55 of the Smith Commission Agreement".

I turn to Amendments 77J and 77K, about other discretionary payments and assistance. The purpose of Clause 24 is to broaden the exception of the 1998 Act to the social security reservation governing how the social welfare fund operates. There are two new exceptions here: Exception 7, relating to discretionary payments, gives short-term financial or other assistance to avoid risk to an individual's well-being. Exception 8 gives occasional payments to help vulnerable people establish and maintain a settled home. The difference from the existing exception is that the requirement is only short-term. It does not also have to be immediate and arising from an exceptional event or circumstance. However, the payment could be to meet an immediate need. This is not intended to reduce the powers of the Scottish Parliament. To give a practical example, if a cooker breaks then this would cover the immediate food vouchers that might be required as well as help for repair of the cooker itself. However, the term "short-term" is needed to ensure that this provision does not stray into reserved territory in providing an ongoing entitlement.

I turn to the power to create new benefits in devolved areas, covered by Amendments 77L and 77M. The purpose of Clause 26 is that, under the 1998 Act, the Scottish Parliament has wide powers to legislate in any area of devolved responsibility, including the provision of new benefits. Examples of how this has been used include the provision of educational maintenance grants, free school meals, free prescriptions and the council tax reduction scheme. However, the Scottish Government would have to engage with the UK Government if they wished to create new benefits that strayed into the reservation under F1 of Part 2 of Schedule 5 to the Scotland Act 1998. Clause 26 inserts a new Exception 10 into F1 of the 1998 Act to put it beyond doubt that the Scottish Parliament can create new benefits in areas of devolved responsibility without the need to engage the UK Government. So the Scottish Parliament and the Scottish Government will have freedom to design and deliver welfare provision tailored to meet the needs of the people of Scotland.

Amendments 77N and 77R relate to the operation of concurrent universal credit regulation-making powers. Smith was very clear that universal credit remains reserved. It is, after all, a key part—with pensions—of the social union. However, it provides the Scottish Government with limited powers to vary certain aspects. Therefore Clause 27 gives the Scottish Government regulation-making powers to vary housing costs within universal credit for claimants who rent and to allow payments direct to landlords. Clause 28 gives Scottish Ministers regulation-making powers to change the frequency of universal credit payments to claimants, usually once a month, otherwise twice or four times a month and also to decide in what circumstances a single payment to a claimant couple could be split, for example if one partner has a drink or a gambling problem.

9 pm

In terms of the safeguards for effective delivery, Scottish government Ministers are required to consult the Secretary of State for Work and Pensions before making regulations. Examples of the practical issues that this is designed to address include if the IT system requires changes or there are updates to guidance to jobcentre staff or partners such as local authorities, citizens advice bureaux or other stakeholders. Clearly it is important that any changes that are required as a result of the flexibilities that the Scottish Government will have integrate with the overall DWP universal credit delivery plans. The two sets of changes should be made at same time. At the moment we are implementing changes arising from the Budget and spending review. It is important to make sure that everything meshes together.

The Secretary of State for Work and Pensions remains legally responsible and accountable for delivery since universal credit remains reserved, and of course he has power to make regulations to postpone timing. I make clear that this is very much a backstop safeguard in the unlikely event that changes cannot be delivered in the proposed timescale. It is absolutely not a means for the DWP to frustrate what the Scottish Government are trying to do.

Lord Kirkwood of Kirkhope: The Minister is being helpful but this is important. I do not see any escalation mechanism. I supported some of these universal credit

[Lord Kirkwood of Kirkhope]
changes that the Scottish Government are now seeking to win back—flexibilities in Clauses 27 and 28. However, if we are to use this mechanism, there needs to be some way of resolving disputes in situations where agreements simply cannot be reached. Postponing the introduction of changes indefinitely is not an answer to that question.

Lord Dunlop: The first thing to say is that we do not anticipate problems. That is why I go back to this being a backstop power. The powers to vary are discrete. We shall come on to talk about the amendments regarding a welfare commission, but already close intergovernmental working has been established both at ministerial and official level and a lot of work is going on through visits and teach-ins and the like. Given where we are with universal credit rollout—it is already fully rolled out in Musselburgh; by June it will be rolled out in Inverness and by autumn in another five centres across Scotland—there is an opportunity to look at how these changes and the flexibilities that the Scottish Government have got might actually work in practice. There is a good dialogue between the two Governments to establish what the Scottish Government want to do with these powers and what draft Scottish Parliament universal credit regulations might look like. In terms of dispute resolution, we have already established a joint ministerial group on welfare. That has already proved an effective mechanism for resolving any issues between the two Governments.

I turn to the government amendments. Amendment 77B is technical in nature and ensures that executive competence will be transferred to the Scottish Ministers so that they can make payments of Sure Start, maternity grants, funeral payments, cold weather payments and winter fuel payments when Clause 21 is commenced. Clause 21 provides the Scottish Parliament with legislative competence to create a scheme that would allow it to make payments or provide other assistance for funeral and maternity expenses, and expenses incurred due to cold weather. Without the amendment to Clause 21, executive competence would not be transferred to Scottish Ministers when the clause is commenced. This would prevent Scottish Ministers being able to make payments in respect of Sure Start, maternity grants and all the other payments to which I have referred. This amendment therefore ensures that people in Scotland can be paid these benefits by Scottish Ministers and that payments will be made out of Scottish funds.

Our amendments between Amendment 77P and Amendment 79ZB are again technical amendments. They deal with the way in which existing social security legislation will apply after the transfer of powers under the Bill. The amendments to Clauses 27 and 28 relate to universal credit and put beyond doubt the intention that where regulations are made by Scottish Ministers under the new powers, the Scottish Parliament's procedure for negative instruments applies. Clause 31 is a technical provision that requires legislation to universal credit to be read as if references to the Secretary of State were references to Scottish Ministers. After careful consideration and since universal credit will remain a reserved benefit administered by the DWP, this clause is not required.

The noble Lord, Lord Kirkwood, mentioned the Social Security Advisory Committee and its role to advise the Secretary of State on relevant matters relating to social security. The Industrial Injuries Advisory Council advises the Secretary of State on matters relating to industrial injuries benefit and its administration. The roles of the SSAC and IIAC are to remain unchanged. Scottish Ministers, however, will not be able to refer their draft regulations to these bodies for consideration. Once legislative competence has been given to the Scottish Parliament it may, if it wishes, put in place separate scrutiny bodies to consider legislative proposals made by the Scottish Government within the scope of the legislative competence and report back to Scottish Ministers. It is for this reason that we do not support Amendment 79ZC, which seeks to change the role of the SSAC to give it a duty to advise Scottish Ministers. We would of course want to put in place arrangements to facilitate information and co-operation between the two Governments.

Finally, Amendments 79ZE, 79ZF and 79ZG will ensure that UK Parliament procedure is converted into Scottish Parliament procedure in relation to the secondary legislation that Scottish Ministers will be able to make in relation to welfare foods. I will move these government amendments and I ask noble Lords to withdraw or not move their amendments.

Lord Davidson of Glen Clova: I express my gratitude to the Minister for the clarifications that he has given in relation to disability benefit and its definition. In relation to access to work, I will reflect on the answer he has given and eagerly await the Written Answers. In these circumstances, I beg leave to withdraw my amendment.

Amendment 77 withdrawn.

Clause 20 agreed.

Clause 21: Benefits for maternity, funeral and heating expenses

Amendment 77A not moved.

Amendment 77B

Moved by ***Lord Dunlop***

77B: Clause 21, page 24, line 42, at end insert—

"( ) In section 138 of the Social Security Contributions and Benefits Act 1992 (payments out of the social fund) after subsection (4) insert—

"(4A) This section has effect in or as regards Scotland as if—

(a) references in subsections (1)(a) and (2) to the making of payments out of the social fund were to the making of payments by the Scottish Ministers,

(b) the reference in subsection (2) to the Secretary of State were to the Scottish Ministers, and

(c) the reference in subsection (4) to regulations were to regulations made by the Scottish Ministers.

(4B) Where regulations are made by the Scottish Ministers under this section—

(a) sections 175(2) and (7) and 176 do not apply, and

(b) the regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

(4C) The power to make an Order in Council under section 30(3) of the Scotland Act 1998 is exercisable for the purposes of this section as it is exercisable for the purposes of that Act.""

Amendment 77B agreed.

Clause 21, as amended, agreed.

Clause 22: Discretionary payments: top-up of reserved benefits

Amendments 77C to 77F not moved.

Clause 22 agreed.

Clause 23: Discretionary housing payments

Amendments 77G and 77H not moved.

Clause 23 agreed.

Clause 24: Discretionary payments and assistance

Amendments 77J and 77K not moved.

Clause 24 agreed.

Clause 25 agreed.

Clause 26: Power to create other new benefits

Amendments 77L and 77M not moved.

Clause 26 agreed.

Clause 27: Universal credit: costs of claimants who rent accommodation

Amendment 77N not moved.

Amendments 77P and 77Q

Moved by ***Lord Dunlop***

77P: Clause 27, page 29, line 3, leave out "43" and insert "43(1)"

77Q: Clause 27, page 29, line 4, leave out "sections 189(3) and 190" and insert "section 189(3)"

Amendments 77P and 77Q agreed.

Clause 27, as amended, agreed.

Clause 28: Universal credit: persons to whom, and time when, paid

Amendment 77R not moved.

Amendment 77S

Moved by ***Lord Dunlop***

77S: Clause 28, page 29, line 35, leave out from beginning to "not" in line 36 and insert "section 189(3) of the Social Security Administration Act 1992 does"

Amendment 77S agreed.

Clause 28, as amended, agreed.

Amendment 78

Moved by ***Lord McAvoy***

78: After Clause 28, insert the following new Clause—

"Joint Committee on Welfare Devolution

(1) There shall be a Joint Committee on Welfare Devolution to examine the transfer, implementation and operation of the powers devolved to the Scottish Parliament by Part 3 of this Act.

(2) The Joint Committee on Welfare Devolution shall be responsible for ensuring full co-operation, consultation and information-sharing between the United Kingdom Government, the Scottish Government and relevant stakeholders.

(3) The Joint Committee on Welfare Devolution shall publish a report—

(a) on the transfer and implementation of the powers devolved to the Scottish Parliament by Part 3 of this Act, at least once every three months for the first three years from the date on which this Act is passed, and

(b) on the operation of the powers devolved to the Scottish Parliament by Part 3 of this Act, at least once in each calendar year, starting three years from the date on which this Act is passed.

(4) Schedule (The Joint Committee on Welfare Devolution), which makes further provision in relation to the Joint Committee on Welfare Devolution, has effect."

Lord McAvoy (Lab): My Lords, I speak to Amendment 78 standing in my name and that of my noble and learned friend Lord Davidson of Glen Clova. The amendment provides for the establishment of a Joint Committee on welfare devolution that would oversee the transfer and implementation of the welfare and employment support powers transferred under the Bill. This cross-party committee would not only examine the transfer, implementation and operation of these powers; it would also be responsible for ensuring full co-operation, consultation and information-sharing between the UK Government, the Scottish Government and, crucially, the relevant local stakeholders. The committee would be established in a spirit of mutual co-operation and transparency. Those principles must lie at the heart of the devolution settlement and, indeed, are what I believe to be the cornerstones of any future intergovernmental discussions.

The creation of the committee would provide an important mechanism through which the Scottish people can engage with the devolution process, and the membership of the committee would make that clear. Before I get on to why I think such a committee is needed, let me first outline how we envisage such a committee working in practice.

The committee would be made up of 10 members, with equal representation from both the UK and Scottish Governments, including the Secretary of State, UK and Scottish Welfare Ministers—presumably the

[Lord McAvoy]
noble Lord, Lord Freud—Back-Benchers from both Parliaments and representatives from Scottish local government. The committee would determine its own proceedings and, acting jointly, the Secretary of State and Scottish Ministers could appoint an advisory panel on welfare reform comprising academics, representatives from third-sector and voluntary organisations, and any other relevant stakeholders. Following the passing of this Bill, the committee would publish reports every three months for the first three years and annually thereafter. The aim is to provide a truly all-encompassing, all-inclusive process.

The very detailed debate that we have just had about welfare benefits and employment support highlights why such a committee is needed. The work of the noble Lord, Lord Kirkwood, is well known and has been demonstrated in the past 20 minutes or so, so the expertise is certainly there. A number of points were raised that show how such a committee could be of value. The amendments proposed by the noble Lord, Lord Kirkwood, recognise the importance of joined-up working, particularly on welfare. These are extremely complex issues, but I have no doubt that the committee would make a positive contribution during the transition of the welfare provisions, with experts from local government and voluntary organisations feeding into discussions. Indeed, the Scottish Council for Voluntary Organisations warmly welcomed this initiative, stating that it is a,

"pragmatic proposal given the need to ensure continuous, timely delivery of social security payments to those who receive them".

9.15 pm

The more positive intergovernmental working that can be fostered is surely to the benefit of all parties involved, and will develop and strengthen the relationship between Scotland and the UK. The committee would be an extremely powerful symbol of exactly the type of working that we should all want to promote; indeed, that broader issue is a powerful motivating factor behind the amendment. With the passing of the Bill, we will enter a new phase in the history of the United Kingdom and a new chapter for Scotland. We should use this as an opportunity to think creatively about how we work together and to renew our commitment to intergovernmental co-operation.

Noble Lords will be aware that we have been pursuing this sort of monitoring since the Bill was introduced in the other place, and since then it has not just been third-sector organisations that have advocated such engagement during the transitional process in the weeks, months and years ahead. I quote from the most recent report from the Scottish Affairs Select Committee, which stated:

"There is a clear risk that a system in which some benefits are devolved and some are reserved will create"—

or have a strong possibility of creating—

"confusion and uncertainty for those who depend on welfare support. Both governments must work together effectively to ensure that claimants are not disadvantaged by the process of transition from one system to another or by the interaction of those separate systems in the future, not least because those claiming multiple benefits are likely to be on the lowest incomes. The needs of those who rely on benefits should be at the heart of the process of devolving spending powers to the Scottish Government. We expect to monitor progress in this area as part of our future work".

So there is genuine concern as well as the positive contributions being made to this debate, and I believe that that statement from the Select Committee speaks directly to our amendment. I understand that the Government have yet to respond to the Select Committee report. Without pre-empting their response, does the Minister agree with the principle of this sort of co-operation, with particular regard to the welfare measures in the Bill? Are such preparations in place, or are discussions taking place to consider them? Are such processes or tools being considered, and who would carry them out?

The committee would bring together national and local representatives, politicians and voluntary organisations with the sole purpose of making the transition as effective, collegiate and positive as possible. I look forward to hearing the Government's response, and I beg to move.

Lord Dunlop: I thank the noble Lord, Lord McAvoy, for his amendment. With this Bill we are moving into a new world of two parallel systems, and it is absolutely the responsibility of both the UK Government and the Scottish Government to ensure that there is a seamless transition from the current situation to that new world and that there are no cracks for people to fall between. We have an important duty in that regard. There is very much a common interest in the UK Government and the Scottish Government working together.

The Government are very sympathetic to the intent behind the amendment but we argue that it is unnecessary because there are existing arrangements in place. However, I agree with the noble Lord on the principle of co-operation, and there is a good level of intergovernmental co-operation in this space already.

The first example of that is the joint ministerial group on welfare, which was proposed by the Prime Minister to the First Minister when they first met after she was elected to her post in November 2014. This body is jointly chaired by the Secretary of State for Scotland and the Scottish Government Cabinet Secretary for Social Justice, Communities & Pensioners' Rights. Its membership includes not just Scotland Office and Scottish Government Ministers, but is also attended by DWP and Treasury Ministers as required and their Scottish equivalents: for example, the Finance Secretary and the Cabinet Secretary for Fair Work, Skills & Training.

Since February 2015, the ministerial group on welfare has met four times and its agenda covered very practical issues that one would expect as a part of inter-governmental co-operation: information sharing, policy issues, operational and transitional issues and, crucially, dispute resolution. To give some examples, two issues that were resolved through this mechanism were the Work Programme contract extensions and the facilitation of the early introduction of UC flexibilities.

Lord Kirkwood of Kirkhope: That is an important group; I confess that I did not know that it met and dealt with those things. How do people find out about

this? Are there minutes on websites of decisions taken? If people are trying to find out about this important work that the Minister is telling us about, how do we find out about it?

Lord Dunlop: The noble Lord raises a good point. One thing that I will take away from this debate is to see how we can promote a better understanding of how this group works and the issues that are being discussed. If I can give him this reassurance, I will certainly take that away.

Along with the ministerial group, there is also a senior officials' group, which covers very much the same agenda of issues as the ministerial group. It is jointly chaired by the DWP director of devolution and the Scottish Government director of welfare, housing and regeneration. It has a remit to meet quarterly; I think that the next meeting is coming up very shortly, on 1 March. As other examples of co-operation, the DWP has seconded officials to the Scottish Government and, as I mentioned earlier, there is a programme to brief Scottish Government officials and get them up to speed on how the existing system works, so that the Scottish Government are in a much better position to determine how they are going to develop the powers that are coming to them.

In terms of parliamentary scrutiny, DWP Ministers and officials obviously appear before the Scottish Parliament Welfare Reform Committee and are available to appear before the committees of this Parliament. On local authority and other stakeholder engagement, the DWP runs three stakeholder forums in Scotland per year to provide operational updates and improve joint working. It engages with a range of stakeholders from CoSLA, Citizens Advice Scotland, the Scottish Federation of Housing Associations, the Prince's Trust and the Scottish Council for Voluntary Organisations. CoSLA and the Scottish Government are both represented on the universal credit partnerships forum, chaired jointly by the DWP and the Local Government Association.

As to reporting, I am happy to take on board and explore with the Scottish Government how we can improve reporting on the working of the joint ministerial working group on welfare, and our intent would be to provide annual reports on implementation.

Therefore, we regard the amendment tabled by the noble Lord as unnecessary, but it also confuses executive and scrutiny functions and perhaps lacks a clear objective—what outcome are we looking for here? One difficulty is that there is no precedent that I am aware of to fall back on. To whom will this body report? As I have explained, there are better ways to achieve the intent behind this amendment, to which, as I say, I am sympathetic. Therefore I ask the noble Lord to withdraw it.

Lord McAvoy: My Lords, I thank the Minister for his positive response, particularly with regard to his response to the noble Lord, Lord Kirkwood of Kirkhope. I share the Minister's surprise that he was not aware of it, because he seems to know everything else about social security. However, I am pleased, not by the concession—it is not a case of wanting concessions—but by the confirmation from the Minister that he will look at ways at following up the proposal from the noble Lord, Lord Kirkwood.

As the Minister was outlining all the ministerial and civil servant involvement, I thought that something was glaringly missing, which was the users, the public—some sort of public consultation and representation. He then went on to list a whole host of organisations that the Government have some kind of link with. However, I still feel that there is a case for more direct involvement by users groups and local organisations. I get the feeling that the links with the organisations are perhaps a bit perfunctory. I hope that I am wrong about that but nevertheless there is still a bit of a case for more direct users' involvement. The system always needs to hear what went wrong and what went right, and so on. Nevertheless, with that little prevarication, I beg leave to withdraw the amendment.

Amendment 78 withdrawn.

Clause 29: Employment support

Amendment 79 not moved.

Amendment 79ZA not moved.

Clause 29 agreed.

Clause 30 agreed.

Amendment 79ZB

Moved by ***Lord Dunlop***

79ZB: After Clause 30, insert the following new Clause—

"Social Security Advisory Committee and Industrial Injuries Advisory Council

(1) Section 53 of the Scotland Act 1998 does not apply in relation to any function of a Minister of the Crown under the legislation relating to social security and industrial injuries advisory bodies.

(2) Section 117 of that Act does not apply in relation to any reference to a Minister of the Crown in that legislation.

(3) In this section—

"the legislation relating to social security and industrial injuries advisory bodies" means any provision of sections 170 to 174 of, and Schedules 5 to 7 to, the Social Security Administration Act 1992 (Social Security Advisory Committee and Industrial Injuries Advisory Council);

"Minister of the Crown" includes the Treasury."

Amendment 79ZB agreed.

Clause 31 disagreed.

Clauses 32 and 33 agreed.

Amendments 79ZC and 79ZD not moved.

Clause 65: Subordinate legislation under functions exercisable within devolved competence

Amendments 79ZE to 79ZG

Moved by ***Lord Dunlop***

79ZE: Clause 65, page 73, line 20, after "24," insert "25,"

79ZF: Clause 65, page 73, line 27, after "24," insert "25,"

79ZG: Clause 65, page 73, line 37, after "24," insert "25,"

Amendments 79ZE to 79ZG agreed.

Clause 65, as amended, agreed.

Clauses 66 and 67 agreed.

9.30 pm

Clause 68: Power to make consequential, transitional and saving provision

Amendment 79A

Moved by ***Lord Hope of Craighead***

79A: Clause 68, page 74, line 22, leave out paragraph (a)

Lord Hope of Craighead: My Lords, this amendment is the first in a group which deals with Clause 68 and draws attention to the very broad nature of this clause, which is usually described as a Henry VIII clause. In this group are five amendments in my name: Amendments 79A to 79E, which are also in the name of the noble Lord, Lord Forsyth.

May I explain a little of the background to this series of amendments? In recent months increasing concern has been expressed in this House about the use of Henry VIII clauses. I recall particularly the debate on the report of the noble Lord, Lord Strathclyde, arising from the concern about the use of statutory instruments and the inability of this House to amend them and do anything other than pass or refuse to pass them. It was in that connection that the noble and learned Lord, Lord Judge, delivered a very powerful speech that alerted us to the great dangers of overuse of Henry VIII clauses.

Clause 68 has been cited as a particularly extreme example of the use of this type of clause. To explain the point, I will analyse the clause a little to see what it actually does. It is headed:

"Power to make consequential, transitional and saving provision".

I have no complaint about transitional and saving provision. My amendments seek to remove from the clause those parts that refer to consequential provisions.

If you look through the clause you will find that subsection (1) would give power to the Secretary of State by regulations to make,

"such consequential provision in connection with any provision of Part 1, 3, 4, 5 or 6 … as the Secretary of State considers appropriate".

Part 2 is not mentioned there. If you look at Part 2, you will find more precisely targeted provisions dealing with related powers in Clauses 15 and 19. The draftsman has taken the trouble to provide provisions related to the needs of that particular part. In this subsection you will see that Parts 1, 3, 4, 5 and 6 are grouped together in a way that does not attempt to target the need for the provision in any particular way at all.

Then you will find in subsection (2):

"Regulations under this section may amend, repeal, revoke or otherwise modify any of the following (whenever passed or made) … an enactment or an instrument made under an enactment … a prerogative instrument … any other instrument or document".

Subsection (3) is very wide because of the way in which it enables these regulations to proceed. They may be used for all sorts of purposes which are set out in the subsection.

As far as the expression "an enactment" is concerned, there is a definition in subsection (7), which tells us that it includes,

"an Act of the Scottish Parliament",

but also goes on to say that it includes,

"a Measure or Act of the National Assembly for Wales, and … Northern Ireland legislation".

It is startling to find references to the measures passed by the other devolved institutions in a Bill that purports to deal only with Scotland.

If you look carefully at subsection (5) you can find that the regulations may repeal,

"any provision of primary legislation",

and that expression is defined as including an Act of Parliament—in other words an Act of this Parliament. The Secretary of State is seeking to assert to himself a power to,

"amend, repeal, revoke or otherwise modify",

a whole range of statutes including Acts of this Parliament and measures of the devolved institutions, without any limit of time whatever for any purpose he may consider proper, so long as it can be described as consequential.

There are four features of this provision which are the source of particular concern and I have, in a way, hinted at them in the opening remarks. First, there is no limit on the time during which this power may be exercised or on its extent. Secondly, there is no attempt to relate the provisions about consequential provision to the needs of any particular parts or clauses within the parts referred to in subsection (1).

Thirdly, the power is to be exercised by statutory instrument, which has all the defects referred to in the debate that I mentioned earlier. All we can do is look at what the instrument says and either pass or refuse to pass it. There is no opportunity for this House, or indeed the other place, to subject it to the scrutiny that primary legislation would receive. That is quite extraordinary when you consider the scope of the power that the Secretary of State is seeking to give himself.

Fourthly, the power is to be exercised by the Secretary of State, but there is no provision that he is to be required to consult Scottish Ministers. We have already had debates about Clause 2 and the Sewel convention, which is not being made part of a statutory provision. It is subject to the word "normally", and its scope and application are open to some question unless they are spelled out in the statute, and it is perhaps not entirely clear whether it extends to statutory instruments as well as to primary legislation.

Therefore, the scope of the clause is in itself disturbing, but in this Bill, of all Bills, it is even more extraordinary because, as we have been told from the very beginning, the purpose of the Bill is to give effect to what one finds in the Smith commission report—no more, no less. Yet the power given to the Secretary of State will enable him to go well beyond what is set out in this Bill and it is not qualified in any way to limit the Secretary of State to what may be found in the Smith commission report, however widely one might construe it.

This really is an extreme provision which ought to be edited in some way to make it clear that what is being done relates to the nature of the Bill, which

deals with Scotland, and to the need of the clauses or parts of the Bill in question to give effect to the Smith commission report. As it stands, it seems far, far too wide. It may simply be the product of—if I may say so with all due respect to those who are responsible—lazy draftsmanship. Of course, it is dead easy to write in words as widely as we find here without giving any thought to how necessary they may be.

For those reasons, I respectfully suggest that this clause is defective in so far as it seeks to relate to consequential provisions, and the parts which are the subject of my amendments should simply be taken out of the Bill. I beg to move.

The Lord Speaker (Baroness D'Souza): My Lords, if this amendment is agreed to, I cannot call Amendment 79AA by reason of pre-emption.

Lord Wallace of Tankerness: My Lords, amendments in my name and that of my noble friend Lord Stephen are in this group. Basically, the arguments are very similar to those just advanced by the noble and learned Lord, Lord Hope of Craighead. The powers in Clause 68 are extremely wide. We are coming to the end of the Bill and people will think that these are technical amendments but in fact they are of profound constitutional importance. In its report on the Bill, your Lordships' Constitution Committee has already drawn the House's attention to the extent of the powers conferred by Clause 68, and therefore it is important that the Government take these points seriously.

Our Amendment 79AA is very similar to the amendment moved by the noble and learned Lord, Lord Hope, with one difference, which is that we allow the powers to apply in respect of Part 3 because of the report of the Delegated Powers and Regulatory Reform Committee. Paragraphs 24 to 28 of the committee's 15th report of this Session deal with this clause.

The noble and learned Lord gave a number of reasons why he thought that this provision was exceptional but I think that he may have missed one out. He said that there was no limit to when these powers could be used but in fact there is no time limit on the legislation that it can apply to. Subsection (2) says:

"Regulations under this section may amend, repeal, revoke or otherwise modify any of the following (whenever passed or made)".

I emphasise the last four words, which mean that future legislation could be affected by these powers. The Delegated Powers and Regulatory Reform Committee said in paragraph 25 of its report that the memorandum from the Government,

"acknowledges that the power to amend or repeal future enactments is exceptional. Reasons are given as to why this is needed in connection with Part 3 of the Bill which deals with welfare benefits: the commencement of Part 3 is expected to take place over a period of time and, because of the complexity of the area, it may be necessary to make changes to legislation enacted between the date on which the Bill is passed and the date on which the functions to which Part 3 applies are transferred to Scottish Ministers. We consider this provides a reasonable explanation for needing the power to amend future enactments in relation to Part 3 of the Bill".

But the report goes on to say that that,

"does not justify the extension of this power to the other Parts of the Bill. It may be that similar considerations apply, but because nothing is said about this in the memorandum it is impossible to know".

In other words, the Government are not only trying to take these powers but they have given the appropriate committee of your Lordships' House that is scrutinising the Bill no reason whatsoever for such wide powers, including the exceptional power to amend or repeal future enactments. They did provide an explanation in respect of Part 3, which the committee found to be a reasonable one, and that is why we have not sought to remove it. Amendment 79AB is consequential.

As was also picked up on by the noble and learned Lord, Lord Hope, Amendment 79BA refers to the provision that talks about,

"any other instrument or document".

Our amendment would remove those words from subsection (2), as it is thought that it is extremely wide. Again, the 15th report of the Delegated Powers and Regulatory Reform Committee commented on this at paragraph 27, noting its exceptionally wide effect without any compelling reason—that no justification has been given for a power to revoke any instrument or document, whenever made. Therefore, we believe that it should be removed from the Bill.

The other point is one touched on by the noble and learned Lord, Lord Hope. We deal with it in Amendment 79EA, which would remove references to Acts of the National Assembly for Wales and Northern Ireland legislation from this regulation-making power. Again, no substantive reason has been provided for extending the Secretary of State's regulation-making power under Clause 68 to legislation made by either the National Assembly for Wales or the Northern Ireland Assembly. It seems very wide and raises the interesting question of whether legislative consent Motions were required in the Northern Ireland Assembly or the National Assembly for Wales before including these provisions in the Bill or whether, indeed, if these powers are ever wished to be used, doing so would require legislative consent Motions. Perhaps the Minister can enlighten us when he comes to reply.

Lord McCluskey: Before the noble and learned Lord sits down, may I ask him a question on that point that I meant to ask my noble and learned friend Lord Hope? The particular measure in subsection (7) refers to, as the noble Lord said, Wales and Northern Ireland legislation. Is that within the Long Title of the Bill? The Long Title is:

"To amend the Scotland Act 1998 and make provision about the functions of the Scottish Ministers",

not the Secretary of State, "and for connected purposes". I am not very good at reading Long Titles, but when I read this I cannot see how the subsection objected to fits within it.

Lord Wallace of Tankerness: The noble and learned Lord makes a very important and perceptive point, and I am glad it is not me who has to reply to it from the Dispatch Box. I certainly see his point that it is a very stark, simple Long Title. To actually extend the ambit of the Bill to Measures or Acts of the National Assembly for Wales or legislation of the Northern Ireland Assembly does seem a bit of a stretch. No doubt the Minister can enlighten us when he comes to reply.

[Lord Wallace of Tankerness]

The important point is that we do take seriously the report from the Delegated Powers and Regulatory Reform Committee. At the heart of it, these are extremely wide powers and, in some respects, exceptional powers. With the one exception relating to Part 3, no explanation or justification has been provided by the Government for taking these wide powers.

Lord Forsyth of Drumlean: Could the noble and learned Lord, with his considerable experience, give me some legal advice? I wonder whether, if a clause like this had been included in the previous Scotland Bill, it would have been necessary to have this Bill at all.

Lord Wallace of Tankerness: That is a good point. As the noble Lord was making it I was wondering whether the phrase,

"any other instrument or document",

could apply to the fiscal framework—but perhaps that is stretching things a bit too far. Actually, "any document" could include the fiscal framework, so perhaps the Minister can tell us more.

9.45 pm

The serious point—not that I am saying that the points made by the noble and learned Lord, Lord McCluskey, and the noble Lord, Lord Forsyth, are not serious—is that these are quite important constitutional issues. I hope that in replying to the debate the Minister will indicate that the Government are willing to look at this again, because these powers go far beyond what is reasonable.

The Earl of Kinnoull (CB): I support the amendment tabled by the noble and learned Lord, Lord Hope of Craighead. I said near the start of the debate that I felt that, of all the stuff we have had in Committee over the past few days, this clause was the one thing that was inconsistent with the Smith commission agreement. I shall explain a bit more of my thinking behind that.

I have my dog-eared copy of the Smith commission report here, and in the foreword there is a paragraph headed "A more autonomous Parliament", which starts:

"The Scottish Parliament will be made permanent … and given powers over how it is elected and run".

In paragraph 26, entitled "Powers over the operation of the Scottish Parliament and the Scottish Administration", we read that:

"UK legislation will give the Scottish Parliament powers to make decisions about all matters relating to the arrangements and operations of the Scottish Parliament and Scottish Government, including",

and then follows a list of the things that are included.

It seems to me that those words—and I am sure that we could trawl through the Smith commission report and find others—at least raise a reasonable doubt about whether the provisions are consistent with the Smith agreement. I would certainly feel, on balance, that they were not. There are few fans of Henry VIII clauses in this House, and I can see no reason why these powers are needed, or indeed—because of my point about the Smith commission—why they should be there.

Lord Forsyth of Drumlean: My Lords, when I first saw Clause 68 I was outraged, and my instinct was to take it out entirely. Then I saw the rather more finessed approach of the noble and learned Lord, Lord Hope, so I quickly added my name to his amendments. I very much support those amendments, and the approach taken by the noble and learned Lord, Lord Wallace of Tankerness.

I was outraged when I saw the clause because—together with the fact that the Government propose to take this Bill, as it has already been taken, through the House of Commons, and then through the House of Lords, without the fiscal framework being in place—it gives the impression of a Government who see Parliament as a rather irritating thing that has to be got through, rather than as the process by which legislation is carefully considered.

It is 20 years since I was in government, but in my day this would never have got past the parliamentary draftsmen. Even if it had, it would have been knocked on the head by L Committee. It is very worrying that a Bill can get to this stage, having gone through the House of Commons, with such completely open provisions. I was not making the point in jest: I genuinely think that with these powers it would have been possible to put the entire contents of the Bill into statutory instruments. That would have been jolly convenient for the Government—would it not?—because they would have been able to say, "We're simply implementing the Smith commission report. There's a convention that your Lordships don't amend or vote against regulations", and that would have been that. It would have been a very retrograde step indeed—so I hope that my noble friend will simply take the clause out entirely, as he did with a previous clause this evening. If not that, I certainly accept the amendments tabled by the noble and learned Lord, Lord Hope, and possibly make a concession because of the points made to the Delegated Powers Committee.

I will certainly not press removing the clause altogether at a later stage, but the Government need to respond to this and recognise the very considerable feeling in the House, which was illustrated by the debate that we had on the Strathclyde commission proposals. I thought that the Government said that they were going to mend their ways. Certainly, the Strathclyde commission report was balanced in that it suggested that that needed to be done. This would be a great opportunity for the Government to show good will towards the Strathclyde recommendations. Then they might be able to persuade some of us who have doubts about them that it would be sensible to reach a compromise.

Lord Norton of Louth (Con): My Lords, I want to reinforce points that have already been made. It is important to stress that we should not let the late hour mask the importance of the amendments before us. As the noble and learned Lord, Lord Wallace of Tankerness, stressed, this clause has important constitutional significance. It raises fundamental issues and I concur with everything that was said by the noble and learned Lord, Lord Hope of Craighead, and reinforced by the noble and learned Lord, Lord Wallace of Tankerness.

He referred to the report by the Constitution Committee on the Scotland Bill and I reiterate the comments made by that committee, on which I served, in respect of this clause.

In its report, the committee drew attention to the clause, saying:

"As has become a trend over the years, the Government has put forward a Henry VIII clause which gives it powers well beyond those which are necessary to achieve this end"—

that is, the end of the Bill. It goes on to say that,

"we once again must express our concern at a Government proposal that would provide Ministers with too much power at the expense of Parliament".

Here we have a Bill that is giving the Government greater powers than is the norm in these types of clauses, as has already been stressed, without any justification for so doing.

It is amazing that we have got to this stage without the Government providing a clear justification for what is before us. We must take our role seriously in terms of acting as a constitutional safeguard to make sure that the Government do not use these measures to take powers that have not been justified by them and which would put us in a difficult situation in any future measures. The Government must take this very seriously and I hope that the Minister will give some commitment that between now and Report changes will be introduced by the Government themselves.

Lord McAvoy: My Lords, I join in the debate and fully endorse all of the speeches made, particularly by the noble and learned Lords, Lord Hope of Craighead and Lord Wallace of Tankerness. As most of my comments have already been made as quotes from the Delegated Powers Committee, I will concentrate on one aspect of this, although I also completely endorse the comments of the noble Lord, Lord Forsyth of Drumlean. It gives me such pleasure to do so.

The comments about scrutiny were made far more eloquently than I could make, so I will just endorse those comments of the noble Lord, Lord Norton of Louth. I want to concentrate particularly on the provision-making policy because it affects a significant amount of social security legislation, which can be of an extremely complicated nature.

In a letter, the Minister said:

"Although extensive checks have been carried out as to the effect of the provisions of this Bill and the interaction with social security legislation, it is possible that, in implementing the provisions of the Bill, consequential amendments are found to be necessary to fulfil Parliamentary intention".

As the noble Lord, Lord Norton of Louth, mentioned, there is an important constitutional role for the House, even at this time of night.

The memorandum concerning the delegated powers in the Bill states:

"Furthermore, Social security has, until now, broadly remained reserved across Great Britain and delivered on a GB-wide basis by the UK Government. In operating a system where responsibility for the different social security benefits paid in Scotland is split between the UK and Scottish Parliament there may be some areas where the respective Governments may wish to make mutually beneficial agreements relating to delivery which may require consequential amendments to existing legislation—for example to facilitate fraud investigations, debt recovery and compliance issues arising out of overpayments in respect of both reserved and devolved benefits".

I conclude by joining the comments made by many Members of your Lordships' House who have spoken tonight. There has got to be a reason—is it laziness, bad draftsmanship or is there a purpose behind it? Were they thought out, were they put down specifically? I join other noble Lords in asking why it was felt these powers were necessary.

Lord Dunlop: First, I thank noble and learned Lords for their contribution to the debate about Clause 68. These provisions have been well scrutinised by the Delegated Powers and Regulatory Reform Committee and I am grateful for the Committee's examination and subsequent report. Of course, Bills of this nature do require necessary powers to ensure that the powers that are transferring to the Scottish Parliament transfer effectively. That is one point that the committee recognised in its report; it is therefore to retain those aspects of Clause 68. However, having considered the report, the Government accept that the ability to amend future enactments and prerogative instruments, and any other future instruments or documents, and Welsh and Northern Ireland legislation whether made in the future or the past, is unlikely to be required for Parts 1, 4, 5 and 6 of the Scotland Bill. Therefore, we intend to bring forward an appropriate amendment on Report, amending the provisions.

More broadly, powers to make consequential provision are commonly found in primary legislation. Section 105, read with Section 113 of the Scotland Act, provides similar powers. The Bill contains consequential amendments identified as necessary during the course of its preparation. However, given the nature of the Scotland Bill and the significant devolution of legislative and Executive powers, it is difficult to anticipate the full extent of the consequential amendments required once the Bill has been commenced. Further, the nature of the Bill means that it effects both Westminster and Scottish Parliament legislation and it is possible that officials in either Administration may in future identify additional necessary amendments to either primary or secondary legislation.

I turn specifically to the use of the consequential power in relation to welfare provisions:

"In operating a system where responsibility for the different social security benefits paid in Scotland is split between the UK and Scottish Parliament there may be some areas where the respective Governments may wish to make mutually beneficial agreements relating to delivery which may require consequential amendments to existing legislation—for example to facilitate fraud investigations, debt recovery and compliance issues arising out of overpayments in respect of both reserved and devolved benefits".

How feasible it is to make such arrangements will depend,

"to some degree on the provision that the Scottish Parliament puts in place and any agreements would need to be considered and agreed between both the UK and Scottish Governments".

Therefore, it is necessary to have appropriate consequential provision in the Bill. However, as I said, the Government intend to bring forward an appropriate amendment on the basis that I have set out.

Next I would like to address the concern of the noble and learned Lord, Lord Wallace, related to,

"any other instrument or document",

[LORD DUNLOP]
which I think has been proposed by the Law Society. The Government intend to retain the power to amend current instruments or documents. Let me offer the rationale for that. Section 117 of the Scotland Act 1998 provides that, so far as may be necessary for the purpose of or in consequence of an exercise of a function by a Member of the Scottish Government in devolved competence, any pre-commencement enactment or prerogative instrument and any other instrument or document shall be read as if references to a Minister of the Crown were or included references to Scottish Ministers. The effect of the gloss by Clause 30 of the Bill of references to pre-commencement enactment in the Scotland Act 1998 is that instruments or documents such as the contracts entered into by the UK Government for the provision of welfare that refer to a Minister of the Crown will be glossed appropriately to refer to Scottish Ministers.

However, other amendments or transitional arrangements may be required to ensure the efficient and effective transfer of contracts. For example, the gloss converts references only to a Minister of the Crown to Scottish Ministers. There may be other references that need to be amended. Accordingly, a power to amend, repeal, revoke or modify any other instruments or documents whenever passed or made is required for Part 3. We accept that the power to amend any other future instruments or documents is unlikely to be required, as I have said, in relation to Parts 1, 4, 5 and 6, and we will be bringing forward an amendment to address this issue. We are retaining the power to amend existing instruments and documents on the basis that that is likely to be required, given the scale of the powers being devolved to the Scottish Parliament and Scottish Ministers.

10 pm

Amendment 79D, tabled by the noble and learned Lord, Lord Hope, requires that all regulations passed under Clause 68 should be subject to the affirmative procedure, reflecting the suggestion of the Delegated Powers Committee that non-textual modifications of an Act should require the same level of parliamentary scrutiny as textual amendments, that being the affirmative procedure. The Government accept the general principle that changes made to primary legislation by secondary legislation should be subject to the affirmative procedure. Wherever possible in the approach to drafting legislation, changes to primary legislation are made by textual amendment.

I have noted the suggestion made by both the committee and the noble and learned Lord. However, we continue to believe that non-textual and minor or technical changes should be possible under the negative resolution procedure. It would be inappropriate to set out on the face of the Bill specific kinds of modification of primary legislation that should require the negative procedure. Doing so would create legal uncertainty, especially in those outlying and indirect cases where it is not always clear when a provision non-textually modifies primary legislation. As well as this undesirable level of legal uncertainty, the Government think that many of the cases which fall into this category are unlikely to warrant the use of the affirmative procedure due to their indirect and remote nature. Furthermore, given the range of legislation under the provisions in this Bill, the Government consider that the approach taken is appropriate, particularly as they enable the use of the affirmative procedure should there be a need to do so. The Government acknowledge that this allows discretion on the part of the Minister, but we have also indicated to the committee that on those rare occasions, and unless otherwise provided for, changes to primary legislation by secondary legislation are normally subject to the affirmative procedure. I hope that this offers noble Lords reassurance on the points raised in the debate and I urge the noble and learned Lord to withdraw his amendment.

Lord Purvis of Tweed: It is welcome to hear the Government's view as regards potential amendments on Report. However, in light of the Minister's remarks, how does Clause 68 sit with Clause 2 when it comes to areas where the Government may have the power to amend Acts of the Scottish Parliament and devolved legislation? Would a legislative consent Motion mechanism be required for that, and equally for the National Assembly for Wales?

Lord Dunlop: I am happy to take the noble Lord's point away and reflect on it, and I shall either write to him or discuss it.

Lord Forsyth of Drumlean: Can I take my noble friend back to the debate we had earlier when the noble Lord, Lord Turnbull, argued that it was important to have in the Bill specific provisions relating to borrowing powers? I think that my noble friend indicated that more primary legislation would be required; he used the phrase "primary legislation". Can we take it that these powers would not be used, for example, to put in place a borrowing regime for the Scottish Parliament, taking into account what he has just said now with what he said earlier this evening?

Lord Dunlop: I absolutely stand by what I said earlier. There may be some aspects of borrowing that could be done through secondary legislation, and that will be made clear when we agree and publish the fiscal framework.

Lord Hope of Craighead: Before the Minister sits down yet again, I am not quite sure from his explanation that he has fully taken on board the points made by the noble Earl, Lord Kinnoull, and me about the nature of this legislation—in other words, that the purpose of the legislation is to give effect to the Smith commission report. What concerns us is the opportunity that the provisions as framed—and, indeed, as forecast by the Minister—would give for straying outside the scope of the commission. I do not know whether the Minister's brief has really addressed that point. If not, perhaps he will be kind enough to say that he will give further thought to it. It is an important matter because we really need to keep faith with the Government's undertaking when they introduce legislation as to what it is all about.

Lord Dunlop: I will certainly give further thought to what the noble and learned Lord has said and come back to him on it.

Lord Hope of Craighead: My Lords, I am extremely grateful to all noble and noble and learned Lords who have spoken in this debate and, in particular, to the noble and learned Lord, Lord Wallace, who has drawn attention to the report of the Delegated Powers Committee, and to the noble Lord, Lord Norton, for his contribution, given his background on the Constitution Committee. This matter's constitutional nature is evident from what has been said in the course of the debate. Of course, I am glad that some of the points I have been making have been observed already by those who are providing information to the Minister, but here is a case where—if I may say so with great respect—the Minister has the authority of the House to go back to the draftsmen on the Bill team and say that this has been taken too far and it is time to put an end to the wide use of these clauses.

The Minister has gone some way along that course already, for which I am very grateful, but I urge him to read very carefully the points made by everybody in this debate and reflect carefully with the Bill team on whether the extent of the trimming down he has forecast goes far enough. I appreciate that time is very short, with Report stage on Wednesday. I am prepared, in light of what the Minister has said, to withdraw my amendment for the time being, but I give notice that I have to put down some kind of amendment to keep the point open, because I do not know exactly what he will come up with. So we will return to this issue, because of its importance. Having said that, I am content for the time being to withdraw my amendment.

Amendment 79A withdrawn.

Amendments 79AA to 79EA not moved.

Clause 68 agreed.

Amendment 79F

Moved by ***Lord McCluskey***

79F: After Clause 68, insert the following new Clause—

"The fiscal framework

(1) Within 30 days of the date on which this Act is passed, the Secretary of State must publish in full the new fiscal framework agreed between the Scottish and UK Governments, unless it has already been published by the Secretary of State.

(2) Within 30 days of the date on which this Act is passed, the Secretary of State shall publish as an appendix to the new fiscal framework as published a full description of any agreement whatsoever reached between the said Governments relating to the future of the Barnett Formula or its application, amendment or replacement in the future, including any agreement as to when any such change is intended to be considered by the two Governments in the future.

(3) In this section, "the new fiscal framework" means the agreement between the said Governments as to the arrangements and institutions intended to underpin the tax and spending powers included and devolved under this Act and under the Scotland Acts of 1998 and 2012, including the funding of the Scottish budget, planning, management and scrutiny of public revenues and spending, the manner in which the block grant is or may be adjusted to accommodate further devolution, and the operation of borrowing powers and cash reserve, fiscal rules, and independent institutions."

Lord McCluskey: I am not sure whether I moved Amendment 79F originally, but if I did, I would want to withdraw it. The same applies to Amendments 79G, 81A and 82A. What I want to do is return to these matters on Report. For the benefit of my noble and learned friend Lord Hope of Craighead and others, it is possible to make those amendments known tonight. Officials are meeting at the end of this debate to discuss what is to go into the list of amendments for Report and I have put mine in by dint of simply asking them to repeat certain numbered ones which appeared in the Marshalled List. They accept that that is a method they can use to proceed.

The other point is a matter for the Committee. It appears quite silly in a way for the Committee to group Amendments 75 to 82, and then not allow those to be dealt with when the discussion on all these amendments is completed. We ought at that stage to be able to say, "I am not going to move Amendment 82A", or whatever it may be, instead of which we have to go through the sequence. Therefore, I have been sitting here for approximately two and a half hours, waiting to stand up and say, "Not moved". I am happy to say it now.

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): As the noble and learned Lord has spoken to the amendment, I think he will have to move it, after which it can be withdrawn.

Lord McCluskey: I beg to move.

Lord Wallace of Tankerness: On the important point made by the noble and learned Lord, Lord McCluskey, about having to table amendments again to maintain the sequence, and, indeed, in relation to the point made by the noble and learned Lord, Lord Hope of Craighead, on the last group of amendments, perhaps the Minister will take this opportunity to clarify whether, when we come to Report, the order of consideration will be as in Committee; in other words, that Parts 2 and 3 will be taken at the end—I think next Monday is the day currently set down for that—and the other parts will be debated on Wednesday.

Lord Dunlop: Yes, I can confirm that.

Lord Hope of Craighead: I am sorry to intervene on the same point but we have today debated Part 7, in which Clause 68 appears. I am not quite sure in which order it will appear on Report. That affects what we do in terms of tabling further amendments. Will it be in the first stage of Report or the second?

Lord Dunlop: This obviously has to be discussed through the usual channels but my understanding is that we will consider the Bill on Report in the same order that we have considered it in Committee.

The Deputy Chairman of Committees: Does the noble and learned Lord, Lord McCluskey, now wish to withdraw his amendment?

Lord McCluskey: With the leave of the Committee, I beg leave to withdraw the amendment.

Amendment 79F withdrawn.

Amendment 79G not moved.

Clause 69: Commencement

Amendment 79H not moved.

Amendment 80

Moved by ***The Earl of Kinnoull***

80: Clause 69, page 75, line 17, leave out subsections (1) and (2) and insert—

"(1) Sections 13 to 68 of this Act shall not come into force until such time as the relevant Secretary of State has laid before Parliament a statement to the effect that the Secretary of State is satisfied that the Scottish Government and any Scottish authorities to which power is devolved under this Act have the appropriate arrangements in place with which to exercise the relevant powers devolved under this Act.

(1A) Each section or subsection to which subsection (1) applies may be the subject of a statement under subsection (1), which once laid before Parliament would cause that section or subsection to come into force.

(1B) The provisions in subsections (3) to (7) are subject to the provision in subsection (1).

(2) Sections 1, 69 and 70 come into force on the day on which this Act is passed."

The Earl of Kinnoull: My Lords, in moving Amendment 80, I wish to speak also to Amendment 81.

Amendment 80 is intended to do something very simple. The language is illustrative only. The concept is that a power to be transferred under the Bill would be so transferred only once the Secretary of State was satisfied that arrangements were in place for the transferred power to be successfully and smoothly operated in Scotland; and that, by implication, matters in the rest of the UK would continue at least as successfully and smoothly as before that transfer. This is fully consistent with the Smith commission agreement and would, of course, remove all temptation to go for a rushed and bodged job—a temptation that has so often been succumbed to in the process that has led us here today. It is quite simply a small source of comfort and protection for the ordinary citizens of Scotland and the rest of the UK who would be the innocent victims of such a rushed and bodged job. It is worth noting that I was anticipating that a similar discipline would be observed in Holyrood.

As I said in an earlier debate in Committee, the origin of this thinking came from a conversation that I had with an SNP MP, who said that he had anticipated teething troubles where the British Transport Police were concerned. Here, I assume that "teething troubles" means young women being thumped, drug smuggling having an easier ride and terrorists getting through. I dare say that the Minister will suggest that the amendment is not needed because responsible Ministers would act in such a manner anyway. However, I put it to the Committee that in the politically charged atmosphere that is the genesis and continuing history of this Bill, we have seen time and again actions taking place that would not occur under the simple discipline proposed in Amendment 80, and when taking into account the ordinary citizen's point of view rather than the political one.

I further add that, as we move into a more devolved United Kingdom, with further devolution deals affecting other parts of the UK, this would be a help as a general principle. It would ensure that the risk of teething troubles is greatly reduced. It would mean that devolution is considered from the point of view of the ordinary citizen, not the politician.

Amendment 81 was debated at an earlier stage, and I know that the Crown Estate will come up again on Report, but would the Minister care to comment on whether the SNP has had put to it the various Crown Estate ideas which have been debated in this House? If so, what did it have to say about them? I beg to move.

10.15 pm

The Earl of Dundee: My Lords, in supporting this amendment, I stress three aspects: its timeliness without leading to procrastination; between the two Parliaments and Governments its inference of co-operation; and within the United Kingdom, both in Scotland and elsewhere, its enhancement of good practice. It is clearly desirable to avoid teething troubles following powers which may have been transferred too quickly. In particular, it is indeed so concerning the British Transport Police, instanced just now by the noble Earl, Lord Kinnoull. Yet a timely transfer means just that, and if for good reason it is judged to take place at a certain moment rather than at another, then that transfer of powers has become neither prevaricated nor procrastinated. This is not least the case since the decision on when to transfer will have been made by Scottish Ministers and the Secretary of State together in a spirit of co-operation, thus jointly enhancing good practice by adopting a necessary method which benefits both Scotland and the rest of the United Kingdom.

Baroness Hayter of Kentish Town (Lab): My Lords, I speak to Amendment 82, in my name and that of my noble friend Lord McAvoy, which allows some time for consultation about the implementation of Clause 50. That clause was a late addition to the Bill, which means there has not been the normal consultation with women's groups, medics, lawyers, the health service or, indeed, ethicists and constitutional experts. Above all, there has been no discussion about the implication for the funding for abortion for women should they move between Scotland and England or Wales, should any differences emerge in the future between the laws on abortion either side of the border. We should consider the lessons of Northern Ireland before implementing this new provision.

Although the Smith commission reported that the parties favoured the devolution of abortion, regarding it as an anomalous health reservation, it recommended only that further serious consideration should be given to its devolution and a process established immediately to consider the matter further. However, that process has not happened and our amendment seeks to give the matter proper consideration before the clause is implemented. Indeed, because the Smith commission did not call for immediate devolution, the Government initially thought that an early change would pre-empt such discussions and there was, therefore, no reference to abortion in the original Bill. An amendment was tabled, but not voted on, in Committee in the Commons, by which stage women's groups and the Scottish TUC began expressing their concerns, particularly that this could have a discriminatory impact on women in Scotland, just as in Northern Ireland.

The inclusion of the provision was announced by the Government on 14 October, with the amendment tabled on Report in the other place and with none of the debate that took place during the original devolution Bill. Looking back to 1998, there was quite a strong view that abortion, duly protected and regulated by law, was a human rights issue and not simply a medical or, indeed, a criminal matter. There were many voices of the view that a woman's right to choose should be universal, not delimited by boundaries and borders.

It is this risk of cross-border differences, leading to women having to travel for an abortion, that concerns many, partly because it might undermine the notion of a UK citizenship, but also for the more prosaic but serious issue that there is a fairness dimension. Moving country for a termination is an option more open to the wealthy and well connected than to those without access to money, transport or friends in distant parts. We know the difficulties and trauma that such journeys involve for many Irish women. Indeed, because of the variation in law, some 5,000 Northern Irish women and 20,000 from the Republic of Ireland travelled to Great Britain for an abortion between 2010 and 2014. That is 12 Irish women crossing the Irish Sea every day.

This reflects the fact that when women are desperate for an abortion, whether as the result of rape, because of foetal abnormalities, because of incest or because the woman cannot handle a child due to her psychological state or her age—there are girls as young as 14 coming here for abortions—she will do whatever is needed. No border will prevent that. What is more, though a child in Northern Ireland can come over to be treated at Great Ormond Street on the NHS, her mother, needing an abortion, cannot get it on the NHS but has to go privately and pay, in addition to air fares. It is for these reasons that we need to consider how different rules in England and Scotland would be handled, should teenage girls have to make cross-border journeys to have the procedure, for example. For nearly 50 years, there have been the same rights across Great Britain, but this clause could alter that.

It is not that we anticipate any change in the Scottish law. Indeed, the First Minister said that her Government had no intention of changing the current law, but she cannot, of course, bind her successors. Given the demand for abortion to be devolved, there is surely the possibility of a change being made. It is better to think through the implications now rather than after any such decisions. Indeed we read suggestions that the new power will indeed be used to change Scottish law, with CARE for Scotland, a charity, saying that there should be a debate among MSPs about whether Scotland has the right laws. Lynn Murray of the Edinburgh branch of SPUC has said that devolving abortion would get people thinking about it and that it is time that we looked at it again, while the Scottish Secretary for Social Justice, Communities and Pensioners' Rights, Alex Neil, has said that he personally favours reducing the 24-week limit.

That is of course a matter for the Scottish people, so we shall not resist or seek to remove Clause 50. However, we need time to consult on and possibly prepare for any impact that such a change could bring and how to respond, particularly as to whether women living in Scotland—be they English women, Welsh women or Scottish women—would be able to have an NHS-funded abortion, say in Newcastle or elsewhere, should they then fulfil our criteria for termination but not new criteria in Scotland. Whatever differences might emerge, some women will want or be forced to travel from England to Scotland or from Scotland to England to exercise their rights under one or other of the two laws. Amendment 82 allows for a 12-month consultation with relevant groups and representatives in Scotland and in the health service to ensure that the process is correct and to follow the wise advice of the Smith commission.

I turn to Amendments 80 and 81 in the names of the noble Earls, Lord Kinnoull and Lord Dundee. Amendment 80 provides that Clauses 13 to 68 would not come into force until the relevant Secretaries of State were satisfied that the Scottish Government had appropriate arrangements in place to exercise the relevant powers. That would mean that discretion remained with the UK Parliament on matters that will be devolved issues, undermining one of the most important principles of the devolution settlement. Your Lordships will not, therefore, be surprised that we oppose this amendment.

In a similar vein, Amendment 81 would delay the devolution of the Scottish Crown Estates until the Secretary of State had laid a report before Parliament regarding the Scottish Crown Estates commissioners and the arrangements to facilitate the transfer of assets. We do not consider it appropriate to delay the commencement of this clause. Furthermore, we understand that talks are taking place between officials on the transfers of assets and that those are still ongoing. It would perhaps be helpful if the Minister could indicate whether the issues included in the amendment are part of such discussions. We understand that the date for the transfer has yet to be decided or even much discussed. I do not know whether the Minister has any further update on this since the letter that he wrote to my noble friend Lord McAvoy on 12 February. We look forward to his comments on that.

Lord Hope of Craighead: My Lords, I add a word in support of the amendment in the name of the noble Baroness, Lady Hayter. It is remarkable that the provision in Clause 50 was not in the Scotland Bill of 1998. I am old enough to remember the debates that took place on that Bill and, as I recall, the provision was not part of the Bill for a very deliberate reason: it was regarded at that stage as undesirable that there should be any question of a difference in law between the laws of Scotland and those of England and Wales in relation to abortion. Things have moved on since then and the noble Baroness has made it clear that she is not opposing Clause 50. However, with great respect, the point that she makes is important given the way in which the clause has been introduced into the Bill at a late stage and the difficult and sensitive matters to which she drew attention in her speech. As I say, this was thought about carefully in the late 1990s when the original Scotland Bill was being considered and my recollection is that there was a deliberate decision to keep it out, for fear that it might give rise to undesirable consequences. That risk, which I think the noble Baroness was mentioning, makes her amendment one deserving of careful consideration.

Lord Wallace of Tankerness: My Lords, it certainly had not been my intention to take part but I do so given the comments of the noble Baroness, Lady Hayter, and the contribution of the noble and learned Lord, Lord Hope, because I took part in the debates in the other place on the 1998 legislation. Indeed, I tabled an amendment to devolve abortion—the argument being that abortion law is a matter of health and the criminal law, both of which are themselves devolved. It therefore seemed anomalous that abortion should not be. The noble and learned Lord may correct me if I am wrong but I think that prior to 1967, the criminal law in relation to abortion was different in Scotland from what it was in England. So there have been many years, probably decades, in which there were differences on different sides of the border.

Having spoken for the devolution of abortion in debates in the other place in 1998, I recall that when the then Secretary of State spoke, there was a conscious decision that the Government's position was that abortion should not be devolved. So the late Donald Dewar spoke very coherently, as your Lordships would expect, putting the case for a continued reservation of abortion. However, when we came out of the Chamber later he said to me, "I'm glad you did not read my speech during the debates on the 1978 legislation". So before Committee on this Bill, I went back and looked at Donald Dewar's speech when he advocated the devolution of abortion during the passage of the 1978 legislation. It made a compelling case for its devolution.

Lord Dunlop: I thank the noble Baroness, Lady Hayter, and the noble Earl, Lord Kinnoull, for the amendments that they have tabled. I hope that the Committee will indulge me if, given this late hour, I am relatively brief in responding to them.

As has already been explained, Amendment 80 would require the Secretary of State to lay a statement before Parliament stating that the Scottish Government and Scottish authorities have made appropriate arrangements in relation to the exercise of the powers which have been devolved to them before parts of the Bill are commenced. The Government regard this amendment as against the spirit of how devolution operates. Moreover, this is an enabling Bill: constitutional legislation which transfers legislative competence to the Scottish Parliament and executive competence to the Scottish Ministers. There will be no change in law until such time as the Scottish Parliament and Scottish Ministers use the powers devolved to them. It will therefore be for them to decide whether they have made appropriate arrangements before doing so. I have discussed this point with the noble Earl—namely, how we ensure an effective transition. It requires the co-operation of the two Governments to discuss those issues. A number of mechanisms are in place to support a smooth transfer of powers and joint working. We have already debated how that works in relation to welfare and I expect similar joint working with regard to the Crown Estate.

10.30 pm

Although I fully understand why the noble Earl has tabled Amendment 81, if we intend for devolution to be meaningful we must not tie the hands of the Scottish Government. 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. However, I agree that the Scottish assets must be managed responsibly and it is the duty of this House and the people of Scotland to call on the Scottish Government to be clear about their plans for the future management of the assets. In that regard I, like many other noble Lords, met with the Scottish islands councils. I believe that the islands councils have met the Scottish Government today. I am not up to date with the responses they got, but it is important that we get answers and that the Scottish Government fulfil the commitments that all the parties who were signatories to the Smith commission entered into, to make sure that those are delivered. My right honourable friend the Secretary of State for Scotland is meeting the Deputy First Minister tomorrow and will press him on exactly that point. I will be happy to report back to the noble Earl what answers he gets.

On Amendment 82, noble Lords will recall that the Smith commission agreement stated that the parties were strongly of the view that abortion policy should be devolved to the Scottish Parliament. The Government's response to the agreement highlighted that productive conversations were already taking place between officials and Ministers on the scope and shape of future work between the two Governments on whether abortion and other issues should be devolved. On Report in the other place in July, the Secretary of State for Scotland provided a further update on the process and highlighted that, in his view, there is no reason why the Scottish Parliament should not be able to decide an issue of this significance, given that it has demonstrated its ability to do so on numerous other significant occasions.

I understand that the topic of abortion policy is one that many people feel strongly about. The amendment tabled seeks to delay devolution of the power to legislate in relation to abortion until 12 months from the date of the Act being passed. Under Clause 69 of the Bill, the abortion clause would come into force two months from the date of the Act being passed. We have reflected very carefully on the concerns that have been raised about this. However, in the Government's view there is no convincing reason why abortion policy should not be devolved nor why commencement should be delayed for 10 months. At the point of devolution the policy will not change: the current legislation will remain in force until such time as the Scottish Parliament decides to legislate. The Scottish Government have clearly stated that they have no plans to change the law on abortion. The First Minister has made very clear statements in that regard. They recognise the case for gestational limits to remain aligned with England and Wales. The Secretary of State for Scotland has already spoken and written to women's organisations. Engagement will continue with interested parties as the matter is taken forward and I understand that Scottish Ministers have recently met representatives of a number of stakeholder organisations. Therefore I respectfully ask noble Lords to withdraw their amendment.

Baroness Hayter of Kentish Town: Before the Minister sits down, the noble and learned Lord, Lord Hope, who I thank for his intervention, made clear that we were not at all questioning the Scottish Parliament's ability to take this decision. I very much trust Scottish women to get their views heard strongly, although, as the Minister says, it has been officers, officials and Ministers having those debates so far, not the people who are mostly involved, who are of course women.

The question that I asked is one that we all need answers to, regarding funding: should there be a difference in whether the NHS funding will cover women who travel between the two jurisdictions when those jurisdictions have different laws on this? I do not expect the Minister to be able to answer that tonight but, given our experience in Northern Ireland, I think that this is a really big issue. If he cannot answer tonight, I hope that he will write to us before we reach this part of the Bill on Report.

Lord Dunlop: I am very happy to write to the noble Baroness on that point.

The Earl of Kinnoull: I thank the Minister for what he said. I was rather ungracious earlier on: he spent a lot of time with me on this issue, and has gone a long way to giving lots of assurances about my essential concern, which is the private citizen as opposed to political expediency. I am grateful to him and I note that he has organised a drop-in on the issue of the British Transport Police tomorrow afternoon; I shall be dropping in for sure. That said, and putting down a marker that I feel that the interests of the private citizen as opposed to political expediency is something that this House should have regard to, I beg leave to withdraw the amendment.

Amendment 80 withdrawn.

Amendments 80A to 82A not moved.

Amendment 83 had been withdrawn from the Marshalled List.

Clause 69 agreed.

Clause 70 agreed.

House resumed.

Bill reported with amendments.

House adjourned at 10.37 pm.

Grand Committee

Monday 22 February 2016

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Baroness Henig) (Lab): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

European Union Referendum (Conduct) Regulations 2016

Motion to Consider

3.30 pm

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

That the Grand Committee do consider the draft European Union Referendum (Conduct) Regulations 2016.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, the draft conduct regulations set out the detailed framework for administration of the referendum poll and are largely procedural in nature. I would like to start by thanking members of the Joint Committee on Statutory Instruments, which considered and approved these draft regulations on 5 February, and the Secondary Legislation Scrutiny Committee, which has also considered them and published a considered and helpful report on 11 February.

The conduct regulations specify items such as the way that ballot papers will be issued and how voting will take place in polling stations. They also specify the arrangements for absent voting at the referendum, which provide for people to vote by post or by proxy as an alternative to voting in person. They cover the arrangements for the counting of votes and declaration of results as well as the way that ballot papers and other referendum documents will be disposed of following the poll. Existing electoral offences such as double voting are also applied to the referendum by the regulations.

As noble Lords will no doubt be aware, all elections have conduct rules—they are a routine part of every British poll. We have modelled these conduct regulations on the rules that we used to administer the parliamentary voting system referendum in May 2011, which were themselves modelled on those used for UK parliamentary elections. The Parliament and Government of Gibraltar will make rules for the administration of the referendum there. In addition, minor changes to the UK rules have been required to reflect the fact that the European Union referendum will take place in Gibraltar as well as in the United Kingdom.

Noble Lords will also note that we have also taken into account changes in electoral law since the 2011 referendum as well as recommendations from the Electoral Commission. For example, in line with the Electoral Registration and Administration Act 2013, the regulations provide for people who are queuing at the point when a polling stations closes to vote.

The conduct regulations were published in draft in July 2015 in order to give the Electoral Commission, Members of Parliament and other interested parties an opportunity to review their content and to comment. This gave electoral administrators significant notice and allowed them to begin their planning activity far in advance of the poll. The responses that we received, which were largely technical in nature, were carefully considered before the conduct regulations were finalised. I beg to move.

Lord Kennedy of Southwark (Lab): My Lords, I say at the outset that I genuinely have no issues with the regulations before me. They are what I would expect to ensure a well-run, efficient referendum, and ensuring a well-run referendum is in everyone's interest. We must never allow the conduct, or otherwise, of any ballot, election or referendum to become the story. However, I have a number of questions for the noble Lord, Lord Bridges of Headley, and I will go straight into them.

How will the noble Lord ensure that counting officers and their staff have sufficient resources in place to conduct this referendum properly? What plans do the Government have to impress upon the chief counting officer, the regional counting officers and the local counting officers the importance of delivering a well-run referendum and of avoiding past mistakes in elections? Do the Government intend to impress upon the chief counting officer the need to use her powers of direction at any point where she feels that confidence in the running of the ballot could be undermined by poor practice by counting officers and their staff?

We need an absolute guarantee that ballot papers for every single voter in the UK will be printed and available at the polling station—not just an estimated number that the local counting officer thinks may turn up to vote. How will the Government ensure that this happens? In the past, problems have been caused by people arriving in the last 30 minutes and not being able to vote. What specific actions will the Government be taking in this referendum to ensure that there are sufficient staff on duty at each ballot station to cope with a last-minute surge of people?

We have all cast a vote many times in the past. Let us think back: is the polling station we normally use adequate if a large number of people come in to vote? How will the Government ensure that polling stations can cope with a larger number of arrivals than normal? I know that you cannot change where the station is, but it may be that, instead of the usual smaller room, you could move to a bigger room in the school or whatever is being used.

What discussions will the Government have with the police about their role in ensuring that the referendum is free and fair? What discussions will the Government have with the police and crime commissioners to ensure a free and fair referendum?

[Lord Kennedy of Southwark]

How will the Government address the problem of a very close overall result and the calls for a full national recount that will inevitably follow? There will be local counts with a big win for one side and, frankly, all the people could have packed up and gone home. Is that something in the hands of the chief counting officer, or is there no provision for it?

When is the counting of votes going to take place? I hope the noble Lord will confirm that counting will start as quickly as possible after 10 pm. It is necessary for this to be done expeditiously, with counts starting at the same time across the UK.

Can the Minister explain the thinking of the Government on the regulated period? A 10-week regulated period would overlap with the elections for the Northern Ireland Assembly, the Welsh Assembly and the Scottish Parliament. If a seven-week regulated period was in place then the elections and the referendum would be separate, which would be much clearer for everyone.

How are the Government going to ensure that the more than 2 million British citizens living abroad are able to register and vote?

Those are the points I have at the moment, but I hope that if the Minister responds to those, he will not mind if I put other points to him later. As I have said, I have no issues with the regulations as they stand. My questions arise only from reading the documents and wanting to ensure that we have a proper referendum and that the process does not become the story.

Lord Hayward (Con): May I ask, following on from that question, about the counting of postal votes? I noted that the Minister had a look of horror, concern or surprise—I am not sure which it was—when I came into the Room. He was fairly sure that I would ask one question or another. Under normal circumstances, postal votes are counted over a number of days and, despite the Electoral Commission's best guidance which is being implemented by most councils, it is sometimes possible to see the results of those postal votes. Given that, in these circumstances, any leak of information will be seriously market sensitive in relation to the value of the pound and other aspects that might impact on the City and the world's stock markets, could my noble friend say whether postal votes will be counted on the day, thereby minimising the chance of leaks in advance, or, as they normally are in other elections, over a series of days?

Lord Bridges of Headley: I thank both noble Lords who have spoken, particularly the noble Lord, Lord Kennedy, who speaks with a lot of experience. I will try to answer his excellent questions. Like him, I wish to see this referendum being conducted properly, fairly and efficiently. I will answer his questions in the spirit in which he asked them.

The noble Lord asked how the Government plan to ensure that counting officers and their staff at polling stations have sufficient resources to conduct the referendum properly, and about what plans we have to impress on chief, regional and local counting officers the importance of delivering a well-run referendum and avoiding past mistakes in elections. Those are fair questions. The Electoral Commission's planning for the referendum, as I mentioned in my opening remarks, is already well under way; a management structure of groups and the regional counting officers is in place to ensure effective planning. I am sure that the noble Lord, having himself been an electoral commissioner during the 2011 referendum, will be aware of the approach taken by the chief counting officer and her team to ensure that that poll was well-run, and I am sure that she is taking on board and learning from that experience in planning for the poll on 23 June.

A related question was how the Government intend to impress on the chief counting officer the need to use her powers of direction at any point when she might feel confidence in the running of the ballot could be undermined by poor practice by counting officers and their staff. On this point, I am also sure that the chief counting officer and her team at the Electoral Commission will be playing very close attention to the debate and to the remarks that the noble Lord has just made, and will note the legitimate concerns here. This goes without saying, but I will make the obvious point that we are in very close touch with the Electoral Commission on the operations of the poll, and government officials and I will ensure that the noble Lord's points are flagged up with it directly.

Another related point was about ensuring that ballot papers for every single voter will be printed and available at the polling station and what the Government are doing to ensure that the polling stations are of sufficient size to cope with larger than normal numbers. As the noble Lord will know, the detail of how the polls are run is a matter for the chief counting officer. We are aware that numbers of ballot papers and the logistics of polling stations are among the delivery matters that the Electoral Commission has already considered and planned for with directions and guidance. For example, the chief counting officer has indicated that she will require ballot papers to be printed to cover 110% of the eligible electorate, to ensure that sufficient papers are available, and that contingencies will be in place.

As regards the declaration of the results, the votes will be counted overnight. The conduct rules specify that counting officers must begin counting the votes as soon as practical after polling closes at 10 pm. As well as the overall result of the referendum, which will be decided by a simple majority, separate results will be announced for each voting area and region. Separate results will be declared for each local authority as well as for Scotland, Wales, Northern Ireland and Gibraltar.

Lord Kennedy of Southwark: I live in Lewisham, which possibly will vote heavily in favour of staying in the European Union, but other places will not. Although there may be quite a large result either way, when it is all added together there might be only a few thousand votes in it. I remember that the referendum on the Welsh Assembly was very close, and I think it was the last area to declare that narrowly gave a yes vote. I am conscious that if we end up like that, with a few thousand votes in it nationally, we will have people saying, "Hang on, I want a recount". How will that happen? Can it happen?

Lord Bridges of Headley: I will need to write on the details of that. As for the timing, the counting must begin, as I said, as soon as practical after polling closes. The results will be declared by each local authority. I will respond to the noble Lord in writing on the details.

The noble Lord raised a legitimate question as to whether, with a 10-week regulated period, we might have an overlap of the regulated periods for the referendum and for the elections to the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly. I think he is arguing that if we had a seven-week regulated period, there would be no overlap and a clearer position for everyone. We recognise that some campaigners and political parties will wish to campaign both in the elections to the devolved legislatures and in the referendum. Existing Electoral Commission guidance explains how to split spending limits for elections and referendums. The Electoral Commission has given an undertaking to issue further guidance to explain the impact of the overlapping periods for parties and campaigners who are campaigning in both the EU referendum and the May 2016 elections.

Lord Kennedy of Southwark: I am sure the commission will give very good guidance and do it very well, but as his explanation suggests, this is quite complicated. If the periods were split, it would be very different and there would not be these problems. The Minister is absolutely right that those campaigning for elections to all the bodies he has talked about and for the in/out referendum will in many cases be the same people. That is the problem. Maybe it cannot be changed, but there is an issue there and perhaps he could look at that again and talk further to the commission. Its guidance is good, but if this stays as it is, that guidance has to be very clear and precise.

Lord Bridges of Headley: I completely accept that point and am happy to raise it will the Electoral Commission again. As I say, I very much hope that the commission will be reading this debate with considerable interest, but I am happy to raise the point.

The noble Lord asked about ensuring that British citizens living abroad are able to register in time to vote in the referendum. As the noble Lord might know, the Government have strengthened and simplified the registration process so more voters can take part in elections by registering online. It now takes less than three minutes, and you can register throughout the year wherever you are. Under IER, there is no longer a general requirement for initial applications to be attested by another British citizen resident abroad, which we believe discouraged many Britons from registering in the first place. We have also extended the electoral timetable to give overseas electors more time to cast their votes. As the noble Lord may also know, the Foreign Office's consular network supported the Electoral Commission's overseas voter registration day last month to promote voter registration to British citizens abroad, and I urge overseas voters to register as soon as possible, and by 6 June at the latest, in order to take part in the referendum. I think that that probably addresses the points that the noble Lord raised on overseas voters, but I am happy to go into more detail if he so wishes.

The noble Lord also raised discussions with the police, which is a matter for the chief counting officer to take forward, but another good point worth flagging, and I will do so with the Electoral Commission. Postal votes are not counted before the close of the poll, and will be counted along with all other votes after the polls close.

I commend the regulations.

Motion agreed.

National Assembly for Wales (Representation of the People) (Amendment) Order 2016

Motion to Consider

3.46 pm

Moved by ***Baroness Chisholm of Owlpen***

That the Grand Committee do consider the draft National Assembly for Wales (Representation of the People) (Amendment) Order 2016.

Baroness Chisholm of Owlpen (Con): My Lords, the instruments that we are considering make changes to the rules for the administration and conduct of elections to the National Assembly for Wales and of police and crime commissioners. In particular, they make provision for the combination of polls at Welsh Assembly and PCC elections when they are held on the same day. They also apply, for the purposes of Welsh Assembly elections, provisions in the Electoral Registration and Administration Act 2013 and associated secondary legislation, which made a number of changes to the rules for UK parliamentary elections.

Noble Lords may be familiar with these measures, which have been considered in earlier debates on instruments which applied the measures for the conduct of other elections and referendums. Indeed, I should explain that these changes have already been made for PCC elections in a previous instrument that the Committee has considered. The background to the instruments is that we have consulted on them with the Electoral Commission and with others such as the Association of Electoral Administrators and the Welsh Government.

I turn first to the Welsh Assembly order. The Assembly order requires a poll at an Assembly election to be combined with a poll at a PCC election when both polls are held on the same day, as will happen on 5 May 2016. I should explain what is meant by a combination of polls. Where more than one poll is held on the same day, it is common for electoral law to provide for the polls to be combined and for rules to be drawn up that set out how they will be administered. Such rules are designed to ensure that the polls are run effectively and seek to minimise any risks of confusion to the electorate.

The Assembly order therefore designates the constituency returning officer at the Assembly election as the lead returning officer when an ordinary Assembly election is combined with an ordinary PCC election, and ensures that voters will cast their vote at the same polling station for both the polls, and that a different

[Baroness Chisholm of Owlpen]
coloured ballot paper is used for each poll. Returning officers will be able to issue a single poll card to electors for all the polls, and may issue to postal voters one postal voter ballot pack with two different sets of voting papers inside, instead of separate packs for each election.

The order also updates the forms used by voters, such as poll cards and postal voting statements, to make the voting process more accessible. The revised material has been produced following a programme of public user testing and consultation with the Electoral Commission, the Association of Electoral Administrators and Scope, and discussions with electoral services suppliers. I confirm that the order includes Welsh language versions of the forms.

I highlight that the order provides for the names of candidates to appear on the ballot paper for the election of regional members. This is an important change, designed to ensure that voters are aware of the candidates standing at the election.

The order also provides for police community support officers to enter polling stations and counting venues under the same conditions as police constables. This will allow police forces additional flexibility in deploying their resources on polling day, and allow them to provide a greater visible reassurance to the public.

The order additionally provides that voters waiting in a queue at the close of poll—that is, 10 pm on polling day—for the purpose of voting may be issued with ballot papers to enable them to vote, or may return postal voting statements or postal ballot papers despite the close of poll.

The order also applies to Welsh Assembly elections measures relating to postal voting that have already been made in respect of other elections. First, the order requires that 100% of postal voting statements are checked against voter records for security purposes.

Secondly, the order enables postal votes to be issued as soon as practicable at a poll. This is to facilitate the earlier dispatch of postal votes and to give administrators the flexibility to dispatch postal votes earlier than the 11th day before the poll, which is the earliest that postal votes may be issued to many postal voters at present. This will be of particular help to people in more remote locations, including service voters, as it will give them more time to receive, complete and return their postal vote in time for it to be counted. To facilitate this, the order moves the deadline for candidates to withdraw their nomination from Assembly elections from noon on the 16th working day before the poll to 4pm on the 19th working day before the poll, and the deadline for the publication of persons nominated becomes no later than 4pm on the 18th day before the day of the election.

Thirdly, electoral registration officers will be required to inform electors after an Assembly election where their postal vote has been rejected because the signature or date of birth, which are used as postal vote identifiers, that they have supplied on the postal voting statement failed to match those held on record, or where they had simply been left blank. This is to help ensure that those electors can participate effectively in future polls and not have their ballot papers rejected at successive polls because of a signature degradation or inadvertent errors. This will help legitimate voters who submit their postal ballot packs in good faith to avoid their vote being rejected at successive polls.

In response to a recommendation from the Electoral Commission, the order increases the spending limits for candidates at Assembly elections to take into account the effects of inflation. This means that the maximum amount that a candidate standing in an Assembly constituency may spend is increased from £7,150 to £8,700, together with an additional 9p, up from 7p, for every elector in a county constituency, and an additional 6p, up from 5p, for every elector in a borough constituency.

The instrument also provides for the fee of a returning officer at an Assembly election to be reduced, following a recommendation by the Electoral Commission, in the event of inadequate performance at an election. This mirrors an equivalent provision made for UK parliamentary elections by the Electoral Registration and Administration Act 2013.

The National Assembly for Wales (Representation of the People) (Amendment) (No. 2) Order 2016 corrects errors that appear in the Welsh language sections of some of the forms set out in the National Assembly for Wales (Representation of the People) (Amendment) Order 2016. It is right that we have brought forward this further order to ensure that the forms used at the upcoming polls are correct.

Turning to the order concerning the conduct of PCC elections, as I have noted, the Welsh Assembly order requires ordinary Welsh Assembly and PCC polls to be combined when they are held on the same day. The PCC order complements the Assembly order by making equivalent provision, in relation to the rules for the conduct of PCC elections, for the combination of PCC and Assembly elections when they are held on the same day. The instrument also provides that when PCC and Assembly elections are combined, the voting areas for the purposes of the PCC election in Wales are Assembly constituencies, instead of local authority areas. This will ensure that both polls are administered on the ground using the same voting area—that is, Assembly constituencies—and by a single returning officer. The returning officer for a voting area will be the local returning officer for the PCC poll who is the constituency returning officer for the Assembly constituency.

The Electoral Commission and electoral administrators in Wales specifically requested that we align the voting areas in this way, which will assist in the effective running of the combined polls. The Electoral Commission has commented that this change reflects the view of the commission and of returning officers in Wales and avoids a potential risk to the effective administration of the election.

Noble Lords will be pleased to hear, in summary—they must have felt that I was going to be here all night—that I believe that the changes in the instruments concerning the conduct and administration of Welsh Assembly and PCC polls will help to increase voter participation and support the integrity of our electoral system, helping to ensure that the polls scheduled for May 2016 are run effectively. I beg to move.

Lord Wigley (PC): My Lords, I apologise for missing the first two minutes, as I was in the Chamber trying to follow another devolution debate going on in parallel. I thank the noble Baroness for bringing these before the Committee. If she has not already said this in her opening remarks, will she confirm that there is unanimous backing for this in the National Assembly? I believe that to be the case—and therefore it is welcome.

I shall resist the temptation to ask her to clarify the grammatical errors in the Welsh language form, but that underlines one point—that many matters such as these should surely be devolved to the Assembly itself to handle rather than expecting Ministers with no knowledge of the Welsh language to handle it up here. Would I be correct in saying that, if the devolution Bill that is currently under consideration is passed as intended by the Government, that would put responsibility for matters such as these into the hands of the National Assembly, and therefore there would be no need to test the Minister on her detailed knowledge of the Welsh language?

Lord Kennedy of Southwark (Lab): My Lords, these three regulations are being debated together, and at the outset I should say that I have no issues with the instruments before the Grand Committee today. However, I have a few points and questions for the noble Baroness, Lady Chisholm of Owlpen, and I am sure that she will be able to answer them for me.

First, in respect of the National Assembly for Wales order, I was pleased to see the addition of Article 23A, which concerns the inadequate performance of returning officers and the making of provisions for no payments. That will hopefully focus minds, but what are the Government going to do to deal with poor performance of returning officers in general? Payments can be withheld, but that is just imposing a monetary sanction; it is not actually dealing with the problem.

On Article 13, I was pleased to see that the expenses limit for candidates has been increased, as these elections were last contested five years ago and costs have increased for all candidates. Although we are not able to do it with this order, we need to get to a position whereby these allowances are automatically uprated by inflation, which would remove the need for this cumbersome process, involving officials, the Electoral Commission and everybody else.

In a similar vein, although I know that these issues are not part of these regulations, I hope that the Committee will forgive me for putting some other issues out there. The Government need to look at the whole question of recordable and reportable donations thresholds, which have not changed for well over six years and need to be uprated. Combining the polls with the PCC elections is sensible, makes for better, well-run elections, reduces costs and is helpful to both the administration of the election and voters alike.

The other matters in the order, which include allowing PCSOs to enter polling stations and making provision for people who had their postal vote rejected due to an identifier problem to be contacted to correct the problem for future elections, are very welcome.

Paragraph 7.6 of the Explanatory Memorandum refers to the work undertaken by the Law Commission to consolidate all our election law. For me, this cannot come soon enough. Election law is needlessly complex, hard to understand and contains far too many Acts, regulations and orders. A thorough rewriting would be in everyone's interests, whether they be candidates, officials organising the elections or, most importantly, voters.

4 pm

I have raised this before, but will do so again: it is remiss of the Cabinet Office not formally to consult the political parties on these regulations and other matters and to go only to the representative bodies, such as the Association of Electoral Administrators, the chief executives associations and the Electoral Commission. People do not always see the problem, and having a different or fresh pair of eyes could be very helpful to the Government. The political parties can give a very different view, which I think would be very welcome. The Electoral Commission is supposed to consult the political parties on various matters through the political parties panel. I can say, as a former member of the panel and later as an electoral commissioner, that such matters would never be discussed there.

I see in paragraph 12 of the Explanatory Memorandum that the Electoral Commission will produce a report on the National Assembly for Wales and PCC elections, and this will be considered by the Cabinet Office in ordinary course, and the Cabinet Office will keep electoral legislation under review. Again, it would be beneficial to the Government to seek a view from the political parties, as they will give a different perspective and have a very valid view on these matters. The fact it is not done is regrettable.

The No. 2 order corrects the errors in the translation into Welsh. We should all be very grateful to the deputy junior counsel to the Joint Committee on Statutory Instruments for spotting the errors. I was a member of the JCSI for four years in the last Parliament, and while membership was not particularly onerous, the staff were most impressive. On many occasions, they stopped both Parliament and the Government from falling into some very deep holes. I am sure the noble Baroness will be aware of the problems at the last National Assembly for Wales elections with the translation of forms into Welsh on the Electoral Commission site and the problems that caused.

I am content with the orders and hope that the noble Baroness, Lady Chisholm, can respond to the points I have raised, although I am conscious that one or two of them are beyond the scope of the orders.

Baroness Chisholm of Owlpen: I thank noble Lords for their contributions, and I will try to answer the points raised.

The noble Lord, Lord Wigley, raised the issue of devolution, and it is absolutely true that the Welsh Assembly will be responsible following the Bill, so noble Lords will not have to listen to me speaking here for at least 20 minutes on the subject. That is very important and will make a big difference.

The noble Lord also raised a point about the Welsh language. The Cabinet Office is looking into that further and is making sure that these mistakes do not

[Baroness Chisholm of Owlpen]
happen in the future. It is getting together more people who can speak Welsh and can be in charge of this sort of thing, because it is not good for that to happen.

The noble Lord, Lord Kennedy, made a point about the performance of returning officers. Even though monetary sanctions are indeed very important—it draws people up short if they think they will not get the amount of money they thought they would—I agree with him that other important considerations should be taken into account. The Cabinet Office has organised two seminars for all returning officers at PCC elections in England and Wales to provide training and guidance for the delivery of the PCC elections in May. In fact, on a recommendation from the Electoral Commission, the Welsh Assembly SI provides that Welsh Ministers may reduce or withhold returning officers' charges in the event of poor performance at the Welsh Assembly elections. This is a significant sanction, and we have no plans at this time to introduce further sanctions in the event of poor performance. Our focus will be on the guidance and training provided to the returning officers.

Lord Kennedy of Southwark: From my time as a commissioner, I remember that we had the situation where—I do not know whether returning officers are paid some money in advance—there was a complicated process of providing receipts and getting the money back. It seemed to go on for ever and was very cumbersome. Maybe we need to have the bills first and then pay the money out, but it seemed to go on for months. It was very inefficient. That went on between the commission and the returning officer. How this is funded and how money comes back needs to be looked at.

Baroness Chisholm of Owlpen: The noble Lord raises an important point. Having it that way round seems to make things more complicated, and I will certainly take that back for further discussion.

The noble Lord also raised the issue of candidates' expenses limits. Our current policy is not to link candidates' expenses limits to inflation so that they increase automatically in line with inflation. Of course, we have agreed to increase the limits for the Welsh Assembly elections in May following a recommendation from the Electoral Commission. As with other electoral matters, this will be the responsibility of the Assembly once the Wales Bill is passed.

The noble Lord also raised the issue of the existing thresholds for reportable donations. These have not been changed since 2010. The current thresholds apply to elections across the piece. We do not wish to make a change for a particular poll and we have no plans to change the current arrangements, although, as with other electoral matters, we will keep this under review.

We do not as a matter of course consult political parties on electoral SIs, which are often technical in nature. We keep representatives of the parliamentary parties panel informed of our work on upcoming elections at meetings held on a quarterly basis. We will draw to their attention any planned changes we think would be of particular interest to them.

Lord Wigley: Would the noble Baroness confirm that the Government do consult on this with the National Assembly? The Assembly has the facility to discuss among the parties if it so determines, even as the law stands.

Baroness Chisholm of Owlpen: Yes, and it does so as part of its assignment of running and reporting on polls. It refers back to the Electoral Commission on how things have gone as well.

I think that that has covered all the points raised. The noble Lord, Lord Kennedy, also mentioned that it would be good to simplify election law. We all take that view, and I shall certainly take it back. I could not agree more that the staff are incredibly efficient and good at what they do. They cannot be praised highly enough.

I commend the statutory instruments to the Committee.

Motion agreed.

Police and Crime Commissioner Elections (Amendment) Order 2016

Motion to Consider

4.07 pm

Moved by ***Baroness Chisholm of Owlpen***

That the Grand Committee do consider the draft Police and Crime Commissioner Elections (Amendment) Order 2016.

Motion agreed.

National Assembly for Wales (Representation of the People) (Amendment) (No. 2) Order 2016

Motion to Consider

4.07 pm

Moved by ***Baroness Chisholm of Owlpen***

That the Grand Committee do consider the draft National Assembly for Wales (Representation of the People) (Amendment) (No. 2) Order 2016.

Motion agreed.

Pharmacy (Premises Standards, Information Obligations, etc.) Order 2016

Motion to Consider

4.09 pm

Moved by ***Lord Prior of Brampton***

That the Grand Committee do consider the draft Pharmacy (Premises Standards, Information Obligations, etc.) Order 2016.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, this order makes changes to the pharmacy regulators' powers to regulate pharmacy premises. In broad terms, the intention is to remove the General Pharmaceutical Council's duty to set standards in rules and, instead, turn them into code of practice-style obligations which are enforced through disciplinary committee procedures. The Northern Ireland regulator, the Pharmaceutical Society of Northern Ireland, will have a statutory duty to set standards for registered pharmacies and the order clarifies what those standards can cover.

The order also makes changes to the regulators' ability to issue interim suspensions from the premises register. The General Pharmaceutical Council's powers relating to improvement notices are amended. It is enabled to publish reports of pharmacy premises inspections, there are changes to its powers to obtain information from pharmacy owners, and a correction is made to the Pharmacy Order 2010 in respect of the notification of the General Pharmaceutical Council of the death of a pharmacy professional. All the changes have been developed with the agreement of the regulators, the Government and the devolved Administrations. Since the General Pharmaceutical Council's pharmacy premises standards may relate to the regulation of pharmacy technicians, which is a devolved matter, this order has also been laid in the Scottish Parliament.

I should give the Committee some background. All pharmacists and pharmacy technicians who practise in Great Britain must be registered by the General Pharmaceutical Council. Pharmacists who practise in Northern Ireland are registered with the Pharmaceutical Society of Northern Ireland. Pharmacy technicians are not a registered healthcare profession in Northern Ireland. Unlike most other healthcare regulators, the pharmacy regulators are also responsible for the regulation of registered premises. The regulation of retail pharmacy premises is the subject of the order under debate today.

The key change for the General Pharmaceutical Council, and one of the Law Commission's recommendations, is that it should no longer be required to set standards for registered pharmacies in rules. Instead, the standards should be aligned with other regulatory standards and be code of practice-style obligations enforced through disciplinary procedures. This supports the General Pharmaceutical Council's approach, since its inception in 2010, to move to an outcomes-based approach to pharmacy premises regulation. Overall, it will align the legal status of registered pharmacies' standards with the status of standards for individual registrants.

As a consequence of moving the standards out of rules, they will no longer be included in a statutory instrument that is subject to Privy Council approval. Increasing the autonomy of the General Pharmaceutical Council in this way is in line with government policy. However, the order includes an explicit requirement for the General Pharmaceutical Council to consult Scottish Ministers, as well as English and Welsh Ministers, on changes to pharmacy premises standards.

The General Pharmaceutical Council's standard-setting powers are being extended to include associated premises; that is, premises at which activities are carried out which are integral to the provision of pharmacy services. This reflects the fact that, in some respects, the traditional model of pharmacy premises being entirely self-contained operations in which all aspects of the retail pharmacy business are carried out is, for some businesses, outdated. Integral parts of their business operations—for example, electronic data storage—may be elsewhere. Very similar changes are being made in relation to Northern Ireland.

The disqualification procedures for pharmacy owners and the procedures for removing premises from the premises register are being amended for both regulators; first, so they apply to retail pharmacy businesses owned by a pharmacist or a partnership, as well as bodies corporate; and, secondly, to clarify that the test to apply sanctions where premises standards are not met is whether or not the pharmacy owner is unfit to carry on the retail pharmacy business safely and effectively.

4.15 pm

The GPC already has powers to issue improvement notices where a pharmacy owner breaches the standards for pharmacy premises. This order makes two amendments to the sanctions provisions relating to breaches of improvement notices. The two changes mean that the GPC will deal with all breaches of premises standards as disciplinary matters. Both regulators are being enabled to make suspension orders, pending a full hearing of the case against the owners of pharmacy premises, and to make interim suspensions from the register prior to a disqualification decision or a removal decision taking effect. These changes reflect the move to better align the disciplinary provisions for pharmacy owners in respect of breaches of pharmacy premises standards with those for individual registrants.

The remaining changes are for the GPC. It is currently required to make rules in relation not just to premises standards but to the information obligation of pharmacy owners. The latter duty is being made permissive. The order also clarifies when the GPC can require pharmacy owners to provide such information and the type of information covered. Currently, there is no provision about how these information-gathering rules are to be enforced, and this gap is being filled by making use of the existing enforcement regime via the GPC's improvement notice system.

The GPC is also being enabled to publish reports and outcomes from pharmacy premises inspections. The opportunity is being taken to correct an error in the Pharmacy Order 2010 to require notification of the death of a registered pharmacist or registered pharmacy technician by a registrar of births and deaths, or in Scotland a district registrar, rather than by the Registrar General, which is what the legislation states now.

We conducted a full public consultation across the UK from 12 February 2015 to 14 May 2015. There were 159 responses, the overwhelming majority of which supported the proposals, with many welcoming them. However, the need for guidance was raised in response to a number of the proposals, whether from regulatory bodies, professional bodies or others, to help understanding of the proposed changes and their impact in practice.

[Lord Prior of Brampton]

To supplement the consultation, a number of events were arranged across the UK for patients and the public. Participants at the events gave unanimous support to the proposals for an outcomes-based approach to standards for registered pharmacy premises. The emphasis on patient safety was welcomed, and it was recommended that pharmacy users should have a voice in whether good outcomes for patients are being achieved by the pharmacy. Publication of inspection reports in Great Britain was also welcomed.

In summary, the key proposals concerning the continuing development of an outcomes-based approach to standards for registered pharmacy premises build on best practice. The proposal that the standards should not be placed in legislative rules follows as a consequence of this approach and will enable the GPC, and eventually the Pharmaceutical Society of Northern Ireland, to respond quickly when reviewing and updating the standards to keep pace with the increasingly rapid changes in pharmacy service provision. I commend the order to the Committee and I beg to move.

Lord Hunt of Kings Heath (Lab): My Lords, I am very grateful to the noble Lord for his careful explanation of the order. On the whole, the changes seem sensible, and I note that some of them follow the Law Commission's recommendations. As the noble Lord will know, there has been disappointment that the Government did not bring forward a Bill or a draft Bill in relation to the whole package, and I know from our previous discussions that the Government are considering what further to do in relation to the regulation of individual health professionals. Is he able to update me on where the Government are on that?

On the detail of the order, I noted that overall the consultation outcome showed a great deal of support for the proposals, although perhaps less so in respect of the change in relation to standards for registered practices, which are no longer to be placed in legislative rules. I noted that some concerns were expressed, according to the Explanatory Memorandum,

"that removing the 'black and white' rules could lead to unhelpful variation for employee pharmacists in the way pharmacy owners choose to meet the standards".

I assume that the proposal for an outcomes-based approach would ensure that there will be consistency about the standards themselves but leave more discretion for individual community pharmacies to decide how to meet them. Could the noble Lord confirm that for me?

The noble Lord made a very interesting comment at the end of his speech about the rapid change in the way community pharmacy services are provided. I certainly agree with that. I am sure he is aware that an estimated 1.6 million people visit a pharmacy every day. There is no question but that they have huge potential, not just in dispensing medicines but in many of the other services that are now available in community pharmacies, for example home delivery, compliance aids and other support to help old and frail people in particular live independently. There is also no question about the strong professional advice community pharmacies can give, particularly in relation to medicine management. We know, again, that older and frailer people in particular can be prescribed individual medicines without perhaps the GP or other doctors looking at the whole impact, whereas community pharmacies, through medicine management approaches, can have a very beneficial impact. For instance, this winter, NHS flu vaccines were available for the first time through community pharmacies. Again, that shows the benefit of recognising the professional expertise they have and of trying to ensure that they can relieve some of the load on other pressurised parts of the National Health Service.

The Government have made clear in a number of publications how they value community pharmacies, so I have been puzzled by the reductions that are going to be made in the community pharmacy budget, which is the subject of an Oral Question next week. I am puzzled by the thinking behind that reduction, which I think will start in October 2016, according to a letter that the Department for Health and NHS England sent out to community pharmacies. I just wanted to ask two or three questions about this.

First, in the letter that was sent out to community pharmacists, or to their representative organisations, there was a clear implication that the Government think there are too many community pharmacies at the moment. The letter points out:

"In some parts of the country there are more pharmacies than are necessary to maintain good access. 40% of pharmacies are in a cluster where there are three or more pharmacies within ten minutes' walk. The development of large-scale automated dispensing, such as 'hub and spoke' arrangements, also provides opportunities for efficiencies".

The department is also looking at ways of online ordering, which will make it easier for the public. The letter also says it is looking at,

"steps to encourage the optimisation of prescription duration",

which I assume means prescriptions for a lengthier period than currently.

The Pharmaceutical Services Negotiating Committee has told me that it feels that the cut in budget is incompatible with the Government's ambitions in relation to the contribution of community pharmacy. It wants to know whether it is government policy to see a reduction in community pharmacy premises. It would be a brave Government who said that they wanted to see that, but clearly it would be helpful to know if that is a stated intention. The development of an online pharmacy service is clearly to be encouraged. The record of community pharmacy has been very good in relation to being able to adopt a digital approach. Will that be done in a way that does not bypass the actual value of the advice that pharmacists can give to individual patients, particularly about medicine management?

Finally, on the question of increasing the length of time of a prescription, we know that a lot of medicine is wasted. Often, patients give up the course before they reach the end, even though they are recommended to take the full course. I can see that making the length of a prescription longer will mean that they will need fewer visits to the community pharmacist, thereby reducing the money going to the community pharmacist. However, if it leads to a greater waste of medicine, it might be a false economy. Has the department undertaken any work on that?

Overall, the SI itself is eminently sensible, but it cannot be considered without looking at the context of where community pharmacy is going. When we debated the Health and Social Care Bill in 2012, we discussed whether community pharmacists should be represented, as of right, on the board of a CCG. The Government resisted that, but there is evidence that because community pharmacists are not around the table at CCG level, the contribution they can make is often missed when it comes to issues such as how you make a health economy work effectively together or how you can, say, reduce pressure on A&E. We may be missing a trick here in not embracing community pharmacy rather more than we have been for the past year or two.

Lord Prior of Brampton: My Lords, I had a feeling that we might stray beyond the order, and we duly have. The noble Lord raised three broad points. The first was to request an update on the Law Commission's report into the regulators. I do not have much to say that we have not already said. We think that a lot of what was in the Law Commission's report was absolutely right, but it was a long and fairly prescriptive approach to the matter. We are considering it and may return to it in this Parliament, but it is not a priority in the short term.

The noble Lord referred to the outcomes-based approach and raised concern about whether the standards will be consistent. The intention is that they will, but there will be more discretion in how the outcomes are achieved. We are at one on the intent that lies behind his question.

I turn to the much more difficult matter that the noble Lord raised, which does not relate directly to the order, although he is right to say that it provides some context. The first thing to say is that I agree wholeheartedly with what he said about the vital role of pharmacists not just in dispensing but in how we manage medicines, perform vaccinations and look after the old and frail. I was interested by his comment at the end about why pharmacists are not represented on the board of CCGs. When we come to debate our whole approach to community pharmacy in more detail, we will set out our views on how pharmacy should be more integrated with the delivery of health and social care. It may well be that we should revisit whether pharmacists should be on the board of CCGs. Perhaps I can take that away to think about it further.

I do not want to be taken down the route of the number of pharmacists, because we are out to consultation at the moment. It is a fact that 46% of pharmacists are located in very close geographic proximity to each other. That is one reason why we have been looking at the structure of delivery of community pharmacy. On the one hand, we absolutely recognise that in rural areas we must have community pharmacies close by, and we want them to be much more integrated with healthcare delivery; on the other, there must be a question mark about the structure of community pharmacy. The number of outlets has grown from 9,000 to 11,500 in the past seven or eight years, which is a huge increase. Much of that increase has come from people setting up shop in very close proximity to existing pharmacies. It is right that we look at the whole delivery of healthcare by pharmacies, and it will be interesting to see what emerges from the current consultation.

4.30 pm

I think that we are in complete agreement about the digital approach. We want to encourage click and connect and use of the internet to reduce costs and make it more convenient for consumers. Again, I agree entirely with the noble Lord's comments that that should not be a way to bypass the advice that skilled pharmacists can provide. I know from personal experience that the local pharmacist is open nearly all hours. They are often extremely well trained and can answer a wide range of medical issues. They have a critical role to play in the system.

The noble Lord's last question was an interesting one on the balance between wasting medicines, when you are given many months' supply, and having fewer visits to the pharmacist, which is more convenient for people. Interestingly, I was at one of our major teaching hospitals in London, which I accept is different from community pharmacies, but the wastage of medicines is absolutely shocking. In many hospitals that is accompanied by a lack of realisation of cost, which would not be the case with community pharmacists. There is a balance to be struck. As with many topics we debate, making it easy for people to do the right thing—to have the check-up, and to be seen by a pharmacist or by a GP—is very important, but there is the balance of the cost. The right balance needs to be struck between those two issues, but the noble Lord makes a valid point.

I suspect that we will debate community pharmacy in much more depth. We have a Question in the House next week. I suspect that there will be many more questions on our policy towards community pharmacy in the weeks and months to come, but I hope that that gives a little bit of information for the time being.

Motion agreed.

State Pension (Amendment) Regulations 2016

Motion to Consider

4.33 pm

Moved by ***Baroness Altmann***

That the Grand Committee do consider the draft State Pension (Amendment) Regulations 2016

The Minister of State, Department for Work and Pensions (Baroness Altmann) (Con): My Lords, I shall speak also to the draft Social Security Benefits Up-rating Order 2016. In my view, the provisions in the order and the regulations are compatible with the European Convention on Human Rights. Together, these statutory instruments demonstrate the Government's continuing commitment to support those who have worked hard all their lives, paid into the system and done the right thing to provide them with dignity and security in old age.

[Baroness Altmann]

Let me first address the issue of those social security rates which are linked to the rise in prices. This includes the additional elements of the current state pension, working-age benefits, carer's benefits and benefits which contribute to the extra costs that may arise as the result of a disability or health condition.

Last year, the relevant headline rate of inflation, the September consumer prices index, stood at -0.1%, which means that price-indexed benefits have retained their value in relation to the general level of prices. These benefit rates will therefore remain unchanged for 2016-17 and have not been included in the uprating order this year. For the same reason, the Government have not laid a draft guaranteed minimum pensions increase order.

I add that the Government intend to bring forward additional secondary legislation to adjust rates and thresholds within certain social security benefits that would usually be covered by an uprating order. These include adjustments to pensioner premiums within working-age benefits, pensioner amounts in housing benefit, the level of savings credit and non-dependent deductions. We will be laying these regulations, which will be subject to the negative procedure, before Parliament in due course.

As for those rates that are included in the uprating order, this Government continue to stand by their commitment to the triple-lock guarantee, by which the current basic state pension is uprated by the highest of earnings, prices or 2.5%. This year, the increase in average earnings has been 2.9%, more than inflation and more than 2.5%. This means that from April 2016 the rate of the basic state pension for a single person will increase by 2.9%—that is, £3.35, to £119.30 a week, the biggest real-terms increase of the basic state pension since 2001. Therefore, from April 2016 the full basic state pension will be more than £1,100 a year higher in 2016-17 compared to the start of the previous Parliament. We estimate that the basic state pension will be around 18.1% of average earnings, one of its highest levels relative to earnings for more than two decades and in contrast to the low of 15.8% which it reached in 2008-09.

This Government continue to protect the poorest pensioners. The pension credit standard minimum guarantee, the means-tested threshold below which pensioner income need not fall, will rise in line with average earnings at 2.9%, so that from April the single person threshold of this safety-net benefit will rise by £4.40 to £155.60 a week and will be the biggest real-terms increase since its introduction. Pensioner poverty now stands at one of its lowest rates since comparable records began. Despite the difficult economic decisions that we have had to take, I am pleased to say that this Government are spending an extra £2.1 billion in 2016-17 on supporting pensioners who have worked hard and done the right thing while continuing to protect the poorest pensioners.

The state pension regulations set the new state pension full rate that will apply from April 2016 at £155.65 per week, equivalent to more than £8,000 per year. This will mean that the new state pension will therefore stand at 23.6% of average earnings, and I am pleased to confirm that the triple lock will apply to this full rate for the remainder of this Parliament. Our reforms will see the complicated state pension system become clearer and fairer, providing a solid foundation on which people can build up their retirement savings. They will lift many more pensioner incomes above the basic means-tested threshold for the pension credit standard minimum guarantee.

The new state pension will see many groups better off than they would be on the current system. Around 650,000 women who reach state pension age in the first 10 years can expect to receive, on average, more than £400 a year more than under the current system. Around three-quarters of those reaching state pension age will be better off under the new system by 2030. Carers, lower-earners and self-employed people will also benefit under the reformed system. However, we are ensuring that the reforms in the new state pension cost no more than the present system.

In conclusion, these measures demonstrate the Government's overall commitment to support current pensioners by increasing their basic state pension through the triple lock, to protect the poorest pensioners by raising their guaranteed minimum income and to reform the state pension system so that it is clearer and fairer for future pensioners. Despite the tough and difficult decisions we have had to take, the Government are rewarding pensioners who have worked hard by providing them with a secure and dignified retirement. On that basis, I beg to move.

Lord McKenzie of Luton (Lab): My Lords, I thank the noble Baroness, Lady Altmann, for her explanation of these regulations and the uprating order. I thank the Minister also for the follow-up communication dealing with some outstanding points from earlier regulations and note the efforts to be made to publicise the availability of national insurance credits for spouses and civil partners who accompany Armed Forces personnel on overseas postings.

As we have heard, the regulations set the full rate of the new state pension at £155.65. I will say more about this later. The uprating order covers the obligation under Section 150A of the Social Security Administration Act 1992 for the Secretary of State to review certain benefits and uprate by reference to earnings if they do not maintain their value. We are advised that the annual growth in average weekly earnings for the quarter ending in July 2015 was 2.9%. This is therefore applied to relevant benefits.

As far as Section 150 of that Act is concerned, we are advised that the uprating order does not need to include any benefits because these benefits have maintained their value in relation to prices, given that the CPI for the 12-month period ending in September 2015—which was available from mid-October, I think—showed a marginal negative growth rate. This seems to overlap with the benefits freeze in the Welfare Reform and Work Bill, a freeze that extended for four years the previously announced two-year restriction on certain working-age benefits. The Minister will be able to confirm that not all the benefits that are not uprated in this order have been the subject of the freeze provided for in the Bill. These include—I think the Minister

referred to them—attendance allowance, carer's allowance, DLA, ESA, statutory adoption pay, statutory maternity pay, statutory paternity pay, and PIP.

When we discussed these matters the Government made much of certain disability benefits being outside the freeze. The briefing note provided to us when we were considering the Bill—at a time when the CPI rate must have been known—nevertheless stated:

"To continue to ensure we protect the most vulnerable we are exempting benefits for pensioners, benefits relating to the additional costs of disability and care and statutory payments".

In the event, many pensioner and disability costs are not to be uprated, for 2016-17 at least. Can the Minister tell us what assessment has been made of the appropriateness of using CPI as a measure of the additional costs incurred by those with a disability, so that the Government can be satisfied that the vulnerable are being protected?

4.45 pm

The uprating secures a 2.9% uplift to the basic state pension in line with the triple lock. This uprating has been applied, as required, to category C and D pensions, to the guarantee credit in pension credit and to rates of industrial injuries benefit. We support the triple lock, although it is the application of the Act and the need to review changes in earnings which has been determinative in these circumstances. I should say that we also support the application of the triple lock to the new state pension and trust the Government maintain this position—I think the Minister confirmed earlier that that is the intention throughout this Parliament. Can the Minister confirm, however, that no uprating is to be applied for 2016-17 to SERPS or S2P, to a pension shared on divorce, to deferred retirement increments or to lump sums for surviving spouses where entitlement has been deferred for future years?

I understood from what the Minister said that we should await some further regulations which are going to come forward, touching on a range of issues. I am not sure I caught them all, although I will read the record and she may wish to just repeat those when she responds. Why are they not being dealt with in the regulations and order before us today? Is this something coming out of Mr Osborne's hat, among other things that we should expect in due course?

We had a canter round the new state pension a couple of weeks ago when considering other SIs. The Minister did accept, I think, that over the long term the new state pension would be less generous than the current system, although there was the suggestion that this was okay because auto-enrolment would mean that private sector retirement incomes would be higher and could take the strain. We will see, but I understood that encouraging greater saving was so that individuals could have a more comfortable retirement, not to allow the state to step away from its obligations.

The Minister cited several statistics about those who would be better off in the first 10 years or by 2030. You have to look at this right across the piece and at the longer term. When you do that, you should reach the conclusion that this is not cost neutral and that the Government are making savings on this.

We note that by setting the rate of the new state pension at £155.65, the Government have just fulfilled their pledge to set it above the level of the pension credit standard guarantee. It has squeaked home by 5p. We have no issues with it being set at this rate, but there are matters which need clarification. We have given broad support to the concept of the new state pension, and acknowledge that it will over time simplify matters and will accelerate the equalisation of outcomes between men and women. However, I reiterate that we hold to the point that overall, and on the Government's own figures, in the longer term the new state pension will lead to a reduction in the percentage of GDP applied to pensions and pensioner benefits in comparison to the existing system. Can the Minister say whether she agrees with this point, and if not, why not?

To be clear, we would assert that the increased national insurance to be gained from the abolition of contracting out is a benefit to government in addition to the calculations for pensions and pension credit. Originally some of this was to be earmarked for social care proposals—I think the Dilnot proposals—which have now been deferred. So where is this to be deployed? Specifically, how much will be additional funding to cover the costs of additional public sector employer national insurance arising from the abolition of contracting out?

However, there are nearer-term issues associated with the introduction of the new state pension which, if not properly addressed by the Government, will undermine the introduction of something which should have been a success. These include: the lack of coherence in addressing the reasons for people retiring next year receiving different amounts; the consequences of limited entitlement to derive a pension from a former spouse's contribution record; the changes to pension saving credit; and of course the continued dismay expressed by the WASPI campaign about the adequacy of the notice given for the change in the state pension age.

On the first point, can the Minister give the Government's estimate of the number of individuals retiring on or after 6 April 2016 who will receive in 2016-17 a new state pension other than at the full rate, with a broad explanation of those reasons? She will be aware of the figure of just 37% of individuals receiving the full amount, and this is a figure the Government accept. On a wider point, she will have been briefed on data pursued by my honourable friend Owen Smith MP about the potential losses in the retirement income of the younger generation—for those in their 30s, an average loss of nearly £17,000 for men and £18,500 for women, in comparison with the existing system.

On the second matter, colleagues in another place have been pursuing clarity on changes to the pensions scheme that, for the future, will deny a right to derive a state pension based on the national insurance record of a person's spouse or civil partner. As has been pointed out, in extremis this could leave somebody, particularly a woman, who reaches the state pension age on or after 6 April 2016 with no entitlement to the equivalent of a basic state pension and reliant—presumably depending on circumstances—on the guaranteed credit. It is understood that the Government estimate that up to 2030 some 290,000 people will be

[Lord McKenzie of Luton]
affected, including as many as 30,000 in 2020 alone. Will the Minister say where the issue of transitional protection rests for such individuals? Mention has been made of protecting those women who paid reduced NICs before 1977. Is this the extent of what is planned? I do not think it would cover the whole of the population concerned.

On the savings credit, raising the threshold and reducing the maximum amounts will mean that 1.2 million recipients will lose, on average, £112 a year. Many of those—some 438,000, I think—will receive only the savings credit and therefore will not benefit from the rise in the guaranteed credit. Is it correct that the Treasury will pocket some £135 million a year from these changes—again at the expense of some of the poorest pensioners?

Finally, I turn briefly to WASPI. This issue, although not directly related to the uprating, is overshadowing the pensions scene, including the introduction of the new state pension. The Government will be feeling the heat from the campaign and should be seized of the sense of injustice felt by those women who judge that they were given inadequate notice of the changes to their state pension age and their deferred access to the new state pension. It would appear that this matter is simply not going to go away—as I am sure the Minister saw, there was another article in the *Sunday Times* just yesterday. I think we know her original view, and I hope that in government she will become a voice for addressing this injustice. A theme running throughout these issues is the importance of effective communication. We know that pensions can be complicated—and transitional arrangements particularly so—but on this score the Government are still failing.

Baroness Altmann: My Lords, I thank the noble Lord, Lord McKenzie, for his observations, and I would like to help set some of the record straight or clear up any confusion. He asked about what he called a "freeze". The fact that some of the benefits are not changing is purely a reflection of the fact that they are linked to prices and prices fell. I assure him that uprating will continue as inflation picks up, so that these benefits will continue to increase in line with any rise in prices in the coming years. This is not a freeze on these particular benefits.

Lord McKenzie of Luton: It is not a freeze on these particular benefits, but they are not being uprated. How would the Minister describe that? That is the first point. On the perhaps more substantive point, which I recognise does not include the specific freeze in the Bill, what judgment have the Government made about the impact of not uprating and the extent to which CPI is relevant to the extra costs of those who claim DLA or PIP, not the generality of benefits?

Baroness Altmann: As I have said, benefits such as PIP, DLA and attendance allowance will be uprated in future years, when there is inflation, but prices have fallen over the past year. I can confirm, by the way, that SERPS, S2P and the other benefits are included in this. The official measure of inflation is CPI, and that is the measure required to be used for uprating benefits. CPI fell last year, so there is a 0.1% real-terms increase in these benefits, and as and when inflation increases in the future, these benefits will be increased to take account of the rise in prices, as is required. Earnings-linked benefits will rise in line with earnings or the triple lock, depending on the requirements of the benefit.

Lord McKenzie of Luton: I am sorry; I do not intend to get up again, unless really provoked. I think the Minister said that the benefits had to be uprated in line with CPI. If the Government judged that to be an insufficient uprating—zero, in this case—because of what had happened to the costs of those concerned, is she saying that the Government would be precluded from uprating further or beyond the zero? Are they bound by that?

Baroness Altmann: As the noble Lord is aware, the Government would have discretion to increase by more, but the judgment is that the appropriate requirement this year is that these benefits be changed in line with inflation, or slightly above the movement in prices over the past year. I reiterate that this is not a freeze. It is not part of any benefits freeze; it is purely a function of the fact that these particular benefits rise in line with the change in the price level, as measured by CPI, which is the Government's official inflation measure. On his particular question, Section 150A of the Social Security Administration Act does not allow for inclusion of these rates in the order, so the rates that will be increased will be taken by alternative powers. There is nothing untoward or underhand in any way; it is merely a function of how the legislation is framed.

Turning to the new state pension, the noble Lord is absolutely correct: communication is very important. One of the big communication challenges we all face is the perception that if people are not getting what is called the full rate of the new state pension, they are losing out. That is a misperception, and it is important that we try to help correct and overcome that. It is important that we help people understand that the new state pension is a totally new system. The full rate will apply to those who are only in the new system, but for those who have built up state pension under the previous system—the existing system—an allowance will be made for years in which they did not pay full national insurance because they were building up a private pension with some of the rebate for national insurance they received.

5 pm

We are now including in state pension statements an estimate of the amount of state pension that somebody would have opted out of or would have been able to build up elsewhere to replace the part of the state pension they contracted out of. It is therefore important that people understand that if you add the contracted-out pension equivalent to the amount that people will be getting from the state, 90% of people will get at least the full rate, if not more. It is a communications challenge, and there has been misunderstanding, but I stress that that is not the yardstick that needs to be used. In fact, the new state pension is much more generous for millions of people in the years up to 2030;

70% of men and 75% of women—that is 3 million men and 3 million women—will be getting more under the new state pension system than they would have got under the old state pension system. In the case of women, up to 2030 they will have an average of £11 a week more under the new state pension than they would have had under the old state pension.

Lord McKenzie of Luton: Will the Minister tell me what happens after 2030? What are the projections?

Baroness Altmann: I am coming on to that because it is important to understand that these reforms are designed to make the state pension system affordable and sustainable over the long term. We have an ageing population and an increasing number of expected future pensioners, which is good news. The proposal and the overall framework of our pension reforms, taken together, are to ensure that the state pension system is sustainable. Over the years from 2030 and certainly from the 2040s onwards, the general level of the state pension will be set at a base of around £8,000 a year in today's money. On top of that, people will be expected to have built up a private pension under the auto-enrolment reforms. It is true that in the 2030s and mainly from the 2040s onwards, the general level of the state pension will not be as generous as it would have been if the current system had been sustained. However, the current system is not sustainable. That is expected to be combined with a better private pension to ensure adequate pension provision—indeed, better pension provision—for more pensioners in future because the state pension system will not penalise private savings in the way it currently does for those who are going to end up in the bottom half of the pensioner income distribution in later life.

The new framework, with a base level of state pension that is not earnings-linked, topped up by a good private pension that comes from auto-enrolment, with help from the employer, which will be earnings-linked, is meant to make our system more sustainable and affordable. Having said that, as the noble Lord rightly said, there will be people who will need a safety net; for example, because they do not have the full 10 years required for any state pension and so end up with no state pension, or for other reasons. They will still have access to the means-tested pension credit, but that will be set below the full rate of the new state pension to maintain the incentive.

The question about the 5p differential between the pension credit minimum guarantee and the full rate of the new state pension was relevant to this point. We are committed to ensuring that the new state pension is above the pension credit standard minimum guarantee, but it is also important to remember that the 2012-13 illustrative rate for the new state pension was £144 a week, while the pension credit standard minimum guarantee for a single person was expected to be £142.70 a week. Since then, we have increased the pension credit standard minimum guarantee by the full cash increase given to the basic state pension, so that the poorest pensioners benefit from the triple lock as well. That means that the pension credit standard minimum guarantee has grown faster than the new state pension illustrative rate.

As far as the savings credit is concerned, it is true that the savings credit maximum rate is being reduced, but this should be more than offset by the increase in the basic state pension, and the triple lock. As well as being catered for, depending on what happens to each individual element of a pensioner's income, the fact that the maximum savings credit is falling by approximately £2 a week will be more than offset by the £4 or £3.35 increase. Our forecasts are that pensioners will, on average, still be £2 a week better off in cash terms. I am assured that there will be absolutely no cash losers from this. The expectation is that the poorest pensioners will still see an increase in their overall income.

The noble Lord also asked about the rebate savings from contracting out. It is true that the additional national insurance revenue raised by the withdrawal of the contracting-out rebate will be received by the Government. However, it will be received by the Treasury; it will not flow to the DWP. It is not expected to be spent on the state pension; otherwise, it would mean that significantly more would be spent on new, rather than existing, pensioners, which was never the intention of these reforms. It is a matter for the Treasury how it allocates the departmental funds that it raises after the removal of the rebate and how that revenue is subsequently spent.

I think that that covers the points raised, if I am not mistaken.

Lord McKenzie of Luton: I am grateful to the Minister for a very full response on most issues. Unless I missed it, I do not think she dealt with those who may have no entitlement to the equivalent of the basic state pension, or with transitional protection. We touched on those paying reduced national insurance contributions before 1977, which might be one category, but is that it? Is that all the transitional protection that will be available?

Baroness Altmann: I apologise. I thought that the noble Lord had, in a way, answered his own question by saying that there is transitional protection for those women who have paid the married women's stamp—the reduced rate election. There is also protection for Armed Forces spouses, who will get credits in the system. It is also the case that some people might have inherited a pension from a spouse but no longer will under the new system because the new state pension will treat individuals in their own right. It is very difficult for us to predict who will become widowed. However, as the noble Lord rightly said, this will form an important part of the communications on the new state pension: to explain that in future most people—as I say, there will be exceptions for the Armed Forces and the married women's stamp—will be treated for state pension purposes on the basis of their own record, rather than being assumed to be able to inherit or transport an entitlement from a partner.

Lord McKenzie of Luton: Just to be clear on that point, my understanding is that the Government have estimated that up to 2030 some 290,000 people will be affected by the withdrawal of that opportunity. I understand what the Minister has said about those

[Lord McKenzie of Luton]
who paid reduced national insurance contributions before 1977 and those accompanying armed services personnel, but how many of those 290,000 people does that cater for? What is the level of the transitional protection likely to be for those who paid reduced national insurance contributions before 1977?

Baroness Altmann: I do not have the breakdown, but I am happy to write to the noble Lord with whatever figures we can give him to satisfy him on that particular request. Pension credit remains for anybody who does not have sufficient income to bring them up to the £155.60, which is usually far more than the pension that one would have inherited. Under the new state pension, widows or widowers will also inherit the protected payment that their previous partners would have been able to build up under the new state pension system rules.

I thank the noble Lord for his contribution to this important debate. This Government are taking the necessary steps to protect pensioners, many of whom have worked hard all their lives and are no longer in a position to increase their income through work. Our triple lock, our protections for the poorest pensioners and our new state pension reforms mean that we will be able to provide pensioners with dignity and security in their retirement.

Motion agreed.

Social Security Benefits Up-rating Order 2016

Motion to Consider

5.12 pm

Moved by ***Baroness Altmann***

That the Grand Committee do consider the draft Social Security Benefits Up-rating Order 2016

Motion agreed.

Housing: Affordable Housing

Question for Short Debate

5.14 pm

Asked by ***Lord Shipley***

To ask Her Majesty's Government what assessment they have made of the affordability of homes under their proposed extension to the right-to-buy scheme and their starter homes proposals.

Lord Shipley (LD): My Lords, I am grateful for this opportunity to speak to this Question for Short Debate. I should at the outset declare my vice-presidency of the Local Government Association. This QSD was tabled three months ago, and it is fortuitous that it has come up for debate at this point because the Housing and Planning Bill is in Committee.

This QSD asks what assessment the Government have made of the affordability of homes under their proposed extension to the right-to-buy scheme and their starter homes proposals. By affordability, I mean what dictionaries tell us affordability means: people having the resources to pay for a product or service.

Of all the factors that enable people to enjoy a fulfilling life, a decent and secure home is central. Too many people do not have that and too many cannot even aspire to it. I have come to the conclusion that the Government do not actually understand that. If they did, they would be building more homes for rent. Clause 143 of the Housing and Planning Bill defines affordable housing as,

"a new dwelling in England … to be made available for people whose needs are not adequately served by the commercial housing market or … a starter home",

within the meaning of the Bill. However, so much of the evidence we have tells us that the Government's proposals in the Housing and Planning Bill will not help us to solve the problems of affordability or access to decent rented housing for the many people who do not earn enough to buy their own home. That is because house prices are so high and not enough new homes are going to be built over the next few years. The Government have admitted on several occasions that their plan to build 200,000 homes a year to 2021 will meet only the projected increase in the number of households over that period. In other words, the current housing crisis will remain unaddressed.

Average house prices are now £288,000 outside London and £540,000 in London, which is several times average incomes. This is not just a London problem; it is a problem right across the country and impacts on all parts of England where for so many home ownership remains a dream. House prices are predicted to rise by up to 20% in the next few years, so in no sense can these houses be deemed affordable even at the lower end of the market for the vast majority of people who are currently renting or who are living in a family home. The consequence of this policy is that there are 1.6 million people on housing waiting lists in the UK, with 9 million people living in private rented accommodation, including 1.3 million families with children.

The lack of social housing for rent and affordable houses for purchase has driven more people into the private rented sector. There are now more people living in the private rented sector than in social housing for the first time. Thirty per cent of private rented households contain children, and people in this sector pay higher rents and have much less security than other tenures.

The truth is that we are building too few homes and, with the Government depending too much on owner-occupation to the detriment of expanding the social rented sector, the aim of giving every family the stability and dignity of a decent home cannot be achieved. To stand a chance of doing so would require 300,000 extra homes to be built annually rather than the 200,000 which the Government plan. What is worse is that the Government, in producing a target figure of 1 million new homes by 2021, have not published any longer-term projections about how many

houses they plan to ensure are built, nor do they tell us the net figure of new homes taking into account demolitions.

Housing is too important to rely on short-term planning. We need 300,000 new homes a year, and I wonder whether the Government have grasped that. Might they look again at creating a housing investment bank to provide long-term capital for projects? Might they look again at creating more garden cities in areas where there is local support?

Current government policy is driven by two new policies: starter homes and the right to buy housing association properties, with funding being made available by the sale of higher-value council homes. The housing announcements in the 2015 spending review included a doubling of the housing budget, which is welcome. It is not enough, but the sense of direction is right in terms of spending. The review also established that there would be 400,000 new affordable homes to buy by 2020—half would be starter homes and 135,000 Help to Buy shared ownership. I welcome that support for Help to Buy shared ownership schemes. However, the trouble is that this simply does not represent enough new homes, and there is no sign of any understanding of the need to build new homes in England for rent. In fact, we will see a reduction in the number of new homes for rent, as starter homes to buy will be built instead of them. First, councils will be required first to sell off their higher-value properties to help to fund the right to buy of housing association properties and, secondly, councils will lose rights under Section 106 agreements and the community infrastructure levy to build more homes for rent.

As we know, starter homes are new properties for first-time buyers under the age of 40, who are entitled to a 20% discount off the market price. The Government have set a target of 200,000 starter homes during this Parliament, which is expected to deliver most of their affordable housing goal. Shelter has calculated that on average in England a deposit of £40,000 and a salary of £50,000 will be necessary to afford a starter home. In London, buyers would need a deposit of £98,000 and a salary of £77,000. These are very large sums of money. Shelter has also suggested that, based on the purchase price caps of £450,000 in Greater London and £250,000 outside Greater London, starter homes will be unaffordable in 58% of local authorities to households on average income and in 98% of local authorities to households on the national living wage. What assessment have the Government done of this compelling evidence provided by Shelter?

I have concluded that, in practice, starter homes are for renters who are higher earners or who have access to private capital and that those starter homes will replace homes with affordable rent levels for those who are less well off. For those who buy a starter home, there could well be a substantial profit if, as forecast, house prices continue to rise. That is because they will be able to sell it at market value just five years after buying it. There is a very strong case for starter homes to maintain a 20% sub-market rate for much longer than five years, so the benefit of a cheaper home can be passed on to others. There is a very serious risk that starter homes will be built at the expense of traditional affordable housing for sub-market rent and shared ownership. This would worsen the availability of low-cost housing, particularly in rural areas. Starter homes should be delivered in addition to affordable housing, not in place of it.

This brings me to the right to buy for housing association tenants, which will reduce the number of affordable homes for rent, given the way in which the Government are effecting the sale. It will then make things more difficult for those on the social housing waiting list and those for whom home ownership is not within reach. The Government have made no commitment to exempt housing association properties in rural communities, but they should. As I have said, the Government's plan would require this right to buy to be funded by councils via an annual tax, which the Government expect them to finance by selling off high-value council homes. The current right-to-buy discounts are £104,000 in London and £78,000 outside London. I understand that the National Housing Federation has calculated that the extension could cost £11.6 billion. I wonder what the Government's assessment of that figure is as well.

The forced sale of high-value council homes will reduce the number of low-rent social homes in the places they are needed most and will make things worse for the 1.6 million people on social housing waiting lists. It will also jeopardise new housebuilding because it will reduce councils' capacity to borrow. It will also put any new council homes that are built at immediate risk of being forcibly sold if they are deemed to be high value. Crucially, there will be even fewer homes available for larger families.

In conclusion, all of this could see homelessness return to 1980s levels. It is already increasing and the Government's failure to build for rent and to support adequately that category of housing is likely to see homelessness rise. I wonder what assessment the Government have done of the likely increase in the number of homeless people.

Everyone deserves a decent, affordable home to live in. I regret that many people are going to be priced out of the communities in which they grew up, due to rising house prices and rents. I am deeply concerned by the present Government's housing reforms, which will lead to fewer new affordable homes for rent and a potential breakdown in community resilience by the selling off of affordable homes with no guarantee of replacement in the same place.

5.26 pm

Lord Beecham (Lab): My Lords, the noble Lord deserves our thanks for securing this curtain-raiser to Committee stage of the Bill, when we will be considering the Government's proposals. This debate provides a welcome opportunity for an initial exploration of the Government's proposals in relation to right to buy and starter homes, which will of course be subject to much more detailed scrutiny as the Bill progresses.

Ministers trumpet their policies as making more affordable homes available for purchase for both council tenants and social housing tenants under right to buy, although for the time being housing associations will not be compelled to sell. If this Government remain in

[LORD BEECHAM]

office, I believe that they will ultimately extend compulsion to that sector, as they have in the municipal sector. In addition, there is the starter homes scheme, with its attendant 20% discount, to be funded, effectively, by the sale of existing high-value council housing.

The claim is that affordable homes will therefore become available for purchase. But, as the noble Lord has implied, affordability is an elastic concept. The coalition Government drove up council rents, deeming an affordable rent to be 80% of private sector rents. But given the chronic housing shortage and the boom in buy to let, which dramatically drove up prices and rents in the private sector, the definition of affordability is fundamentally flawed. Affordability must surely relate to what the would-be owner-occupier or tenant can reasonably be expected to pay, having regard to his or her income, not an artificial comparison with the market rate.

At Second Reading the Minister told us, in true Candide fashion, that all was for the best in the best of all possible housing worlds, because the average price of starter homes for first-time buyers was £226,000—or, after the discount, £169,000. The London figure after the discount was £291,000. But of course these were 2014 figures. Already they will have increased, I suggest, by around 5%. The noble Lord, Lord Shipley, has pointed to likely future increases. Under Help to Buy, the average price was £186,000.

I pointed out at Second Reading that in Newcastle the 5,900 applicants on the council's housing list have average earnings of £20,000 a year, which would be enough to support a mortgage of only £70,000, leaving an effectively unbridgeable gap between that and the discounted purchase price which would apply outside London. Even the national average income of £26,000 would fall short of the amount required to obtain and sustain the required mortgage—and that is at the present historically very low levels of mortgage interest rates.

Ironically, in passing, we should note that a household income of £30,000 outside London, which could be a couple on the national minimum wage, would invoke the "pay to stay" provision for council housing. So what is the Government's definition of affordability for both house purchase and rent relative to income? The LGA quotes a report by Savills that starter homes would be out of reach for all the people in need of affordable housing in 220 council areas.

What, furthermore, will we be getting in terms of space and energy efficiency in the 200,000 starter homes, given the contrast between what has been built here in recent years and what has been built on the continent? It is a question not just of numbers but also of quality.

In all of their claimed ambitions for more new homes the Government make no mention of council housing. Is it not the Government's intention to phase out such provision completely through the right to buy, while at the same time forcing councils to cut rents, with dire consequences for the maintenance and improvement of the stock? In Newcastle's case that amounts to a loss over time of £593 million which could have been devoted to improving the stock. What are the Government's intentions in relation to new council housing, and what is their assessment of the impact of the proposed alteration to the planning system, including permission in principle and the emphasis on starter and so-called affordable homes?

The implications, which are dire for councils, are also dire for housing associations. *Inside Housing* magazine's survey of 135 English associations found that 53% think it likely that they will seek to renegotiate existing agreements to build homes for affordable—sub-market, as they would define it—rents. Already a small scheme in my own ward has fallen through, and another has been preserved only by changing the type of housing and reducing the size of the property.

There will also be an impact on what councils can achieve under Section 106 agreements. The Government's own figures suggest that for every 100 starter homes built, between 56 and 71 affordable council and social rented homes will not be built. This represents, over the four years of the starter homes scheme, a reduction of around 50% compared to the previous four years.

Reference was made at Second Reading to the position of supported housing and specialist housing, where the LGA—I declare my interest as a vice-president, along with my other local authority interest—is calling for Government, councils and housing associations to identify categories of properties to be exempted from the right to buy. What is the Government's response on this issue? Will the Government require housing associations to consult local councils on the exercise of right to buy in their sector, given that, for the time being, this is voluntary—not compulsory—and given the need in many areas to ensure that replacements are provided in the locality?

Last Friday the Select Committee on National Policy for the Built Environment published a report with the apt title of *Building better places*. It affirms that:

> "We do not believe the Government can deliver the stepchange required for housing supply without taking measures to allow local authorities and housing associations each to play their full part in delivering new homes".

The committee calls on the Government to ensure that councils are able to fulfil their potential as direct builders of new mixed-tenure housing and to review the restrictions on borrowing and the effect of social housing rent increases. It also calls for a revision of the proposal to require starter homes on every developable site, and argues that councils should have the right to prioritise long-term affordable housing over starter homes where appropriate. Will we have the Government's response to this important publication before we reach Report on the Bill? Perhaps the Minister could also tell us when we might expect to see the draft regulations through which it intends to implement so many of the provisions of this highly controversial measure.

5.33 pm

Baroness Thornhill (LD): My Lords, I declare my interest as a deputy chair of the Local Government Association.

I will be very brief and say that I agree with noble Lords and with much of what was said at Second Reading. There will be much more to come. I shall assume that the generic arguments have already been

made—not least by the two noble Lords ahead of me—and shall confine my remarks to my main concern, which is that building starter homes instead of, not as well as, social housing will lead to a reduction in homes that are genuinely affordable. Over time—and for me this is the real crunch of the Bill, as I genuinely believe it to be short-sighted and short-term—it will undermine the precious balance of communities that is essential for cohesion and sustainability. Redefining the problem does not solve it.

Will the Government take notice of the Savills research while the Bill goes through Committee? It has already been quoted. It is fairly conclusive in saying that starter homes will be out of the reach of people in 67% of council areas.

I draw the Minister's attention to a specific issue regarding the price cap of £250,000 outside London. In my borough of Watford, £250,000 will not buy very much. You may be lucky to get a studio flat with a "bed space"—a new concept that I had not come across until I started looking—but there are not many of them. In my home town of Preston, that would buy a decent family home. That is what worries me about the Bill: the housing market is so diverse that one size does not fit all, yet everything in the Bill appears to be centralising and standardising. Councils must be able to retain some flexibility over what is built in their areas, whereas the Bill appears to be undermining that.

That is the case not least in planning provisions in the Bill, which we have not spoken about much. It promotes significant measures reserved to the Secretary of State. This is in sharp contrast to the rhetoric we had during the coalition, with the notion of local determination and acceptance of development by local people through the neighbourhood planning process. This is a real reversal of previous rhetoric used when the current national planning framework was introduced.

We know that London is a hot spot for costs, but there are those on the outer ring of London who are also suffering high prices. Will the Government consider an outer-ring cap? There are many areas just outside London with housing shortages and high prices. Somewhere between the £250,000 and £450,000 prices might help.

There is a mixed picture on affordability, but there is little argument that those whom this policy will help—if it were stated upfront as a political aspiration, that would at least be honest—are the reasonably well-off with parents who can afford the required deposit, which in my area will be £25,000 if it is a 10% deposit. Those same people are currently renting and lament that they cannot rent at current levels and save for a deposit. Indeed, if they have that deposit and then have the mortgage for the rest, they will need a combined income of £60,000 to take on the mortgage on a 3.5 multiplier. That is considerably more than the £30,000 deemed to be, in the words of the Minister, a high salary for those who fall foul of the "pay to stay" policy. That is a huge inconsistency and discrepancy.

At this point, enter mum and dad, or even grandparents, which is positive news for those fortunate folk, but not for the many for whom this is not remotely feasible. It has been cynically said by many that this is a cash windfall to middle-class families, but in truth when people on an average wage struggle to afford the cost of a home even after a large government subsidy, the scale of the issue is truly laid bare. The starter homes programme therefore makes only some homes 20% less expensive, rather than delivering homes that are genuinely affordable and in a quantity to make the difference after decades of underfunding.

Setting affordability aside—I am sure that there will be many arguments about that—I am deeply concerned that starter homes will be the only game in town when it comes to providing the not-so-affordable homes, while the need for real affordable homes remains unabated. We should also look at the language we use around "affordable" and "social". We need to clarify that.

The change during the Thatcher years for developers to provide social housing by what we now call Section 106 contributions has meant a year-on-year decline in the number of homes available at social rent levels. Coupled with the right to buy—whatever your political views on that policy—that change has contributed to that decline. We know that only one in 10 right-to-buy properties has been replaced by a similar home.

Much more recently, developers were given an opportunity to opt out of providing social housing by claiming to local councils that the financial viability of their scheme was at risk if they had to provide it. This has happened in many councils all over the country. They could challenge the local authority, and have been doing so. In Watford, we have had to employ specialist housing advice and support to argue those cases and fight for much-needed social housing in my area—at considerable cost, money which I would have preferred to use for housing.

If starter homes count as affordable homes, there will be no provision of social housing for rent under Section 106. The key thing is flexibility for councils to determine where, what and when, rather than starter homes being the only priority.

I will learn to time my speeches better; my apologies, colleagues.

5.42 pm

Baroness Grender (LD): My Lords, I thank my noble friend Lord Shipley for introducing this timely debate, and other noble Lords for indulging me by allowing me to speak in what I believe is called the gap. I shall speak very briefly about those on the sharpest end of the affordability issue, who are of course homeless people and, in particular, the single homeless. They are the ones at the end of the chain who suffer and whom we need to bear in mind as we discuss the housing Bill.

I reference Homeless Link, which undertook an extensive survey and is the umbrella body for all homelessness organisations. It found that 25% of people in some accommodation projects were ready to move on. These will typically be people aged between 18 and 25—49% of them are—and three in 10 are women. They are ready to move on, but there is no move-on accommodation available for them. Of this group, 27% have been waiting for six months or longer. Forty-eight per cent of projects overseen and surveyed

[Baroness Grender]
by Homeless Link reported that the main barrier was a lack of suitable accommodation to move to, and 14% of those projects typically cite a lack of affordable housing as the main barrier to their clients' moving.

Any of us who have studied housing systems elsewhere in the world—for instance, in the US—would hate to find ourselves going down the route of not having multiple tenures in a community so that communities can work together. That means that single homeless people can move into areas where there is affordable rent and some kind of move-on accommodation available to them.

I simply ask that, as we continue to discuss the Bill, we continue to bear those people in mind.

5.43 pm

Lord Kennedy of Southwark (Lab): My Lords, first, I congratulate the noble Lord, Lord Shipley, on securing this Question for Short Debate and declare an interest as a local councillor in the London Borough of Lewisham. Everyone here supports the concept of being able to buy your own home if that is what you want to do, but that must be part of a wider policy of providing homes of different tenures to meet people's needs, underpinned by homes of good quality.

We are in the midst of a housing crisis in the UK and are considering the Housing and Planning Bill, which is a generally dreadful piece of legislation and a politically motivated attack on social housing that will do little of what the hype says it will deliver. I very much agree with the points the noble Lord, Lord Shipley, made in that respect.

The Question before the Grand Committee today is about the affordability of homes under the extension of the right-to-buy scheme and the starter home proposals. The first challenge for the Government is to make sure that their sums add up. Measures to help people own their own homes are to be welcomed, but the starter homes programme has hit a number of problems and appears to be a one-off gimmick rather than a thought-through policy that will remain in place for many years, as my noble friend Lord Beecham said. I would have hoped that the starter homes programme, a flagship policy of the Government, would enable people on modest or low incomes to own their own homes, but it plainly does not do that in its present form.

Research from Shelter, to which the noble Lord, Lord Shipley, referred, has shown that the programme will not help the majority of people on the new national living wage, which is another flagship policy of the Government. Starter homes for families earning average wages will be unaffordable in more than half of local authority areas across the country in 2020. Families on the new national living wage will be able to afford a starter home in only 2% of local authority areas. Single people on low or average wages will struggle to afford a starter home in 2020 in the majority of local authority areas. Even those on a higher than average salary will be restricted from being able to afford to buy in three-quarters of local authority areas. London, the south-east and the east have the lowest number of areas where affordable starter homes could be built under the scheme, despite being among the highest areas for demand.

There is a conflict in the scheme. Behind the hype, the reality is that it is a complete failure in helping people on modest incomes to buy their own home. Can the noble Baroness explain to the Grand Committee how this policy helps people earning the Government's flagship living wage to own their own home? Can she further confirm for the record how the scheme is to be funded? Is it by diverting funding from other forms of affordable housing funding, such as shared ownership or social rent, with no additional funds being made available? Can she also explain why the discount is not for a much longer period or in perpetuity, to have a long-term effect in delivering the Government's objectives?

Looking at the term "affordability" in a wider context, when sites are being considered in the green belt or on brownfield sites, what thought has been given to the provision of services such as roads, buses, shops and schools and to other infrastructure? Who will pay for all those essential requirements? Can the noble Baroness also set out her views on the desirability of having mixed tenure rather than developments all of one type of housing?

Moving on to the extension of the right to buy to housing association tenants, again, I support people being able to own their own homes, but the funding method here makes this programme of very questionable affordability for the wider community, as well as for individuals, due to rising prices. As a matter of policy, this should be funded by the Government directly, not by a smash and grab raid on so-called high-value local authority housing. There must be a duty on housing authorities carefully to consider the local housing need and make decisions accordingly. Forcing councils to sell homes and requiring them to make regular payments to fund another flagship government scheme does not seem very fair. It certainly does not seem very localist but, like the big society, localism is rarely mentioned by Ministers these days.

We must also not forget that a significant proportion of properties sold under the statutory right to buy have found their way into the private sector. In August 2015, *Inside Housing* published an analysis based on FOI requests, which found that 40% of ex-council homes were now in the private rented sector. That is not exactly a great achievement in terms of getting people to own their own home. It also has a detrimental effect on the housing benefit bill, which is paid for by the taxpayer.

I suggest that selling public sector housing only for it to become more expensive in the private rented sector—and of lower quality, with more people living there and with upkeep and maintenance issues—runs contrary to everything that the Government say about the dream of owning your own home. The dream of owning your own home is being thwarted by the nightmare of ever-increasing rents in the booming private rented sector, thanks to government policy which is preventing people from living in a more affordable home and saving for a deposit to own their own home, something to which the noble Baroness, Lady Thornhill, referred.

The scheme is another central government policy that should be funded from central government resources. Why do the Government think it is acceptable to fund

these housing policies in the way they propose? How is reducing social rented sector housing, with its fairer rent levels, and increasing the private rented sector, with its soaring rents, helping individuals to own their own home? How is it helping the wider community to thrive when people are forced out of certain communities as they become unaffordable to live in for people on low or modest incomes? How does it help London, for example, to remain one of the greatest cities in the world if we create a London of two halves?

It would also be helpful if the noble Baroness could confirm who thinks up these policies and schemes—I would like to meet them. We all want to increase home ownership, and colleagues on these Benches want to help people on low and modest incomes achieve that dream. It is regrettable that nothing in the Government's proposals suggest that they want to do the same.

5.49 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who have taken part in this debate, particularly the noble Lord, Lord Shipley, for securing it at what appears to be a very timely moment. I am sure waiting for three months has been worth it.

This Government have a good record on affordable housing delivery. Between 2011 and 2015, 193,000 affordable homes have been delivered in England, which exceeded our target by 23,000. The spending review announced that we will invest £8 billion to deliver a further 400,000 affordable housing starts. Councils will continue to support delivery of a range of affordable housing. A number of noble Lords brought this point up—it is not just about starter homes but about a range of different types of affordable housing. Councils are in the best position to bring forward more land for affordable housing.

I think it was the noble Lord, Lord Beecham, who brought up council housing and asked what our aspirations were for it. More council housing has been built since 2010 than in the previous 13 years, and 2014 saw the highest number of council housing starts for 23 years. However, we are clear on prioritising support for low-cost home ownership. We want current and future generations to experience the benefits of owning their own homes, and I believe our reforms are the best way to achieve this.

The right to buy has already helped 2 million families to realise their dream of owning a home. We reinvigorated it in 2012, and as a result sales have jumped from 2,600 in 2011-12 to 12,300 in 2014-15. This shows that these realistic discounts have enabled significantly more people to realise their home ownership dreams—I see my noble friend Lord Young to my right, who asked a Question earlier about housing. A question was asked in Committee about the decline in home ownership. Last week saw a report that said that, for the first time, decline had halted. Hopefully, we are on an upward trajectory.

Lord Beecham: Could the Minister tell us how many of the houses that were sold were replaced?

Baroness Williams of Trafford: I will come to the figure on replacements during my speech, if the noble Lord would bear with me.

Until now, the discounts available under right to buy have been available only to tenants in local authority properties and some former council properties. Extending these discounts to housing association tenants in England will end that unfairness and mean that up to 1.3 million more families will get a realistic chance to own their own home. Working with the National Housing Federation, we have secured a voluntary agreement with housing associations to give their tenants the opportunity to buy their own homes with an equivalent discount to the right to buy.

As set out in the voluntary agreement with the National Housing Federation, tenants of housing associations will be eligible for the equivalent discounts that are available under the right to buy of up to £77,900, or £103,900 within London. The extended right to buy will make home ownership affordable for the first time for many more housing association tenants. The Government have been clear that the sale of high-value vacant council housing—I stress vacant—will pay for the cost of compensating housing associations for the discount.

Starter homes will provide an affordable step into home ownership by offering young first-time buyers a minimum 20% discount on a new home. This model gives purchasers the benefit of immediate ownership and, importantly, will help them achieve the step up to their second home in due course. A number of noble Lords made the point about securing that discount in perpetuity. We do not want people five years down the line—or however long it is before they sell their house—to suddenly be at a disadvantage and find there is another cliff for them to overcome. We have decided not to insist on that in perpetuity discount to allow people to step up on the housing market.

We expect starter homes to be valued at below the average first-time buyer price for the local area. Developers must build them for sale to young first-time buyers and will ensure that they price them for this market. With a 20% discount, average market prices for homes bought by first-time buyers in the third quarter of 2015 could be reduced to £145,000 across England, excluding London, enabling more first-time buyers to buy their own home. We have examined affordability of starter homes to those who are currently in the private rented sector. If they were to buy in the lower quartile of the first-time buyer market, outside of London, up to 60% of households, currently renting privately, would be able to secure a mortgage on a starter home, compared with 45% who could buy a similar property at full market value.

There are a number of different points to make about the market, including saving for a deposit through a Help to Buy ISA. We are also looking at the possibility of allowing a Help to Buy equity loan to be offered on a starter home to ensure that a first-time buyer needs only a 5% deposit.

Starter homes are just one part of our package of affordable housing options. They will help to address a real problem of access to home ownership for the under-40s, the one demographic excluded from this market.

[Baroness Williams of Trafford]

The noble Lord, Lord Shipley, asked about affordable rent. As we have discussed already under the housing Bill, £1.6 billion has been put aside for houses for affordable rent. That will be grant funded, so they are absolutely guaranteed to come on to the market. These are minimum positions for this sector, because local authorities may well do a deal with developers to produce more—and, of course, there is the £4.1 billion that we have put aside for 135,000 shared ownership houses, which will require a deposit of something like £1,400. That may be unaffordable for some people, but I think for most people it will be within the scope of what they can afford.

The noble Lord also made a point about garden cities. The Government are certainly not closed to suggestions about proposals for garden cities; they are a very good way to build a lot of houses and, in fact, to build sustainable communities within certain areas. I know of a number of areas where people are very keen to bring such proposals forward.

A number of noble Lords made the point about the £450,000 cap in London and £250,000 cap outside of London. A cap is precisely what it is—it is not an average house price. Many properties will fall well below that cap, and the Government will keep an eye out to make sure that housebuilders do not abuse that provision for first-time buyers for starter homes.

The noble Lord, Lord Shipley, made the point about the forced sale of high-value assets. The high-value assets sales will not be for occupied properties but for vacant properties at the very top of the market, and details of that will come out in due course. He also made the point about homelessness going to 1980s levels. Homelessness is at less than half of the 2004 peak, and the Government are maintaining spending centrally and locally on homelessness prevention. The noble Baroness, Lady Grender, talked about continuing to discuss this issue and bear it in mind as we go through the housing Bill. I think that the last time we had a debate on this matter, I mentioned the rough sleeping social impact bond, which we intend to bring forward. We have brought forward a homelessness SIB, which was the first in the world.

The noble Lord, Lord Shipley, also talked about replacement of property in the local area. This is what we fully expect: that a housing association will want to build in the local area.

The noble Lord, Lord Beecham, talked about 53% of housing associations renegotiating right-to-buy agreements. If that happens he will, I am sure, reiterate his words to me; we have, however, no evidence that it will. This agreement was made in good faith and the first five pilot housing associations are already starting on it. He also asked how the exemptions on the right to buy would work. We are very keen that these exemptions are negotiated and agreed locally in a form that is best for the local area.

The noble Baroness, Lady Thornhill, talked about starter homes being the only game in town. They are a priority for the Government because of the demographic group that has fallen out of home ownership, but they are not the only game in town. Affordable homes for rent, shared ownership, custom build—these will all be promoted in the housing Bill. She mentioned flexibility for councils, and I totally agree—other than the duty in relation to starter homes, councils will have flexibility on what is best for their areas.

I am conscious of the time, but I had better answer the questions of the noble Lord, Lord Kennedy, before I get told off again. He asked about the quality of housing. That is a very good point. Design quality will be a focus of my noble friend Lord Heseltine in estates regeneration. We are not trying to gentrify estates; we are trying to give people on regenerated estates the quality of life that they deserve.

The noble Lord also asked whether starter homes are a gimmick. They are not a gimmick. We recognise that the under-40s are being increasingly precluded from the housing market and we want to reverse that position. He rightly made the point that historically, London and the south-east have been the hardest areas for people to own their own homes. That is why we are focusing so much on providing not just one-for-one replacement, but two-for-one replacement, for people accessing their own homes in London.

Finally, the noble Lord, Lord Kennedy, talked about infrastructure funding in connection with some starter home projects. Infrastructure funding can be accessed through Section 106. He is right that CIL is not applicable here, although local authorities can negotiate Section 106 infrastructure funding if it is viable—we do not want to push developments out of viability. Finally—because I have gone well over time—he talked about social rented sector rents versus private sector rents. In fact, the percentage increase in the social rented sector has got far out of kilter with the private rented sector, and we have tried to address this through the Welfare Reform Bill, although some noble Lords will not agree with that approach at all.

Lord Kennedy of Southwark: Would the Minister come back to me, perhaps in writing, with regard to people on the new national living wage, a big policy of the Government? They have no way of affording a starter home—a number of organisations have said so. How will the Government address that? The Minister also referred to the fact that, in addition to starter homes, other forms of housing would be supported. Will the Minister write to me about the sums involved?

Baroness Williams of Trafford: I will certainly write to the noble Lord about the sums of money involved. I agree that not everybody will be able to afford a starter home, which is why we have so many products we intend to bring forward. For shared ownership, which I mentioned earlier, it could be that one needs a deposit of £1,400, which would suddenly make the prospect of home ownership—even if it is part ownership—far more of a possibility. I appreciate, however, that certainly in London the housing market is very expensive.

With that I will finish because I have gone three minutes over time. I did not want to neglect the noble Lord, Lord Kennedy, because I did before, but I have a load of questions I have not answered, so perhaps I could write to noble Lords.

Lord Shipley: Before the Minister sits down, can I thank her for her reply? I hope that two things will be explained in writing. The first relates to the figures quoted from the National Housing Federation, the noble Lord, Lord Beecham, Savills and Shelter. I believe those figures to be true. If the Government have had discussions with any of those organisations, or feel that other figures are correct, it would really help the Committee to know exactly the Government's view of them. At the moment, I think all those figures are correct. If they have had discussions, could we know about them?

Secondly, will the Minister respond specifically on the issue of high-value council properties? I understand that there will be, either through regulation or perhaps in the Bill, some clarification about what "high value" actually means. I draw it to her attention that, by their very nature, larger homes tend to have a higher value and that larger homes are appropriate for larger families. Of course we understand that they will be sold only when not occupied, but if we end up with four-bedroom —or even more—properties being sold, it will help nobody.

Baroness Williams of Trafford: The noble Lord makes a good point. We would not want to get rid of all the four and five-bedroom high-value assets in an authority—meaning there would be no houses of that kind—so we have definitely thought about that. As for our discussions with Savills and others, I am certainly happy to write to all noble Lords who have taken part in the debate and place a copy of the letter in the Library.

Committee adjourned at 6.07 pm.

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