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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Tuesday 12 April 2016

2.30 pm

Prayers—read by the Lord Bishop of Coventry.

UN Security Council: Kazakhstan
Question

2.36 pm

Asked by ***Lord Sheikh***

To ask Her Majesty's Government what is their assessment of Kazakhstan's bid to secure a non-permanent seat on the United Nations Security Council for 2017-18.

Lord Sheikh (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare my interest as vice-chair of the All-Party Group for Kazakhstan.

The Earl of Courtown (Con): My Lords, Her Majesty's Government are committed to promoting a broad and deep bilateral relationship with Kazakhstan, working together to further boost our co-operation and take forward our dialogue on a wide range of issues. We will consider Kazakhstan's candidacy for the United Nations Security Council on its merits.

Lord Sheikh: My Lords, I thank my noble friend for that reply. The pillars of Kazakhstan's campaign to join the United Nations Security Council are nuclear security, water security, food security and energy security. It has played a pivotal role in the promotion of nuclear disarmament and in advancing the peace in several countries as well as responding to humanitarian emergencies. Does my noble friend recognise the importance of these issues and does he believe Kazakhstan's commitment to them displays its suitability for a non-permanent seat on the council?

The Earl of Courtown: My Lords, I have no doubt of Kazakhstan's commitment to water, food and energy security and its role in nuclear disarmament. I recognise that these are important issues. However, as I am sure the noble Lord appreciates, we have a long-standing policy of never revealing our voting intentions for Security Council elections.

Lord Faulkner of Worcester (Lab): My Lords, has there been any change in Kazakhstan's human rights record since the United States Department of State reported on it in 2013, when it described the most significant human rights problems as severe limits on citizens' rights to change their Government; restrictions on freedom of speech, press, assembly, religion and association; and the lack of an independent judiciary? It also talked about other reported abuses, including arbitrary and unlawful killings, military hazing that led to deaths, and detainee and prisoner torture. Is this the sort of country we wish to encourage to join the Security Council?

The Earl of Courtown: My Lords, the noble Lord makes some very important points from the 2013 report. There are still problems with freedom of expression. Kazakhstan's legislation on NGOs is of concern and progress on human rights has not been quite as fast or comprehensive as we and others would wish in the 25 years since independence. Significant reforms are under way, however, and important progress has been made on social and women's rights and prevention of torture.

Lord Alton of Liverpool (CB): My Lords, in addition to worrying about human rights violations, which include torture, does the noble Earl agree that the record on the promotion of democracy is also pretty awful? There have been five successive elections: in the most recent the President was elected yet again, but with 97% of the vote. All the outside agencies that have monitored these elections say that they have all been flawed.

The Earl of Courtown: My Lords, I agree with much of what the noble Lord has said. The OSCE Office for Democratic Institutions and Human Rights noted that, while the elections were "efficiently organised", there was still room for much improvement and there needs to be a "genuine political choice" and more media pluralism.

Lord Wallace of Saltaire (LD): My Lords, we all recognise the importance of Kazakhstan and the other central Asian countries in the stability of Asia—in particular, given their Sunni Muslim populations, in the enormous overlapping problems between central Asia and the rest of the Middle East. Nevertheless, we recognise that there is a good deal of corruption in Kazakhstan. Has the noble Earl noted the number of Kazakhs who came into Britain in recent years under the tier 1 investor visa scheme? Have we checked whether the money they invested in Britain was lawfully acquired in Kazakhstan?

The Earl of Courtown: The noble Lord, Lord Wallace, makes some very interesting points. I will ensure that we look—

Noble Lords: Oh!

The Earl of Courtown: Noble Lords may jest, but it is quite right that these points should be examined. I assure the noble Lord that we will look at this and see whether there is any more information I can give him.

Lord Collins of Highbury (Lab): My Lords, sometimes, unfortunately, horse trading can take place at the United Nations and the issues that concern us most are put aside for other reasons. This week, we have seen the much more open and transparent process for the appointment of the UN Secretary-General.

[Lord Collins of Highbury]
Half the declared nominees are women. What are the chances of a woman being elected Secretary-General in September?

The Earl of Courtown: My Lords, I would not try to second-guess the General Assembly, but the noble Lord was in his place during a debate last year when my noble friend Lady Anelay responded on behalf of the Government. She emphasised the importance of structure and transparency in the election of future UN Secretaries-General. While we want to encourage as many women candidates as possible, we want to see the best person for the job, no matter what gender.

Lord Soley (Lab): Does the Minister accept that in Kazakhstan's condition the thing we want to encourage more than anything else is an independent judiciary and rule of law?

The Earl of Courtown: My Lords, the noble Lord, Lord Soley, makes a point that is worth repeating. Last May, President Nazarbayev launched far-reaching reforms for the legal system, the civil service, the economy and public accountability, known as the 100 concrete steps. I emphasise that the Prime Minister visited Kazakhstan in 2013 and President Nazarbayev visited the United Kingdom towards the end of last year. Human rights and trade were important points of discussion.

Lord Lawson of Blaby (Con): My Lords, while I in no way advocate Kazakhstan being a member of the Security Council of the United Nations, does my noble friend agree that if widespread corruption, and the other abuses that have been mentioned, disqualified a candidate for membership of the council, it would be significantly smaller than it is today?

The Earl of Courtown: I could not possibly comment on my noble friend Lord Lawson's question, but he makes an interesting point.

United Nations World Humanitarian Summit

Question

2.43 pm

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government who will represent the United Kingdom at the United Nations World Humanitarian Summit in Istanbul in May.

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, the UK is committed to making the World Humanitarian Summit a success and we will send high-level representation to Istanbul. We are progressing a strong agenda for humanitarian reform, including a new approach to protracted crises. Last week we hosted a forum at Wilton Park on protracted displacement and at the end of this week we will co-host, with the World Bank, the third grand bargain Sherpa event in Washington DC.

Lord McConnell of Glenscorrodale (Lab): Secretary-General Ban Ki-moon has stressed that this summit, the first of its kind in the 70-year history of the United Nations, has to deal with the urgency of these complex challenges and the scale of the suffering that we see around the globe. He has called on global leaders to,

"act decisively, with compassion and resolve".

Given that the UK is one of the biggest donors of development aid to humanitarian crises around the world, and given that the British public have consistently shown a generosity that is unmatched in most of the world, will the Prime Minister take a lead and attend the summit? It might give him a slight distraction from some of his current troubles.

Baroness Verma: My Lords, as I have already mentioned, there will be high-level representation at the summit.

Lord Chidgey (LD): My Lords, UN member states have agreed that the summit in Istanbul must reinforce the outcomes of the *2030 Agenda for Sustainable Development* and the Paris agreement on climate change. Therefore, will the Government be ready at the summit to commit to action, subject to mutual parliamentary scrutiny and accountability, in what will be the first major opportunity to give meaning to the principle of "Leave no one behind"?

Baroness Verma: My Lords, the noble Lord is absolutely right. This is a very important summit. It will tackle a lot of issues, including the agreements that were reached at Sendai and Paris, to ensure that those strong linkages between the disaster risk reduction and climate change adaptation agendas continue. On the wider point, it is about making sure that the reforms that are required to ensure preparedness for future crises are also part of the bigger reform agenda. As I said, we also need to encourage other partners and donors and the private sector to step up to the mark.

Lord Lansley (Con): My Lords, does my noble friend the Minister agree that the British representative at the humanitarian summit will be able, by virtue of having met our commitment to the 0.7% GDP target, to give a lead to others, and that it is very important that we give that lead in May? Does she also agree that one of the projects that we should take on with our commitment of future resources is to increase the supply of expert humanitarian aid co-ordinators so that there is a corps in place not only for dealing with crises when they happen but of sufficient numbers that they can stay in place and help with the recovery from crises in some of the most desperate areas?

Baroness Verma: I am extremely grateful to my noble friend for the points he has raised, particularly on the 0.7% commitment that we have managed to embed and deliver. He is also right that we need to prepare ourselves for future crises but also help

build resilience in infrastructure in countries that really need it, particularly in their health systems. My noble friend is absolutely right that we need to make sure that we not only support people with the skills but prepare people locally to have those skills.

The Lord Bishop of Coventry: My Lords, in his pre-summit report, referred to by the noble Lord, Lord McConnell, the United Nations Secretary-General urges world leaders not to underestimate or, worse, override the work of local organisations in dealing with humanitarian crises, because they are the best placed to shape programmes in culturally sensitive ways, as we saw in the Ebola crisis. Yet currently only 0.02% of humanitarian aid is passed through local organisations. Can the Minister reassure us that at the summit—whoever represents us—the Government will support the call made by leading NGOs to raise this to 20%? Will that be part of the new approach of which she speaks?

Baroness Verma: My Lords, the right reverend Prelate is right that we need to ensure that we do not miss out on the local support groups on the ground. We have a mixture of packages. There is some work that the multilaterals are better placed to do. Of course, as the right reverend Prelate said, it is also important that local-led community groups are properly supported. DfID support will be there to ensure that not only are we urging others to step up to the mark to support these local groups but we are doing that ourselves.

Baroness Coussins (CB): My Lords, when the Minister last referred to the Istanbul summit in this House, she mentioned that one of the themes on the agenda would be the protection of civilian populations. Would Her Majesty's Government be willing to table an item on the agenda in Istanbul about the need to protect the civilian interpreters in conflict zones?

Baroness Verma: My Lords, the noble Baroness raises a point that is well above my own pay grade but I will take that back to the department.

Baroness Kinnock of Holyhead (Lab): My Lords, does the Minister agree that the summit is an opportunity to focus on making humanitarian action more effective and inclusive and, as Ban Ki-moon has said—I, too, quote him—"to transform the lives" of those who are most at risk and in danger of being "left behind"? Does she agree that it is a potential turning point in our ability to prevent and end crises, and to tackle vulnerability?

Baroness Verma: Yes, my Lords, the noble Baroness sums it up rather well. It is an opportunity, but one that we must all take. The UK has often been at the forefront of it all. We really need to push harder for other donors to step up to the mark, but also to involve the private sector and strengthen the civil society organisations on the ground.

Lord Collins of Highbury (Lab): My Lords, clearly the focus at the summit will be on the Middle East and Syria but there are of course unfolding crises throughout the world, particularly in the east of Africa. The Minister mentioned the Sendai framework. Can she tell us a bit more about how committed the UK Government are to ensuring that this framework is properly operated, and will she continue to support the European Union's efforts to ensure that it is implemented?

Baroness Verma: My Lords, the noble Lord is right that we must not take our eye off any crises. As demonstrated by the department in which I have the privilege of being a Minister, we have shown that leadership. We have provided an extra £150 million to prepare for and mitigate the impact of some of the crises caused by the El Niño-related climate shocks in Africa. But, again, we cannot do things on our own; we really need to get others to support strongly the work that we in the UK Government are doing. I agree with the noble Lord, but we need others to be reminded constantly that they have a duty, too.

Prisoners: Foreign Nationals

Question

2.51 pm

Asked by ***Lord Brown of Eaton-under-Heywood***

To ask Her Majesty's Government how many prisoners serving indeterminate sentences for the protection of the public over the last three years have been foreign national prisoners eligible, pursuant to Section 119 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, for removal from the United Kingdom at the end of their tariff terms without a direction from the Parole Board for their release, and what proportion of such prisoners have in the fact been removed without such a direction.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, from May 2012, when the tariff-expired removal scheme was commenced, up to 31 March of this year, 261 prisoners serving a sentence of imprisonment for public protection have been removed under that scheme—that is, without a direction from the Parole Board. A further five such prisoners have been eligible for removal but officials decided that they did not meet the criteria, while 16 have been approved for removal but are awaiting the settling of their removal directions.

Lord Brown of Eaton-under-Heywood (CB): I am grateful to the Minister for those figures but I am sure that he will readily understand the sense of injustice and frustration, not to say anger, felt by UK domestic IPP prisoners at this preferential treatment which is accorded to foreign national prisoners. It is preferential because, of course, the foreign national prisoners do not have to satisfy the Parole Board that they can safely be released. Would the Minister agree to see the Lord Chancellor and try to persuade him that this is yet another reason for the Lord Chancellor to exercise his powers, also given under Section 128 of LASPO, to modify the test which the Parole Board applies in the case of the domestic IPP prisoners so that, hopefully, some of them, too, may gain the earlier release that at the moment is given only to these foreign prisoners?

Lord Faulks: My Lords, the noble and learned Lord is a champion of those who have been imprisoned under the IPP scheme brought in by the previous Labour Government. The position is that this Government are committed, as I think all Governments before them were, to removing foreign criminals to their own countries where possible. They must be punished but not at the expense of British taxpayers. Therefore they are removed when the relevant section permits their removal. Of course the Secretary of State actively considers the position that he has a power to change the release test but, at the moment, he is not satisfied that it is appropriate to do so.

Lord Wigley (PC): My Lords, in view of the totally unsatisfactory ongoing position with regard to IPP prisoners, will the Minister convey to the Secretary of State that if the Secretary of State is not willing to take and use the powers at his disposal, he should consider appointing a senior judge to review the working of this system in order to get justice for people who are quite clearly not getting it at present?

Lord Faulks: We have reduced by 584 the number of IPP prisoners in the last year. There is an indeterminate sentence prisoners co-ordination group, run by NOMS, where close examination is taking place of all serving IPP prisoners. Efforts are made to accelerate their access to the appropriate courses, and we have removed backlogs from the Parole Board. We think that everything is being done to make sure that those who are safe to be released are being released when the Parole Board decides.

Lord Marks of Henley-on-Thames (LD): My Lords, today we have further evidence of prison overcrowding from another shocking inspection report of Wormwood Scrubs, which holds 35 indeterminate sentence prisoners. It makes the obvious recommendation that single cells should not be used for more than one prisoner. Will the Government now recognise that the injustice of keeping IPP prisoners beyond their tariffs serves only to add to the scandal of holding prisoners in overcrowded, squalid and understaffed prisons?

Lord Faulks: The noble Lord refers to the report on Wormwood Scrubs, which I entirely accept shows a distressing picture. As he and the House will know, the Secretary of State and the Prime Minister are determined to improve our prison system, and the Chancellor of the Exchequer has given £1.3 billion to enable that to happen. It will not happen overnight, but I am sure the House will accept the Government's sincerity and determination to deal with some of the most unattractive aspects of our prison system.

Lord Woolf (CB): My Lords, I fully accept that the Government have been trying to find a solution to the problem of these unfortunate prisoners, but the fact remains that it is now coming up to the fourth year since the power to impose IPP sentences was removed. That is far too long a period when, as was indicated at the time, these sentences put on a prisoner the impossible task of proving that he is not a danger. That is the real heart of the problem. Unless something is done to tackle that, does the Minister recognise that there will be a substantial further period before the last of these prisoners are released?

Lord Faulks: My Lords, the House of course greatly respects the noble and learned Lord for his experience in this area, but it is a matter for the equally experienced Parole Board to decide whether or not it is safe to release these prisoners. It must not be forgotten that, in each of the cases, the relevant judge sentenced the defendant in accordance with the then existing powers for the protection of the public. It therefore becomes incumbent upon the Parole Board to decide whether it is safe to release them, notwithstanding the fact that they may have a short-tariff sentence. It would be easy of course for the Government to wash their hands of this, but they have taken a responsible view to unravelling this unfortunate provision, which was brought in by the previous Labour Government.

Lord Blunkett (Lab): My Lords, it is probably not the moment for me to confess that I was the Home Secretary who introduced the idea. The original intention, which I hope is understood, was that only those who posed a really serious risk to the population would be subject to such orders. That did not come about, and I regret that very strongly. But is it not a fact that what is lacking are the courses and therapy to allow the Parole Board to make the necessary decisions as quickly as possible. so that the overly prolonged incarceration of many of these prisoners can come to an end?

Lord Faulks: I entirely accept that the intention was to protect the public and that this provision caught in the net rather more prisoners than it was expected to catch. It must be remembered, of course, that these courses are important because they can provide evidence that a prisoner has grappled with a particular problem, whether it is sex offending, violence, drugs or whatever it might be. It is not a prerequisite for their release that they have to have attended these courses, although it may provide some evidence. Equally, the fact that you attend a course does not guarantee your release. We have increased the availability of courses to these prisoners. I am aware that a letter was written to the noble Lord, Lord Beecham, by my noble friend Lady Evans when this matter was last raised. I will ensure that that letter is placed in the Library. It gives a list of all the various courses which are now available to those prisoners.

Economy: Productivity

Question

2.59 pm

Asked by ***Lord Harrison***

To ask Her Majesty's Government what plans they have to improve the productivity of the United Kingdom economy in the light of the figures published by the Office for National Statistics on 7 April.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, productivity growth represents a serious challenge for all advanced economies, and the UK is no exception. The Government last year published our productivity plan, *Fixing the Foundations*. In last month's Budget, we went further—for example, announcing additional reductions in corporation tax to incentivise investment, and giving the green light to infrastructure projects such as Crossrail 2 and High Speed 3.

Lord Harrison (Lab): Indeed, my Lords. Given that productivity levels in the UK are lower than when the previous Labour Government were in office, and given that in the G7 only Japan stands worse than us, would it not be a good idea if, with some enthusiasm and gusto, the Government actually pursued their plan of fixing the foundations and building homes, rebalancing the economy and taking timely decisions about our transport infrastructure? Indeed, can they apply the enthusiasm with which they quarrel among themselves about Europe to addressing the real problems of the United Kingdom?

Lord Bridges of Headley: My Lords, I am bursting with enthusiasm and full of energy to get things done. I cannot claim that this Government will not encounter some of the problems that previous Governments down the ages have encountered when implementing their plans, but I refer the noble Lord to chart 2.B in the *National Infrastructure Delivery Plan*, published a fortnight ago, which shows that, of the 602 projects that the plan sets out and are in the pipeline, 61% are in construction, 50% will have been completed by 2020-21 and a further 49% will by that point be either under construction or part of an active programme. So we are full of enthusiasm, full of energy and we are getting going.

Lord Howell of Guildford (Con): Will my noble friend explain to the noble Lord, Lord Harrison, that the Office for National Statistics figures which so worry him may not tell the full story by any means, because they take too little account of the huge output of data and information in the digital age, which now generates more economic value than the whole of global goods trade?

Lord Bridges of Headley: My noble friend makes an extremely good point. Sir Charles Bean recently completed a review of the UK's economic statistics, and one of his findings was, as my noble friend said, that if the digital economy had been properly taken into account, economic growth would have been one-third to two-thirds of a percentage point higher over the past decade, with similar implications for productivity. However, I stress that that would not explain the UK's recent poor performance in comparison with other countries, nor why productivity has worsened since the financial crisis, so we are not complacent.

Baroness Kramer (LD): My Lords, the UK's poor performance on productivity will surely never improve until we get in place the infrastructure—housing, broadband, power and transport—that we need. Will the Government give up or curb their obsession with the budget surplus, borrow at the current zero-coupon rate available to them, stop faffing around with expensive and reluctant private sector and sovereign fund investors, and actually get spades in the ground on the major projects—Hinkley Point being one example—that are at present all suffering delays?

Lord Bridges of Headley: My Lords, we are getting going and cracking on with things. I dispute what the noble Baroness says about having a choice between ditching the projected surplus that my right honourable friend the Chancellor has set out and achieving what we are setting out. They are not mutually exclusive. For example, noble Lords might be interested to know that we have committed to the biggest investment in transport infrastructure in generations, increasing spending by 50% to £61 billion in this Parliament.

Lord Davies of Oldham (Lab): My Lords, the Minister cannot get away with those glib replies. Where has he been for the last six years? The fact is that our productivity levels are back to those of the recession year of 2008. Most of the projects that he mentions have been started in the past year or so. What about those projects which were meant to commence from 2010 onwards, which have in fact achieved very little? Does he accept that we will get nowhere until we successfully address the issue of training? Even the construction industry, which is clearly important to the development of economic growth and jobs, complains that it cannot get work people of sufficient skills to do the tasks it wants them to do.

Lord Bridges of Headley: My Lords, I apologise if I sound glib, but I am certainly not complacent. I quite agree that there is a lot of work to be done. That is why, for example, on the point about construction skills, we are launching the apprenticeship levy to fund more high-quality apprenticeships. On top of that, we are protecting the core schools budget; we have removed the HE student numbers cap; and we have cut corporation tax to 18%. I could go on and on—there are lots of things. This is not glib; this is work in progress, but we are not complacent.

Lord Vinson (Con): My Lords, the Minister will be aware that the latest figures for High Speed 2 put the overall cost at £80 billion. It will be 16 years before it begins to run at all, and then it will run at a loss. Meanwhile, in this country 90% of our economic activity is conducted by road. Would not it be more sensible—taking up the point made by the noble Lord, Lord Harrison—to divert these enormous sums into something that would give more immediate productivity gains, have a less ambitious target and put that money into millions of small, economically beneficial and productivity beneficial developments that could be done through rail and road improvements?

Lord Bridges of Headley: I hear what the noble Lord says about HS2, but I would not say that these were mutually exclusive. As I have said, the UK will

[Lord Bridges of Headley]
invest more than £100 billion in infrastructure over this Parliament. My noble friend wishes to see more investment in roads. The £15 billion of investment in the roads investment strategy will include resurfacing more than 80% of the strategic road network and delivering more than 1,300 miles of additional lanes. As I say, these are not mutually exclusive.

Lord Tomlinson (Lab): When the Minister replied to my noble friend Lord Harrison, he produced a long list of good intentions, but none of them has actually come into effect. In a subsequent answer, he went on to tell us about a number of measures that the Government have taken. Having taken all those measures, we now have the appalling productivity statement from our own department dealing with national statistics. I am not going to accuse the Minister of being complacent, but he really has to get a better story to tell.

Lord Bridges of Headley: I hear what the noble Lord says, but I think that we do have a good story to tell. I draw his attention to the national infrastructure plan that was published, which sets out very clearly what the Government are doing and how we are delivering it.

Immigration Bill

Third Reading

3.07 pm

Amendment 1

Moved by ***Baroness Hamwee***

1: After Clause 43, insert the following new Clause—

"Information

(1) The Immigration Act 2014 is amended as follows.

(2) After section 21(3) insert—

"(3A) P may apply to the Secretary of State for written confirmation that the Secretary of State—

(a) Has granted, or

(b) Will grant,

Permission to P in accordance with subsection (3)."

Baroness Hamwee (LD): My Lords, I beg to move Amendment 1. It is unusual, of course, to have a substantive amendment at Third Reading, and I suspect that it is more unusual for that amendment to amend an Act that is already on the statute book. However, noble Lords will be aware that the amendment would not be before us if it had not got past the eagle eyes of the Public Bill Office. The amendment would iron out what seems to be a contradiction about the position as between a letter from the Minister, the noble Lord, Lord Bates, in response to a request under the Freedom of Information Act, which came from the Home Office.

Your Lordships will recall that this Bill extends provisions regarding any tenant's right to rent, but those who are caught up in this situation are, not entirely, but very often, immigrants. On Report, the noble Baroness, Lady Lister, raised what she called the "Lord Avebury point". I am very happy to take any opportunity to refer to my late friend Lord Avebury, whose record on these issues I strive to match but will never attain. The point, as she summarised it, is that asylum speakers whose presence is not illegal but who do not have documentary proof are unable to show landlords that they have a right to rent. The noble Lord, Lord Bates, said that he would write to the noble Baroness, and he did so, copying me. He wrote:

"It remains the case that migrants who do not understand whether they may qualify for permission to rent may contact the Home Office to establish whether this is the case".

That was welcome, but earlier in the same month the Home Office, replying to a request under the Freedom of Information Act, said three times:

"there is no application route for permission to rent".

It also said:

"It is not a question of a migrant making an application for permission to rent, but rather a status the Secretary of State may consider affording on a case by case basis".

To explain the problem a little further, Home Office guidance envisages that permission to rent will be granted in cases such as: asylum seekers; refused asylum seekers; families co-operating with the Home Office's family return processes; individuals on criminal or immigration bail; those within the Home Office voluntary departure process; victims of trafficking or slavery; and individuals with an outstanding out-of-time immigration application, in-country appeal or judicial review. It is also necessary to grant permission to rent where to fail to do so would violate an individual's human rights.

However, the only way to seek confirmation that a discretionary right to rent has been granted is for the landlord, not the tenant, to request confirmation from the Home Office. During the passage of this Bill, we have debated the processes in place for that and the operation of the checking service. We have also debated the problems about the right-to-rent scheme, which include potential discrimination and landlords who, quite understandably, want to get on with renting their property and will let to those whose status is the most easily ascertained. A landlord may not tell a would-be tenant why he is refusing a tenancy, and the individual might not be aware that he has been denied permission to rent. There is no mechanism to allow an individual to clarify the position, correct any mistakes or give additional evidence. There is no obligation for landlords or agents to request a check from the Home Office. I am sure that almost all noble Lords know, if not personally, then through acquaintance with people who are seeking to rent property in a very difficult market, that the situation for every would-be tenant is emotional and a matter of considerable stress and anxiety and that many people have to go on looking without a good outcome.

The 2014 Act, which is the subject of the amendment, provides at Section 21(3) that a person,

"is to be treated as having a right to rent … if the Secretary of State has granted",

him,

"permission for the purposes of this Chapter to occupy premises under a residential tenancy agreement".

My amendment would allow an application for confirmation that the Secretary of State has granted or will grant permission in accordance with the subsection that I have just read out. This is not an academic matter, as I have said; I believe that the noble Baroness, Lady Lister, will share with your Lordships the case of a family with two young children, living in this country legally, who, through circumstances that I suspect are not at all unusual, found that they could not prove their right to rent and therefore found themselves homeless, with their possessions in store and the family in limbo.

My amendment does not seem to be inconsistent with the response to the FOI request because, although I would like to, I am not seeking an application for permission to rent, nor would it be an application that would imply the whole process of going through seeking permission. It would simply be an application to find out whether the individual himself had, or was due to have, permission. I hope that we can clear this up because a lot of people will be affected by it. I beg to move.

3.15 pm

Baroness Lister of Burtersett (Lab): My Lords, I am grateful to the noble Baroness, Lady Hamwee, for tabling the amendment on behalf of us both. I was alerted to this issue by briefings at an earlier stage of the Bill from the JCWI and ILPA. As the noble Baroness said, the late and much missed Lord Avebury tried to resolve this issue during the passage of what became the 2014 Act, but to no avail. It falls to us to try to resolve it now.

I will not repeat the case in support of the amendment that has already been made so clearly by the noble Baroness. Instead, I draw your Lordships' attention to a singular aspect of the permission-to-rent scheme that the amendment is designed to remedy. The UK has a strong tradition of upholding the rule of law. All of us can be sure in our interactions with the state that officials who make decisions that affect us are accountable to the law. Whether it is the person next door applying for planning permission, the imposition of a fine for speeding, the grant of a licence to serve alcoholic beverages or a local decision to cut council services, in every case the people affected are either directly notified of the decision or are able to access information about it that is available in the public domain. By informing people of the decisions that affect them, we ensure that government operates reasonably transparently. We ensure that power is exercised in a reasonably accountable way, and that any arbitrary or unlawful use of power is communicated directly to those that it affects. The system helps to ensure that Ministers and other public servants wield their considerable power within the law.

Here, though, we have a scheme under which the Home Secretary can decide whether or not a person—and, potentially, their entire family—is made homeless. I emphasise to noble Lords that this is no exaggeration. To take the example that the noble Baroness referred to, we have been made aware of the case of a man with a wife and two young children who have every right to be in this country and possess the right to rent but, because he does not have the paperwork to evidence that, he is unable to find housing for his family. They have come to the end of a tenancy and have now been forced, as a family of four, to live with relatives while the Home Office processes his paperwork.

The right-to-rent scheme has a huge impact on individuals who are caught up in it. But, despite the importance that the Home Secretary's decision makes to an individual's life in future, there is no right to be informed of that decision and of the grounds on which the decision was made.

The Government will tell my landlord whether or not I have permission to rent and therefore whether or not I might have a home to go to come tomorrow, but they will not tell me. This cannot be tenable in a country that operates under the transparent rule of law. People have a right to know whether they will be entitled to rent accommodation. Moreover, as the Commissioner for Human Rights of the Council of Europe stated in his recent memorandum on the human rights of asylum seekers and immigrants in the UK, the right to adequate housing applies to everyone. Ensuring that right is essential to the inherent dignity of every person, irrespective of their legal or immigration status.

A simple administrative reform can resolve this issue, which, as I have said, has important human rights implications. I urge the Minister either to accept the recommendation or to make a clear commitment to sort this out once and for all.

Lord Rosser (Lab): I, too, have received a briefing on the issue that has been raised, and I certainly do not wish to reiterate the points that have been so ably put. There seems to be a strong argument for at least clarifying the situation—I think that that is what is being asked for—and ensuring that we do not end up with people being made homeless as a result. I very much hope that in his response the Minister will be able to provide that clarification—and an acceptable clarification as well.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, Amendment 1, tabled by the noble Baroness, Lady Hamwee, would, as she explained, provide that a person disqualified by virtue of their immigration status may apply to the Secretary of State for written confirmation that permission to rent has been or will be granted to them. The amendment would amend the Immigration Act 2014, which introduced the right-to-rent scheme. It would work in conjunction with the existing provision, which states that a person who is otherwise disqualified from renting premises as a result of their immigration status is to be treated as having a right to rent where the Secretary of State has granted them permission to occupy premises under a residential tenancy agreement.

I hope that I can persuade the noble Baroness that the amendment is unnecessary and potentially even a step backwards. The Secretary of State is already able to grant permission to rent to people who are otherwise disqualified from renting. This may include migrants without leave who have sought asylum, families with minor children who are in the family returns process or those who face a genuine obstacle to leaving the

[Earl Howe]
UK. A migrant may obtain confirmation that they will be afforded such permission by contacting the Home Office, and all a landlord need do then is to contact the Home Office landlords' checking service with the migrant's Home Office reference number to confirm that they may rent to that migrant. Following that process will give the landlord a statutory excuse from any civil penalty under the right-to-rent scheme.

Very importantly, this system allows for a swift process, without the need to require a migrant to make a formal application or for them to await written confirmation through the post that they may rent. Our experience since the right-to-rent scheme was introduced on 1 December 2014 is that this process works well. For those reasons, I invite the noble Baroness to withdraw her amendment.

Incidentally, there is no inconsistency between the FoI response and the letter from my noble friend Lord Bates. As I explained, a migrant may already contact the Home Office in order to establish whether they will be granted permission to rent. Existing arrangements are straightforward and work well. I should also mention that the Home Office is in the process of revising its published guidance in response to concerns raised during previous debates. I have no doubt that it will factor in the points made in this debate as well. Once that is done, the guidance will set out even more clearly how a migrant may contact the Home Office. But I suggest that requiring that they make a formal application and then have to await written confirmation may lead to unnecessary delays and in fact would serve no useful purpose.

Baroness Hamwee: My Lords, I wish that I were persuaded. The letter from the noble Lord, Lord Bates, said that migrants,

"may contact the Home Office to establish whether this is the case".

The clear implication there is that the migrant himself may establish the position, not ask the Home Office to make sure that, if and when a landlord inquires, the landlord is given that information.

Of course, I am aware of the landlord's statutory excuse. I do not want to be too harsh, but I wonder whether the person in the Home Office who has been drafting this has had any recent experience of trying to rent a property. Not that long ago, on the question of the rollout of the 2014 Act, two or three Members of this House explained very clearly that as landlords they, and indeed most landlords, would want to get on with letting and not have gaps in that letting. The information that I and other noble Lords have received is not that the situation is working well—that is not the position. I am glad to hear that there has been some revision of procedures, but it seems to me that by denying that there is a problem, there is denial around looking at how to solve that problem.

It seems to me that this is not considered a big deal. Perhaps I can simply urge the Minister to urge the Home Office to take this as a very serious concern. If there is a different way of assisting tenants—and my goodness, this House is spending a lot of time talking about the housing crisis at the moment—and making the whole process that much easier, avoiding the concerns about discrimination that we have debated in this context at some length, then I urge him to do that. I am clearly not going to make any progress on this now, but I will not let it go: I will keep asking questions about it.

Earl Howe: My Lords, I am happy to give the necessary undertaking to the noble Baroness. Indeed, I am sure she will have gathered from what I said that the whole purpose of the scheme we now have is to have a straightforward and rapid process for people to follow, rather than a more labyrinthine paper-based process. Clearly, the information she has received contradicts, at least in part, the information that I have had about how well the scheme works. I will of course ensure that Home Office officials look at any evidence she has which may cast into doubt the efficient working of the scheme.

Baroness Hamwee: My Lords, I think the first piece of evidence will be the case to which the noble Baroness and I have referred. I am grateful for that undertaking and beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 45: Powers to carry out searches relating to driving licences

Amendment 2

Moved by ***Earl Howe***

2: Clause 45, page 37, line 39, leave out "of the Environment" and insert "for Infrastructure"

Earl Howe: My Lords, I beg to move Amendment 2 and will speak to Amendments 3 to 5 inclusive. These amendments are technical in nature and are necessary to reflect a planned reorganisation of departmental functions in Northern Ireland. Clause 45 as drafted makes reference to the Department of the Environment, as this is the department responsible for issuing driving licences in Northern Ireland. However, this department is to be dissolved and its functions related to driving licences will be transferred to a new department: the Department for Infrastructure. These government amendments simply take account of this planned change.

Amendment 2 agreed.

Amendments 3 to 5

Moved by ***Earl Howe***

3: Clause 45, page 38, line 21, leave out "of the Environment" and insert "for Infrastructure"

4: Clause 45, page 38, line 30, leave out "of the Environment" and insert "for Infrastructure"

5: Clause 45, page 38, line 40, at end insert—

"( ) In the period (if any) between the coming into force of subsection (2) and the coming into force of the Departments Act (Northern Ireland) 2016, references to the Department for Infrastructure for Northern Ireland in paragraph 25CC(3)(b), (8) and (9)(b) of Schedule 2 to

the Immigration Act 1971 (as inserted by subsection (2)) are to be read as references to the Department of the Environment for Northern Ireland."

Amendments 3 to 5 agreed.

3.30 pm

Clause 62: Guidance on detention of vulnerable persons

Amendment 6

Moved by ***Baroness Lister of Burtersett***

6: Clause 62, page 58, line 37, at end insert—

"( ) No person whom the Secretary of State knows, or could reasonably be expected to know, is pregnant shall be detained."

Baroness Lister of Burtersett: My Lords, Amendment 6 would put into law the recommendation of the Shaw review into the welfare in detention of vulnerable persons, commissioned by the Home Office, that the current presumptive exclusion from detention for pregnant women should be replaced with an absolute exclusion. On Report, the noble and learned Lord, Lord Keen of Elie, twice stated that the Government would reflect on the matter by Third Reading. However, he also made it clear that the Government did not consider it appropriate for there to be an absolute rule and gave the example of an irregular migrant—I deliberately do not repeat the term "illegal", in line with the recent recommendation of the Council of Europe's Commissioner for Human Rights—who arrives at an airport and can be returned almost immediately. Six days later, the noble and learned Lord sent a detailed letter to me and the noble Baroness, Lady Hamwee, in which, among other things, he addressed the specific questions that I had raised about the new guidance on the detention of pregnant women. I am grateful to him for that, in particular for his agreement to share a draft of the new operational guidance with detention-related organisations such as Women for Refugee Women, to which I pay tribute for its tireless work on behalf of women in detention.

However, on the underlying question of whether pregnant women should be detained at all, the noble and learned Lord in effect repeated what he said on Report, and I did not see any evidence of the promised further reflection. I had assumed that there would be a further statement giving the Government's formal response to Shaw's recommendation, but when none had appeared by yesterday, I realised that it was not to be and therefore thought it important that your Lordships should have the opportunity to consider this question, which inevitably got rather lost in the debates about the wider question of time limits. I apologise that, as a result, the amendment was tabled at the very last minute.

Stephen Shaw was clearly aware of the issue of pregnant women who might not otherwise be returned quickly to their country when appropriate to do so. Nevertheless, he concluded:

"I believe that the Home Office should acknowledge the fact that, in the vast majority of cases, the detention of pregnant women does not result in their removal. In practice, pregnant women are very rarely removed from the country, except voluntarily".

He therefore recommended unequivocally that the presumptive exclusion from detention should be replaced with an absolute exclusion. In doing so, he cited evidence from the Royal College of Midwives, among others, which he said demonstrated the,

"incontrovertibly deleterious effect on the health of pregnant women and their unborn children".

In a witness statement to the High Court, the director for midwifery at the RCM spelled out the medical reasons why detention is completely inappropriate, particularly for a group of pregnant women with significant or complex health and psychosocial problems in need of higher levels of care than the general population. I here call on the Minister to arrange for a discussion of the issues raised by the detention of pregnant women with the RCM, Medical Justice—which has produced a damning research report on the issue, endorsed by the Royal College of Obstetricians and Gynaecologists—Women for Refugee Women and organisations working with those who have suffered torture.

Stephen Shaw stands by his recommendation; I heard him speak recently and eloquently in support of it. He spoke of detention's "undoubted damage to mothers and unborn babies" at a meeting in Parliament hosted by Caroline Spelman MP, who together with me, the noble Baroness, Lady Hamwee, and the noble Lord, Lord Ramsbotham—who I do not believe is in his place—were members of the parliamentary inquiry into detention which recommended that pregnant women should never be detained for immigration purposes. That inquiry's recommendations were endorsed by a Motion in the Commons last September. In his address, Mr Shaw drew attention to the Prime Minister's prisons speech earlier this year, in which he expressed particular concern about the position of mothers and babies in prison.

The argument that the absolute exclusion recommended by Shaw would tie the Government's hands inappropriately might appear reasonable. The problem is that, in effect, it means no real change from the status quo so roundly criticised by Shaw and others, including HM Inspectorate of Prisons, which told Shaw that there is little to suggest that pregnant women are being detained only in exceptional circumstances, as is supposed to be.

Current Home Office policy already states that the only exception to the general rule that pregnant women should not be detained is when removal is imminent and medical advice does not suggest that the woman concerned will go into labour before her removal date. In spite of this clear policy presumption against detention, in 2014, 99 pregnant women were detained and, in 2015, 69. Of the 99 pregnant women detained in Yarl's Wood during 2014, 30—that is nearly one-third—were held for between one and three months; four for three to six months; and only nine were deported from the UK. I understand that there is a pregnant woman who has been there for just over two months at present.

I ask the noble and learned Lord to explain what additional safeguards the new approach brings. How can he reassure noble Lords that the new policy will

[Baroness Lister of Burtersett]
mean that pregnant women are detained in only the most exceptional circumstances when the current policy is already supposed to ensure that? I know that the Home Office believes that the new gatekeeping team to be introduced as part of the adults-at-risk approach will introduce a degree of objectivity into detention decision-making and so protect against inappropriate use of detention. However, given that this team will still sit within the Home Office—albeit in a different management chain from those making the decisions—the oversight it provides will clearly fall short of the independent element for detention decision-making that the Shaw review recommended the Home Office should consider.

Returning to the example of the pregnant woman who arrived at the airport with no right of entry, it is the only example we have been given of where an absolute exclusion would cause a problem. So it should be, because it is the only exception that exists at present. I have not seen any evidence as to how often this occurs at present. The fact that nine out of 10 pregnant women held in detention in 2014 were subsequently released back into the community rather than deported suggests that it is rare. ILPA makes the point that if a pregnant woman claims asylum she cannot be returned until her claim is determined in any case.

As Women for Refugee Women argue, refusing to accept Shaw's clear recommendation of an absolute exclusion from detention on the basis of what would appear to be a small number of cases each year where swift removal might be possible, and when there is clear evidence that allowing decision-makers discretion results in significant numbers of pregnant women being detained in circumstances that are far from exceptional—just one pregnant women being detained when she should not be is one too many—is not sensible, effective or humane policy-making. I hope that even at this late stage the noble and learned Lord will accept Stephen Shaw's recommendation, which has support across the political spectrum and from a wide range of civil society groups, none of which have been convinced by the Government's argument against doing so. I beg to move.

Lord Alton of Liverpool (CB): My Lords, I should like to support the amendment moved so well by the noble Baroness, Lady Lister. I raised this issue in Committee, and then my noble friend Lord Hylton and I took the trouble to go to Yarl's Wood where we asked questions about the number of pregnant women who had been detained there in the past or might currently be detained. I share the view of the noble Lord, Lord Bates, who did such wonderful work on this Bill in its earlier stages. He commented on a Channel 4 investigation into Yarl's Wood, which was shown in March 2015, where staff members called the women being held there "animals" and "beasties". Having watched the programme, the noble Lord said to the House:

"I watched that documentary on Channel 4, and quite frankly I was sickened".—[*Official Report,* 28/1/15; col. 103.]

Having been to Yarl's Wood, I was able to say to the House that many of the staff we met had learned the lessons of that experience, and certainly my noble friend and I were impressed by many of the standards that we saw, but nevertheless we could not be convinced that it could ever be right, as the noble Baroness has just said, to have even one pregnant woman detained in those circumstances.

The Royal College of Midwives has said that:

"The detention of pregnant asylum seekers increases the likelihood of stress, which can risk the health of the unborn baby".

In the review referred to by the noble Baroness, the former Prisons and Probation Ombudsman for England, Stephen Shaw, says this:

"that detention has an incontrovertibly deleterious effect on the health of pregnant women and their unborn children … I take … to be a statement of the obvious".

Alongside that, of course, there are long-standing concerns about the conditions in Yarl's Wood. The Chief Inspector of Prisons has called it a "place of national concern". Although I have tried, I hope fairly, to say that conditions have undoubtedly improved, nevertheless it is not a place where pregnant women should be.

The briefing material referred to by the noble Baroness from the organisation Women for Refugee Women poses the question that the Government frequently ask in these circumstances:

"If the government said they were going to stop detaining pregnant women, wouldn't women lie and say they were pregnant—or get pregnant deliberately—just to avoid detention? And wouldn't women abscond if they weren't detained?".

I agree with the response:

"Establishing if a woman is pregnant or not is very straightforward: she simply needs to take a pregnancy test! The idea that women would get pregnant as a way of avoiding detention is unfounded and based on sexist stereotypes about women and the way they behave".

To illustrate the strength of that argument, which I agree with, it is perhaps worth mentioning to noble Lords the story of one woman, Priya:

"Priya was trafficked to the UK and forced into prostitution. She has been detained in Yarl's Wood twice; the second time she was locked up, she was 20 weeks pregnant, and was held in Yarl's Wood for seven weeks before being released back into the community".

Picking up her story, she says this:

"I was released after three months in detention, and fell pregnant by my partner, but then I was detained again. Although I had a written report from an expert, the Home Office did not believe that I was trafficked, so my claim was refused and I found myself back in detention. This time around I was in Yarl's Wood for about seven weeks, and I was 20 weeks pregnant when I arrived.

I only had one hospital appointment while I was there, for my 20 week scan, and even then I was escorted by officers who took me 40 minutes late for my appointment. I felt frustrated that I wasn't able to speak to the midwife after my scan because there was no time. The officers just took me straight back to Yarl's Wood instead".

I will not read the entire testimony to the House, but let me pull out two more sentences:

"The first time I was detained in Yarl's Wood, I was on medication for sleeping and depression, and I took an overdose because I felt so hopeless … I couldn't eat the food in the canteen; that made me sick too. A lot of the time I could only really manage milk. It was too far for my partner to visit and, as an asylum seeker as well, he couldn't afford the travel, but we spoke on the phone every day. I've been released now but I still feel depressed".

Levels of depression in Yarl's Wood and incidents of self-harm have been very high indeed. The prisons inspectorate report in 2015 found that more than half of women who were detained there felt depressed or suicidal when they first arrived, and that there had been 72 incidents of self-harm in the previous six months —a huge rise from the previous inspection. Surely these are circumstances in which we should never put someone who is pregnant.

3.45 pm

I also make the point, which is made in the briefing material, that it costs around £40,000 a year to keep someone in those circumstances. As the noble Baroness has already told us, of the 99 pregnant women detained in Yarl's Wood during 2014, just under a third were held for between one and three months and four were held for between three and six months. Detention of people who will be released back into the community anyway to continue with their claims serves no purpose at all and is just an extremely expensive and wasteful business.

I shall end, if I may, in supporting this amendment, by returning to the effects not just on the women who are held but on their unborn children. Some years ago, I chaired an inquiry here with the late Lord Rawlinson of Ewell looking into the effects during pregnancy of experiences that the unborn child can have. Among those who gave evidence was the late, eminent psychiatrist Dr Kenneth McCall, a well-known author on these subjects. He made the point that a mother who is happy during pregnancy will project those feelings to the unborn child living within her body but that the reverse is also true. I vividly recall Professor McCall giving us an example of a pregnant mother caught in a fire in her home. Although she was saved by escaping in a pretty traumatic way from the blazing building, the child who was subsequently born, but not knowing anything about that experience, had throughout his life, until the psychiatrist helped to bring out the history and deal with it, an aversion to fire in every way. It was the experience in the womb.

On a more positive note, the great violinist Yehudi Menuhin said that he learned his love of music in the womb from his parents. Dr Henry Truby, an emeritus professor of paediatrics and linguistics, says that from 24 weeks the child moves in rhythm to the mother's speech. Babies' preferences for stories and music are first heard in the womb. I shall not go on at length, but we all know that these things are true. Therefore, do we want to subject women who are pregnant to these kinds of experiences knowing what the traumatic consequences could be, not just for the women but for their children as well?

The Earl of Listowel (CB): My Lords, I rise briefly to support this amendment. Before doing so, I highlight the fact that, following last year's Maternal Mental Health Alliance report which highlighted the serious concerns about perinatal mental health, the Government made a very strong response. I think it was the noble Earl, Lord Howe, who did such good work in terms of ensuring that more mother and baby units across the country have access to the right mental health professionals to support mothers through that difficult time.

In the past, we had whole families for several months at Yarl's Wood. Thanks to the important work of the coalition Government—the Conservative and Lib Dem Government—we removed those families. If they were detained, it was for very short periods of time. The Government recognise the principle that this is something that we need to be careful of, and it was good to hear on Report the careful and conscientious reply of the noble Lord, Lord Bates. However, it is disappointing that there is this loophole and an area that still needs to be covered. It seems to me to be so important. Looking at the Maternal Mental Health Alliance report, speaking to mothers who have experienced postnatal depression and depression during their pregnancy and having visited Yarl's Wood three times myself over the years and spoken to mothers there, I know that, whatever the rights and wrongs of their situation, they are often very distressed and worried about being returned, whether they have rights to remain here or not. To have mothers who are pregnant in that situation is very undesirable.

As the noble Baroness said, there is no evidence that one returns mothers in these circumstances by detaining them. What we have found over time is that it is much more effective to build a relationship and provide services so that they can be returned in a good way. I hope that the Minister will respond to the concerns raised by this amendment.

Baroness Neuberger (CB): My Lords, I, too, strongly support this amendment. I will speak briefly because much of what I wanted to say has already been said, and said very eloquently.

This is enormously important. As many noble Lords know, we run a drop-in for asylum-seeker families at my synagogue. In talking to some of the women, many of them pregnant, who visit with their small children, one thing that comes out time and time again is how they worry that the situation in which they are living—they are not detained—is so insecure that some of that insecurity may be transmitted to their unborn children. Of course, we know a great deal now about the transmission of anxiety and trauma to unborn children. If we extrapolate from that and from those women talking about it to women detained for what seem to be not very good reasons, it is really important that we have an absolute exclusion on pregnant women being detained. I hope that people will look at the evidence given by the Royal College of Midwives. That made it absolutely clear that unborn children may well be traumatised by the experience. I do not believe that we in this House would wish to take responsibility for that.

Baroness Hamwee: My Lords, from these Benches I support this amendment very warmly. In the previous stage of the Bill, as the noble Baroness, Lady Lister, said, we had an amendment dealing with vulnerable people but it was debated alongside and really overshadowed by the amendment on a time limit to detention. The amendment provided that detention should take place only in exceptional circumstances determined by the First-tier Tribunal.

After the amendment was tabled, I was quite embarrassed by the opposition to or considerable doubts about it expressed by a number of organisations

[Baroness Hamwee]

for which I have the greatest respect. They told me that we had got it wrong and that we should not provide for any exceptional circumstances in the case of pregnant women. I explained to them that the amendment was expressed as it was because we were trying to approach the Government with an offer of compromise. We hoped that the Government would meet us halfway by agreeing to not a complete exception but the one we expressed in that amendment. The list of vulnerable people was taken from Stephen Shaw's report, in which—no ifs, no buts—pregnancy means vulnerability. As the noble Baroness said, and I will see if I can get it out without tripping over the word, he spoke of the,

"incontrovertibly deleterious effect on the health of pregnant women and their unborn children".

His Recommendation 10 was that they should be excluded.

The Government have added what is now Clause 62 to the Bill and there will be guidance; I acknowledge that that will come to Parliament. However, it will be through the negative procedure, and this is another of those examples where we can talk to our hearts' content but will not be able to alter what is proposed. I was worried when I saw that new clause in the last stage and I worry now about the expression "particularly vulnerable". I say again: there should be no ifs, no buts.

The Government proposed the adults-at-risk approach that has been referred to. I thank the Minister for his letter, in which he describes the Government's concern about allowing all pregnant women access to the UK regardless of their immigration status, and therefore access to maternity services. The noble Earl will recall the debates that led up to the health charge being imposed—I suppose it is two years ago now—and that was one of the concerns which was expressed. We now have the health charge.

The letter from the Minister, the noble and learned Lord, Lord Keen, explained:

"The higher the level of risk (and pregnant women will be regarded as being at the highest level of risk), the less likely it is that an individual will be detained".

He added that the Government's view,

"is that the best approach is a considered, case by case one which is represented by the adults at risk policy".

I find it difficult to reconcile the two parts of that—that this is the "highest level of risk" but that there will be a "considered, case by case" approach. I do not think that the Minister can be surprised at the anxiety expressed by the very considerable number of well-respected organisations which are anxious about the policy given their experience of the current policy.

The noble Baroness referred to the all-party group inquiry, of which she and I were members. I turned it up this morning to find the comments that we made then about pregnant women. They included the evidence of Hindpal Singh Bhui, a team inspector at HM Prisons Inspectorate, who said that,

"pregnant women are only meant to be detained in the most exceptional circumstances. And again, we look for evidence of this".

Of course, I am talking about the historical position. The inspector continued:

"And on the last couple of occasions that we've looked, we haven't found those exceptional circumstances in the paperwork to justify their detention in the first place".

Our report went on to say:

"We were also told of pregnant women being forced to travel long distances, sometimes over several days, when initially being detained, and failures in receiving test results and obstetric records. In one case, we were told that an immigration interview was prioritised over a 20-week … scan".

The report continued:

"We are disappointed that the Home Office does not appear to be complying with its own policy of only detaining pregnant women in exceptional circumstances. We recommend that pregnant women are never detained for immigration purposes".

I see no reason to depart from that but every reason to support it and the amendment.

Lord Rosser: I apologise in advance for the fact that my contribution will contain a fair element of repetition of what has already been said but it will be relatively brief.

In his review for the Home Office into the welfare of vulnerable persons in detention, Stephen Shaw recommended that it amend its guidance so that the presumptive exclusion from detention for pregnant women was replaced with an absolute exclusion. Stephen Shaw said in his report that Her Majesty's Inspectorate of Prisons had told him that in its view there was little to suggest that pregnant women were being detained only in exceptional circumstances. He also said that the Association of Visitors to Immigration Detainees had pointed out that an inspection of Yarl's Wood had found pregnant women being detained without evidence of the exceptional circumstances required to justify this, with one of the women being hospitalised twice because of pregnancy-related complications. In the light of the evidence presented to him, which he set out in his report, Mr Shaw said that he had not sought further evidence that detention had an adverse effect on the health of pregnant women and their unborn children, since he took this to be a statement of the obvious.

Stephen Shaw also said in his report that he believed that the Home Office should acknowledge the fact that in the vast majority of cases the detention of pregnant women does not result in their removal, and that in practice pregnant women are very rarely removed from this country except voluntarily. Concluding, he said that he was strongly of the view that presumptive exclusion from detention should be replaced with an absolute exclusion.

I hope that the Government will reflect on their apparent decision not to accept Stephen Shaw's strong recommendation in respect of the detention of pregnant women. It is my party's policy that pregnant women should not be detained in these circumstances, a view also expressed by Mr Shaw in his independent report to the Home Office. If my noble friend Lady Lister of Burtersett decides, at the end of the debate—and, most importantly, after the Government's response—to test the opinion of the House, we shall support the amendment.

4 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I understand fully that the intention of the amendment tabled by the noble Baroness,

Lady Lister, is to reflect the recommendation from Stephen Shaw that pregnant women be absolutely excluded from detention. On this point, I reiterate what I made clear on Report and set out in my letter to the noble Baroness and to the noble Baroness, Lady Hamwee. While the Government agree that it is not right to detain pregnant women unless there are exceptional circumstances, it does not consider that an absolute exclusion would be workable.

As has been explained in this House and in another place, it is important that the Government are able to detain, for a short period, those with no right to be in the United Kingdom who refuse to leave voluntarily. For example, if an immediate removal is planned, a short period of detention may be appropriate to facilitate a safe departure where there are absconding risks or other public protection risks to be considered. Furthermore, exempting from detention an individual who has arrived at the border with no right to enter the United Kingdom and who can be put on a return flight quickly would allow pregnant women access to the United Kingdom regardless of their immigration status.

The noble Baroness, Lady Lister, mentioned that 99 pregnant women were detained in Yarl's Wood in 2014 and that this number had reduced to 69 in 2015. I am advised that there is, at present, one pregnant woman in Yarl's Wood. She is a foreign national offender who recently completed an 18-month prison sentence and was detained there on 9 February. A deportation order was signed and removal directions were in place for 3 April. These were later brought forward to 26 March but then deferred because of an asylum claim being made. I am advised that there has now been an application for judicial review as well. Taking that case as an example, if removal ceases to be imminent there is every prospect of release subject to conditions. This is what frequently happens in these circumstances and goes some way to explain why only a small proportion of those actually in detention are subsequently removed from detention and deported. Many are released under condition and their asylum or immigration status is determined subsequently and the matter disposed of in that way.

I stress that we are dealing with cases in which there are exceptional circumstances. The noble Baroness, Lady Neuberger, observed that uncertainty over immigration status could itself be a source of stress and anxiety for a pregnant woman. That may very well be the case: who could dispute it? But she went on to say that they can be detained for not very good reason. We cannot accept that. Our policy and guidelines are very clear: pregnant women are to be detained only in exceptional circumstances. There is a requirement for that detention in particular and exceptional circumstances.

The noble Baroness, Lady Lister, will be aware that, on Report, I stated that the Government intended to reflect on the detention of pregnant women and would have a considered position by Third Reading. I apologise to the House for the delay in completing that consideration. This is a complex issue and the Government continue to give it serious thought in the context of the work that is under way in developing policy on adults at risk in detention and the further implementation of Stephen Shaw's report and its recommendations. That is taking time to finalise because the Government do not want to rush what is and is recognised to be a highly important issue. But I assure the noble Baroness and the House that the Government will be making a formal announcement on this matter very shortly. Indeed, the Government expect to make such an announcement in a matter of days.

The announcement will not involve an absolute prohibition on the detention of pregnant women. It will, however, set out a very clear and limited time for detention, only in exceptional circumstances, as it may be applied to pregnant women.

Lord Alton of Liverpool: I wonder if the Minister can explain to us why, if it is possible for the Government to make a statement in a few days, it is not possible to make that statement today.

Lord Keen of Elie: If I was in a position to make the statement today, I am sure the noble Lord appreciates that I would do so. He may be familiar with the wheels of government and with the requirement for these matters to be approved at various levels before a final statement is made. If I was in a position to make that statement, I reassure the noble Lord that I would not hesitate to make it.

Lord Harris of Haringey (Lab): But this is Third Reading. Is there not a sense of urgency in these matters?

Lord Keen of Elie: There is certainly a sense of urgency in this matter and that is why I expressed my apology to the House and the noble Baroness, Lady Lister. I had indicated that by Third Reading I would be in a position to confirm the Government's position on this. However, it is a matter that requires detailed consideration. It is a matter that has ramifications. It is a matter that has to be considered in conjunction with Home Office guidelines. It is a matter that must be consulted on and finally approved before issue, and it is for that reason that, regrettably, there has been a period of delay in respect of this point.

I underline that it will not involve an absolute prohibition. It will, however, involve a very limited power of detention to be exercised only in exceptional circumstances and for a very limited period. That is what is anticipated at present. As I sought to point out on Report, it is simply not practicable to have an absolute bar in respect of pregnant women. There are circumstances in which, for example, a pregnant woman arriving at an airport or a port, clearly with no right at all to enter the United Kingdom, may present either a security risk or a risk of absconding, and without any power of detention it would be quite impossible to arrange her return at that time of arrival. Therefore, in these circumstances, I urge the noble Baroness to withdraw her amendment.

Baroness Lister of Burtersett: My Lords, I am very grateful to all noble Lords who have spoken. Many have spoken so eloquently, drawing attention in particular

[Baroness Lister of Burtersett]
to the implications of this for unborn children, and have made the case very strongly.

I realise that the Minister is in a difficult position in that he is not able to make the statement to which he referred. I asked him for reassurance that the new policy will mean that pregnant women are detained genuinely in the most exceptional circumstances because the current policy is that they should be detained only in the most exceptional circumstances. While the hint of a time limit is encouraging, I have heard nothing to reassure us that the new policy will be different from the old policy.

I quite understand that it is not the Minister's fault—if that is the correct word—that he is not able to make the statement today. But Stephen Shaw delivered his report to the Home Office on 24 September. The Government have had over six months to consider this crucial issue, which they know many people—organisations, individuals who gave evidence to Shaw and individuals who gave evidence to the inquiry—feel very strongly about. They must have known that people would want a clear answer on this by now and I am afraid that clear answer has come there none. I am quite sure that the noble and learned Lord understands why it is not good enough to say, when this is the last chance we have to discuss it in this House, that we should wait for a few days because the Government have not managed to get their act together to enable him to make the statement today.

Given that every noble Lord who has spoken did so very strongly in support of this amendment, I feel that I have no choice other than to test the opinion of this House.

4.10 pm

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Amendment 6 agreed.

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4.24 pm

Clause 63: Immigration bail

Amendment 7

Moved by ***Lord Keen of Elie***

7: Clause 63, page 59, line 27, leave out "The amendment made by subsection (3) is" and insert "Subsections (3) and (4) are"

Lord Keen of Elie: My Lords, Amendments 7, 10 and 11 are all relatively minor and somewhat technical in nature. Clause 63 ensures that a person may be on immigration bail when they are liable to detention, even if they can no longer be detained, and subsections (3) and (4) apply this to people who have been released on bail under the current provisions of Schedule 2 to the Immigration Act 1971. Amendment 7 to Clause 63(5) removes the reference to an amendment being made by subsection (3). This is because, in an earlier draft of the clause, subsection (3) contained an amendment to Schedule 2 to the 1971 Act, but subsections (3) and (4) no longer use that construction.

Amendments 10 and 11 to Schedule 10 ensure that any cross-references in other legislation to immigration bail granted, or a condition imposed, under Schedule 10 will include the rare circumstance when bail is granted by the court, just as if it were granted by the tribunal. I beg to move.

Baroness Hamwee: My Lords, I am grateful for the Minister's explanation but, on Amendment 7, it seems to me that we have never really had an explanation of why it is necessary for these provisions to be made retrospective. The Constitution Committee raised the matter in its report to the House on the Bill, and referred to the Government's acknowledgement of retrospectivity in the Explanatory Notes, which said:

"This clause is retrospective in its effect because it is intended to clarify the law following a recent Court of Appeal judgment".

Having read on in the Constitution Committee's report, I wonder whether "clarify" is the right term. I do not think one can talk about correcting a Court of Appeal judgment, but that is the flavour of what the Constitution Committee had to say. The Government's response to the committee was that the clause has been remodelled, which does not seem quite to take the point. Could the noble and learned Lord assist the House by explaining why this does not broaden the scope of the Bill and why it is appropriate?

My first reaction on reading Amendments 10 and 11 was to wonder whether the draftsman could not have made a real effort to make them really opaque and difficult to follow. After that rather flippant comment, the serious point is that, as I understand the issue, the Secretary of State is now to have powers over courts as well as the tribunals. The noble and learned Lord is shaking his head, so I look forward to his refuting that. We are bothered, as we have been concerned before, about not respecting the independence of the judiciary. What if a tribunal judge thinks that it is contrary to a person's human rights to impose the electronic monitoring condition, and the Secretary of State says that it is not contrary to do so? The judge is very conflicted there. What if he or she wants to impose a condition, and considers that it would be practicable to do so, but the Secretary of State says that it is not practicable, so the judge cannot impose the condition? If that meant that the judge did not grant bail to that person, this would be a considerable—and, I think, unwarrantable—interference with the person's right to liberty. Would the noble and learned Lord expand a little on his explanations?

4.30 pm

Lord Rosser: My Lords, I support the questions raised by the noble Baroness, Lady Hamwee, in relation to the first amendment and retrospection, which was addressed by the Constitution Committee, and to the other two amendments and the extent to which they do or do not mean that the Secretary of State could dictate to a criminal court, including a court of criminal appeal. I am afraid I did not see the Minister shake his head when the noble Baroness, Lady Hamwee, made that comment, but I hope that, if that is the position as far as the Government are concerned, it does not mean that the Secretary of State will in any way be able to dictate to a criminal court and that the Minister will set out very clearly in his response why it is incorrect to draw that inference or assumption from these amendments.

Lord Keen of Elie: I shall begin with the observations made with regard to alleged retrospective effect in the provisions in Clause 63. Reference was made to a decision of the Court of Appeal in the case of B v the Secretary of State for the Home Department. Before that decision, which is subject to an appeal that I will come back to in a moment, it was widely—indeed, universally—understood that individuals could be released on immigration bail in circumstances where their detention was no longer lawful under the Hardial Singh principles; that is, there was no reasonable prospect of their deportation and they therefore had to be released. That understanding was shared by the relevant tribunals: the First-tier Tribunal and the Special Immigration Appeals Commission. Indeed, it was the decision of the president of the Special Immigration Appeals Commission which was overturned in the recent decision of the Court of Appeal, that determined that if detention was no longer lawful under the Hardial Singh principles, it would follow that bail could not be granted and, in particular, that bail could not be granted subject to conditions. As one might imagine, that had wide-ranging implications for the purposes of security, particularly in the case of B, who appeared to be an established Algerian terrorist who was at risk of carrying out terrorist activities to assist others in Algeria and elsewhere. The decision of the Court of Appeal has been suspended pending an appeal to the Supreme Court, which is set down to take place in December. However the Government's position is that the position prior to the decision of the Court of Appeal was correct and it should be reinforced by statutory provision. It is for that reason that Clause 63 is in its present form. I understand that the appeal to the Supreme Court will proceed in any event, but it is essential, particularly in a matter that

impacts on our security, that there should be no doubt or difficulty and no gap in our legislation so far as that is concerned.

Turning to Amendments 10 and 11, the test of practicability is for the Secretary of State, not the court, but there is no question of the Secretary of State usurping the functions of the court. It may be recollected that for that reason an amendment was made to Schedule 10 at an earlier stage to make clear that the Secretary of State could not usurp or overturn any decision-making power of the court or tribunal in these circumstances. That remains our position with respect to Schedule 10, as amended.

Amendment 7 agreed.

Clause 71: Transfer of responsibility for relevant children

Amendment 8

Moved by ***Baroness Hamwee***

8: Clause 71, page 62, line 44, leave out subsection (10) and insert—

"(10) For the purposes of subsection (9) a person is unaccompanied who is separated from both parents and is not being cared for by an adult who in law or by custom is responsible for doing so."

Baroness Hamwee: My Lords, Clause 71 provides for the transfer of responsibility for relevant children. A relevant child is defined in subsection (9) as an unaccompanied child, while subsection (10) says:

"The Secretary of State may by regulations make provision about the meaning of 'unaccompanied'".

At the previous stage of the Bill, the noble Baroness, Lady Lister, raised the concern that an accompanying adult might not be—I use this phrase non-technically—an appropriate adult. There were concerns about trafficking. The amendment would put into the Bill the definition that is in current Home Office guidance on processing asylum applications by children.

While the amendment is to Clause 71, the same issue might of course arise in respect of Clause 70, the clause that your Lordships agreed on Division regarding the figure of 3,000 unaccompanied children. We will have to see what happens to that provision. In any event, taking a rather narrow technical point about Third Reading, that clause was not the subject of the reassurance from the noble Lord, Lord Bates, that he would put in writing how the term "unaccompanied" would be defined and would operate, and that he would do so by Third Reading. Given the change of Minister last week, I contacted the noble Earl's office to ask if there would be a letter, and at the point when I tabled the amendment there was not. It arrived around 6 pm yesterday and I read it some time later, and I thank him for it. The letter says that there is,

"no intention to alter the definition",

for the purposes of this clause. In situations where an asylum-seeking child,

"is accompanied by an adult who is not a parent or relative",

Home Office officials will,

"verify the identity of the adult and establish the relationship with the child".

I am not sure whether the relative referred to there is one who by custom has responsibility for the child, otherwise there would be a change from current guidance, although I gather that Home Office guidance is currently being rewritten. What I am really not clear about is why the Bill needs to allow for any flexibility or change in the definition, so it is important to get the position on record.

I was concerned about the reason for leaving the matter open in the way that the Bill does. When I was looking into this at the weekend, I found that the definition used by the Committee on the Rights of the Child is slightly broader because it refers to "other relatives" as well as parents. It occurred to me that it is known that "other relatives" are sometimes traffickers, which is why the wording is not used in the Home Office definition. There may be issues around siblings or other family members. However, it is important that we get the position on the record. It would be preferable to get it into legislation, but at any rate we should understand what the parameters are of the regulations that the Secretary of State might make. I beg to move.

Baroness Lister of Burtersett: Once again, my Lords, I am very grateful to the noble Baroness, Lady Hamwee, for tabling this amendment. With her usual lawyer's quickness, she picked up the point that I raised on Report. As I said then, it is a point that was raised with me by an organisation local to me in the East Midlands, Baca. It was worried because it could not understand why that wording was there. It is perhaps not surprising if groups are worried and perhaps slightly cynical when they come across measures that they do not understand, given that there is so much in legislation that they do not like. So I am delighted that, at the last minute, the letter from the noble and learned Lord, Lord Keen of Elie—not the noble Earl—made it very clear that the definition, as in the amendment, is,

"separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so".

It is helpful to have that in *Hansard* because of course your average punter cannot read the letters sent between Ministers and Members of your Lordships' House. I am sure that the noble and learned Lord will repeat that for the record. Also, like the noble Baroness, I would appreciate an explanation of why this clause is necessary, given that this is, as the letter says, the,

"established definition in the Immigration Rules",

and it is accepted by the UN. I am glad that through this organisation raising this matter with me, we have some clarity on what is meant by it.

Lord Keen of Elie: I am obliged to the noble Baronesses, Lady Hamwee and Lady Lister. As they have observed, there is already an established definition of "unaccompanied" in the present context. It is not in guidance alone; it is in the Immigration Rules, and that is important. The definition states that an unaccompanied asylum-seeking child is someone who—perhaps I may, as suggested, read this into the record—is under 18 years of age when the claim is submitted, is claiming asylum in their own right, is separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so.

[Lord Keen of Elie]

Following the commitment given by my noble friend Lord Bates on Report to explain how the definition would operate, I wrote to the noble Baronesses—albeit, as they observed, at the last minute—to confirm that there is no intention of altering the definition of "unaccompanied" as set out in the Immigration Rules for the purposes of the transfer provisions in the Immigration Bill. Furthermore, defining particular categories in primary legislation is not always desirable or even necessary. As your Lordships will appreciate, there are times, particularly in the context of the current migration crisis, when the Government need to respond quickly to changing circumstances.

I should make it clear that at present we have no intention of amending the definition of "unaccompanied". We would do so only in response to a significant change in circumstances, but it is important that in such circumstances we are able to react swiftly and efficiently. Clearly, regulations subject to parliamentary scrutiny are a more appropriate way to achieve that result than placing something on the face of this Bill.

I reassure the noble Baronesses, Lady Hamwee and Lady Lister, that safeguarding and promoting the welfare of vulnerable children is at the forefront of the Home Office's work with the Local Government Association and the Department for Education to develop a transfer scheme for unaccompanied asylum-seeking children. I understand the concerns about the definition of "unaccompanied"—it may have unintended consequences and inadvertently place children in the hands of traffickers—but immigration officials working with these vulnerable children are trained to be alert to any signs that a child is at risk of harm or abuse or may have been trafficked. Where an asylum-seeking child is accompanied by an adult who is not a parent or a relative, Home Office officials work with local authority children's services to verify the identity of the adult and establish the true relationship with the child. If that relationship cannot be verified or there are ongoing welfare or safeguarding concerns, the child will be treated as unaccompanied.

In the light of those points and our recent correspondence confirming that we have no intention of amending the already established definition of "unaccompanied" for the purposes of the transfer provisions, I invite the noble Baroness to withdraw the amendment.

Baroness Hamwee: My Lords, that is reassuring. It is difficult to imagine how urgent the circumstances might be that would require a swift change of the definition. However, I am very glad to have the assurances about the position on the record in *Hansard*, which, as the noble Baroness said, is most easily accessible by those outside this place. I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

4.45 pm

Clause 96: Commencement

Amendment 9

Moved by ***Lord Wallace of Saltaire***

9: Clause 96, page 75, line 38, leave out subsection (4) and insert—

"(4) Section 87 shall not come into effect—

(a) before 31 March 2018; and

(b) until transitional provision has been made for institutions in the public sector."

Lord Wallace of Saltaire (LD): My Lords, last week, the Centre for Policy Studies, a respected Conservative think tank, published a paper entitled *Dangerous Trends in Modern Legislation*. It warns that,

"the length of new Bills and the number of clauses they include is becoming so great that Parliament is unable to properly scrutinise them … There are often lengthy and significant parts of a Bill that receive no detailed scrutiny at all at any point in its Parliamentary passage".

Clause 87 of the Immigration Bill provides a prime example of this problem. In the Commons it had five minutes in Committee and none at Report. We reached it late in Committee in the Lords, where the Minister was unable to answer the questions raised, telling us that,

"there will be an opportunity for an informed debate on the details",

when the regulations—that had not yet been drafted—would be laid before the House. He specifically stated that,

"no decision has yet been made",—[*Official Report*, 9/2/16; col. GC 174.]

as to the impact on healthcare of the imposition of the charge.

Those of us who took part in that debate received no further communication from the Government between Committee and Report, unlike the usual custom, and no invitation to discuss the issues raised. We reached this clause on Report at 12.30 am on 21 March, at the end of a very long day. The Minister did make a significant concession in his reply on exempting university-level appointments from the new levy, but he declined to tell us when the Government's response to the report from the Migration Advisory Committee, on which these proposals rested, would be published or to answer other questions raised. The noble Lord, Lord Bates, did at least say that, "Given the hour", he was,

"happy to put further thoughts in writing … if that would be helpful".—[*Official Report*, 21/3/16; col. 2210.]

He then disappeared for a rather long walk. The noble Earl has indeed sent us a letter but it does not answer any of the points on the public sector or public sector training which we had raised. The noble Lord, Lord Trefgarne, then moved, I assume on behalf of the Government, to oppose withdrawal of the amendment to shut off further discussion at Third Reading. The chairman of the MAC was allowed to brief parliamentarians on this charge on 22 March, the day after Report ended. The Government then slipped out their response to the MAC report two days later on the Thursday before the Easter weekend—a quiet news day.

This is not the way to make legislation, as the Centre for Policy Studies paper noted. The Government have not explained the implications of this significant new charge, and in particular its likely impact on the public sector; nor have they provided any coherent

rationale for imposing it on the public sector. The Minister did, however, in responding to the debate, say that,

"I will give further consideration to when they"—

the charges—

"are introduced".—[*Official Report*, 21/3/16; col. 2212.]

He specifically mentioned that they were looking at the issue of phasing in the charges on the public sector. This amendment returns to exactly that issue, asking what further consideration the Government have given this and whether they will now accept that the current provision to rush this charge into operation only two months after the Bill is passed—as Clause 96 states—is mistaken, incompatible with allowing an informed debate on the regulations that will have to be pushed through, and damaging to the finances of schools and hospitals throughout the country.

The noble Lord, Lord Bates, reiterated that the aim of this charge is,

"to bring about some behavioural change in the way that people think about recruitment",—[*Official Report*, 21/3/16; col. 2210.]

encouraging employers to look for recruits from within the UK rather than from outside, and to invest in training those recruits in the skills needed. That is fine for the private sector. However, the Government are the employer in the public sector: they set the quotas for teacher and nurse training, and they encourage—or discourage—doctors to stay and work in the NHS rather than going abroad. So here we have the Government encouraging themselves to expand training to fill skills shortages in schools and hospitals by fining those schools and hospitals—out of government funds—for recruiting from outside the UK and the EEA. That is absurd.

There have been a succession of announcements of government policy that the likely impact of this charge will undermine. There are plans to expand and extend maths and technology teaching in schools, but no mention of the existing shortage of maths teachers in this country and of the active efforts that schools are making to recruit from Australia, Singapore and elsewhere. Hospitals have announced that they need to recruit some 15,000 nurses a year from abroad to fully staff their wards, from the Philippines, South Africa and so on. We have just read that the NHS is planning to recruit 4,000 doctors directly from India. These are large numbers of predicted immigrants, recruited to fill avoidable skills shortages within the UK—significant numbers pulled into the UK by our failures in skills training: 30,000 or so a year. The Government should therefore act to provide the training to reduce the necessity to pull such numbers in.

We have asked repeatedly what plans the Government have to increase incentives for maths teachers and to launch crash courses to train them, but there appear to be no such plans. We have also asked about rapid expansion in nurse training and efforts to improve retention of nurses in post. Again, there are no plans to do so yet. So within the next 12 months the Government will start to fine schools and hospitals £1,000 a year per skilled person recruited from outside Europe—fining them from the funds that the Government have just given them.

The noble Lord, Lord Bates, suggested on Report that,

"schools … can seek maths teachers from the whole European Economic Area market",

to avoid the charge for recruiting them from outside that market—to do that, it was implied, rather than to have to train more of our own or to pay British teachers well enough to stay in post. The *Daily Mail* will love that as a proposal from a Government who are supposed to be trying to reduce the pull factor in immigration from within as well as outside Europe, but I leave that to the Government to answer.

We were assured on Report that:

"The Department for Business, Innovation and Skills has confirmed that it will continue to consult with stakeholders",—[*Official Report*, 21/3/15; col. 2211-12.]

which in this case presumably means to negotiate with the Department of Health and the Department for Education on how to limit the damage to school and hospital budgets. But BIS, the *Times* told us last Saturday, is planning a major cost-cutting exercise, shrinking the staff of the Commission for Employment and Skills and the Skills Funding Agency by 40% to 50%. So it is likely to lack the capacity to manage the expansion of training schemes which the Government have promised us, either for the public or the private sector.

In short, the Government have failed to make any case for their proposed rapid implementation of this ill-thought-out scheme. Their failure to answer legitimate questions raised in Committee and on Report, in spite of promises so to do, has fallen well below the normal standards of this House. I hope that the noble Earl, Lord Howe, gallantly stepping into the breach, will concede that this has not been well done and will accept the rationale for delay which justifies our amendment. I beg to move.

The Earl of Listowel: I attended a meeting of maths teachers earlier this year in Parliament and was sad to learn of the serious shortage of maths teachers in this country, of so many of our children being taught by people with very low qualifications in maths, and of physical education teachers trained up to teach maths desperately trying to fill the gap. The recent concerns expressed by the Chancellor of the Exchequer that our children should have a good understanding of maths brought home to me the real concerns raised by those maths teachers about the inadequacy of supply of maths teachers. So it concerns me to hear the noble Lord say that schools will be penalised for the shortage of maths teachers. I am afraid it does not seem to be the schools' fault but somebody else's. This is not a Department for Education debate, but my experience in this matter coincides with what the noble Lord has expressed. Certainly, one should not penalise schools for a shortage they are not responsible for.

Lord Green of Deddington (CB): My Lords, the principle of the immigration skills charge is not in dispute. It is absolutely vital that the skills of our own workforce should be improved if we are to achieve the major reduction in immigration which the public so anxiously wish to see. The main issue is one of timing as to when it should come into effect.

[Lord Green of Deddington]

The Migration Advisory Committee, to whose work I pay a warm tribute, gave three reasons for its strong support for this scheme. First, to raise the cost of immigrant labour so as to reduce the numbers; secondly, to contribute to the extra cost involved for public services; and, thirdly, to compensate for what it described as the,

"rather modest efforts to upskill UK workers",

by those firms employing Indian IT workers. All those matters need tackling as soon as possible.

I certainly accept that there may be some loose ends in respect of some of the public services, but we need to get on with this. The Government have announced that they will bring the measure into force in April 2017. That seems a reasonable way to get this moving in a vital area.

Lord Rosser: The Government have said that the £1,000 per year immigration skills charge will be paid by employers who sponsor tier 2 migrants, with a reduced rate of £364 per annum applying to small businesses and charities as set out in the Immigration Rules. There will be an exemption in respect of migrants undertaking occupations skilled to PhD level, primarily science and research roles. An exemption will also be applied for graduates who switch from tier 4 to tier 2 for the purpose of taking up a position in the UK. As far as other areas, organisations and categories are concerned, the Department for Business, Innovation and Skills is apparently continuing to consult, including with devolved Administrations and other government departments.

In their letter of 7 April, on Ministry of Defence headed paper, the Government said that they intend to introduce the charge from April 2017 rather than from a somewhat earlier date provided for in the Bill. As they have also said that they are looking at phasing in the charge, can the Minister say what the intention to introduce the charge from April 2017 means as far as timescales are concerned?

The Government have confirmed that secondary legislation will be needed before the charge can be introduced. They expect to lay regulations in the autumn and to publish a draft before they are laid, with interested parties being given an opportunity to comment. There are difficulties with potentially significant issues being dealt with by secondary legislation because such proposed legislation cannot be amended, only accepted or rejected in its entirety.

There appears to have been little analysis provided on the impact of the immigration skills charge. Can the Minister say how much money will be raised by the charge; what percentage of existing training budgets that will represent; and for how many will this additional money provide the training envisaged? What analysis have the Government undertaken to show that the introduction of the charge will achieve the stated objective, as set out in the letter of 7 April, of encouraging employers to think differently about their recruitment so that, where possible, they recruit and train up resident workers and reduce the need to recruit skilled labour from outside the European Economic Area? Has an impact assessment been undertaken and, if so, what did it indicate? By how many is it expected that the charge will reduce the need to recruit skilled labour from outside the European Economic Area?

The Government also ought at least to give a commitment that they will listen to and take into account the views of interested parties when the draft regulations are published prior to being laid; and that interested parties will be given sufficient time to respond, bearing in mind that the draft could be published in the middle of the holiday season.

In looking at where, to whom and from when the charge will apply, what are the criteria against which the Government are determining and making their proposals? Against what criteria, for example, will proposals on the extent to which the charge should or should not apply in the National Health Service be formulated? While the decision not to apply the immigration skills charge to those switching from a tier 4 student visa to a tier 2 visa is a positive move for the health service, it will not as I understand it exempt overseas doctors recruited by the NHS on tier 2 visas to fill medical vacancies in hard-to-recruit medical specialties and areas.

5 pm

The Government have said that they will review the operation and impact of the immigration skills charge after a suitable period of operation. Within what kind of timescale does that actually mean? They have also said in their letter of 7 April that income raised through the immigration skills charge will be used to fund training in order to reduce the UK's reliance on imported skills, and that further details will be set out in due course in advance of the draft regulations. Is that in advance of the draft of the regulations being published prior to being laid? Is the money raised from the charge going to be ring-fenced, and if so, in what way? Will it be ring-fenced in relation to the type of training on which it has to be spent, or in relation to the sector, organisation or organisations in which it has to be spent? Will money raised from the health service, if it is not exempt, have to be spent within the health service on training? If it is not going to be ring-fenced, what guarantees are there that the money raised will be used to fund training rather than for some totally unrelated purpose, and that the money will be additional money spent on training and not used to finance existing training commitments?

As far as the amendment is concerned, we do not share the view that the skills charge should not be introduced at all in the private or public sector until the end of March 2018, provided that it will be used to fund additional training, and neither do we consider that there necessarily has to be transitional provision for all institutions in the public sector, although we have along with others raised our concerns about the impact and necessity of the charge, for example, in the health service and the education sector.

I hope that the Minister will be able to respond to at least some of the questions and issues that I and other noble Lords have raised, since I share the concerns that have been expressed by the noble Lord, Lord Wallace of Saltaire, about the way this matter has been handled and the late stage at which it has been

brought forward into the proceedings on the Bill, and what appears, frankly, to be a lack of information about the charge, with the Government saying that we will have to wait until later on to find out what their intentions actually are.

Earl Howe: My Lords, I have listened carefully to the position put forward by the noble Lord, Lord Wallace, and other noble Lords. The Government were pleased to be able to provide further details about the immigration skills charge in the statement made at the Report stage by my noble friend Lord Bates. In addition, a Written Ministerial Statement covering reforms to the tier 2 visa route was laid in the other place on 24 March, but unfortunately it could not be laid in your Lordships' House because we were not sitting on that day.

As promised at the Report stage, the Government have considered when Clause 87 will come into effect. The first point to make, which was referred to by the noble Lord, Lord Rosser, is that while the clause commences two months after Royal Assent, it is clear in the Bill that secondary legislation will be needed before the charge can be introduced, and that will be subject to the affirmative procedure. Secondly, as my noble friend Lord Bates said on Report, we will publish a draft of the regulations before they are laid, enabling noble Lords and other interested parties to comment; I would just emphasise that opportunity.

As regards the date of introduction, the Government have announced details about the rate and the scope of the charge, including the exemptions that will apply, a year before it is to be introduced. The Written Ministerial Statement confirmed that the charge will be introduced from April 2017 and not before. We consider that that gives employers, including those in the public sector, sufficient time to plan how best to manage the introduction of the charge without delaying until after April 2018, as suggested in this amendment—and I am grateful to the noble Lord, Lord Green, for his comments on that point. I would argue strongly that there is no need for transitional provision to be made for institutions in the public sector, which is the other purpose of the amendment. I would just say that, on Report, my noble friend Lord Bates did not commit to consider a phased approach to implementation for the public sector. We made a commitment to consider when the clause comes into effect and, as I have indicated, we stated that we will not introduce the charge before April 2017.

As the independent Migration Advisory Committee stated, public sector organisations are employers, like any other, and should be incentivised to consider the UK labour market first before recruiting from outside Europe. On that particular point, it is worth noting that the MAC took evidence from a full range of stakeholders, including the public sector, before making its recommendations. From my time as a health Minister I recognise the important role that tier 2 plays in recruiting doctors to fill vacancies in hard-to-recruit medical specialties and areas, as the British Medical Association has flagged. I also understand its concern that the charge might take funds away from training in the health service.

Let me be clear about this. Staffing in the NHS is a government priority. That is why there are already more than 29,600 extra clinical staff, including more than 10,600 additional doctors and more than 11,500 additional nurses on our wards since May 2010. That is why Health Education England has increased nurse training places by 14% over the last two years and is forecasting that more than 40,000 additional nurses will be available by 2020. There are already 50,000 nurses currently in training.

The noble Lord, Lord Wallace, asked me what plans there were to incentivise individuals into nursing and to encourage retention. It would perhaps be helpful if I mentioned that the Come Back to Nursing campaign, launched by Health Education England in September 2014, reports that 2,188 nurses have registered on a return-to-practice programme, 927 have completed the programme and, of those, 700 have successfully completed their retraining and are now back on the front line providing care and support for patients. We have invested £40 million in leadership training to create a new generation of senior nurses and we are running a campaign to get experienced nurses who have left the profession back to work.

The noble Earl, Lord Listowel, referred to the pressure on schools, and I understand the points that he made. I hope that he will take some reassurance from the fact that many schools will benefit from the reduced rate of £364 by virtue of being either small businesses or charities. The noble Lord, Lord Rosser, asked about ring-fencing the fund and whether the charge will just go, as it were, into general revenue. Let me be clear about that. The Prime Minister was emphatic that this measure will help train up the resident workforce to address skills shortages. I cannot, of course, tell him how much the skills charge will raise. The amount of funding generated will very much depend on employer demand. The Migration Advisory Committee estimated that the charge could raise as much as £250 million a year. The MAC's estimates did not take account of the reductions and exemptions the Government have announced or the expected impact on behaviour. The Government are still finalising the policy detail, as will be obvious. We have not, therefore, produced a firm estimate. However, we estimate that once the exemptions and reductions are taken into account, the sums raised will be significantly lower than the MAC's estimate.

Lord Hunt of Chesterton (Lab): With respect to the remarks of the noble Earl, Lord Listowel, and those of the Minister, the Science and Technology Committee had a special session here at the House of Lords in March, and we heard that the funding available for training teachers who are not advanced in mathematics or science to become better trained is actually decreasing. I wonder whether the Minister's remarks are implying that there will be more money for this training, which is absolutely essential if we are to raise the skills and educational levels in science and technology.

Earl Howe: My Lords, a great deal is being done to encourage students into science and technology, as I am sure the noble Lord is aware. What I cannot tell him is whether and to what extent the money raised by

[Earl Howe]
the skills charge will be directed into particular vocational areas. That is still being worked through. As regards teaching, it has been recognised that public sector pay restraint and specific recruitment challenges in certain occupations present problems for the National Health Service and the education sector in particular. On the new salary threshold, we announced that we will exempt nurses, paramedics and medical radiographers; and in the education sector we will exempt secondary-school teachers in mathematics, physics, chemistry, computer science—

Lord Hunt of Chesterton: Primary schools as well are a particular area.

Earl Howe: My Lords, I heard what the noble Lord said. Perhaps he will allow me to continue. We will exempt secondary-school teachers in mathematics, physics, chemistry, computer science and Mandarin from that new salary threshold. The point has been recognised by the MAC and we took its advice on that.

The exemption we have announced for students switching from tier 4 to tier 2 to take up a graduate-level position in the UK will benefit doctors following completion of their foundation training. I am pleased that the BMA has welcomed this exemption. However, if we are to meet our objective of reducing reliance on overseas workers, we simply must reverse the trend of increasing numbers of workers coming through tier 2, including in the public sector. In 2015, sponsored visa applications for skilled workers in the human health and social work activities sector alone, which includes a number of public sector occupations, increased by 13% to more than 3,500 places. For those reasons, we consider that delaying or phasing in the introduction of the charge, or indeed an exemption, for the NHS or wider public sector would overlook the key aim of the charge: to influence employer behaviour. The Migration Advisory Committee was clear that it did not believe the health sector should be exempt from the charge.

I note that the BMA said it is highly unlikely that the NHS would benefit from the proceeds of the charge because apprenticeships are not relevant to or will not benefit the NHS. With great respect to the BMA, there is currently no basis for saying that. Decisions on where the charge income will be spent are not yet finalised, as I said. The priority will be to spend the charge on training the resident workforce to address skills gaps in the UK. Apprenticeships are only one government-supported programme designed to address the long-running trend of underinvestment in skills by UK employers that might be supported. I can assure noble Lords that the Department for Business, Innovation and Skills is already engaging with stakeholders, including the Department of Health and the Department for Education, to ensure that their skills and workforce planning needs are fully considered. It cannot possibly do otherwise given the key importance of those sectors. I can also assure the House that the Home Office will continue to consult with stakeholders on how best to address skills gaps in advance of the introduction of the charge to inform decisions on how the income is spent.

I hope that noble Lords—in particular the noble Lord, Lord Wallace—will be reassured from what I have said today and from the totality of the announcements we have made about the skills charge, that the Government are committed to implement it in a balanced way, ensuring that the UK remains open for business and can continue to attract the best and brightest to our workforce. I hope, too, that noble Lords are reassured by our confirmation that we will not seek to impose the charge before April 2017, and only after we lay regulations.

In the light of those points, I very much hope that the noble Lord will agree to withdraw Amendment 9.

5.15 pm

Lord Wallace of Saltaire: My Lords, I am a little reassured but I have to say that I am still left in much confusion as to how the Government intend to get from here to where we all wish to be. The ability of the noble Lord, Lord Rosser, to raise a very large number of fair questions about what is intended by all this simply demonstrates how unclear many of us in this House and outside are about how the Government will ensure that the extra skills are provided from within this country. I entirely agree with the noble Lord, Lord Green, that there is a long-term problem of companies in Britain finding it cheaper and easier to recruit direct from abroad rather than spending money on training their own employees. That applies not just to the Indian IT sector but also to long-distance truck drivers and all sorts of occupations in the private sector.

However, in the public sector the Government are responsible for training. As regards when we introduce this charge, I simply point out that it takes two or three years to train a nurse and longer to train a doctor, let alone a good maths teacher. Therefore, a year is not enough. We will find in the interim period that schools and hospitals will pay sums out of their flat budgets, out of which they are already paying for additional pension increases—so budgets are being squeezed—before any new training schemes have provided the additional skilled recruits from within the United Kingdom. That is part of the argument we are making about phasing in for the public sector.

I very much hope that we will have Labour support on this occasion. As I understand it, the Labour Party supports the public sector. I have heard reports that the Labour Party in the Commons has instructed the Labour Party in the Lords not to support this measure because it is a Liberal Democrat amendment and it is a bit queer about supporting Liberal Democrat amendments. I very much hope that the noble Lord, Lord Rosser, will be able to bring his party along. However, I appreciate that sometimes in the Lords the Labour Party Front Benchers have to defend positions they are not entirely happy about, as, indeed, do the Conservative Party Front Benchers.

Lord Rosser: I reassure the noble Lord, who is clearly very concerned about my present state and what I have had to say on this amendment, that I fully support an agreement—obviously, to his surprise—regarding what I said from this Dispatch Box. Interestingly enough, the noble Lord has not responded to the objections that I raised on his amendment.

Lord Wallace of Saltaire: My Lords, I hope that the noble Lord has not yet got out his walking maps, but we shall see. I conclude by pointing out that the phasing argument is about the time it takes to train the people from within the United Kingdom who we need to supply skills in our schools and hospitals. We have not yet been informed about the new schemes which the Department of Health and the Department for Education will undertake to provide. However, we know that from April 2017 schools and hospitals will pay an additional £1,000 per person per year for everyone recruited from outside the European Economic Area, although I think I may have heard the noble Earl say that independent schools will have to pay only £330 because they are charities, which raises some interesting questions to which we may also wish to return.

Earl Howe: It does not apply just to independent schools, some of which are charities and some of which are not. However, the lower figure is £364 for charities.

Lord Wallace of Saltaire: We are reassured by that, but I may wish to take it up further with the Minister. Meanwhile, we are not satisfied. This imposes additional charges on the public sector which is already hard pressed. We have not yet heard sufficient about the additional training which the Government, as employers, need to provide from departments other than the Home Office. We are depressed by the news that the Department for Business, Innovation and Skills is cutting the staff it has to promote skills and employment within the United Kingdom. We therefore wish to test the opinion of the House.

5.19 pm

Division on Amendment 9

Contents 110; Not-Contents 232. [The name of a noble Lord who voted in both Lobbies has been removed from the voting lists.]

Amendment 9 disagreed.

Division No. 2

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5.31 pm

Schedule 10: Immigration bail

Amendments 10 and 11

Moved by ***Earl Howe***

10: Schedule 10, page 171, line 25, at end insert—

"( ) A reference in any provision of, or made under, an enactment other than this paragraph to immigration bail granted, or a condition imposed, under Schedule 10 to the Immigration Act 2016 includes bail granted by the court under sub-paragraph (1) or (1A) or (as the case may be) a condition imposed by the court on the grant of such bail.""

11: Schedule 10, page 175, line 9, at end insert—

"( ) A reference in any provision of, or made under, an enactment other than this section to immigration bail granted, or a condition imposed, under Schedule 10 to the Immigration Act 2016 includes bail granted by the court under subsection (3) or (as the case may be) a condition imposed by the court on the grant of such bail.""

Amendments 10 and 11 agreed.

5.31 pm

Motion

Moved by ***Earl Howe***

That the Bill do now pass.

Lord Hylton (CB): My Lords, we are led to believe that Third Reading is for the removal of doubt and uncertainties. I believe that there is still a lot of uncertainty over the Dublin III regulation and over discretionary entry outside the Immigration Rules. These uncertainties affect both those who could use the provisions to reunite their families and those who have to administer the provisions or to present compassionate cases to the Secretary of State. The result is that few people get admitted. Under Dublin III, even the Government do not know how many people reach this country—or if they know, they will not say. Under discretionary entry, on the other hand, an average of 35 persons were admitted in each of the last five years. Only last week, the Children's Commissioner for England wrote to the French Government about unaccompanied children now at Calais who may be—

Lord Taylor of Holbeach (Con): My Lords, I am sorry to interrupt the noble Lord, for whom I have a great deal of regard. It is not proper to open a new substantive argument at this stage of the Bill and I think that he is out of order by seeking to do so.

Lord Hylton: My Lords, I have taken the advice of the Public Bill Office and I was told quite clearly that I could make a short intervention at this stage. That is what I am doing.

Lord Taylor of Holbeach: I am sorry, my Lords, but the noble Lord has at least three sheets of paper from which he is reading the comments that he intends to make. I do not consider that a short intervention and I call him to order.

Lord Hylton: My Lords, I have two very brief questions to put to the Minister. First, will the Government immediately consult the British Red Cross, Save the Children Fund and faith groups, which are in daily contact with split families and unaccompanied children? Secondly, will the Government ensure that all the relevant officials are fully briefed about family reunion and how it can be achieved?

Earl Howe: My Lords, with the leave of the House I will briefly answer the noble Lord's questions. First, as he is aware, we regularly consult external partners and experts including the Red Cross and Save the Children. We will continue to do that. Secondly, we are revising our guidance on family reunion, which provides specific guidance for those already in the UK on how to apply for family reunion and instructions for caseworkers on how to consider such applications. We intend to publish this in April and we will communicate it to all relevant officials. Details of how to apply are already available on GOV.UK and refugees granted international protection are advised about their entitlement to family reunion when they receive their asylum decision.

Lord Rosser: I take this opportunity—I believe I am doing it at the right place—to express our thanks to all those who have participated in the debates on the Bill, which I believe is now a better Bill than the one that was sent to us from the House of Commons. We are grateful for the amount of information provided by Ministers and the Bill team, for the numerous meetings that have taken place and for the willingness of Ministers to listen to concerns about the Bill and, in some instances, the willingness of the Government themselves to bring forward amendments or place statements on the record to address those concerns. I particularly express appreciation of the work undertaken during the passage of the Bill by the noble Lord, Lord Bates, whose approach, as with that of his Front-Bench colleagues, has I think been appreciated on all sides of the House.

Baroness Hamwee: My Lords, from these Benches I add our thanks, particularly to the noble Lord, Lord Bates, who has started on a rather long walk, as my noble friend Lord Wallace of Saltaire said. It is one of a series of admirable walks but the noble Lord's colleagues have been walking well alongside him, and after him, during the course of the Bill. It feels a little odd to agree that the Bill do now pass, because we are by no means clear what it will provide by the time that it has endured—a word that the noble Lord the Chief Whip might use—ping-pong. We are by no means finished with these issues or with the Bill itself.

Lord Alton of Liverpool: My Lords, from the Cross Benches, perhaps I can briefly add a remark to those of the noble Baroness, Lady Hamwee, and the noble Lord, Lord Rosser, particularly in paying tribute to the noble Lord, Lord Bates, whose leave of absence was agreed by the House only yesterday. I was privileged to get to know the noble Lord, Lord Bates, when we served in another place and we remained friends after he left the House of Commons. I was delighted when he was appointed as a Member of your Lordships' House; I was even more delighted when the Government had the good sense to appoint him as a Minister of the Crown. He has discharged his responsibilities in the House over the passage of time, particularly on the Modern Slavery Act and now on the Immigration Bill, with great distinction. We have huge admiration for the work that he is undertaking, which is to raise the peace pledge and the work of the Red Cross and Save the Children. It touches on many of the issues which we have debated in your Lordships' House during the passage of the Bill so, before the Bill passes, I am sure that we all add our voices to those which have already been raised in thanking the noble Lord, Lord Bates, for all that he did.

Earl Howe: My Lords, I am sure that my noble friend Lord Bates, were he present today, would be touched and gratified by the comments that have been made about him. I am grateful to all noble Lords who have spoken but, more particularly, I am grateful to the Members on both Opposition Benches and the Cross Benches for their constructive role throughout the passage of this Bill which, as the noble Baroness, Lady Hamwee, has said, has not quite left our Chamber yet. We will be returning to it. Nevertheless, the whole tone of the debate has been extremely positive even when it has been questioning and, from the point of view of the Government's Benches, I express my gratitude for that.

Bill passed and returned to the Commons with amendments.

Energy Bill [HL]

Commons Amendments

5.39 pm

Lord Taylor of Holbeach (Con): My Lords, I have it in command from Her Majesty the Queen and His Royal Highness the Prince of Wales to acquaint the House that they, having been informed of the purport of the Energy Bill, have consented to place their prerogative and interest, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Motion on Commons Amendment 1

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

That this House do agree with the Commons in their Amendment 1.

1: Clause 2, page 2, line 37, at end insert—

"( ) Schedule 1 to the Oil Taxation Act 1975,"

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the amendments in this group add the relevant provisions of the Oil Taxation Act 1975 and the Corporation Tax Act 2010 to the legislation listed at Clause 2(6), which contains the Secretary of State's relevant oil and gas functions. This ensures that the functions provided for by these Acts fall within the definition of "relevant functions"

[Lord Bourne of Aberystwyth]
and can be transferred from the Secretary of State to the Oil and Gas Authority by regulations made under Clause 2(2).

Schedule 1 to the Oil Taxation Act 1975 and Part 8 of the Corporation Tax Act 2010 contain the important oil and gas functions of determining oil fields, cluster areas and whether an oil field project is materially complete. These functions form the basis of oil taxation and are currently undertaken by the Oil and Gas Authority in its capacity as an executive agency. Amendment 2A to Commons Amendment 2 simply seeks to ensure that the function of determining whether an oil field project is materially complete is also transferable to the OGA.

These amendments are technical in nature and simply seek to put it beyond doubt that these key functions can be transferred to the OGA once it becomes a government company, as we have always intended. I beg to move.

Commons Amendment 1 agreed.

Motion on Commons Amendment 2

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

That this House do agree with the Commons in their Amendment 2.

2: Clause 2, page 2, line 39, at end insert—

"( ) Chapter 9 of Part 8 of the Corporation Tax Act 2010,"

Amendment 2A (as an amendment to Commons Amendment 2)

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

2A: Line 2, leave out "Chapter 9 of"

Amendment 2A agreed.

Commons Amendment 2, as amended, agreed.

Motion on Commons Amendment 3

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

That this House do agree with the Commons in their Amendment 3.

3: Clause 8 page 5, line 29, leave out Clause 8

Lord Bourne of Aberystwyth: My Lords, following a Division on Report in this House, a new clause was added to the Bill. This new clause rewrote the OGA's principal objective in three significant ways. First, it removed the Wood review's central premise to maximise the economic recovery of UK petroleum within Part 1A of the Petroleum Act, and replaced it with an objective to maximise the economic return of UK petroleum. Secondly, it imposed on the OGA an obligation to retain oversight of the decommissioning of oil and gas infrastructure. Finally, it imposed an obligation on the OGA to secure oil and gas infrastructure for reuse for the transportation and storage of greenhouse gases. Noble Lords will know that these changes were reversed in Committee in the other place.

The OGA has important functions in respect of both decommissioning and the storage of carbon dioxide. However, the change to the principal objective made on Report detracts from the OGA's focus on maximising economic recovery and is damaging to the North Sea. This is unacceptable—particularly at a time of unprecedented challenge for the oil and gas industry. The OGA should remain focused on maximising economic recovery, and anything other than this risks seriously weakening its ability to provide crucial and urgent support to our oil and gas industry.

The amendment made at Lords Report stage had significant potential knock-on effects. By diluting the OGA's principal objective, it would not only risk the premature decommissioning of key North Sea infrastructure but seriously jeopardise vital skills and experience, including those that could help to promote the longevity of the industry through carbon storage projects. From this perspective, the amendment is self-defeating.

5.45 pm

Furthermore, the MER UK strategy has now been published and is in force. This strategy is focused on the delivery of maximising economic recovery, and any amendment to the principal objective would undo the significant amount of work that has been undertaken with industry. It would also require the OGA to revise this strategy to take into account the expansion in the principal objective.

The Government firmly agree that decommissioning and CCS are of significant importance. It is clearly evident from the provisions currently included in the Bill that we wholeheartedly stand behind the development of these industries and recognise the role the OGA will play in supporting them for the future benefit of the United Kingdom continental shelf. Importantly, the provisions as they stand are substantive and measured, and are welcomed by both the oil and gas and CCS industries. They strike the right balance between ensuring the OGA can deliver what is needed to support the oil and gas industry at this time while keeping its eye firmly on the potential future benefits of CCS.

It is imperative that the OGA's focus be on maximising economic recovery of oil and gas from United Kingdom waters. At this time, industry urgently requires a regulator with—as the honourable Member for Aberdeen South in the other place termed it—a "laser-like focus" on this objective. The OGA is working very closely with government and industry to do all it can to support the North Sea. It is focused on delivering key pieces of work in 2016 with the aim of making the basin more attractive to investment. These include: stimulating exploration in both frontier and mature areas; making new seismic data freely available; introducing regional development plans to protect key hubs and infrastructure; and progressing a technology strategy to make new fields more viable.

We must support the OGA's crucial mission to protect our domestic energy mix and to support jobs. This can be achieved only through supporting the OGA's principal objective—to maximise economic recovery. I hope I have provided noble Lords with clear and strong reasons why it was right for the Commons to remove the clause, thereby restoring the principal objective to that envisaged by Sir Ian Wood in his independent review. I beg to move.

Baroness Featherstone (LD): My Lords, it is our view on these Benches that carbon capture and storage and transportation should have been woven into the

principal objective of the OGA. I hear what the Minister says, but it leaves me some concerns. Although the Government have made many arguments and given many assurances about the importance of carbon capture and storage, we on these Benches are not completely convinced.

I wish to raise with the Government some points which still give us great concern about the level of commitment to carbon capture and storage and indeed about their ability to deliver on our legally binding targets. If CCS is not going to be integral to the principal objective and functions of the OGA, we might have had more confidence and assurance if Her Majesty's Government had agreed to an earlier amendment in the name of the noble Lord, Lord Oxburgh, to which my noble friend Lord Teverson added his name, which would have required the Government to undertake and develop a national strategy for carbon capture and storage. CCS is such a vital part of decarbonisation for the period when carbon is still being produced that we have grave concerns in this regard.

On Report in this House, the Minister made great efforts to assure the House of the Government's commitment to carbon capture and storage and about the money invested—£130 million since 2011 to support research, development and innovations to foster the next generation of CCS technologies. In Committee, the Minister assured us:

> "It is not as though no work is happening on carbon capture and storage. We are committed to a competition with up to £1 billion capital—that is current, and we will make an announcement on it early in 2016".—[*Official Report*, 7/9/15; col. 1230.]

That was on 7 September 2015. On 25 November 2015, Her Majesty's Government cancelled that £1 billion Conservative manifesto pledge, as was stated in this House.

I simply say to the Minister that actions speak louder than words, so perhaps he will understand that we on these Benches would like to trust the Government's words, but they have made it somewhat difficult. Time will, of course, tell, but I remind the Minister that carbon capture and storage is a vital component of our ability to meet our carbon emissions targets. The establishment of the OGA was an opportunity to embed proper regard and action on transportation and storage. That is now an opportunity lost.

Baroness Liddell of Coatdyke (Lab): My Lords, I will not delay the House unduly, and I draw attention to my entry in the Register of Members' Interests as the new president of the Carbon Capture and Storage Association. I have some very big boots to fill in the shape of the noble Lord, Lord Oxburgh.

I do not want to replay what has happened to development proposals for carbon capture and storage, I say to the Minister only that there are great opportunities with it, but investors and the industry now need reassurance from the Government. There are interesting developments, not least within our regions. The Dutch are increasing their interest in carbon capture and storage. As we come to the closing stages of the Bill, I ask the Minister to regroup on the issue, to give us back some reassurance and to look to the positive opportunities that lie ahead. Britain can lead in this technology, but it will take some commitment from the Government and the industry. The key thing needed at the moment is reassurance to the industry.

Baroness Worthington (Lab): My Lords, I, too, express some concerns about the removal of the amendment in the Commons. Although I have listened to the argument that it would detract from the intention behind the OGA, I seriously hope that the Government will look back at the primary objectives that they have given it and conduct a timely review—I know that that will happen.

Since we last considered the amendment, we have had two important events. The first was referred to by the noble Baroness, Lady Featherstone: the cancellation of the carbon capture and storage project. I do not intend to debate the whys and wherefores of that, but it is clear that there has been a significant dent in investor confidence. People have invested in good faith in this technology knowing that, to meet our long-term climate targets, we need a form of capture and storage for certain sectors of our industry.

The second big event is the signing of the Paris agreement, when the Government and the Secretary of State, Amber Rudd, played an enormous role in making it the success that it was. That states a very clear target for the world: that we must get our anthropogenic sources, our sources of carbon emissions, matched and cancelled by anthropogenic sinks. That largely means capturing and storing carbon and putting it underground. We need to take that Paris equation seriously.

Viscount Ridley (Con): I suggest to the noble Baroness that a third event has happened—we have the early results from the Canadian carbon capture and storage project, which is by far the most advanced in the world. They are very disappointing in terms of the amount of carbon dioxide reduction and the cost that it has taken to achieve it.

Baroness Worthington: I note that, but I would just say that we are not Canada and we are very fortunate to have the North Sea as a reserve to use, which I believe would make it more cost efficient if we could do it in a timely fashion—obviously, not wanting to gold-plate anything, but making the best of the resource that we have in this nation. As I said, we need some reassurances from the Government. I am part of the group that the noble Lord, Lord Oxburgh, has now set up, which is looking at the whole issue afresh. We do not want to push carbon capture and storage for its own sake, but only in so far as it gives us options to decarbonise at least cost. I hope that the Minister will be able to say some words of reassurance about that process and the seriousness with which the Government will take the recommendations of that group.

Lord Howell of Guildford (Con): My Lords, I agree that carbon capture is one of the keys to the future of energy and climate policy, because, if it can be done commercially and successfully, it will allow us to continue burning fossil fuels but in ways where the carbon is extracted. This is the case for continuing with fossil

[Lord Howell of Guildford]
fuels, and perhaps slightly undermines the case of those who want to abolish fossil fuels altogether, because the whole point is that you can carry on if you have the technology.

Through your Lordships, I ask the noble Baroness who just spoke from the Liberal Democrat Benches whether they have thought about alternative and cheaper carbon removal technologies. There is carbon capture utilisation, which is developing in all sorts of new areas. It is beginning to look as though it can undermine the vast costs of piping carbon away into the North Sea. As we heard from the Minister, that would set back the problems in the North Sea, which are enormous and one hesitates to add any burdens to them, however important one may think the technology. So if there are cheaper ways of going forward, surely we should be going those ways.

That makes sense of what I understand from my noble friend to be the Government's strategy, which is that the experimental efforts with carbon capture and storage in its full glory, with piping, transmission, finding places in the North Sea and overcoming all the vast technical and cost problems, can be replaced by something rather more imaginative. We may be moving in the right direction. My question is whether the Liberal Democrats have thought about those alternatives before pressing something which will obviously hurt the oil and gas industry in the North Sea at a time when it is already hurt very considerably.

Baroness Featherstone: I am happy to answer the noble Lord's question. The Liberal Democrats keep an open mind on all technologies which can advance our climate change agenda. However, in Peterhead, for example, projects were well advanced and should have been continued.

Viscount Younger of Leckie (Con): My Lords, I am sorry to interrupt, but at this stage of the Bill noble Lords are not allowed to speak more than once.

The Lord Bishop of Chester: My Lords, speaking briefly from these Benches but entirely personally, because bishops take different views on this, I welcome the realism that lies behind the Commons amendment. Following on from the contribution of the noble Lord, Lord Howell, it may well be that nature's way of carbon capture and storage is some sort of vegetation. That may be the solution, but it is hardly a function for the Oil and Gas Authority to supervise. The great cost of extracting carbon dioxide—which can be done perfectly easily, technically—and then transporting it under the North Sea would increase energy prices in this country to an extent that would make the recent threat to our steel industry look like simply the foothills. It would have a major impact in raising energy costs. So the Commons amendment limiting the function of the Oil and Gas Authority is realistic and entirely supportable.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords for participating in the debate on this amendment. I will try to cover the points raised and do justice to some very important ones. First, there is nothing inconsistent in having a laser-like focus on the development of the North Sea as a principal objective set out by the Government and developing CCS. I reassure noble Lords who raised the issue—the noble Baronesses, Lady Featherstone, Lady Liddell and Lady Worthington—that the Government are very much wedded to the importance of CCS. As the noble Baroness, Lady Worthington, said, we set up an advisory committee chaired by the noble Lord, Lord Oxburgh, who I do not think is in his place. He brings to this task great expertise. It has cross-party representation, with all principal parties here represented and also the Scottish nationalists from another place. We will be responding to the advice that we receive from the committee, which I think will come in a timely way at the end of the summer or the beginning of the autumn. I know that the committee has met at least three times already and is driving this agenda very hard.

I will mention what we are doing on CCS to reassure noble Lords. There is collaboration with key partners who are also developing CCS; we are sharing data and research with them. Officials in the department are working on CCS; this is not an area where there is no activity. Our science and innovation budget has been increased, and we are looking at how we can usefully use it. There are developments on Teesside with industrial CCS, which is important. My noble friend Lord Howell made a valid point about carbon capture usage, which is also a key part of what we are looking at—but these things are best done together.

I thank my noble friend Lord Ridley for mentioning the issue of Canada; we study progress there very closely. I also thank the right reverend Prelate the Bishop of Chester for injecting some realism about the importance of having that laser-like focus on the North Sea, but, at the same time, as has rightly been accentuated and stressed by other noble Lords in the debate, developing a CCS strategy. With that, I commend the amendment.

Commons Amendment 3 agreed.

6 pm

Motion on Commons Amendments 4 and 5

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

That this House do agree with the Commons in their Amendments 4 and 5.

4: Clause 17, page 12, line 7, leave out "one year" and insert "three years"

5: Clause 17, page 12, line 12, leave out "one year" and insert "three years"

Lord Bourne of Aberystwyth: My Lords, Commons Amendments 4 and 5 overturn amendments made at Lords Report stage. They reinstate the original wording of Clause 17, to require the Secretary of State to carry out reviews of the OGA's performance and functions on a no more than three-yearly, ongoing basis. There is broad consensus that measures are needed to ensure that the OGA remains well equipped to address the diverse challenges faced by the oil and gas industry.

Its role and scope, including in relation to the storage of carbon dioxide, needs to be appropriate, sufficient and regularly evaluated. As such, the Government introduced provisions requiring review of the OGA's effectiveness in exercising its functions, as well as review of the fitness for purpose and scope of such functions.

However, requiring an initial review to take place no later than one year after the Bill comes into force, and then annually for subsequent reviews thereafter, would be an incredibly onerous process for government, the OGA and industry. Moreover, it would likely have myriad unintended consequences. It would require the almost continuous evaluation of the effectiveness of the OGA, with very little time to implement the recommendations from each review. Reviews would be extensive, needing to cover both statutory and non-statutory functions, and an assessment of effectiveness against external factors, such as changes in the regulatory landscape, operational practices across the UK continental shelf and environmental and economic factors.

All this would be required as part of the review to enable the Secretary of State to produce a report setting out the findings of the review which is to be laid before Parliament. This would create significant resource burdens both for the OGA and government, and risk obstructing the work of the OGA. This process would be inefficient and likely to result in an ineffective review. It would weaken the OGA's ability to act as an independent regulator free from government intervention. It would also create a review process significantly out of step with other regulators.

There will be other mechanisms in place to ensure that the OGA's performance and functions are appropriate. The OGA will publish, on an annual basis, a refreshed five-year business plan and an annual report and accounts. The need for an arm's-length body charged with effective stewardship and regulation of the UK continental shelf was a central recommendation of the Wood review. I believe that the original three-year review periods introduced by government must be reinstated to avoid conflict with that recommendation. I beg to move.

Commons Amendments 4 and 5 agreed.

Motion on Commons Amendment 6
Moved by ***Lord Bourne of Aberystwyth***

That this House do agree with the Commons in their Amendment 6.

6: After Clause 79, insert the following new Clause—

"Onshore wind power: closure of renewables obligation on 31 March 2016

(1) In Part 1 of the Electricity Act 1989 (electricity supply), after section 32LB insert—

"32LC Onshore wind generating stations: closure of renewables obligation

(1) No renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after 31 March 2016 by an onshore wind generating station.

(2) Subsection (1) does not apply to electricity generated in the circumstances set out in any one or more of sections 32LD to 32LL.

(3) In this section and sections 32LD to 32LL "onshore wind generating station" means a generating station that—

(a) generates electricity from wind, and

(b) is situated in England, Wales or Scotland, but not in waters in or adjacent to England, Wales or Scotland up to the seaward limits of the territorial sea.

(4) The reference in subsection (1) to a renewables obligation order is to any renewables obligation order made under section 32 (whenever made, and whether or not made by the Secretary of State).

(5) Power to make provision in a renewables obligation order or a renewables obligation closure order (and any provision contained in such an order) is subject to subsection (1) and sections 32LD to 32LL.

(6) This section is not otherwise to be taken as affecting power to make provision in a renewables obligation order or renewables obligation closure order."

(2) The Renewables Obligation Closure Order 2014 (S.I. 2014/2388) is amended as follows.

(3) In article 2(1) (interpretation), after the definition of "network operator" insert—

""onshore wind generating station" means a generating station that—

(a) generates electricity from wind, and

(b) is situated in England, Wales or Scotland, but not in waters in or adjacent to England, Wales or Scotland up to the seaward limits of the territorial sea;".

(4) In article 3 (closure of renewables obligation on 31st March 2017)—

(a) in the heading, after "solar pv stations" insert "or onshore wind generating stations";

(b) in paragraph (1), after "solar pv station" insert "or an onshore wind generating station"."

Lord Bourne of Aberystwyth: My Lords, the Government remain committed to delivering our manifesto pledge to end new subsidies for onshore wind. To deliver on this commitment the Government are intent on bringing forward the closure of the renewables obligation to new onshore wind in Great Britain. It is the Government's view that all the government amendments in this group are consequential on each other.

Commons Amendment 6 reinserts the early closure clause removed at Lords Report stage. It gives effect to the manifesto commitment to end new subsidies for onshore wind. As I set out during our earlier debates, the Government have engaged widely on their intention and have considered in detail each of the proposals that have been raised, not only by noble Lords and Members in the other place but by many valued industry stakeholders during the passage of the Bill. The Government are committed to protecting consumers from the rising costs of energy bills while also protecting investor confidence. It is the Government's opinion that the new clauses presented here do exactly this.

To protect investor confidence, the Government have proposed a grace period for those projects, meeting certain conditions as at 18 June last year, as outlined in the Statement on that date by my right honourable friend the Secretary of State for Energy and Climate Change, Amber Rudd. The grace period conditions set out in Commons Amendment 7 are intended to protect those projects which already had the following as at 18 June last year: first, relevant planning consents; secondly, a grid connection offer and acceptance of that offer, or confirmation that no grid connection is required; and, thirdly, access to land rights.

[Lord Bourne of Aberystwyth]

In addition, and to address feedback from industry, certain projects which have been granted planning permission following a successful appeal will also be eligible for the grace period. This will include those projects which have, as a result of a judicial review or an appeal, had a negative planning decision which was made on or before 18 June last year subsequently overturned.

The Government have also taken on board concerns raised by industry about an investment freeze. Following industry engagement after the 18 June announcement last year, we have seen evidence that certain projects have been experiencing difficulty securing funding due to legislative uncertainty caused by the Bill's passage through Parliament. We have, therefore, sought to address this through the investment freezing condition. This will ensure that projects which meet the approved development condition, and which would otherwise have been able to commission and accredit under the RO by the original closure date, 31 March 2017, are not frozen out of the process. This investment-freezing condition has been designed specifically to protect the projects that were intended to be able to access the grace period as proposed on 18 June last year but which have been unable to secure debt funding pending Royal Assent due to legislative uncertainty. Indeed, feedback from industry suggests that it supports and welcomes such a measure.

The Government want to take a consistent approach to all onshore wind projects eligible to accredit under the RO. The Commons amendments therefore also seek to ensure that an existing grace period for delays caused by grid or radar works will continue to apply. Let me reiterate so no ambiguity remains: this is a manifesto commitment based on plans which we signalled well before the election. The honourable Member for Coatbridge, Chryston and Bellshill, Mr Philip Boswell, said at Committee stage in the other place:

"We agree that swift passage of the Bill with clear and consistent RO grace period provisions is needed in order to provide certainty to investors in the onshore wind sector as quickly as possible. The renewables industry fears that the longer legislative uncertainty over RO closure persists, the greater the risk of otherwise eligible projects running out of time to deliver under the proposed grace periods".—[*Official Report*, Commons, Energy Bill Committee, 2/2/16; col. 127.]

On Commons Amendment 8, the Government would like to see an equivalent approach to closure of the RO to onshore wind taken across the UK. Commons Amendment 8 gives the Secretary of State a power to make regulations, which, if made, would prevent suppliers in Great Britain using Northern Ireland renewables obligation certificates. These would relate to electricity generated by new onshore wind stations and any additional capacity added to existing wind stations after the onshore wind closure date. This power allows for circumstances to be specified in regulations when such Northern Ireland renewable obligation certificates may still be used, and for the setting of a later date than the onshore wind closure date. The power has been included with an intention to protect consumers in Great Britain from the costs of any additional support which Northern Ireland chooses to provide.

This is a backstop power; it would be used only if Northern Ireland does not close its renewable obligation to new onshore wind on equivalent terms to the rest of the United Kingdom. As my honourable friend the Minister of State Andrea Leadsom confirmed in the other place, this power would be used only in relation to new onshore wind stations and additional capacity in Northern Ireland that do not meet closure conditions equivalent to those in Great Britain.

I am pleased to say that renewable obligation in Northern Ireland has now closed to large-scale new onshore wind stations with a capacity above 5 megawatts with effect from 1 April 2016, and that Northern Ireland is currently consulting on closing stations at 5 megawatts and below on equivalent terms to the rest of the United Kingdom. The Government continue to engage with Northern Ireland with a view to effecting closure on equivalent terms to Great Britain through Northern Irish legislation, but this backstop power is included with a view to delivering on our manifesto commitment across the whole of the United Kingdom.

Amendment 10 seeks to ensure simply that the provisions set out in Commons Amendments 6, 7 and 8—that is, the early closure of the RO to new onshore wind in Great Britain, together with the related grace-period provisions, and the backstop power relating to the RO in Northern Ireland—will come into force on Royal Assent. As my honourable friend the Minister of State Andrea Leadsom set out in the other place, the Government intend the provisions implementing the early closure of the RO to come into force on the date of Royal Assent and do not intend to backdate these provisions.

Government amendments to Commons Amendments 6, 7 and 8 further clarify that the onshore wind closure date will be the date on which the Bill achieves Royal Assent. These changes are set out in government Amendments 6A, 6B, 7A to 7S, 7AJ to 7AL and 8A to 8C. The amendments also include a number of consequential changes to the investment-freezing condition, extending it by one month to account for the additional period of legislative uncertainty. The amendments further ensure that projects seeking to access the grid or radar delay condition would continue to have an additional 12 months to accredit where they satisfy the relevant eligibility requirements. The Government are making these changes to provide clarity and certainty for the industry, and our policy makes it clear that we are taking steps to protect consumer bills while also balancing the interests of industry. I beg to move.

Lord Foulkes of Cumnock (Lab): I shall speak to Amendments 7U, 7V, 7W, 7Y, 7AC, 7AD and 7AE which are in my name. The Minister is a good friend of mine, and I have great respect for him. Before he became a Minister, he and I used to work together on the great issue of devolution of powers to Scotland and Wales. We worked very well together, so I want to reassure him that I have every interest in him continuing in his post. I do not want him to do anything that would threaten his future. That is why I want to reassure him that everything that I am suggesting is in line with the Conservative election manifesto pledge.

Lord O'Neill of Clackmannan (Lab): That is a first.

Lord Foulkes of Cumnock: It is indeed. Absolutely. As my noble friend Lord O'Neill said, it is unusual—exceptional—for me to do that.

Lord Hain (Lab): Unprecedented.

Lord Foulkes of Cumnock: It is unprecedented, as my noble friend Lord Hain says. I also want to reassure the Minister that no constituencies of English Conservative MPs will be affected by this because I know some of them are genuinely worried about the effect on their constituencies. What I am suggesting in my amendments and what others are suggesting in theirs deals with proposals principally in Scotland and with very important community projects in Scotland. Two categories are dealt with in my amendments. The first category is those covered by Section 75 which are unable to go ahead not because they do not have planning permission —they have managed to get that—but because of some technicality. We are suggesting that that technicality is creating huge problems for them. The other category is in relation to grid connections. There is a particular problem in Scotland with the transmission and distribution grids not necessarily being as easily available as south of the border and having different arrangements. Some projects have fallen foul of these regulations.

If we put the schemes together, they amount to only just under 90 megawatts of generation. It is not a huge amount we are asking for. It is a relatively small amount. They all have the democratic consent of the local council, which is one of the matters raised in the Conservative election manifesto. I shall give the House a couple of examples. There is a scheme in Sorbie, a working dairy farm in Ardrossan in north Ayrshire, that has full planning consent and for which bank finance has been secured, a turbine contract has been agreed and design work has been started. Nearly £1 million has been spent on the scheme by the people concerned. The family-run working dairy farm is already suffering because of the low price of milk. If this project were to be cancelled because of the Government not accepting the amendments being put forward today, it would be in real difficulty. That is the kind of problem that is being faced.

6.15 pm

The Minister said that representations from stakeholders were considered. With respect to the noble Lord—as I said, I do have respect for him—I do not think that the representations put forward on behalf of these small, independent projects have been properly considered. They have been frozen out. The Minister quoted the honourable Member for Coatbridge, Chryston and Bellshill about concern about uncertainty. I say to him, and to the honourable Member, that uncertainty can arise in different ways. There can be uncertainty because Parliament has not come to a decision, but if the Minister were to accept our amendment, that uncertainty would go completely. It would be gone, there would be no problem in relation to that uncertainty, and Sorbie would go ahead.

I shall give another example, that of Inverclyde. It is another wind farm project. The earliest available grid connection date for it is November 2016, which has been accepted, albeit after the 18 June cut-off date. The connection distance to the grid is less than 100 metres, hence the extremely quick connection date, and in this instance there is a very limited requirement for additional infrastructure. At present, Inverclyde would not qualify because a grid connection offer had not been accepted as at 18 June 2015. That is another technicality. Again, we have a number of projects—not a large number, a small number—which lose out because of technicalities. I hope that the Minister will seriously consider this because it is important for Ayrshire, an area I used to represent, for Lanarkshire and indeed for Dumfriesshire in the constituency of the Secretary of State for Scotland. My understanding—and I hope the Minister will confirm this—is that Mr Mundell is strongly in favour of this scheme going ahead.

I have spoken long enough. I hope that the Minister will give this serious consideration. It is not going to be a problem. It is not in conflict with the Tory election manifesto pledge; it is not going to upset Tory MPs in England. Apart from one, all the projects are in Scotland, and they are losing out because of technicalities. To make sure that they do not suffer as a result of the Government's arbitrary decision, I hope that the Minister will genuinely and sincerely consider accepting, if not my amendment, then the amendment tabled by my noble friend Lord Grantchester, before we come to a Division today.

Lord Hardie (CB): My Lords, on Report I drew attention to the unfair effect upon a development on Skye. The original provisions about the date upon which the guillotine would fall on new onshore wind farms discriminated against a development at Glen Ullinish in Skye which had planning permission, control of the land, the support of the local community and an agreement to link to the grid; the developers were paying money to the grid in fulfilment of that agreement. The only reason why the development could not go ahead was that the grid had to be upgraded, and that could not be achieved within the appropriate time.

I voted with the amendment that removed the clause from the Bill, but afterwards I wrote to the Minister to explain that that was the only option I had. I called on him and the Secretary of State to consider accommodating this unusual situation. I am grateful to the Minister, the Secretary of State and officials in the department for giving this matter consideration. Unlike the noble Lord, Lord Foulkes of Cumnock, I read the new Clause 32LL as a solution to the difficulty that there is a grid or radar delay condition. I seek confirmation from the Minister that I am reading it correctly, but I genuinely think it has enabled the development at Glen Ullinish to proceed. As I indicated in my letter, if that problem were resolved and a clause were brought back that accommodated this issue, I would support it, subject to the Minister's confirmation that my understanding of Clause 32LL is correct.

Lord Hain (Lab): My Lords, I tabled Amendment 7T and took the liberty of giving the Minister a copy of my draft speech in advance, in the hope of his co-operation and acceptance of the amendment. The Bill as it stands puts at risk a multimillion pound investment in Wales in and around my home area of Neath Port Talbot, which is already facing massive economic

[Lord Hain]
haemorrhage resulting from the threat to Tata Steel. The issue at stake relates to an already consented project, Gamesa's Llynfi Afan renewable energy project, which has had its planning condition varied through a Section 73 consent to allow for a different road access route. The project is ready to start construction, and some of the major work is going to local businesses, with obvious positive implications for jobs, which in that area is welcome.

On 27 August 2013, the Llynfi Afan renewable energy project was granted consent by Neath Port Talbot County Borough Council. Previous consent had already been granted by two other local authorities, Bridgend County Borough Council on 18 July 2013 and Rhondda Cynon Taff on 13 October 2011. However, due to a change in the proposed site access route, the developer, Gamesa, successfully applied for variation of two conditions of the Neath Port Talbot permission by way of Section 73 consent. I stress that the variations dealt solely with the access route for turbine component deliveries to the site of the consented generating station itself, and its capacity will remain unaltered. As such, the impact on the DECC budget is neutral.

The variations were approved on 24 February 2016 by Neath Port Talbot County Borough Council. As I understand it, where an application under Section 73 is granted, the effect of the Planning Act 1990 is the issue of a new planning permission, with a new decision date, sitting alongside the original permission, which remains intact and unamended. The consent and conditions of the original consent are preserved, as is the implementation date by which the construction of the generating station should have been started. On Report in the House of Lords, the noble Lord, Lord Bourne, said:

"Where consent is granted for development on or before 18 June and is subsequently varied",—[*Official Report*, 21/10/15; col. 668.]

in this way, it will continue to fall within the approved development condition.

While that is very welcome and positive for this project, regrettably, his statement by itself has proved insufficient to achieve adequate investor confidence. That is because the renewable obligation certificate is awarded after the wind farm has been built and has proven to be exporting electricity to the grid. Investors therefore need certainty before construction, otherwise there is a risk that the project could be built but not receive the required support. As a result, investors wish for certainty reflected in the legislation, and without the amendment the project will be put at risk. The amendment therefore aims to resolve the issue and ensure that the project can go ahead, matching government intent and delivering investment in the local community. My understanding is that without the amendment, such variation permissions as Section 73 would not qualify under the Government's grace period condition.

The investors' legal advisers have said that, as the Energy Bill currently stands, it fails to reflect the position that variation consents are fresh planning permissions as a matter of law, as used to be the case. They assert that without an amendment, such variation permissions would not qualify under the Government's grace period condition. Amending the Bill would make it absolutely clear and avoid any additional funding being added other than what the Government have already allowed for.

In the particular case of Llynfi Afan Renewable Energy Park, tens of millions of pounds will be invested in the construction and operational phases. The communities have widely supported Gamesa's Section 73 application, as they support the project and wish to see it happen. The local community stands to gain substantially in community benefits, and in terms of business rates and direct and indirect local employment opportunities. Gamesa is in the final stages of appointing a contractor who will be responsible for building the wind farm and, as such, will require employment and services from the locality. It has been Gamesa's aim to work wherever possible with local companies, involving local jobs, and will continue to do so during the construction and operational phases.

I appeal to the Minister to agree to the amendment. If he finds some technical fault with it—although it is not obvious to me what that might be—will he agree to write a letter to the developers explaining why the Bill as it stands, without the amendment, meets their objectives and that they will be able to proceed, notwithstanding the fact that this amendment may not be accepted by the House?

Lord Wallace of Tankerness (LD): My Lords, the Minister has moved Amendment 6 and spoken to Amendment 7, and I want to speak principally to my amendments to Amendment 7. My noble friend Lady Featherstone may say something about the wider issue of the early closure of the renewables obligation in respect of onshore wind generating stations. The Minister has repeated the Conservative Party manifesto commitment that there will be no new subsidies for onshore wind, but I well recall the comment from the noble Baroness, Lady Worthington, that it is difficult to think that a new subsidy is actually the early closure of a long-existing subsidy. The Minister repeats that again and again, but no one is seeking to overturn the early closure. However, the grounds he has stated—that it is a manifesto commitment—are somewhat doubtful.

I have yet to find many people in the industry who think this is a very wise move at all. It is not simply about what is being done with onshore wind; as we have already heard in this debate, a large amount of the investment made in developments over a long period will be cut off at a fairly arbitrary date. The Government's capriciously cutting off developments in the way proposed affects the confidence of those who want to invest not only in onshore wind renewables but in the entire renewables industry and, indeed, in other infrastructure developments.

Turning to the amendments, I begin by thanking the Minister for his willingness to engage through exchanges of letters and in meetings. One reason why we on these Benches were very happy to support the move to take out the principal clause in the original Bill was not that we did not expect the Government to try to bring back the clause, but that we felt that it

would give them an opportunity to reflect on and try to improve the grace periods. Although they were welcome as far as they went, they certainly fell far short of what many people in the industry—I would say almost universally—thought was required.

What has been disappointing, and perhaps not in keeping with the way this House operates when we ask the Government to think again, is that we have absolutely no sense that they are willing to compromise in any way whatever. They have said that there is no compromise, and that is why the amendments that I have tabled—particularly Amendment 7X—embody quite a number of the changes which the industry wants to see and on which we have had representations. I invite your Lordships to support that amendment. I hope that if that measure is brought back in—after all, the Bill has to go back to the Commons because the Government have brought forward amendments to their own amendments—there will be a further opportunity for the kind of engagement that is part and parcel of the way this House operates. Certainly, when I had the privilege of sitting on the Front Bench and dealing with amendments, I tried to find some means of compromise when there were Lords defeats.

6.30 pm

Perhaps I may go through the amendments, although I do not want to rehearse at great length the arguments that have been made before. Amendment 7X relates to proposed new Section 32LJ in Commons Amendment 7 and concerns the consent condition. The purpose underlying proposed new paragraph (d) in my amendment is that we believe that there have been cases where the local planning authority has resolved to grant planning permission on or before 18 June 2015 further to a planning committee consent, but the formal rubber-stamping has not taken place until after 18 June 2015. In those circumstances, it seems that where a reasonable expectation of consent has been raised, it should be carried through.

I turn to proposed new paragraph (e) in the amendment. The Government have argued that if a local authority had taken the decision in time and it had been the right one, it would be unfair to the developer not to have an opportunity to have it backdated just because the matter was called in. However, our proposal would take account of circumstances in which developers had been working alongside the community, the 16 weeks had elapsed and they had not run to the Secretary of State or Scottish Ministers and said, "They haven't given us a decision. We want you to call this in now for Ministers to make the decision". In fact, in many respects that would run totally counter to what the Conservative Party has been preaching about local decision-making. That would be a decision taken centrally or nationally and not left to local determination.

Therefore, with this proposed new paragraph we seek to allow decisions where there has been local engagement and an extension of the period, and the discussions have continued—that is, engagement not just with the local planning authority but with local communities. We know of a number of cases where that has happened. In these circumstances, it seems only fair and reasonable to allow a decision to be made where the local community has been consulted and brought into the picture, and subsequent to 18 June a favourable planning decision has been made. When we debated this matter in Grand Committee, I gave details of the Binn Eco Park wind farm, which I think is in Perthshire—it is in Perth and Kinross Council. The application was made on 7 November 2014 and there had been considerable discussions since 1 May. Binn Eco had completed everything technically to meet the cut-off date and the matter was ready to be considered at a local planning committee meeting, but in fact the planning committee did not meet until 15 July—after 18 June. Therefore, in a development where every effort had been made to engage, the local community lost out because of the planning committee's cycle of meetings. Again, that did not seem particularly fair.

Proposed new paragraph (f) concerns Scotland being in a different position from the rest of Great Britain. When this Parliament decided to raise the threshold of megawattage capacity for planning applications in England and Wales above 50 megawatts, which was the position in the Electricity Act 1989—this is not a consequence of devolution—it chose not to do so for Scotland. I am glad to say that when we debated this matter during the passage of the Scotland Bill, the Parliamentary Under-Secretary of State, the noble Lord, Lord Dunlop, said that the Government were prepared to look at this to see whether there should be proper further devolution.

A 65-megawatt development is proposed on the border between East Lothian and Scottish Borders. A year after the application was put in, a decision was taken by East Lothian Council and Scottish Borders Council to object. They did not have the statutory role—that was for Scottish Ministers—but the consequence of their objection was that the application then went to Scottish Ministers, who ordered an inquiry. The outcome of the inquiry is still awaited. We will probably have to wait until after the Scottish parliamentary elections before the decision can be announced, but quite clearly it will not be announced until well after 18 June. However, had that development been 50 miles further south in Northumbria, it would have been dealt with by Northumberland County Council. Having decided that they did not like the application, the councils, rather than just stating a statutory objection, would have been able to refuse the application in March last year. That would have been the subject of an appeal. If, following an inquiry, the appeal had been successful, the application would have qualified under the provisions here.

As I said, that is not a consequence of devolution; it is a consequence of different planning rules north and south of the border. What are otherwise identical developments do not get treated in the same way. This is not a hypothetical situation. It occurred to me that there might be an issue of hybridity here and today I wrote to the Clerk of Legislation. The *Companion* says that hybrid Bills are,

"public bills which are considered to affect specific private or local interests, in a manner different from the private or local interests of other persons or bodies of the same class, thus attracting the provisions of the Standing Orders applicable to private business".

[Lord Wallace of Tankerness]
Clearly here we have the private interest of a developer in Scotland. There could be an equivalent developer in England in exactly the same position, but the one in Scotland is treated differently and does not get the same appeal rights or the same access to grace period rights as the one south of the border. I gave the clerk very little time in which to respond. He spoke to me this afternoon and said that he could understand why I had raised the point—so I was certainly in the ballpark—but he did not think that regional variations qualified. However, if it is not a legal hybrid, I think that there is a moral hybrid there. It is fundamentally unfair that after a substantial amount of money and effort has been put into this development it should fall foul in that way.

Proposed new paragraph (g) refers to an application for planning permission having been made before 18 June 2014, and its purpose is to show that these matters have a long lead time. A lot of money, time and energy are expended, yet if for some reason planning permission is not granted by 18 June all that effort can go to naught.

Proposed new paragraph (h) has already been referred to by the noble Lord, Lord Foulkes of Cumnock, and it is also the subject matter of the amendment in the name of the noble Lord, Lord Grantchester. It concerns a situation where for all intents and purposes a planning decision has been made and planning permission has been granted, but it has been subject in Scotland to a Section 75 agreement or in England and Wales a Section 106 agreement. The Government's unwillingness to move on this has bewildered the industry. Many people in the renewables industry cannot recall a situation where such relevant agreements have not been forthcoming. As someone in the industry said to me, it is rather like passing all your exams but then being refused a graduation certificate.

In practice, the council and the applicant work together to ensure that the project report that goes to the council committee for a decision covers all the issues that may need bonding or other legally binding commitments so that the committee is minded to consent. The "minded to consent" notice is issued and has conditions attached to it. Those conditions are known to be deliverable, because any other practice would be a waste of everyone's time. The industry has had over 15 years of refining the process along with local government. That process has now matured and is well understood. Examples of projects that have failed to be issued with a final consent after a committee has been minded to approve, subject to the signing of a Section 75 or Section 106 agreement, are rare, if they exist at all.

An interesting example of this is the Twentyshilling Hill wind farm in the constituency of the right honourable Secretary of State for Scotland. That planning application was made on 15 May 2013. Dumfries and Galloway Council's planning committee approved the application, subject to Section 75 agreement, on 16 December 2014. Almost six months before the cut-off date the planning committee approved the application. It was not until four months later that Dumfries and Galloway Council appointed external lawyers to act for it on the matter of Section 75. I do not know why that four months elapsed, but it was a crucial four months and may well have had nothing to do with the power of the developers. The following month, a draft Section 75 agreement was circulated by solicitors and, on 17 June, the Section 75 agreement was agreed and circulated for signature. On 18 June, it was signed by the landowner and the developer and, also on 18 June, Dumfries and Galloway Council issued a letter of comfort to Element Power stating that a minuted decision of the council's applications in committee appears on the council's website, and that it is a public document and a clear statement of the committee's decision on this planning application—an agreement signed on 19 June by Dumfries and Galloway Council. The planning notice was issued on 1 July.

Was there ever such an example of where the capricious date of 18 June has had such a fundamental impact, through no fault of the developers? Of all the amendments, this is probably the one that the industry would set most store by. I can see no good reason why the Government have been unable to show any willingness at all to agree to that.

New Section 32LJ(5) relates to the grid connection. I am led to believe that what we propose—the noble Lord, Lord Foulkes of Cumnock, spoke to this very clearly—reflects the reality of what the industry experience is as regards grid connections and is an improvement on what the Government are proposing. I am interested to hear the Minister's response to the point raised by the noble and learned Lord, Lord Hardie.

Amendment 7AF picks up the point that the noble Lord, Lord Hain, spoke to with great power, on variations. I too have received representation, including from the developers of a project similar to the one that he referred to. Again, substantial amounts of money are involved and no confidence or clarity has been found in what has been said so far by the Government that any variation will in fact allow them to qualify. I raised this point with the noble Lord the Minister and he replied by letter earlier this month. Obviously, he has made statements, his honourable friend Andrea Leadsom has made statements, and there is something in the Ofgem consultation document. But in his letter the noble Lord said:

> "I hope that the following information will help to clarify your concerns, as I am aware that the legislative regime underpinning the different consents is complex. As you are aware, the Bill provisions define 'planning permission' to include: planning permission under the Town and Country Planning Act 1990".

There is a line missing from the copy I have with me, but he also referred to the Scottish legislation of 1997, and continued:

> "Each of these statutory regimes provides an existing consent to be varied, via the following routes: an existing (England and Wales) 1990 Act permission can be varied under section 73 (variations to conditions), 96A (non-material changes), 97 (modification and revocations) and 68 (modification and revocation by the Secretary of State) of the 1990 Act".

He goes on to say that there are similar arrangements with regard to 1997 Scottish Act permissions, consents under Section 36 of the Electricity Act 1989, and development consents under the Planning Act 2008, and that:

> "For the purposes of the 'approved development condition', a developer needs to demonstrate that the generating station which it is seeking to accredit had planning permission in place (for that station) on or before 18 June 2015. We understand that varying an

existing planning consent under any of these routes set out above generally results in a determination by the relevant decision-maker that makes clear reference to the original consent. Should the developer/project wish to make a change to their planning consent to such an extent that a new planning consent is issued—with no reference to the original consent—and that consent is granted after 18 June 2015—this would no longer meet the grace period criteria".

I have shared that letter with those in the industry, and they think that it is better than anything that has yet been said on the record. It would be very helpful if, first, the Minister was to respond positively to the points made by the noble Lord, Lord Hain, and, secondly, if he could place on record from the Dispatch Box what he said to me in his letter of last week on variations. In fairness, those in the industry have found it a more helpful and clearer exposition of what the position is as regards variations than anything that they had heard beforehand.

I turn now to the question of the investment freeze. There is a lot in this and a lot of people have made representations, so it is only fair that they get the chance to have their argument made. It would be far easier if the Government had conceded on a lot of these things, but I intend to persevere with this because these are important points—I am not going to be bullied. The investment freezing condition is one which, rightly, the Government have responded to. But as the Minister well knows, we do not feel that it has gone far enough and important bodies have been left out, including Triodos, a body regulated by the Financial Conduct Authority and the Prudential Regulation Authority, with more than 25 years' experience of financing renewable energy; Temporis Capital, which is currently supporting a development with funds provided by the Green Investment Bank; and Abundance. These bodies have track records in supporting developments and we have heard no good reason from the Minister or the Government other than that he is concerned about gaming. However, these are reputable institutions and there is no suggestion that any of them is gaming.

6.45 pm

Finally, I turn to my other amendments, Amendments 7AA and 7AM. These have been drawn to the attention of myself and the noble Earl, Lord Lindsay, by 3R Energy Solutions Ltd in respect of a development at Douglas West and Dalquhandy in South Lanarkshire—again, I think, in the constituency of the Secretary of State for Scotland. They relate to a 45-megawatt development which, crucially, has been promoted by a community group. Community groups have considerable disadvantages compared to larger developers. The pre-start funding process can take considerable time before they can even start the planning process. This particular development is located on an ex-opencast coal mine in an area with a legacy of deprivation and unemployment due to lack of jobs and poor housing. That is a legacy of the closure of the mining industry, but here is an opportunity to replace an old energy industry with a new energy industry. It is true that the planning application did not go in until after 18 June. However, in February last year the requirement to carry out pre-application consultation did start, and that is an important step on the way.

The Minister will readily recognise that community groups take longer to raise funds and that they have to go through all these other things. This group has proceeded in a way that has engaged its community and needed the time required to consult with others. The project enjoys local support and, indeed, 100% of the stakeholders in the Dalquhandy renewable energy project have their personal residence within 10 miles of the location. It seems very unfair to a community group that has put so much effort into a project that will generate jobs and income for a depressed and deprived community that it should fall foul of what was a somewhat arbitrary date. Perhaps the noble Earl, Lord Lindsay, will say more about that. However, the group made a very compelling case that it set in motion the formal statutory procedures some four or five months before 18 June and therefore should not be prejudiced in this regard.

I conclude by reminding the Minister of what he said when he moved the statutory instrument with regard to the early closure of the renewable obligation for solar below 5 megawatts:

> "One of the grace periods was designed to protect developers who could show that a significant financial commitment had been made on or before the date on which the proposals were announced. This required evidence that a planning application had been made, among other things, as a proxy for the financial commitment".—[*Official Report*, 16/3/16; col. 1916.]

That was a significant commitment, and one which was right. He justified it on the grounds that it was also done for those above 5 megawatts. It has now been done for two early closures and it should be done for this one as well, recognising the significant financial commitments made by communities and developers. We have heard nothing so far but I hope that tonight we will hear some encouragement from the Minister. I also hope that the Official Opposition will be prepared to back us in trying to get some movement from the Government on this important issue.

Baroness Quin (Lab): My Lords, I would like just very briefly to seek clarification on something that has arisen from our debates. I do not know whether I am alone in not being sure of the implications of what we are discussing here. However, I would like to know from the Minister, or indeed from those who tabled the amendments, how many schemes are affected, where they are, and whether any of the schemes that might be affected by the amendments are ones where the local communities have very much opposed the developments that are taking place.

I feel in something of quandary in approaching these amendments, because I do not want schemes which have a lot of public support, referred to by my noble friends Lord Foulkes of Cumnock and Lord Hain, to be prevented from going ahead, but at the same time I hope that what is proposed would not allow schemes to go ahead in my own county of Northumberland, where a large number of schemes have been introduced against the wishes of local people and local communities. I would not like them to go ahead because of changes that we are considering introducing here via amendments.

The Minister knows that I have a lot of sympathy with the Government's approach, in that a lot of schemes have been inflicted on local communities in

[Baroness Quin]
sensitive landscapes and in areas where we are trying to develop tourism. It has been a real issue in Northumberland, which has twice as much onshore wind capacity as any other English county. I would simply like to hear from the Minister and others whether there are implications for Northumberland in what is proposed today.

Baroness Worthington: My Lords, I was not intending to speak on this amendment, but, as the noble and learned Lord, Lord Wallace, was kind enough to refer to me, I want to ask a simple question. I want also to pay tribute to the commitment shown by the noble and learned Lord in the detailed way in which he has approached this question and sought to canvass a wide section of views on this clearly still controversial topic.

My question is more about the future. The Government are doing what they wish to do and it is clear that we need to see a pathway towards all renewables standing on their own two feet, supported, one hopes, by a carbon price which makes investment in cleaner technologies a sensible way forward. My question is in relation to another event that has taken place since we last considered this matter, which is the announcement about the auctions of CFDs. I understand that onshore wind will not be eligible for CFDs. I wonder whether there has been representation from Scotland in that decision-making process, since many questions about eligibility for the RO could be alleviated if there was access for Scottish wind farms to a CFD or equivalent that Scotland could determine. That is my question. It is less about the detail looking backwards over this government statement than about the Government saying something reassuring about repatriating an element of energy control to Scotland to enable it to persevere with this industry, which is clearly very important to it.

The Earl of Lindsay (Con): My Lords, I support the amendments in the name of the noble Lord, Lord Foulkes, and of the noble and learned Lord, Lord Wallace of Tankerness. In particular, I want to speak to Amendments 7AA and 7AM in the name of the noble and learned Lord.

As the noble and learned Lord said, there are two important realities that these amendments seek to address. The first is that planning regulations in Scotland, unlike in England, require a set period of pre-engagement. This means that the submission of a major planning application can take place only once a statutory three or more months of consultation have taken place. In Scotland, therefore, between three and six months is added to the equivalent statutory period that applies in England. In effect, the lodging of this proposal of application notice in Scotland is at exactly the same point in the process as the lodging of a planning application in England. In other words, it is the start of the formal planning process either side of the border.

The second reality that the noble and learned Lord's amendment seeks to address is that projects involving community equity are inherently disadvantaged alongside established developers in terms of the speed with which they can develop their projects, the level of finance that they have available, the time it takes them to get the requisite level of finance and the relative risks they take in getting a project to a particular stage by a particular date. Securing the initial funding for a community stake takes valuable time before the actual planning process can even be initiated.

As a result of these two realities, the Scottish planning regulations and the challenges facing community projects, this Bill would lead to the following scenario. A community-based project could be stopped dead in its tracks despite a significant investment involving a community shareholding having been committed well before 18 June, despite that project having been firmly and formally within the Scottish planning process since well before 18 June and despite all other grace period criteria having been met. Such a scenario would be a regrettable and, I believe, unintended consequence, especially given the importance that the Government attach to the involvement of local communities in, and their support for, onshore renewable projects. As the noble Lord, Lord Foulkes, said, that aspiration was expressed in the Conservative manifesto.

On the concerns expressed by the noble Baroness, Lady Quin, at the same time as such a community project would be stopped dead in its tracks, other cases that were refused planning permission before 18 June by the local planning authority—in other words, they did not have local support—but were subsequently granted on appeal would be able to accredit under the grace periods, while a genuinely community project which is fully committed by 18 June, with full local support and equity ownership, would not. The noble Baroness has therefore raised a very serious concern.

Such a scenario would be addressed by Amendments 7AA and 7AM in the name of the noble and learned Lord, Lord Wallace of Tankerness. They would ensure that community projects that had committed significant financial resources, that had been in the formal planning process well before 18 June and that now had permission and accorded with all the other grace period requirements were given a reasonable grace period to deliver.

Like other Members of this House, I have been grateful to the Minister for his willingness to correspond and engage on the issues relating to this Bill, and I am grateful for the correspondence that I have had with him about the issues behind the amendments. I want to reassure him on two concerns that he raised with me. The first was a concern that, in accepting these amendments, there would be significant additional deployment. This is not the case. Research through RenewableUK data demonstrates that the amendment would lead to an additional deployment of only 45 megawatts, as the noble and learned Lord, Lord Wallace, said. That is less than 0.1%—that is, 1/10th of 1%—of the current annual ROC spend.

My noble friend the Minister also expressed the view that the amendments run counter to policy intent. I can reassure him that they do not. They are about improving in a very precise and limited way the flexibility in how the Bill would apply, especially in Scotland. The amendments are modest in their intent and negligible in their cost and therefore in their impact on the ROC

budget, yet, as we have heard from other noble Lords and especially the noble and learned Lord, Lord Wallace, they would deliver significant local benefits.

I hope that the House and especially my noble friend the Minister will support the amendments or at least consider them constructively. They deal with the very lengthy pre-application consultation requirements in the Scottish planning system and with the challenges that community projects face. I will listen carefully to my noble friend's response, and hope it is a positive one.

7 pm

Lord Grantchester (Lab): My Lords, I shall speak to Amendment 7AB, tabled in my name. The Energy Bill started in your Lordships' House shortly after the generally unexpected Conservative majority in the general election last year. It focuses primarily on the setting-up of the Oil and Gas Authority. Into the Bill, the new Conservative Government thrust two new clauses on onshore wind, closing down early, to a date of 18 June, the renewables obligation. Hurriedly, the Government agreed to consider exceptions, as grace periods, to allow schemes to complete as they had travelled a long way through the development stage, in good faith and at considerable cost.

While understanding that the Government have to draw a new line somewhere to give effect to this measure, your Lordships' House was not content that sufficient logic had been applied and passed the Bill to the Commons with these two clauses omitted from it. These clauses now return to your Lordships' House but without material amendment having being made in the Commons to these grace period proposals.

Amendment 7AB proposes a logical, consistent, clear, honest and fair extension to the exceptions agreed by the Government. The wider onshore wind industry has come to a consensus and supports this single, narrow extension to the existing renewables grace period criteria. The proposed change is for projects that have achieved democratic local consent for their development at a planning committee on or before 18 June 2015 but received Section 75 in Scotland and Section 106 in England and Wales agreement after that date. At present they are excluded.

This cannot be said to be against Conservative Party policy. It is widely considered that a decision made by a democratically elected local planning committee embodies the principle of giving local people the final say. To deny this extension is to deny and prevent local people having the final say on wind farm applications.

The publication of a resolution to grant permission is considered by both developers and local authorities to be a procedural step and that planning permission is to follow—in effect, agreement is all but made. The industry is not aware of any commercial project that received local community consent at planning committee and was not awarded a written decision because of a failure to complete a Section 75/106 agreement. Continuing to proceed on the basis that planning consent is secured, developers have greater sunk costs at this stage. Formal notice is expected because a resolution by a planning committee is a real and substantial commitment.

The lack of logic in the Government's position arises from the concession they have granted to projects refused permission at 18 June but subsequently agreed on appeal. Projects refused on 18 June, although overturned, can qualify, whereas agreements resolved on 18 June and subsequently fulfilled cannot. This is a bizarre interpretation. The legal advice that the industry has received categorically states that there is as much "legal right" to a planning permission resolved at local level as there is to a permission subsequently granted on appeal following a refusal by a planning committee. As I have said, the Government are content to allow these successful appeals to proceed.

Grace period concessions for anomalies and complexities around the criteria should allow for projects which have local consent but missed the cut-off date due to the time needed for a planning authority to complete a Section 75/106 agreement and issue a decision notice. It would comply with Conservative policy that locally approved wind farms be enabled to go ahead.

To allow this concession will not open—I will not say floodgates—a gale of projects coming forward. I understand the industry has put forward a list of projects that received resolution for approval but where formal permission was issued after 18 June. The list totals seven projects—six in Scotland and one in England. This totals just under 90 megawatts. To put this into context, 90 megawatts would power 50,000 households—a mere fifth of 1% of more than 26 million households and about 1% of the present onshore wind capacity of over 8,500 megawatts. Surely the Minister cannot contend this to be a major concession.

As to the amendments tabled by the noble and learned Lord, Lord Wallace of Tankerness, he has worked tirelessly on trying to get a fair outcome for projects started in good faith by people who have committed substantial time and assets to bring forward onshore wind developments—which, after all, will be the least-cost technology providing low-carbon power. He has worked extensively, engaging with industry and the Government, to get a resolution that does the decent thing by these developers.

This measure closing down the renewable obligation has been one of the many taken by this Government that has done severe damage to investor confidence and led to a Commons departmental committee issuing a report on investor confidence in the UK energy sector.

I do not doubt that the amendments the noble and learned Lord has tabled are thought through with good intentions. However, I have targeted this side of the House's focus specifically on the very minimum that could be considered reasonable, given that onshore wind developments are likely to be coming to an end in any case. His Amendment 7X, in part, supports my case. Yes, we want to be fair where we can, considering that the provision can be said to be in the Conservative Party manifesto, and the Commons has expressed its decision. We ask the Government to think again on the small measure I propose, at the very least, and show some consistency

I thank my noble friend Lord Hain for bringing this situation and his amendment to the attention of the House today. It allows me to underline just how destructive the Government's arbitrary cut-off date of projects

[Lord Grantchester]
has been. A great amount of uncertainty now exists throughout the renewables sector and I urge the Minister and his department to open a dialogue with their Welsh counterparts to resolve this anomaly as quickly as possible.

I turn now to the amendments in the name of my noble friend Lord Foulkes of Cumnock and supported by my noble friend Lady Liddell and others. My noble friend's Amendment 7Y, in part, also supports the case that I have made. Unfortunately, he includes other provisions that go beyond the small, narrow extension to the Government's concessions. The fact that six of the seven projects arising from this extension are in Scotland shows the importance of wind power for jobs and enterprise there. He has identified the effect on schemes locally in Scotland in his remarks. It is unfortunate that the Government have brought back the renewables obligation scheme to be solely under the reserve of the Westminster Parliament by withdrawing it from being a devolved matter.

From the amendments that have come forward, I consider it reasonable to press ahead with the amendments that I propose.

Lord Bourne of Aberystwyth: My Lords, we have had a wide-ranging debate on the opposition amendments which I shall try to cover in my response. I shall take the speeches in the order in which they were made.

I acknowledge the great efforts that have been made by the noble and learned Lord, Lord Wallace, the noble Lords, Lord Foulkes, Lord Grantchester and Lord Hain, and the noble Earl, Lord Lindsay, and I thank them for their comprehensive suggestions and the detailed drafting of the amendments. I also thank them for their hard work and forensic skill—particularly that of the noble and learned Lord, Lord Wallace—in putting them forward.

I understand the points that are being made. There is, by and large, a doctrinal difference in attitudes to onshore wind between the Opposition and the Government. Hence it was in our manifesto and not in those of other parties. That should be our starting point.

I should make one thing clear that I hope I do not need to make clear. There were many references to my right honourable friend the Secretary of State for Scotland and projects being in his constituency and I hope no one was suggesting that there should be special treatment in that regard. Let me make it clear that there will not be—nor would the right honourable member for Dumfriesshire, Clydesdale and Tweeddale expect such.

I thank the noble Lord, Lord Foulkes, for his unusual, unprecedented and almost unique accolades. We go back a long way on devolution and, as he knows, I have the greatest respect for him. I am about to damage him with his Benches in the same way as he damaged me with mine but I thank him for his contribution. I contest the point he is making about these being mere technicalities—they are much more than that.

As noble Lords will appreciate, I cannot respond to all of the detailed projects because I do not have knowledge of every single one. Of those I do, I will endeavour to say what I can on them, but I cannot specifically carry the knowledge of where we are on them all. I certainly would encourage noble Lords and the developers to be in touch with the department because officials are keen to engage, to be helpful, and to give clarity in relation to these different projects.

I pay tribute to the noble Lord, who I know makes great efforts on behalf of his part of Scotland and the area he used to represent, and he has put forward a powerful case. I shall pick up on a point made by the noble Baroness, Lady Quin, and say that of course there would be an impact on deployment. Obviously if we alter the law it will not be just in relation to Scotland, it will apply to the whole of the country. It will not be laser-like on a particular area, so it will increase deployment, as the noble Lord, Lord Grantchester, indicated in his remarks. His figure was higher than that suggested by my noble friend Lord Lindsay. Further, as has been indicated, we have undertaken extensive consultation.

I turn to the points made by the noble Lord, Lord Hain, and I thank him very much indeed for making me aware of what he was going to say in relation to Llynfi Afan in the Afan Valley and the Gamesa project there. As he knows, DECC officials have already been engaged with the developer and they are happy to continue to do that. I am also certainly happy to write to Gamesa, as he indicated. From what I gather, this is not a difficulty with the Welsh Government, as has just been suggested. I do not think that that is the case at all. This project has planning permission so we will certainly take a close look at it and clarify the position. If I can help in that regard, of course I will.

I turn to the points made by the noble and learned Lord, Lord Hardie, on the issue of the grid and radar delay as set out in the letter that we sent to him. If I can, I will get officials to contact him again in case there is a lack of clarity on that or if there is an ambiguity; I do not think there is. I know that it is an issue that matters to other noble Lords as well.

I turn to the noble and learned Lord, Lord Wallace, who raised many points with forensic skill, as he does. As he has been around the legal block a bit he will know that cut-off dates are always a problem. It can be suggested that they are capricious or arbitrary, but virtually all legislation has cut-off points in it, and there will always be someone on the other side of them who you wish you could help. But in reality a cut-off point has to be set, and that is what we have done. I can understand that it does not appeal to some people, but of course it is arbitrary only in the sense that any date is arbitrary, so even if we moved in the way he has suggested, there would be other projects that would fall just the other side of the line.

I think that the noble and learned Lord's ultimate conclusion was that there is no hybridity in this Bill. If that was his conclusion, I agree with him; this is not an issue about hybridity. Scottish developers are subject to Scottish planning law and those in England and Wales are subject to English and Welsh planning law. It is not unusual for differences in law to arise on either side of the border these days, and indeed it is now happening more and more in relation to Wales as well, producing different practical results. I do not think that that causes hybridity unless a specific private interest is affected, but I do not see that being the case

here. So, with regret, I do not think that I can move on any of the points he has raised. We have made our position very clear.

Perhaps I may just say in response to some of the matters that have been brought up in relation to Scotland—I understand the particular interest in Scotland because of the massive deployment there; it has benefited massively, there is no doubt about that—that it was not a significant issue in the House of Commons. I did not think it was and so I double-checked it. That is not to say that it is not a matter that needs to be addressed, but it is interesting to note that it did not seem to be a massive issue in another place.

The noble Baroness, Lady Worthington, set out a position in relation to CFDs and the Scottish Government. We have set the rules for CFDs and we have said that they will not be considered for the round of CFDs in this year, but I am very willing to ensure that we engage with the Scottish Government, as we do on energy issues, to see if there is anything that we can do in relation to future CFD rounds. I will take that away and look at it.

The noble and learned Lord, Lord Wallace, raised an issue about what he saw as the improved clarity set out in the letter that I sent to him. That is the correct position, and we will ensure that the letter is circulated to noble Lords who have participated in the debate and we will make use of it too if it is helpful to developers, as indeed we do. The correct position is set out in it, so I will be happy to do that.

The noble Lord, Lord Grantchester, spoke kindly about our unexpected election victory as he saw it, and he also said quite rightly, for which I thank him, that one has to draw the line somewhere. That is a very realistic position. We can take different views as to where the line should be drawn. He talked about democratic control, but I would make the point that this does not stop wind farms deploying onshore, it ends the subsidy. People need to grasp that. The position is that we do not want to carry on subsidising where there is no continued need for subsidy. That is the basis on which we are moving and one of the prime reasons for this provision.

7.15 pm

Lord Bruce of Bennachie (LD): My Lords, I apologise for not being here at the beginning of the Bill, having only joined the House since then. On the basis of what was said by my noble and learned friend Lord Wallace and the noble Earl, Lord Lindsay, like the noble Baroness, Lady Quin, I represented an area which had an awful lot of applications, but we found that the big developers got in very quickly and were able to process their applications, whereas the small community proposals took a lot longer and found it more difficult, so they were later in the field. They have been caught by this. Does the Minister not recognise that the Government could find themselves in a situation where they are seen to have gone against communities in favour of big business? That just compounds the difficulty and the ideological divide that the Government are pursuing.

Lord Bourne of Aberystwyth: The noble Lord is wrong on the issue because, with the grace period and with the investment-freeze conditions, we have allowed for movement on these issues. I take the point that he is making but I do not agree with it.

I am just double-checking, but I hope that I have now done full justice to the comments that have been made.

Lord Wallace of Tankerness: My Lords, I do not think that the Minister has addressed two points, one of which is the investment-freeze conditions and green organisations such as Triodos, which do not appear to qualify. Even at this late stage, would he be prepared to look at this again? I also refer to the points made by the noble Earl, Lord Lindsay, and myself with regard to community investments. I do not think that the Minister has specifically addressed that issue as regards the Dalquhandy and West Douglas development.

Lord Bourne of Aberystwyth: Taking the latter point first, I think that I did so in response to the comments made by the noble Lord, Lord Bruce. We do not see any reason for distinguishing between community projects and others. That would only give rise to difficulties.

On the investment-freeze conditions, I think that the noble and learned Lord is pursuing the lenders point. There is no intention to alter the list. It is something that I think could be done in the future without primary legislation, but there is no proposal to change that. I apologise for not covering it earlier.

I think that I have covered all the main points, and with that, I ask noble Lords to withdraw their amendments.

Amendments 6A and 6B (as amendments to Commons Amendment 6)

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

6A: Line 9, leave out "31 March 2016" and insert "the onshore wind closure date"

6B: Line 12, after "32LL" insert "—

"the onshore wind closure date" means the date on which the Energy Act 2016 is passed;"

Amendments 6A and 6B, as amendments to Commons Amendment 6, agreed.

Commons Amendment 6, as amended, agreed.

Motion on Commons Amendment 7

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

That this House do agree with the Commons in their Amendment 7.

7: Insert the following new Clause—

"Onshore wind power: circumstances in which certificates may be issued after 31 March 2016

(1) Part 1 of the Electricity Act 1989 (electricity supply) is amended as follows. (2) After section 32LC (inserted by section [*Onshore wind power: closure of renewables obligation on 31 March 2016*] of this Act) insert—

"32LD Onshore wind generating stations accredited, or additional capacity added, on or before 31 March 2016

The circumstances set out in this section are where the electricity is—

(a) generated by an onshore wind generating station which was accredited on or before 31 March 2016, and

(b) generated using—

(i) the original capacity of the station, or

(ii) additional capacity which in the Authority's view first formed part of the station on or before 31 March 2016.

32LE Onshore wind generating stations accredited, or additional capacity added, between 1 April 2016 and 31 March 2017: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 April 2016 and ending with 31 March 2017, and

(ii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31 March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2016 and ending with 31 March 2017, and

(iii) the grid or radar delay condition is met in respect of the additional capacity.

32LF Onshore wind generating stations accredited, or additional capacity added, on or before 31 March 2017: approved development condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited on or before 31 March 2017, and

(ii) in respect of which the approved development condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31 March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station on or before 31 March 2017, and

(iii) the approved development condition is met in respect of the additional capacity.

32LG Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 March 2018: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 April 2017 and ending with 31 March 2018,

(ii) in respect of which the approved development condition is met, and

(iii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31 March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 March 2018,

(iii) the approved development condition is met in respect of the additional capacity, and

(iv) the grid or radar delay condition is met in respect of the additional capacity.

32LH Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 December 2017: investment freezing condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 April 2017 and ending with 31 December 2017, and

(ii) in respect of which both the approved development condition and the investment freezing condition are met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31 March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 December 2017, and

(iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity.

32LI Onshore wind generating stations accredited, or additional capacity added, between 1 January 2018 and 31 December 2018: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 January 2018 and ending with 31 December 2018,

(ii) in respect of which both the approved development condition and the investment freezing condition are met, and

(iii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31 March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 January 2018 and ending with 31 December 2018,

(iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity, and

(iv) the grid or radar delay condition is met in respect of the additional capacity.

32LJ The approved development condition

(1) This section applies for the purposes of sections 32LF to 32LI.

(2) The approved development condition is met in respect of an onshore wind generating station if the documents specified in subsections (4), (5) and (6) were provided to the Authority with the application for accreditation of the station.

(3) The approved development condition is met in respect of additional capacity if the documents specified in subsections (4), (5) and (6) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.

(4) The documents specified in this subsection are—

(a) evidence that—

(i) planning permission for the station or additional capacity was granted on or before 18 June 2015, and

(ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,

(b) evidence that—

(i) planning permission for the station or additional capacity was refused on or before 18 June 2015, but granted after that date following an appeal or judicial review, and

(ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,

(c) evidence that—

(i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2015 for the station or additional capacity,

(ii) the period allowed under section 78(2) of the 1990 Act or (as the case may be) section 47(2) of the 1997

Act ended on or before 18 June 2015 without any of the things mentioned in section 78(2)(a) to (b) of the 1990 Act or section 47(2)(a) to (c) of the 1997 Act being done in respect of the application,

(iii) the application was not referred to the Secretary of State, Welsh Ministers or Scottish Ministers in accordance with directions given under section 77 of the 1990 Act or section 46 of the 1997 Act,

(iv) 1990 Act permission or 1997 Act permission was granted after 18 June 2015 following an appeal, and

(v) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached, or

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, planning permission is not required for the station or additional capacity.

(5) The documents specified in this subsection are—

(a) a copy of an offer from a licensed network operator made on or before 18 June 2015 to carry out grid works in relation to the station or additional capacity, and evidence that the offer was accepted on or before that date (whether or not the acceptance was subject to any conditions or other terms), or

(b) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, no grid works were required to be carried out by a licensed network operator in order to enable the station to be commissioned or the additional capacity to form part of the station.

(6) The documents specified in this subsection are a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at 18 June 2015 a relevant developer of the station or additional capacity (or a person connected, within the meaning of section 1122 of the Corporation Tax Act 2010, with a relevant developer of the station or additional capacity)—

(a) was an owner or lessee of the land on which the station or additional capacity is situated,

(b) had entered into an agreement to purchase or lease the land on which the station or additional capacity is situated,

(c) had an option to purchase or to lease the land on which the station or additional capacity is situated, or

(d) was a party to an exclusivity agreement in relation to the land on which the station or additional capacity is situated.

(7) In this section—

"the 1990 Act" means the Town and Country Planning Act 1990;

"1990 Act permission" means planning permission under the 1990 Act (except outline planning permission, within the meaning of section 92 of that Act);

"the 1997 Act" means the Town and Country Planning (Scotland) Act 1997;

"1997 Act permission" means planning permission under the 1997 Act (except planning permission in principle, within the meaning of section 59 of that Act);

"exclusivity agreement", in relation to land, means an agreement by the owner or a lessee of the land not to permit any person (other than the persons identified in the agreement) to construct an onshore wind generating station on the land;

"planning permission" means—

(a) consent under section 36 of this Act,

(b) 1990 Act permission,

(c) 1997 Act permission, or

(d) development consent under the Planning Act 2008.

32LK The investment freezing condition

(1) This section applies for the purposes of sections 32LH and 32LI.

(2) The investment freezing condition is met in respect of an onshore wind generating station if the documents specified in subsection (4) were provided to the Authority with the application for accreditation of the station.

(3) The investment freezing condition is met in respect of additional capacity if the documents specified in subsection (4) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.

(4) The documents specified in this subsection are—

(a) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at the Royal Assent date—

(i) the relevant developer required funding from a recognised lender before the station could be commissioned or additional capacity could form part of the station,

(ii) a recognised lender was not prepared to provide that funding until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted, and

(iii) the station would have been commissioned, or the additional capacity would have formed part of the station, on or before 31 March 2017 if the funding had been provided before the Royal Assent date, and

(b) a letter or other document, dated on or before the date which is 28 days after the Royal Assent date, from a recognised lender confirming (whether or not the confirmation is subject to any conditions or other terms) that the lender was not prepared to provide funding in respect of the station or additional capacity until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted.

(5) In this section—

"recognised lender" means a provider of debt finance which has been issued with an investment grade credit rating by a registered credit rating agency;

"the Royal Assent date" means the date on which the Energy Act 2016 is passed.

(6) For the purposes of the definition of "recognised lender" in subsection (5)—

"investment grade credit rating" means a credit rating commonly understood by registered credit rating agencies to be investment grade;

"registered credit rating agency" means a credit rating agency registered in accordance with Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies.

32LL The grid or radar delay condition

(1) This section applies for the purposes of sections 32LE, 32LG and 32LI.

(2) The grid or radar delay condition is met in respect of an onshore wind generating station if, on or before the date on which the Authority made its decision to accredit the station, the documents specified in subsection (4), (5) or (6) were—

(a) submitted by the operator of the station, and

(b) received by the Authority.

(3) The grid or radar delay condition is met in respect of additional capacity if, on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station, the documents specified in subsection (4), (5) or (6) were—

(a) submitted by the operator of the station, and

(b) received by the Authority.

(4) The documents specified in this subsection are—

(a) evidence of an agreement with a network operator ("the relevant network operator") to carry out grid works in relation to the station or additional capacity ("the relevant grid works");

(b) a copy of a document written by, or on behalf of, the relevant network operator which estimated or set a date for completion of the relevant grid works ("the planned grid works completion date") which was no later than the primary date;

(c) a letter from the relevant network operator confirming (whether or not such confirmation is subject to any conditions or other terms) that—

(i) the relevant grid works were completed after the planned grid works completion date, and

(ii) in the relevant network operator's opinion, the failure to complete the relevant grid works on or before the planned grid works completion date was not due to any breach by a generating station developer of any agreement with the relevant network operator; and

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant grid works had been completed on or before the planned grid works completion date.

(5) The documents specified in this subsection are—

(a) evidence of an agreement between a generating station developer and a person who is not a generating station developer ("the radar works agreement") for the carrying out of radar works ("the relevant radar works");

(b) a copy of a document written by, or on behalf of, a party to the radar works agreement (other than a generating station developer) which estimated or set a date for completion of the relevant radar works ("the planned radar works completion date") which was no later than the primary date;

(c) a letter from a party to the radar works agreement (other than a generating station developer) confirming, whether or not such confirmation is subject to any conditions or other terms, that—

(i) the relevant radar works were completed after the planned radar works completion date, and

(ii) in that party's opinion, the failure to complete the relevant radar works on or before the planned radar works completion date was not due to any breach of the radar works agreement by a generating station developer; and

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant radar works had been completed on or before the planned radar works completion date.

(6) The documents specified in this subsection are—

(a) the documents specified in subsection (4)(a), (b) and (c);

(b) the documents specified in subsection (5)(a), (b) and (c); and (c) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if—

(i) the relevant grid works had been completed on or before the planned grid works completion date, and

(ii) the relevant radar works had been completed on or before the planned radar works completion date.

(7) In this section "the primary date" means—

(a) in a case within section 32LE(a)(i) or (b)(i) and (ii), 31 March 2016;

(b) in a case within section 32LG(a)(i) and (ii) or (b)(i) to (iii), 31 March 2017;

(c) in a case within section 32LI(a)(i) and (ii) or (b)(i) to (iii), 31 December 2017."

(3) In section 32M (interpretation of sections 32 to 32M)—

(a) in subsection (1), for "32LB" substitute "32LL";

(b) at the appropriate places insert the following definitions—

""accredited", in relation to an onshore wind generating station, means accredited by the Authority as a generating station which is capable of generating electricity from renewable sources; and "accredit" and "accreditation" are to be construed accordingly;";

""additional capacity", in relation to an onshore wind generating station, means any generating capacity which does not form part of the original capacity of the station;";

""commissioned", in relation to an onshore wind generating station, means having completed such procedures and tests in relation to the station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that it is capable of commercial operation;";

""generating station developer", in relation to an onshore wind generating station or additional capacity, means—

(a) the operator of the station, or

(b) a person who arranged for the construction of the station or additional capacity;";

""grid works", in relation to an onshore wind generating station, means—

(a) the construction of a connection between the station and a transmission or distribution system for the purpose of enabling electricity to be conveyed from the station to the system, or

(b) the carrying out of modifications to a connection between the station and a transmission or distribution system for the purpose of enabling an increase in the amount of electricity that can be conveyed over that connection from the station to the system;";

""licensed network operator" means a distribution licence holder or a transmission licence holder;"; ""network operator" means a distribution exemption holder, a distribution licence holder or a transmission licence holder;";

""onshore wind generating station" has the meaning given by section 32LC(3);";

""original capacity", in relation to an onshore wind generating station, means the generating capacity of the station as accredited;";

""radar works" means—

(a) the construction of a radar station, (b) the installation of radar equipment,

(c) the carrying out of modifications to a radar station or radar equipment, or

(d) the testing of a radar station or radar equipment;";

""relevant developer", in relation to an onshore wind generating station or additional capacity, means a person who—

(a) applied for planning permission for the station or additional capacity,

(b) arranged for grid works to be carried out in relation to the station or additional capacity,

(c) arranged for the construction of any part of the station or additional capacity,

(d) constructed any part of the station or additional capacity, or

(e) operates, or proposes to operate, the station;"."

Amendments 7A to 7S (as amendments to Commons Amendment 7)

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

7A: Line 8, leave out "31 March 2016" and insert "the onshore wind closure date"

7B: Line 11, leave out "31 March 2016" and insert "the onshore wind closure date"

7C: Line 15, leave out "31 March 2016" and insert "the onshore wind closure date"

7D: Line 18, leave out "between 1 April 2016 and 31 March 2017" and insert "in the year after the onshore wind closure date"

7E: Line 24, leave out "with 1 April 2016 and ending with 31 March 2017" and insert "immediately after the onshore wind closure date and ending with the first anniversary of the onshore wind closure date"

7F: Line 30, leave out "31 March 2016" and insert "the onshore wind closure date"

7G: Line 34, leave out "with 1 April 2016 and ending with 31 March 2017" and insert "immediately after the onshore wind closure date and ending with the first anniversary of the onshore wind closure date"

7H: Line 50, leave out "31 March 2016" and insert "the onshore wind closure date"

7J: Line 71, leave out "31 March 2016" and insert "the onshore wind closure date"

7K: Line 82, leave out "December 2017" and insert "January 2018"

7L: Line 88, leave out "December 2017" and insert "January 2018"

7M: Line 95, leave out "31 March 2016" and insert "the onshore wind closure date"

7N: Line 100, leave out "December 2017" and insert "January 2018"

17P: Line 105, leave out "January 2018 and 31 December 2018" and insert "February

2018 and 31 January 2019"

7Q: Line 111, leave out "January 2018 and ending with 31 December 2018" and insert

"February 2018 and ending with 31 January 2019"

7R: Line 120, leave out "31 March 2016" and insert "the onshore wind closure date"

7S: Line 120, leave out "31 March 2016" and insert "the onshore wind closure date"

Amendments 7A to 7S, as amendments to Commons Amendment 7, agreed.

Amendment 7T (as an amendment to Commons Amendment 7)

Tabled by ***Lord Hain***

7T: Line 145, after "2015," insert "regardless of whether it was varied after that date by any planning permission, consent or development consent issued under section 73 of the Town and Country Planning Act 1990 (determination of applications to develop land without compliance with conditions previously attached), section 42 of the Town and Country Planning (Scotland) Act 1997 (determination of applications to develop land without compliance with conditions previously attached), section 36C of this Act (variation of consents under section 36) or under the Planning Act 2008,"

Lord Hain: My Lords, on the basis of the Minister's kind offer to write to the developer, I will not move the amendment.

Amendment 7T, as an amendment to Commons Amendment 7, not moved.

Amendments 7U to 7W, as amendments to Commons Amendment 7, not moved.

Amendment 7X (as an amendment to Commons Amendment 7)

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

7X: Leave out lines 176 to 185 and insert—

"(d) evidence that—

(i) an application for 1990 Act permission or 1997 Act permission was made before 18 June 2015 for the station or for additional capacity,

(ii) the relevant planning authority resolved to grant 1990 Act permission or 1997 Act permission on or before 18 June 2015, and

(iii) planning permission was granted after 18 June 2015, and

(iv) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached, or

(e) evidence that—

(i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2015 for the station or additional capacity,

(ii) the period allowed under section 78(2) of the 1990 Act (or as the case may be) section 47(2) of the 1997 Act ended on or before 18 June 2015 without any of the things mentioned in section 78(2)(a) to (b) of the 1990 Act or section 47(2)(a) to (c) of the 1997 Act being done in respect of the application, except than an extended period has been agreed in writing between the applicant and planning authority for the purposes of section 78(2) of the 1990 Act or section 47(2) of the 1997 Act,

(iii) the application was not referred to the Secretary of State, Welsh Ministers or Scottish Ministers in accordance with directions given under section 77 of the 1990 Act or section 46 of the 1997 Act,

(iv) planning permission was granted after 18 June 2015, and

(v) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached, or

(f) evidence that—

(i) an application for consent for the station or additional capacity was made under section 36 and the consultation period prescribed by regulations made under paragraph 2(3) of Schedule 8 had expired prior to 18 June 2015,

(ii) during the consultation period, the relevant planning authority had notified the Secretary of State that they had objected to the application and their objection had not been withdrawn,

(iii) the Secretary of State caused a public inquiry to be held,

(iv) following consideration of the objection and the report of the person who held the inquiry, the Secretary of State granted consent and deemed planning permission after 18 June 2015, and

(v) any conditions as to the time period within which the development relates must be begun have not been breached, or

(g) evidence that—

(i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2014 for the station or additional capacity,

(ii) planning permission was granted after 18 June 2015, and

(iii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached, or

(h) evidence that on or before 18 June 2015 the relevant planning authority made a decision to grant planning permission for the station or additional capacity, or made a decision to grant or to intend to grant planning permission for the station or additional capacity, subject to an agreement under section 106 of the 1990 Act (planning obligations) or section 75 of the 1997 Act (agreements regulating development or use of land); and such an agreement is concluded before the onshore wind closure date, or

(i) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, planning permission is not required for the station or additional capacity.

(5) The documents specified in this subsection are—

(a) a copy of an offer from a licensed network operator made on or before 18 June 2015 to carry out grid works in relation to the station or additional capacity, and evidence that the offer was accepted on or before that date (whether or not the acceptance was subject to any conditions or other terms);

(b) a copy of—

(i) an application for an offer to carry out grid works in relation to the station or additional capacity submitted to a licensed network operator on or before 18 June 2015; and

(ii) an offer from a licenced network operator made after 18 June 2015 to carry out grid works in relation to the station or additional capacity and evidence that the offer was accepted after 18 June 2015 (whether or not the acceptance was subject to any conditions or other terms); or

(c) evidence that planning permission for the station or additional capacity was refused on or before 18 June 2015 and an appeal was determined as at 18 June 2015;

(d) a copy of an application for an offer to carry out grid works in relation to the station or additional capacity submitted to a licensed network operator on or after 18 June 2015; and

(e) an offer from a licensed network operator made after 18 June 2015 to carry out grid works in relation to the station or additional capacity and evidence that the offer was accepted before 31 December 2015 (whether or not the acceptance was subject to any conditions or other terms),"

Lord Wallace of Tankerness: My Lords, in view of the fact that the Minister has given no concession whatever, I beg to move and then test the opinion of the House.

The Deputy Speaker: I should inform the House that if Amendment 7X is agreed to, I will be unable to call Amendments 7Y, 7AA and 7AB by reason of pre-emption.

7.19 pm

Division on Amendment 7X

Contents 88; Not-Contents 192.

Amendment 7X, as an amendment to Commons Amendment 7, disagreed.

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Amendment 7Y not moved.

Amendment 7AA (as an amendment to Commons Amendment 7)

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

7AA: Line 179, at end insert ", or

"(e) evidence that—

(i) the requirements of section 61W of the 1990 Act or section 35B(2) to (6) of the 1997 Act were met on or before 18 June 2015 for the station or the additional capacity and planning permission for the station or the additional capacity was subsequently granted before this section came into force,

(ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached, and

(iii) the station or additional capacity was being developed by a community organisation or an equity shareholding in the station or the additional capacity had been committed to a community organisation(s) on or before 18 June 2015."

7.30 pm

Division on Amendment 7AA

Contents 78; Not-Contents 181.

Amendment 7AA disagreed.

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7.41 pm

Amendment 7AB (as an amendment to Commons Amendment 7)

Moved by ***Lord Grantchester***

7AB: Line 179, at end insert ", or

(e) evidence that—

(i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2015 for the station or for additional capacity,

(ii) a grant of planning permission was resolved by the relevant planning authority on or before 18 June 2015,

(iii) planning permission was granted after 18 June 2015, and

(iv) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached."

7.42 pm

Division on Amendment 7AB

Contents 182; Not-Contents 178.

Amendment 7AB agreed.

Division No. 5

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7.52 pm

Amendments 7AC to 7AH (as amendments to Commons Amendment 7) not moved.

Amendments 7AJ to 7AL (as amendments to Commons Amendment 7)

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

7AJ: Line 360, leave out "31 March 2016" and insert "the onshore wind closure date"

7AK: Line 365, leave out "December 2017" and insert "January 2018"

7AL: Line 416, at end insert—

""""the onshore wind closure date" has the meaning given by section 32LC(3);";"

Amendments 7AJ to 7AL (as amendments to Commons Amendment 7) agreed.

Amendment 7AM (as an amendment to Commons Amendment 7) not moved.

Commons Amendment 7, as amended, agreed.

Motion on Commons Amendment 8

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

That this House do agree with the Commons in their Amendment 8.

8: Insert the following new Clause—

"Onshore wind power: use of Northern Ireland certificates

(1) The Electricity Act 1989 is amended as follows. (2) Before section 32M insert—

"32LM Use of Northern Ireland certificates: onshore wind power

(1) The Secretary of State may make regulations providing that an electricity supplier may not discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a relevant Northern Ireland certificate, except in the circumstances, and to the extent, specified in the regulations.

(2) A "relevant Northern Ireland certificate" is a Northern Ireland certificate issued in respect of electricity generated after 31 March 2016 (or any later date specified in the regulations)—

(a) using the original capacity of a Northern Ireland onshore wind generating station accredited after 31 March 2016 (or any later date so specified), or

(b) using additional capacity of a Northern Ireland onshore wind generating station, where in the Authority's view the additional capacity first formed part of the station after 31 March 2016 (or any later date so specified).

(3) In this section—

"NIRO Order" means any order made under Articles 52 to 55F of the Energy (Northern Ireland) Order 2003;

"Northern Ireland certificate" means a renewables obligation certificate issued by the Northern Ireland authority under the Energy (Northern Ireland) Order 2003 and pursuant to a NIRO Order;

"Northern Ireland onshore wind generating station" means a generating station that—

(a) generates electricity from wind, and

(b) is situated in Northern Ireland, but not in waters in or adjacent to Northern Ireland up to the seaward limits of the territorial sea.

(4) Power to make provision in a renewables obligation order by virtue of section 32F (and any provision contained in such an order) is subject to provision contained in regulations under this section.

(5) This section is not otherwise to be taken as affecting power to make provision in a renewables obligation order.

(6) Regulations under this section may amend a renewables obligation order.

(7) Section 32K applies in relation to regulations under this section as it applies in relation to a renewables obligation order."

(3) In section 32M (interpretation)—

(a) in subsection (1), for "32LB" substitute "32LM";

(b) in subsection (7), for "32L" substitute "32LM"."

Amendments 8A to 8C (as amendments to Commons Amendment 8)

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

8A: Line 12, leave out "31 March 2016" and insert "the onshore wind closure date"

8B: Line 15, leave out "31 March 2016" and insert "the onshore wind closure date"

8C: Line 19, leave out "31 March 2016" and insert "the onshore wind closure date"

Amendments 8A to 8C (as amendments to Commons Amendment 8) agreed.

Commons Amendment 8, as amended, agreed.

Motion on Commons Amendment 9

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

That this House do agree with the Commons in their Amendment 9.

9: Clause 80, page 47, line 3, leave out Clause 80

Lord Bourne of Aberystwyth: My Lords, Commons Amendment 9 removes a clause that was inserted on Report in this House. This aspect of carbon accounting has been debated throughout the passage of the Bill, with amendments tabled in this House and the other place. I am sure many noble Lords will recall the debates; I will briefly go through the carbon accounting technicalities.

The Climate Change Act sets a target for the United Kingdom to reduce emissions by 80% by 2050, compared to 1990 levels. It also requires the Government to set intermediate targets to reduce emissions along the way—these are the carbon budgets. Carbon budgets are a cap on the emissions allowed over successive five-year periods. For example, the first carbon budget covered the period 2008 to 2012, and we met this budget with 36 million tonnes of carbon dioxide equivalent to spare. We set these carbon budgets 12 years in advance, so by 30 June this year we will be setting the fifth carbon budget, covering the period 2028 to 2032.

As well as setting each carbon budget, we also make regulations which set carbon accounting rules for each budget period. These rules, in addition to what is set out in the Climate Change Act, tell us how to calculate those budgets and, therefore, whether we have met them. Under the current rules, we count the United Kingdom's actual emissions for some sectors, and for other sectors we reflect how the EU emissions trading system works. For transport, buildings, agriculture, light manufacturing and some other areas we count the UK's actual emissions. For the power sector and heavy industry, we effectively reflect how the EU ETS works, instead of counting the UK's actual emissions.

The EU ETS is a scheme in which emissions from power and heavy industry are capped and reduced at an EU level. Emissions are reduced by issuing a declining number of emissions allowances to member states which are then traded by power stations and industrial sites across the EU. Our current carbon accounting rules tell us to count the UK share of the EU ETS emissions cap for the purpose of carbon budgets. In this way, carbon budgets reflect how the EU ETS works. Noble Lords will recall that the previous amendments tabled in both Houses would have stopped us from reflecting how the EU ETS works in our

accounting from carbon budget 5 onwards. We have been clear on the reasons why we cannot accept this approach at this time.

In short, this is a very complex issue. There are arguments for and against different accounting methods, and weighing these up needs careful consideration of a number of factors, such as potential impacts on consumers, businesses and industry, and cutting emissions at least cost. At the moment, we are focused on setting the fifth carbon budget, and doing that by 30 June this year, as required by the Climate Change Act. We are doing this on the basis that it will be permissible to adopt the current accounting framework. Including these provisions in the Bill would have risked delaying setting the fifth carbon budget. It would have therefore risked missing the statutory deadline and not complying with the Climate Change Act.

Commons Amendment 12 is a technical amendment that reflects the fact that the clause on the United Kingdom carbon account was removed in Committee in the other place. It amends the Long Title of the Bill accordingly. I beg to move.

Lord Grantchester's Amendment to the Motion on Commons Amendment 9

Moved by ***Lord Grantchester***

As an amendment to the Motion that this House do agree with the Commons in their Amendment 9, at end insert ", and do propose Amendments 9A to 9D in lieu of the words so left out of the Bill".

9A: Clause 80, insert the following new Clause—

Review of calculation of net UK carbon account

(1) The Secretary of State must carry out a review of whether it is appropriate for the calculation of the net UK carbon account for the 2028—2032 budgetary period, and subsequent budgetary periods, to take into account the crediting and debiting of carbon units as a result of the operation of—

(a) the European Union Emissions Trading Scheme, or

(b) any amendment of, or replacement for, that scheme that the Secretary of State considers may have effect for the budgetary periods to which the review relates.

(2) When carrying out the review the Secretary of State must take into account—

(a) any representations made by the other national authorities,

(b) scientific knowledge about climate change,

(c) technology relevant to climate change,

(d) economic circumstances,

(e) fiscal circumstances,

(f) social circumstances,

(g) energy policy, and

(h) circumstances at European and international level.

(3) Nothing in subsection (2) is to be read as restricting the matters that the Secretary of State may take into account.

(4) The review must be published, in such manner as the Secretary of State considers appropriate, no later than 31 December 2016.

(5) In this section "European Union Emissions Trading Scheme" means the scheme established under Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as implemented by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038).

(6) Expressions used in this section and in Part 1 of the Climate Change Act 2008 have the same meanings as in that Part."

9B: Clause 83, page 48, line 3, leave out "Part 4 comes" and insert "Parts 4 and 6 come"

9C: Clause 84, page 48, line 12, at end insert—

"(2A) Part 6 extends to England and Wales only."

9D: Page 48, line 13, leave out "subsection (2)" and insert "subsections (2) and (2A)"

Lord Grantchester: My Lords, I will speak to Amendments 9A to 9D in my name, regarding the UK carbon account. A clause on carbon accounting was added to the Bill under consideration in your Lordships' House before passing to the other place. This was reversed and the clause deleted by votes on Report in the other place. I had thought to retable the amendment on the Bill's return to your Lordship's House. However, in view of the fact that this would have been opposed by the Government, consideration has been given to how best to present this long-term issue so that a serious assessment would be made of it.

There is no doubt that climate change is the single most important long-term threat to be faced across the world. Its importance, and the need to get positive responses from the world's governments, was highlighted at the Paris conference. Yet there is a weakness in the way carbon budgets are assessed and, therefore, how measures to combat climate change will be implemented. If the UK is to continue to be at the forefront of global efforts to reduce greenhouse gas emissions, the UK needs carbon budgets that are clear and certain and which drive emissions reductions in all sectors of the economy. At present, they do not meet this standard, as they can be misleading about what emissions are covered. They impose targets in the traded sector of the EU emissions trading scheme, which mean very little, and in the non-traded sector, which are subject to arbitrary change.

In June this year, the Government must set the UK's fifth carbon budget for emissions for the years 2028 to 2032. These proposed new clauses ask the Government to commit to a review to reassess the accounting rules and to critically examine the issue, especially as the Committee on Climate Change has commented that it will provide new advice on the appropriate level of the fifth carbon budget should the rules be changed to take account of the improvements which Labour has proposed.

Currently, the carbon accounting regulations allow the Government to ignore emissions from the electricity sector and heavy industry, which are covered by the EU ETS, while determining whether the carbon budgets have been met. This makes the Government responsible for only half the carbon budgets: those residual parts not under the scope of the EU ETS, such as transport and heat. The Committee on Climate Change has expressed its dissatisfaction with the current accounting rules. The UK's carbon budgets fail to provide a framework that offers investors confidence in the UK power sector that the necessary measures to decarbonise will be put in place.

The amendment proposes that the Government now seriously undertake their own assessment and report back by the end of this year. It is drafted to

[LORD GRANTCHESTER]
bring forward views that need to be taken into account from as wide an audience as possible.

Finally, Amendment 12A is consequential and merely amends the Long Title to include this in the provisions of the Bill. I beg to move.

8 pm

Baroness Worthington: My Lords, Amendment 9E is in my name. Our previous debate on this took place in October, before the historic climate agreement in Paris, which, for the first time, saw virtually all countries agreeing to take action together to avert the growing risk of global climate change. The significant breakthrough that made Paris a success was that countries are now individually responsible for coming forward with nationally determined targets and measures, while being guided by an overarching collective goal.

That process places the responsibility on countries to do what they can, with a view to ratcheting up ambition over time. The UK already has its own nationally determined commitments and we have been at the forefront of international leadership on climate change domestically and internationally for well over a decade. Again, I pay tribute to Secretary of State Amber Rudd, who deserves great credit for the role she and her team played in making Paris the success that it was.

Now, as we enter the final stages of this Energy Bill, which we have been considering since last July, the question we face is: how will we as the United Kingdom want to continue in that climate leadership role by demonstrating our commitment to domestic action, leading by example and forging a path that others can follow? We can and must do this, I believe, by reviewing and reforming an important aspect of our ground-breaking Climate Change Act; that is, how we measure progress.

As things stand, how we do this is complicated and unclear, made ever more complex by a decision introduced in secondary legislation and taken after the Bill was agreed that we should use European emissions allowances as the basis for accounting for our emissions in the power and industrial sectors. This is how things work currently but it cannot continue in this way for much longer. We must start counting our actual domestic emissions, guided by a common international goal set at the European and global level.

Our original amendment, agreed to in this House, sought to make this change in primary legislation, but since I have no desire to upset the timetable for setting the fifth carbon budget, which, as the Minister pointed out, we expect to be set before 30 June, and the process is now well under way, I have not retabled the amendment that was agreed in October. Instead, we have proposed what we believe is a constructive way forward and have listened carefully to the comments made by the Minister in the other place, which were constructive and talked about the timing being the main issue of opposition from the Government.

But there still is a fundamental question at stake here: do we wish to meet our carbon budgets in a way that we determine—for example, through policies and measures that we deem appropriate for our circumstances—or are we happy to have half our budgets set for us on the basis of ever-more complex rules agreed in Brussels? At the moment, as our decision to implement a carbon price support policy shows, we are taking our own path. We add an extra £18 to every tonne emitted in the UK and we are pursuing our own policies to decarbonise. Ahead of Paris, the Secretary of State made a historic commitment to phase out coal for power generation in the UK by 2025. She was rightly praised for this commitment because it sends an important signal to investors at home and to other countries struggling to reduce emissions from coal, including Germany and Holland.

Given that this is our chosen option—that we are pursuing leadership and taking our own path—it seems illogical that our carbon budgets should not reflect our own circumstances. Working on the basis of our own accounting would enable us to make sensible decisions about which sectors to move forward on more quickly and which to give more time to; for example, we could provide more of a budget to sectors that are hard to decarbonise, such as heavy goods vehicle transportation or farming, while moving faster on the power sector, where we are currently overdelivering, as the Minister said. There are 36 million tonnes of overdelivery coming from the power sector. We should be able to use that and redistribute it to other sectors, but as things stand that is not possible.

There are very good reasons why our original amendment made sense, but as I listened to the considered words of the Minister in the other place, I concluded she was right not to accept that amendment at this time, as we are only weeks away from publishing the fifth carbon budget. We hope and assume that this number will follow the advice of the CCC and we expect that to help restore some confidence in the industry. But once that is in place, we should then determine how we will meet that ambition and part of that determination should be: what counts towards compliance with that budget? The amendment in my name, in lieu of our original amendment, sets out a process by which the Government can decide how we measure our progress and how we plan to meet our targets, including a deadline of the end of 2017 by which the matter should be resolved in secondary legislation. With the budget and the rules in place, we will then be in a position to develop a long-term plan to comply with those targets and lead by example.

Unfortunately, short-term thinking is endemic in our political system. More attention is paid to fleeting headlines and passing trends on Twitter than to the important details of often complex policy areas, such as energy, which are so necessary to drive investor confidence in growing our economy. Climate change is a long-term crisis that is slowly unfolding on our watch. Record losses in sea ice, massive coral bleaching in the Great Barrier Reef, unexplained spikes in methane emissions—these are the warnings that are going off around us. We owe it to ourselves and to all future generations to do all within our ability to act and to cause others to act to mitigate this crisis.

What we in this Chamber can do, what opposition parties can do and what the Government can do is try to pass good laws that provide sensible, long-term frameworks to drive down emissions in least-cost ways.

The Climate Change Act was agreed on that basis and it works, but it is now in need of review. I urge the Minister to consider this amendment carefully and if he feels it is within his power to accept it, I hope he will do so, so that we can embark on a process of proper reflection and review over a reasonable timescale, and then we can make the changes that are needed to repatriate the way we meet our most necessary climate obligations.

Lord Howell of Guildford: My Lords, I have only one question about this amendment, and it is aimed at both sides of your Lordships' House. As my noble friend rightly said, this is an extremely complex matter. I sometimes feel that the noble Baroness, Lady Worthington, is the only living person who fully understands the complexities of it all. It seems to me that if one looks behind the thoughts and motivations, the bottom line is whether additional pressures are put on consumers, on the nation, on industry and on activities of every kind to complete the carbon budgets, what weight we give to absolute, precise completion of the established carbon budgets—or indeed the next one we decide—and what contribution that will make worldwide to combating global warming.

My question is simply to ask why the noble Lord, Lord Grantchester, has tabled this amendment, when in the Climate Change Act, with which the noble Baroness, Lady Worthington, had so much to do, there is a specific provision—Section 10(2)(h)—which warns and advises the Government and Ministers to have account of,

"circumstances at European and international level".

The intention behind that was quite clear: to establish that if we got very badly out of line with neighbouring countries on our carbon budgets and on the provisions required to keep to them, the matter would be looked at again and, if necessary, changes would be made. My only question is: why are we not doing that now? Electricity costs between German and British steel have got out of alignment. Everyone knows that. We all know that theirs are 40% less and that we are paying £80 per megawatt-hour for steel-making in Britain, of which some £34 may be in additional green charges and levies. I accept that some of those are absolutely necessary, but some obviously take us out of line with our European neighbours, with the devastating results which we have all seen in the last few weeks. These things can be brushed aside, but everyone knows that this is one of the very powerful reasons why we are in some difficulties over the steel industry. I do not think that that can be denied.

Baroness Worthington: On that point about the steel industry, one point I was trying to convey is that if we take control of our own carbon budgets then we would decide how to allocate emissions to the steel sector, for example, rather than it being dictated by the EU ETS credits. We could then make our budgets and be more flexible to allow for those sectors that need to retain emissions for longer and push down further on the power sector, which is overdelivering by a substantial margin. We could use that to move that allocation around and protect those industries that we choose to protect for slightly longer.

Lord Howell of Guildford: The question is: why are we not using the flexibility in the Climate Change Act to amend it, to ease some of the obvious and immediate pressures that are making the problems of the steel industry—but not only the steel industry—so very difficult because we are too far out of line? Anxious as we are to create a good example, which I fully accept, we are too far out of line with our direct competitors. People are being hurt and jobs are being lost. Why are we not amending our own Climate Change Act now, as we are allowed to do, to meet the new conditions? Is this to be part of the strategy, which we clearly need and which we talked about earlier today, to recover our own commercial and viable steel industries? My simple question to the noble Lord, Lord Grantchester—it is a bit to my noble friend Lord Bourne and the Government, too—is: why are we not following the precepts and guidance of the Climate Change Act itself and meeting the obvious needs of industry at this moment in some towns and areas, where many people are being thrown out of work?

Lord Teverson (LD): My Lords, I rise to speak to the amendment in the name of the noble Baroness, Lady Worthington. Perhaps I can reassure the noble Lord, Lord Howell, as she has, that this amendment does not specifically help the steel industry or, necessarily, the size of the budget from the Climate Change Act. I guess that an amendment back on Report would have been needed to do that. This amendment would make sure that we repatriate entirely the powers to create our own carbon budget. So in fact it is a step towards what the noble Lord, Lord Howell, would want. Ironically, when we debated the Climate Change Bill I raised this matter specifically a number of times, but unfortunately the Labour Government of the time did not want to hear about it. I do not think that they necessarily understood it themselves. However, we now need to make a change. This should not be a party-political issue at all. It is about making a budget something that we could set ourselves and measure against our national performance. That is what we are trying to do.

In a way, I regret that we are not debating the original amendment, perhaps understandably amended to exclude the fifth carbon budget, for the reasons that have been explained. When we are tackling climate change and trying to get everybody to help, it is really important to make measuring our carbon emissions transparent, straightforward and easy, so that they mean what most people would understand them to mean: that the carbon emissions we create within the boundaries of the United Kingdom from products, services and industry are what our carbon budget measures. At the moment, that is not the case: it is only so for about half of it. The rest of it just reflects the European Emissions Trading Scheme settlement.

I fully support this amendment and hope that the Government will accept it as a way forward. There is no party angle to it whatever. All it would do is ensure that our UK emissions count against our UK carbon budget under the Climate Change Act. It would make government policy on climate change simple, straightforward and manageable.

8.15 pm

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on the carbon accounting process and in particular the noble Baroness, Lady Worthington, who I know feels strongly about this issue. She will know that we have spoken about it at some length and probably have a measure of agreement on many of the principles. I will perhaps not go into the details of why we are not able to move forward in some respects, although we feel that her amendment as drafted, requiring regulations on carbon accounting by the end of 2017, is impractical because of the understandable obligations to consult with the devolved Administrations and so on. There are issues with the detail. I will not go into other aspects of it, except to say that we certainly recognise the need to address some of these concerns. There are other issues with carbon accounting that distort, as things stand, such as international aviation and international marine.

Let me address some of the points made by my noble friend Lord Howell. I do not want to get sidetracked on to steel because that issue was addressed yesterday in a Statement. Electricity costs are certainly an issue and a factor, but of course it goes far beyond that, as I am sure that my noble friend would acknowledge. Tata in Port Talbot has a blast furnace, so the electricity costs are less significant there than they would be if it were an arc furnace, which is one of the issues to be looked at. The Government are looking at that in the round to see what we can do there, but again it is not simple. It is not just about altering the carbon accounting rules, as there are issues obviously about state aid, the World Trade Organization and so on. It is a complex issue. I hope that I have been able to cover why we are unable to accept the amendments to the Motion at this time.

Baroness Worthington: Before the Minister sits down, could he be a bit clearer about this? We have obviously taken on board the very sensible comments of the Minister of State in the other place, having looked at the debate in detail. We do not wish to pre-empt the outcome of a review but we do think that, taken in the round, this Energy Bill does not seem to be in keeping with its time and place in history. It is many months after Paris, where we committed to trying to get this big issue of the global climate back on track. Can the Minister not just look again at this and precisely give us the reason why?

Lord Bourne of Aberystwyth: I think the noble Baroness is aware of the reasons why. I do not want to be provoked into going into some of the discussions we have had, but it is not as if she is unaware of some of the reasons why we cannot progress. I do not want to go into those in any detail except to say—

Lord Teverson: My Lords—

Lord Bourne of Aberystwyth: Let me just finish this point. We are not unsympathetic to the principle of looking at this—I think I have made that clear—but we do not feel it is timely to do it at the moment in the way suggested. I do not really want to go any further than that.

Lord Teverson: My Lords, I thank the Minister for giving way and I do not wish to take up the time of the House, but I interrupt because it is not reasonable—

Viscount Younger of Leckie: I am sorry to interrupt the noble Lord but he may need to be reminded that, at this stage of the Bill, only one speech is permitted.

Lord Teverson: I am sorry, but I do not think it is right procedurally for the Minister to say that he has had a private conversation with another Member of the House or that that is a sufficient answer when the rest of the House is not privy to that conversation. That is not reasonable.

Lord Bourne of Aberystwyth: It is perfectly in order for me to have discussions with other Members. I have indicated that there is some sympathy for looking at the accounting principles—but not, as I indicated in my speech, at this time. I have indicated that the timetable is unrealistic. I hope that in the future we can look at these issues, but the Government do not feel it is timely to do it in the way suggested. That is something that has been shared with other Members: there is no great secrecy about that.

Lord Grantchester: I thank all noble Lords who have spoken this afternoon and thank the Minister for the considered way he has responded to issues. On reflection, following the wider debate, I conclude it would be best to press the Government more strongly to be more certain about the outcome of the review. I will therefore not press the amendment in my name, but instead support the amendment in the name of my noble friend Lady Worthington. She is a recognised expert on climate change and a very forceful advocate that the UK must take strong, decisive action to reduce emissions to mitigate its effects.

Lord Grantchester's Amendment withdrawn.

Baroness Worthington's Amendment to the Motion on Commons Amendment 9

Moved by ***Baroness Worthington***

As an amendment to the Motion that this House do agree with the Commons in their Amendment 9, at end insert ", and do propose Amendment 9E in lieu of the words so left out of the Bill".

9E: Clause 80, insert the following new Clause—

"Review of calculation of net UK carbon account (No. 2)

(1) The Secretary of State must lay before Parliament revised regulations relating to carbon accounting under section 27(3) of the Climate Change Act 2008.

(2) Before laying such regulations the Secretary of State must carry out a review of whether it is appropriate for the calculation of the net UK carbon account for the 2028-2032 budgetary period, and subsequent budgetary periods, to take into account the crediting and debiting of carbon units as a result of the operation of—

(a) the European Union Emissions Trading Scheme, or

(b) any amendment of, or replacement for, that scheme that the Secretary of State considers may have effect for the budgetary periods to which the review relates.

(3) When carrying out the review the Secretary of State must take into account—

(a) advice from the Committee on Climate Change,

(b) any representations made by the other national authorities,
(c) scientific knowledge about climate change,

(d) technology relevant to climate change,

(e) economic circumstances,

(f) fiscal circumstances,

(g) social circumstances,

(h) energy policy, and

(i) circumstances at European and international level.

(4) Nothing in subsection (3) is to be read as restricting the matters that the Secretary of State may take into account.

(5) The review must be published, in such manner as the Secretary of State considers appropriate, no later than one year after the passing of this Act.

(6) The Secretary of State must lay the regulations under subsection (1) no later than 31 December 2017.

(7) A statutory instrument containing regulations under subsection (1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Baroness Worthington: My Lords, I beg to move my amendment to the Motion. I would like to test the opinion of the House.

8.21 pm

Division on Baroness Worthington's Amendment

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8.33 pm

Motion agreed.

Motion on Commons Amendment 10

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

That this House do agree with the Commons in their Amendment 10.

10: Clause 83, page 48, line 2, leave out "This Part comes" and insert "Sections [*Onshore wind power: closure of renewables obligation on 31 March 2016*], [*Onshore wind power: circumstances in which certificates may be issued after 31 March 2016*] and [*Use of Northern Ireland certificates: onshore wind power*] and this Part come"

Commons Amendment 10 agreed.

Motion on Commons Amendment 11

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

That this House do agree with the Commons in their Amendment 11.

11: Clause 84, page 48, line 14, leave out subsection (4)

Lord Bourne of Aberystwyth: My Lords, Commons Amendment 11 is a technical amendment that was inserted to avoid infringing the financial privileges of the other place. Now that the money and ways and means Motions have been passed, the short title of the Bill can accordingly be amended. I beg to move.

Commons Amendment 11 agreed.

Motion on Commons Amendment 12

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

That this House do agree with the Commons in their Amendment 12.

12: In the Title, line 8, leave out from "power;" to "and" in line 10

Amendment to the Motion on Commons Amendment 12 not moved.

Motion agreed.

Northern Ireland (Stormont Agreement and Implementation Plan) Bill

Second Reading

8.35 pm

Moved by ***Lord Dunlop***

That the Bill be read a second time.

Relevant document: 24th Report from the Delegated Powers Committee

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): My Lords, the Northern Ireland (Stormont Agreement and Implementation Plan) Bill delivers key aspects of the December 2014 Stormont House agreement and the November 2015 fresh start agreement. I see our job here this evening as helping to ensure that these agreements are implemented and that another step is taken towards a more peaceful, prosperous and stable Northern Ireland where the devolved institutions continue to work for everyone and paramilitary activity is eradicated once and for all.

By way of context, the Stormont House agreement followed some 10 weeks of talks between the Government, the five largest parties in the Northern Ireland Assembly and the Irish Government on matters for which they have responsibility under the long-established three-stranded approach to Northern Ireland affairs. It dealt with many of the most difficult challenges facing Northern Ireland, including welfare reform, measures to deal with the legacy of the Troubles, improvements

to the workings of devolution and new arrangements to examine long-standing issues such as flags and parading.

However, by last summer implementation of the Stormont House agreement—in particular, welfare reform—had stalled. This lack of agreement severely undermined the Executive's finances, putting increasing pressure on funding for public services. This political and financial impasse was then compounded by two paramilitary murders in Belfast, precipitating a serious breakdown in Executive relations. Confronted by the very real risk of the devolved institutions collapsing and a return to direct rule, my right honourable friend the Secretary of State for Northern Ireland convened a further round of cross-party talks.

Following 10 weeks of discussion, on 17 November a way forward was announced on the two key issues the talks were convened to address: first, implementation of the Stormont House agreement, itself a government manifesto commitment, and, secondly, dealing with the continued and malign impact of paramilitary activity on Northern Ireland society.

The fresh start agreement is a very significant step forward on both counts. The agreement takes the Northern Ireland political parties further than ever before in their determination to see a complete end to paramilitary activity, placing obligations on Assembly Members to work together to rid society of paramilitary activity and to tackle organised crime. It helps to ensure the fiscal sustainability of the Executive, underpinned by up to half a billion pounds of extra spending power on top of the £2 billion in the Stormont House agreement. Crucially, it was instrumental in bringing to an end a crisis that had threatened the survival of the devolved institutions which have remained stable since 2007, the longest period of unbroken devolved government since the old Stormont Parliament was dissolved back in 1972.

Good progress has already been made in implementing the fresh start agreement. In November, this House considered and passed the Northern Ireland (Welfare Reform) Bill and the accompanying Order in Council was passed in early December. A joint agency task force has been set up to tackle cross-jurisdictional organised crime, and a panel of respected figures, including the noble Lord, Lord Alderdice, has been appointed to consider the issue of continued paramilitary activity and to make recommendations on a strategy for disbanding paramilitary groups by the end of May. Work is also under way to appoint a new commission on flags and parades. The Assembly has passed legislation to make significant reforms to its institutions, reducing the number of Executive departments and Members of the Legislative Assembly. The implementation of the fresh start agreement is therefore proceeding apace and the Government, Executive and Irish Government have shown a real commitment to make the agreement work and deliver on their commitments.

This Bill is the UK Government's next step towards full implementation of the fresh start agreement, and has the support of the Northern Ireland Assembly, which gave cross-party consent on 15 March in respect of the transferred matters contained in the Bill. A number of commitments need to be delivered through legislation, and the Bill achieves that. It makes provision for a new Independent Reporting Commission, an international body to be established through a treaty with the Irish Government, the objective of which will be to promote progress towards ending paramilitary activity. It makes provision to promote fiscal transparency and support the Executive to deliver a stable and sustainable budget; for additional commitments in the pledge of office taken by Executive Ministers relating to tackling organised crime and paramilitarism, and the introduction of a parallel undertaking for Members of the Assembly; and to extend the time available for agreeing a programme for government and appointing Executive Ministers after an election.

Those last two measures are of course linked to the timing of the forthcoming Assembly election. The Government are therefore seeking Parliament's agreement for the Bill to proceed through its parliamentary scrutiny faster than usual to ensure that the enhanced pledge of office and new undertaking, as well as the extension of the time available for ministerial appointments, are in place in time for the Assembly's return. I am grateful to the parties opposite for their support on this.

With noble Lords' permission, before I turn in more detail to the measures in the Bill, I shall address an issue that formed an important part of the fresh start talks but which does not feature in this legislation: the establishment of new bodies to deal with the legacy of the past in Northern Ireland. I reassure noble Lords that this issue is of paramount importance to the Government, and it is clear that it is important to noble Lords from across the Chamber as well. In discussions that I have had in the run-up to today's debate, many noble Lords have raised this issue. I have therefore written offering an open briefing session, to take place tomorrow afternoon. I hope to see many noble Lords there, and indeed the response has already been very positive.

The Government continue to believe that the provisions outlined in the Stormont House agreement, which themselves build upon the significant work that the noble and right reverend Lord, Lord Eames, took forward in his role as co-chair of the Consultative Group on the Past, represent the best chance for dealing with the past in a way that will deliver significantly better outcomes for victims and survivors. Let us never forget that it was the victims and survivors who suffered more than anyone else as a result of the Troubles. The new institutions will therefore be balanced, proportionate, transparent, fair and equitable. They will allow Northern Ireland to move forward, and have the needs of victims and survivors at their heart. Intensive work therefore continues with victims' representatives and others on finding a way to build the broad consensus needed to legislate. I hope very much that legislation to establish the legacy institutions in a separate Bill will be brought forward once the necessary consensus has been achieved.

I turn to the measures in the Bill before the House today. Clauses 1 to 5 relate to the Independent Reporting Commission. The objective of this new commission will be to promote progress towards ending paramilitary activity connected with Northern Ireland. It will therefore fulfil an important role in furtherance of this Government's commitment to challenging all paramilitary activity and associated criminality. The commission will be an

[Lord Dunlop]
international body, established through an agreement with the Irish Government. Work on the agreement is at an advanced stage and, once agreed with the new Irish Government, it will be laid before Parliament for scrutiny under the arrangements in the Constitutional Reform and Governance Act 2010. It will be independent of the sponsoring Governments and will have a significant degree of discretion in fulfilling its functions, which are to report on progress towards ending paramilitary activity, including on implementation of measures taken by the Government, the Executive and the Irish Government to tackle paramilitarism, and to consult a wide range of stakeholders in fulfilling this role. The Bill also outlines both the legal privileges which the commission will enjoy and the duties under which it will operate. Further detail on the establishment and operation of the commission will be set out in secondary legislation in due course.

At this juncture I should also mention that last week I responded to the very helpful comments of the Delegated Powers and Regulatory Reform Committee on the Bill. I have placed a copy of my response in the House Library and have published it on the Northern Ireland Office website.

The Bill also amends the pledge of office for Ministers in the Northern Ireland Executive. The enhanced pledge reflects the commitments in the fresh start agreement to give unequivocal support for the rule of law and to work collectively to achieve a society free of paramilitarism. The Bill will also introduce for the first time a similar undertaking for all Members of the Northern Ireland Assembly.

In the other place, there was much discussion of the question of possible sanctions for breaching the new undertaking. This is an important point and I have absolutely no doubt that we will return to it during discussions in this House. The Government are firmly of the opinion that it would not be appropriate for us at Westminster to pre-empt the Assembly's own consideration of this issue and prescribe specific sanctions or the means by which they should be taken forward. Rightly, this is a question for the Northern Ireland Assembly and should be decided by that legislative body with the appropriate cross-party and cross-community consensus. There are established mechanisms by which the Assembly holds MLAs to account, including for their adherence to the Assembly code of conduct, and the Assembly has the necessary powers to impose sanctions, should it decide that these are required.

The Bill also extends the time available for the allocation of ministerial positions in the Executive from seven to 14 days after the Assembly first meets following an election. This change was first proposed in the 2014 Stormont House agreement and was confirmed in the recent fresh start agreement. At present, Northern Ireland Executive ministerial positions must be allocated within seven calendar days after the first meeting of the Assembly, as required by the Northern Ireland Act 1998. This extension will therefore allow the parties more time to agree a shared programme for government on a cross-party basis prior to the allocation of ministerial positions following the upcoming elections and all future elections.

Finally, the fresh start agreement contains a clear commitment for the UK Government to legislate to increase fiscal transparency, helping the Executive deliver affordable and sustainable budgets. The Bill therefore requires that, when delivering a draft Budget, the Executive Finance Minister must demonstrate that the amount of government funding required by the draft Budget does not exceed what is available.

As I have outlined, the measures included in this Bill are the product of extensive cross-party talks conducted over the 10 weeks leading up to the fresh start agreement. They have the support of the Executive and the Assembly, which were involved in the drafting of the provisions, and a legislative consent Motion in respect of the transferred matters in the Bill received cross-party support in the Assembly, as I said, on 15 March.

The Bill is a crucial stage in the full implementation of the Stormont House and fresh start agreements, which, taken together, have the potential to resolve some of the most difficult challenges facing Northern Ireland and help us secure a more peaceful, stable and prosperous future for all the people who live in Northern Ireland. I beg to move.

8.48 pm

Lord Murphy of Torfaen (Lab): My Lords, I support the Bill, which is very important, but before I comment on some of its clauses, as I look around your Lordships' Chamber I see almost an action replay of 1998. So many Members of your Lordships' House were with me and others when we discussed the Good Friday agreement back in the spring of 1998. We are all 20 or so years older, and I suppose we never thought that we would be discussing the same issues in this Chamber—but we are. Those noble Lords who were there will recall that at the very end of the afternoon of Good Friday 1998, the chairman of the talks, Senator George Mitchell, said that although the talks were over this was actually the beginning, not the end, of progress in Northern Ireland.

When I look back over the past 18 years at the different agreements that have been dealt with—the St Andrews agreement and all the others, and of course today the Stormont House agreement and the fresh start agreement—I see nothing wrong with that. I rather fancy that there will be more agreements for this House and the other place to consider in the months and years to come.

But today, of course, we are dealing with a specific Bill in front of us. A theme in all those agreements was the issue of continuing paramilitary activity. The deaths that Northern Ireland has witnessed over the past months are of course tragic, but they in no way compare in numbers to what occurred many years ago. But the fact is that paramilitary activity still exists in some form or another in Northern Ireland. Therefore, the two Governments agreeing to the Independent Reporting Commission is, I think, certainly the way forward. I hope that when the First Minister and Deputy First Minister look at the appointment of members to that commission they will bear in mind the fact—I am sure they will—that there has to be general consensus as to who should sit on it, otherwise it simply will not have the confidence of people in Northern Ireland.

I welcome the fact that there are new pledges of office for Ministers and Members of the Assembly. The Minister quite rightly pointed out that the Assembly itself will have to consider the issue of any sanctions that might be applied were those pledges to be broken.

A lot of the difficulties that Northern Ireland has faced over the past months have been because of disagreements over welfare. When I was the Minister for finance in Northern Ireland, I have to tell the House that I was perplexed that Northern Ireland still had the function that, effectively, the welfare legislation and details here in Great Britain could technically be different from those in Northern Ireland. In reality, they never were. I hope that, in the months ahead, the Assembly might consider looking at what is happening in Scotland with regard to welfare and see whether Northern Ireland could learn from the new welfare powers that the Scottish Parliament has so that they could look at it in a rather special way for Northern Ireland.

I am pleased, too, that the Assembly is looking at the number of its Members. I rather fancy that it will be a bit more scientific than the way that we decided it during the night of Maundy Thursday and the morning of Good Friday in 1998, when the noble Lord, Lord Empey, and others came to see me at about 3 am to decide how many Members of the Assembly there should be. We decided that six per parliamentary constituency was the answer. Looking back with hindsight, that was probably too many, but the Assembly will now decide that itself, as well as the number of departments of the Northern Ireland Executive. It is also very sensible that 14 days will now be given for Assembly Ministers to be allocated their portfolio.

The Good Friday agreement was not written in stone, in the sense that as the years went by, adaptions could take place and reviews could happen, so long as there was agreement generally among the political parties in Northern Ireland for such changes to be made.

It is a disappointment—the Minister has indicated why it is the case—that in the Bill there is no reference to the legacy issues in Northern Ireland and to dealing with the past. I do not think that Northern Ireland can finally be settled until we deal with those issues. Although some very good ideas came from the various discussions over the last two years—it is good that the Minister is going to discuss them with Members of this House over the next 24 hours—that issue has to be addressed. There is no question in my mind that the issue of victims and survivors, and of our communities in Northern Ireland, is dependent on how we can deal with the past.

I am glad to see in the Chamber the noble and right reverend Lord, Lord Eames, who, together with Mr Bradley, came up with some very interesting ideas in their report, together with the ideas that came from Ambassador Haass later on. There is a lot of work to be done, but I hope that that issue will be addressed as soon as possible.

We have, of course, an election in Northern Ireland in May, as we do in Scotland and in Wales. Everybody involved in politics in Northern Ireland knows that, in a way, political development is frozen until those elections are over because of the importance of fighting them. Every political party understands that; it is what democracy is about. But when those elections are over, there will be a number of years that are election-free in Northern Ireland. The opportunities that can then be given to the political leaders, political parties and others in Northern Ireland to look very carefully at the institutions and where we go will be invaluable.

There are, of course, obstacles in the way. The first comes only a month or so after those elections to the Northern Ireland Assembly and it is the referendum on our membership of the European Union. It is my firm belief that, were we to withdraw from membership, it would be of huge disadvantage to the people of the island of Ireland north and south. I have no doubt that our joint membership with the Republic of Ireland of the European Union meant that the peace process went more smoothly and developed in a way that it could not have done had we not both been members of the same club. I believe that the distribution of peace money among the different communities in Northern Ireland was pivotal in ensuring that relations between those communities improved. As far as I am concerned—although I understand that there will be different views in Northern Ireland—that is a huge issue which now faces specifically people in Northern Ireland.

That applies also to what happens in Scotland. I am deeply opposed to Scottish independence, but I have no doubt that the issue will be resurrected soon. If Scotland goes it alone and becomes independent, that could have serious consequences for Northern Ireland—as it will do for my own country of Wales. So these are difficulties which we face there.

One thing that struck me very dramatically when I was a Minister in Northern Ireland and then Secretary of State was that I had no right as a Member of Parliament for a Welsh constituency to rule in that place. Direct rule was infinitely and badly wrong. It should never have occurred, and I felt uneasy all the time at the fact that I had to take decisions on behalf of people who should be taking them themselves. So I welcome this Bill, because it means that we will continue to have the institutions up and running in Northern Ireland in a fresh way through a fresh start. We never want to return to those days where there was direct rule.

But there is a lot of thinking to be done in Northern Ireland in the years that are election free. We should harness academic thinking in Northern Ireland because there are many very good people there who can think about where we go. Let us look at civil society in general and at how people who are not necessarily directly involved in politics can help out in the way ahead. The Civic Forum never really took off in the way that the agreement thought it might do, but there is an opportunity there, too. Perhaps the most significant thing is to ensure that a new generation understands that they have a huge responsibility in ensuring the continuing prosperity and stability of Northern Ireland.

Eighteen years is a long time. It means that you would have to be in your mid or late 30s now to have understood when you were young what was happening in 1998. A whole generation has gone by, and the danger is that complacency can set in—that things can become too cosy and that people can become too cynical about politicians in Northern Ireland. All those

[LORD MURPHY OF TORFAEN]
things are bad, because, although we perhaps live in an age of anti-politics, Northern Ireland would not be where it is today had it not been for the risks that were taken by Northern Ireland politicians over the last 20 years in ensuring that we have a stable institution there.

So I hope that younger men and women will be attracted to the business of politics in Northern Ireland and will be able to take part in what I am sure will be a good future for all the people of Northern Ireland, irrespective of their religion, traditions or background.

9 pm

Baroness Harris of Richmond (LD): My Lords, while the 17 November cross-party talks resulted in the fresh start agreement, it is nevertheless deeply disappointing that no comprehensive agreement following from the Haass talks was achieved. The deal arrived at did not offer anything significant to help the still-divided society in Northern Ireland, especially around the vexed issues of the past—the parades and the flags—all of which remain unresolved. They are a politically important area of work in which everyone should be involved.

Certainly there are elements of the Bill which we welcome, particularly around the Government's continuing commitment to those matters dealing with the past, about which I shall say a little more in a minute. It is vital that a settlement is arrived at in which the victims of the years of violence and their families can have these issues resolved.

I wish to concentrate my remarks on the security issues within the Bill. I remind your Lordships of my interests in the register, particularly those relating to the police.

Clauses 1 to 5 deal with the setting up of the Independent Reporting Commission, which will look into paramilitary activities. It is to report on the implementation of the relevant measures of the three Administrations—the UK Government, the Government of Ireland and the Northern Ireland Executive. It will report annually on the progress towards the ending of paramilitary activity in Northern Ireland having consulted a wide range of national and statutory agencies and civic society, as we have heard. We wish it well in this herculean task. I ask the Minister whether it is intended to widen the membership of the IRC to perhaps include a respected and knowledgeable person who could act as mediator in what I imagine would be pretty fraught discussions. Does he not think that an internationally acclaimed mediator might be a helpful addition in its deliberations?

The Police Service of Northern Ireland has had to deal with some of the worst aspects of paramilitary activity. In the last 12 months alone it has dealt with 46 shooting incidents; there were 14 more bombing incidents than in the previous 12 months; 60 casualties resulted from paramilitary-style assaults, an increase of 11 over the previous year; and 24 casualties resulted from paramilitary-style shootings—this in an area not much bigger than my county of North Yorkshire. The murder of prison officer Adrian Ismay on 4 March in Belfast, using an under-vehicle improvised explosive device, underlines the importance of doing everything we can to help and support all our security officers going about their duties. The assistant chief constable of the PSNI expressed his deep concern about the current dissident threats and reminded people that the paramilitary groups want to:

"Kill police officers, prison officers and soldiers".

The threat from terrorism is still very real in Northern Ireland.

It is also a threat in the Republic, and the assistant Garda commissioner warned that the dissident republicans were becoming more sophisticated, particularly in their bomb-making capability. He itemised the cache of weapons—ammunition, mortars, rocket launchers and Semtex—that the Gardai had recovered. Twenty-two people have been arrested and charged in the Republic on suspicion of dissident republican paramilitary activity, indicating the ever-closer professional working relationship between the two police forces and the security forces. The Bill recognises this close relationship and no doubt the IRC will do so too.

The PSNI is working extremely hard under difficult circumstances to keep the people of Northern Ireland safe in the present. It also continues to investigate crimes from the past on a scale that no other police force in the UK can imagine, first through the Historical Enquiries Team, and now through the Legacy Investigation Branch. While there is currently no political agreement to establish the historical investigations unit, as provided for in the Stormont House agreement, the justice system in Northern Ireland continues to carry out its duties to the victims and families of crimes committed in the past. It deserves our fullest support.

The issues around legacy will be watched closely. As I said earlier, the Government's commitment to look again at the difficult issues surrounding the past needs to be recognised, but we have been here so many times before. There is an excellent document sitting on a shelf somewhere that was written some years ago by the noble and right reverend Lord, Lord Eames, and Denis Bradley. Its conclusions, had they been acted on earlier, might have provided a rather different landscape from the one in which we still find ourselves. Legacy issues will have to be addressed for Northern Ireland to move forward.

There are countless unsolved crimes, including those against police officers and their families, and the search for justice must continue. With the new legacy bodies being established, can the noble Lord tell me whether the money for them will be ring-fenced? If so, can he assure me that it will be apportioned equitably so that it will include the large numbers of police officers murdered or injured by terrorists?

Finally, having spoken for many years on policing issues in Northern Ireland, I fervently hope that the fresh start agreement will give the brave men and women who serve the public and who daily face the threat of terrorism some reassurance that we are on their side and that their concerns are addressed in this legislation.

9.07 pm

Lord Empey (UUP): My Lords, before speaking on the detail of the Bill, perhaps I may take this opportunity to thank the Minister for his engagement with Members of your Lordships' House over the past few months while we have been working our way up to this point.

It is welcome to have that engagement because it is helpful, and as the Minister has indicated, it will continue tomorrow and no doubt in the days ahead as we move towards the further stages of the Bill. I would also say that the nostalgic contribution of the noble Lord, Lord Murphy of Torfaen, reminds us that the passage of time has, I would suppose, disappointed some of us in that we envisaged that while of course we came from a terrible state back in the 1980s, 1990s and 2000s, nevertheless we had hoped that by this stage we would be moving on to a different political environment from the one in which we find ourselves. But I suppose one has to play the cards one is dealt and we will have to deal with the matter before us.

Without wishing to be negative about it, I have to say that if the Stormont House agreement of 2014 was a steak and kidney pudding, the Bill before us is a reheated version with the steak and kidney having been removed from it in the form of the real substance of the discussions in 2014. Agreement had broadly, though not entirely, been reached, but in early 2015, for base political reasons, one party to that agreement—Sinn Fein—ratted on the agreement and left Northern Ireland facing a huge constitutional and financial crisis, which was totally uncalled for. It was all to do with the politics in the Irish Republic and had absolutely nothing to do with the welfare of the people of Northern Ireland. There is no point in dilly-dallying about the issue. That is why this particular negotiated proposal is before us. The one that we understood was agreed was ratted on by those who had agreed to it. That is why we were left in 2015 with another wasted year, when progress should have been made in other matters.

As to the Bill, the Independent Reporting Commission is something that I broadly welcome. The previous mechanism that existed—the noble Lord, Lord Alderdice, was a member of it as well—probably ended prematurely. However, after the events of last spring and summer—when two murders had taken place, where the police had clearly indicated in a statement that the IRA was involved and when we did not have any mechanism to shine a light on that—it was perfectly clear that a gap had opened up. We will have things to say at a later stage in the Bill about the establishment of this body, its membership and so on, and the Minister himself will be returning to it, as he said in this opening statement. Nevertheless, it will instil a degree of confidence that there is somebody there who can shine a light.

No matter what anybody says, when we come to the issue of pledges and so on, the history in Stormont has been that parties will close ranks and misuse the processes for cross-community support when it suits them. There is a long-established history of that. Nevertheless, the fact that the body is being established is a step forward to redress and fill a gap in the market which clearly exists.

It was quite shocking to people to have it put to their faces by the chief constable that the IRA was still involved and that, effectively, Sinn Fein was under its influence. Most people, if they were asked in the street, would probably say that that was true. But to have it said by the chief police officer to your face after a murder, and after the passage of time, was quite a shock. Something had to be done about it, and we are gradually moving in that direction. I have no doubt that the Secretary of State in the other place, who had been in charge of the negotiations of the Stormont House agreement in 2014, would have much preferred to have put the total thing forward, but she was unable to. We faced a crisis throughout last year. Yes, the security issue was critical but other issues caused the problem as well.

As we go forward into the Bill itself on the issue of the state of the pledges, I can only say that I am not a great fan of pledges. I do not believe that they matter to some people. Pledges in local government were introduced way back in the 1980s or 1990s. People who were known terrorists and members of councils willingly signed them without any hesitation. Indeed, I think the noble Lord, Lord Alderdice, was a member of Belfast City Council at the same time. We had some leading lights in there, such as the councillor who blew up the Europa Hotel 23 times. The noble Lord, Lord Browne of Belmont, was a member; the noble Lord, Lord Alderdice, was a member; and I was a member. We know who this man was and we know what he did, and he was quite prepared to sign a pledge. If we move forward to where we would be with Stormont, Mr Gerry Adams says he has never been in the IRA. Could we fill a telephone box in this country with people who would believe that? Yet he is the leader of a party in the current Irish Government. The history is that these folks will sign anything. It does not matter to them; it is water off a duck's back. I have little faith in this sort of activity. I have no objections to it. If you want to put it in, put it in if it makes people feel better. Yet if we felt that somebody was going to be effectively damaged by it and put in a petition of concern, there is no sanction. Even if the Assembly agreed one, it is perfectly capable under that process of being stymied anyway. That is why we always felt more comfortable with an external process where something could be delivered. I have no difficulty with this although some make the argument that the use of the word "transitional" could give people a lot of wriggle room. At the end of the day, given what people are prepared to stand up and say—they lie to your face with impunity—I have little doubt that they would sign whatever they were required to without any hesitation.

On Clause 6, on the extended period for the appointment of Ministers, my party has been pushing at this for a number of years. The clause adds only an extra week but when we previously did this we filled the silos the minute we got back home and then started to negotiate a programme for government. With this, we are trying to do it the other way round: first, see if it is possible to agree a programme for government; then, if it is, Ministers would be identified on the basis of the programme broadly agreed. I think a programme for government should be a short, sharp document. The ones I was involved in during previous Executives turned out at something like 90 pages. The vast majority was never implemented anyway. If this works, it might help to focus people on a number of key issues that were agreed before taking office. That might be helpful, but on the other hand people might say, "Well, if whoever were the two largest parties agreed among themselves, never mind, we'll go through this process and sort it out afterwards". They can still

[Lord Empey]
do that but at least this opportunity is provided and the public will be able to make their judgments.

When we deal with the financial issues we should remember that, last year, Stormont for the first time since 1921 could not balance its books. That had never happened before. Yes, there was the welfare crisis—largely created by Sinn Fein, although all parties had issues or major objections, including my own party. I support some of the compromises that have emerged since. However, the principal reason that there was a financial crisis was really down to sheer incompetence. I got Parliamentary Answers from the noble Lord, Lord Deighton, in November 2014 in which he set out when the Government had advised the Executive what their budget was. They were advised in autumn 2010 what their budget was up to the end of 2015, and they were advised in June 2013 what their budget was up to 2016. Knowing those figures and for that length of time, it was obvious to anybody that there would have to be reductions in public services, even though the financial settlements for Northern Ireland were more generous, taken in the round, than for other devolved regions. Despite that, nothing of substance was done and the arithmetic just did not add up. Although welfare was a significant portion of it, it was not the majority.

What is the solution to that? Instead of having four years in which to plan, to go through a process of people voluntarily leaving their posts and making other arrangements in departments, we ended up changing the budget in-year—the worst possible set of circumstances. Not only that, we have now given the Administration—the Government went ahead and pushed this through in September last year—permission to borrow £700 million to pay off 20,000 public sector workers. That was entirely avoidable. I am also concerned that the Assembly is now racking up huge amounts of borrowing. By the end of this financial year, it will be close to £3 billion of borrowing. That is becoming a very substantial slice of our cake.

We also find ourselves in the position where between 20% and 25% of the population are on hospital waiting lists. We have moved on nearly two decades, so the performance of the Assembly now has to be looked at not simply in the light that it has survived, which I welcome, but also in terms of its delivery. That is where there is huge failure.

Although there are many measures in the Bill to be welcomed, many issues are not in it. I am very pleased to see the noble Baroness, Lady Harris of Richmond, in her place and in such good voice this evening. Given that she was a leading light at the time, she will recall the changes that were made to the structures in 2006—the fundamental reason in my opinion why we are not further on—when, following the St Andrews agreement, changes were made to the identification of the First Minister and the Deputy First Minister. Instead of the Assembly appointing them on a cross-community vote, it was done by whichever were the largest two parties. That meant that each subsequent election became a sectarian headcount. That is still the position now. I think that the public have caught on, are getting that message and realise what was done. Nevertheless, that is one of the reasons why we are where we are. Instead of having a shared Government, we have a shared-out Government. There is a lot more to be done. That change was made without reference to the people who had actually negotiated the agreement. It was done behind closed doors and was done basically to buy off those people who had been difficult. I understand why Tony Blair's Government did it and I think that the noble Lord, Lord Hain, who is not in his place, was deeply involved in it. However, I believe that it was a fundamental mistake and we are still paying the price for it.

There will be opportunities at a later stage to discuss all these issues and more and I look forward to that. I hope that as we move forward we will address delivery mechanisms and real improvements to people's lives because, sadly, many people have been sucked into violence. Even in my former patch, the paramilitaries are rampant. The idea that they have gone away is not true; they are still active and have morphed into different areas of activity. I am sure that the noble Lord, Lord Alderdice, will not wish to prejudice anything he might subsequently discover but this is no secret. He will find that there are huge areas of activity in which they are still engaged. They are in many cases major role models for young people in inner-city areas right across the Province. We have not drilled down into the social and economic deprivation in those areas, which is as bad as ever. Yet those are the very people who should have been convinced by the actions of the Assembly that politics works, and works for them. All those young people with no aims or goals in life are at the mercy of people with warped political ideas. We should bear in mind that many of the young people who have been arrested for dissident republican activity had hardly been born at the time the agreement was made, let alone had any major experience of it, as the noble Lord, Lord Murphy, pointed out. However, they have been used by people to deliver what the latter can no longer deliver, and that is an outrage. Only by making politics work and deliver for those communities will we eventually break the link between the two and the poison that these people spread. I look forward to further discussions and debates next week when we will have an opportunity to drill down into some of these measures in greater depth.

9.25 pm

Lord Eames (CB): My Lords, I declare an interest as the co-chairman of the Consultative Group on the Past. I am grateful to noble Lords who have kindly referred to that group's report already in this debate. I also pay a warm personal tribute to the Minister for the care with which he has undertaken the portfolio for Northern Ireland, particularly with respect to this legislation. I would like to put on record that it has been careful; he has listened, consulted and gone far beyond what could have been expected of him.

The phrase which is uppermost in my mind tonight, as I listen to this debate, will be familiar to noble Lords. They are the words spoken by Her Majesty on a recent occasion. She said that progress could be defined as,

"being able to bow to the past but not be bound by it".

The report that I was privileged to have a hand in linked legislation, the disclosure of the past and investigation of particular incidents with one other theme: reconciliation. But you cannot legislate for reconciliation. You cannot pass laws to have reconciliation in a divided society. You can put in the framework which will allow political progress to take place.

The noble Lord, Lord Empey, rightly reminded us of the work that has still to be done, but I beg your Lordships to realise that, no matter how perfect this legislation may be, it is by no means the end of the story. I can assure you that that story is, as the noble Lord said, on the streets of Belfast. We are a divided society; we are a society looking for leadership. We are a society where victims and victimhood stalk the memories of too many people. I have buried them; I have buried the victims of the violence and consoled families. I have tried to suggest ways in which civil society could address the vacuum left by that violence. In my declining years, I am more and more convinced that you cannot gain reconciliation through legislation alone.

The paramilitary situation that is addressed by this legislation—and I welcome the establishment of the monitoring group—is still stalking our streets. To quote the noble Lord, Lord Empey, again, it is still affecting the lives of young people. But it is even more sinister than that. One generation of paramilitary leaders—the people whom I had to try to deal with in my professional life—has gone. We now have young people growing up in these ghetto areas surrounded by peace walls and the remnants of a history and a time that they are taught in school but never knew. They are being influenced by sinister elements and, until we tackle that position, it will continue. I welcome the efforts which I know the Minister intends to take to help us address the legacy issues, I hope that he will bear in mind that we have to tackle a new generation who have new ideas but who are being taught the old grievances in what they are told is their history.

My memory goes back over the years. It is a question not just of the Consultative Group on the Past report but of the days and nights that I was involved in trying to do something to bring about reconciliation, not in a political sense but because of the sickness in our society. If this legislation is to take us on in a fresh start, so to speak, it has to have a realism about it—which so far I am afraid parliamentary democracy has failed to deliver. That failure is caused by many different reasons, not least the fact that there are still those who wish to manipulate the gift of parliamentary democracy for reasons that lie far beyond the debating chamber. There has been reference already to this and Northern Ireland is not immune to that sickness today. I hope that the various provisions of this legislation dealing with the parliamentary procedure in the Assembly and otherwise will help us move further towards realising the difficulties that that procedure involves.

I said just now that we have to recognise our past but not be bound by it. Of course, I am disappointed that this legislation does not represent an agreement that has been reached by the local parties on how to deal with the past. The report that we produced, which, as your Lordships have been reminded, is gathering dust on someone's shelf somewhere, linked legislation with reconciliation. We listened endlessly for two years to what people said and it was an evidence-based report. From what I am told, the architecture of that report remains—not the detail but the architecture of it. Listening to the noble Lord, Lord Murphy, just now and going back in my memory to the days when he had responsibility and some of us had dealings with him on behalf of the community, I venture to suggest he will agree that when the architecture of that report is re-examined, as I understand it is being re-examined, it will be judged still to contain certain principles that are worth following.

Much has been said tonight about the current situation. I want us to look forward. I want us not to treat the situation as it is as the end, because reconciliation is work in progress. I want to pay tribute to those former paramilitary members who are doing heroic work. They are not all continuing in a criminal way. Recently I had occasion to meet some of them and I am convinced that they are making a real effort, particularly among the loyalist paramilitaries, to try to see a new future. I hope that when we get to the next stage of this Bill there will be some recognition that these people need support—and they need it urgently.

Finally, reconciliation is nothing to do with legislation, as I say. It is born in the hearts and minds of people when they feel it is in their interests to be reconciled. It is as simple as that. Until we can create a panorama in Northern Ireland that says, "Do you remember the peace walls? Do you remember the paramilitaries? Do you remember this incident? Do you remember that horrific incident?", and until we can get to the situation where we can say that we are truly an example to the rest of the world in what we can do—then and only then, if some of us live long enough to see it, will we have succeeded.

I thank the Minister for bringing this Bill before us; I thank those in this Chamber who have played a vital role in that process in the past; and I issue the earnest prayer that we are taking one more simple step towards the new Jerusalem that the people of Northern Ireland so richly deserve.

9.34 pm

Lord Browne of Belmont (DUP): My Lords, I welcome the Minister's statement, which set out very clearly the main provisions and aims of the Bill. My party strongly supports the Bill and the proposals to expedite its parliamentary progress, which are important to ensure that the measures relating to the pledge of office, the MLA undertaking and the time available for allocation of ministerial appointments are in place before the return of the new Assembly.

It is generally accepted that unresolved issues relating to paramilitarism and the budget threatened the very existence of the devolved institutions in Northern Ireland at the end of last year. It is important to recognise the vital role played by the Secretary of State, her Ministers and the former First Minister of Northern Ireland, Peter Robinson, in achieving consensus on these critical matters and thus avoiding a potential constitutional crisis. Clauses 1 to 5, providing for the establishment of a new Independent Reporting Commission, represent significant progress towards the ultimate goal of eliminating paramilitarism. The direct involvement of the United Kingdom Government

[LORD BROWNE OF BELMONT]
and the Irish Government, as well as the Northern Ireland Executive, should facilitate the compilation of information on the paramilitary activities of both republican and loyalist groups. It would be helpful if the Minister provided further details on the terms of the treaty between the United Kingdom and Irish Governments which will provide for the establishment of the commission.

The Northern Ireland Assembly should be commended for the practical steps it has taken to reach consensus on budgetary matters. The Executive have now agreed a budget for next year, which has been passed by the Assembly in advance of the relevant time limit. Clause 9 provides for greater transparency in the budgetary process. The Minister will be required to lay a Statement before the Assembly, specifying the amount of UK funding for the financial year, 14 days before the budget date, and a further Statement along with the draft budget showing that the amount of UK funding required will not exceed the amount available. I hope that these provisions will prevent irresponsible and short-sighted political manoeuvring that is intended to obstruct and impede the budget-setting process.

Clause 6 and Schedule 1, which extend the time available for the allocation of ministerial positions, should also facilitate the achievement of consensus in the legislative process by allowing the parties more time to agree a programme for government. I believe this is a time to praise the success of the fresh start initiative, rather than indulging in pedantic fault-finding. Many problems still remain unresolved. As we have heard from the noble and right reverend Lord, Lord Eames, who made such a moving statement, one of these problems is in confronting the past. I should stress that my party would welcome publication of details on the progress made, so that victims, their families and all those affected can be reassured that every effort is being made to achieve a successful conclusion. I very much welcome the Minister's statement tonight regarding talks on the legacy of the past. I am pleased to support the Bill.

9.39 pm

Lord Bew (CB): My Lords, I, too, support the Bill and I congratulate the Government on their success in bringing it forward. We should not forget that in late autumn of last year, we were stuck on a number of points: welfare, the legacy of the past and then the noxious effects on political life of two paramilitary murders in the city of Belfast. It did not look at all like it was going to be possible to make progress in this way. However, we have begun an election campaign for a new Assembly in Northern Ireland, which is at least up and running and not going through any deep institutional crisis, which seemed to be just around the corner.

It is therefore fair to pay tribute to the Government and the Secretary of State. During a period which has already been recalled tonight when the noble Lord, Lord Murphy, was Secretary of State and Minister of State in Northern Ireland, I remember some very late-night conversations when things seemed to be falling part and the progress that had been made seemed to be about to disintegrate. He worked enormously hard to make sure that, in the end, that did not happen, and progress continued to be made. It is worth saying that the same level of public spirit has been demonstrated by the current Government. Northern Ireland is very fortunate in general in the way the two main British parties have struggled to preserve normality and to bring about a historic compromise in the Province.

One other positive point, which I am very keen to see, is the arrival in the Bill of the Independent Reporting Commission. I advocated for this very strongly a number of times last year when the crisis broke out following the two murders. I would go so far as to say that, in a way, the commission has already played a positive role, because it is one of the reasons why the parties—particularly the unionist parties in this case—were able to move on after the two murders. The analysis that an institution such as this was required—the view that I think the noble Lord, Lord Empey, has taken—and that the removal of the previous institution which dealt with these matters was perhaps premature, has largely been shown to be right. It has almost done its work already. I do not want to be flippant about this, but the idea has already delivered even before the commission is set up—although, as a number of speakers tonight have stressed, that does not mean that it is not important that whoever fills these positions in the end has public credibility.

I am uneasy about one, albeit very small, element. If I understand the notes to the Bill correctly, the British and Irish Governments are paying for this body but the Assembly, through the First Minister and Deputy First Minister, has the patronage of two of the four appointments. It is a small thing and you can defend it—there is not much point in having a First Minister and Deputy First Minister unless they have that role—but it is so typical of Northern Ireland that Her Majesty's Government foot the bill, in this case along with the Irish Government, and the Assembly somehow does not quite foot the bill but exercises choice, patronage and political influence with other people's money. I just think it is a bad habit. The noble Lord, Lord Empey, has described in some detail the financial facts of how Stormont has been operating for some years now, and that it is not really a good omen for the future.

What I want to refer to most of all is an element of the debate on the Bill in the other place. Lady Sylvia Hermon in particular, but also other speakers, identified that there is a problem with the way the Assembly operates. There is a great deal of public cynicism. One idea put forward was for IPSA to be given a role, or for a Northern Irish IPSA to be set up. I totally understand the argument, although it was said in the other place that this Bill may or may not be the right place to approach this issue at this point. However, the point is not just that there is no IPSA-type institution in the Northern Ireland Assembly—and that this may encourage public cynicism about politics, expenses and so on, whether that is fair or not—but that the Committee on Standards in Public Life was removed from operating in the Northern Ireland Assembly shortly before my appointment as chairman. It is pure coincidence that I happen to be from Northern Ireland—the decision was made before an appointment was decided on—but

the combined absence of IPSA and the Committee on Standards in Public Life means that Northern Ireland is somewhat light on standards compared with what we have come to expect in the way of transparency in the operation of political institutions. If you throw into that the libel law reform that both this House and the other place implemented in 2013—it opened up a space for investigative reporting in the rest of the United Kingdom, but it has not been implemented in Northern Ireland—perhaps you should not be terribly surprised if financial scandals like NAMA suddenly appear on your doorstep and are such a significant part of Northern Irish life.

I do not expect the Minister to answer this tonight—indeed, I am not at all sure that the Bill is the right place to address these questions; there was division in the House of Commons on the matter—but it is worth asking him whether he agrees that it is worthwhile for the Government to have a view on these matters. The view of Her Majesty's Government on these questions, the resolution of which ultimately requires action in the Northern Ireland Assembly, has to be important because, to go back to my earlier point, it is Her Majesty's Government's money that is being spent here.

9.45 pm

Lord Lexden (Con): My Lords, perhaps I should begin by reminding the House that my interest in Northern Ireland goes back to the 1960s, that it was strengthened by a period teaching history in the Queen's University of Belfast and that it was enhanced further in the late 1970s, when I was political adviser to Airey Neave up until the day of his murder.

No one could say that the Bill's provisions have been rushed, or formulated in a precipitate manner. Ten weeks of discussion by the five main political parties in Northern Ireland preceded the Stormont House agreement in 2014, to which the adjective "historic" is now sometimes attached. Another 10 weeks of discussions took place last year to pave the way for a plan to implement a great deal—but, as we have heard, not all—of the 2014 agreement. Twenty weeks—five months—have been devoted to preparing the ground for this legislation.

One clause in the Bill, above all, deserves particular praise. As we have heard, under Clause 9, the Northern Ireland Executive will be required to disclose the amount of funding available to them from Her Majesty's Treasury before publishing their annual Budget. Financial prudence has not always been a marked feature of Northern Ireland's devolved government in the last few years, to put it mildly. My noble friend Lord Empey spoke vividly on that point tonight. Clause 9, properly implemented, could mark the first, essential step towards improvement, helping at long last to lay the basis for proper budgetary discipline.

Nearly half the clauses of the Bill are devoted to one subject: the Independent Reporting Commission. It, too, is immensely welcome. Indeed, it is essential, following events last year which exhibited so vividly the continued existence of paramilitary structures and their capacity to inflict deep harm on communities and individuals.

It is difficult not to regret the closing down of its predecessor, the Independent Monitoring Commission, in 2011. The new body's powers, it is true, will differ in certain respects from those of its predecessor, but it is infinitely easier to adapt the role and responsibilities of an existing institution than to call a new one into existence, particularly since a formal treaty is required between our Government and that of the Republic of Ireland. The retention of the earlier commissioner could have secured progress in reducing paramilitary activity further and made last year's crisis easier to calm.

The treaty under which the new commission is to be established has apparently not yet been finalised or published. Legislation will be needed in the Irish Parliament as well as this one. Can the Government indicate the earliest date that the commission might come into existence?

I have an issue of terminology to raise in connection with the clauses relating to the commission. Clause 2(3)(a) contains reference to Ireland. Clause 4(1) and Clause 5(2)(b) contain references to the Government of Ireland. In each case, the words "Republic of" need to be inserted before the word "Ireland". Since 1949, the 26 counties which removed themselves from the United Kingdom in 1922 have been known as the Republic of Ireland in international law.

There arose in connection with this Bill a need for a legislative consent Motion at Stormont, as a result of the convention that astonishingly continues to bear the name of a former Member of this House who brought grave discredit on himself last year. To what exactly has the Northern Ireland Assembly consented? Does the Motion acknowledge that Parliament has unfettered discretion to amend the clauses in this Bill that cover devolved matters, or has it consented to the Bill only in the form in which it was published? If the latter, the Government will presumably set their face against any amendments that may be proposed in Committee.

I touch briefly on the great absentee from the Bill—the so-called legacy issues. Our Government carry formidable responsibilities and duties; they have to protect vital interests of national security, do all that they can to assuage the distress of victims and survivors, and determine how many of a vast stock of documents can be safely disclosed. They have also to counter a version of the Troubles that seeks to displace responsibility from the people who perpetrated acts of terrorism and to place the state at the heart of nearly every atrocity and murder that took place—as my right honourable friend the Secretary of State for Northern Ireland said on 11 February this year. It is absolutely right that the Government should feel totally satisfied that they have fulfilled their immense responsibilities in conjunction with Northern Ireland politicians before announcing the final arrangements that are to be made.

This Parliament must encourage and support a process of evolution to assist Ulster to move forward to a more cohesive and united devolved Government, wholly committed to the creation of a shared future—a phrase that the Prime Minister is fond of using. I hope that this Bill will assist progress towards it. There are encouraging signs. One is the spirit of understanding

[LORD LEXDEN]
in which the innately divisive events of 1916, the Easter Rising and the Somme, are being commemorated in this centenary year. As my right honourable friend the Secretary of State for Northern Ireland put it in a recent newspaper article, the commemorations show that,

"it is possible to mark events that are still sensitive and contested a century after they took place in ways that are both dignified and inclusive".

Ulster must remain among the principal preoccupations and concerns of this Parliament. After 1921, devolution led to its neglect at Westminster, as my noble friend Lord Empey often reminds us. That must never happen again. My party, the Conservative and Unionist Party, must hold in its memory words from its 2010 election manifesto—that we will,

"work to bring Northern Ireland back into the mainstream of UK politics".

9.53 pm

Lord Alderdice (LD): My Lords, like other noble Lords I am grateful to the Minister not just for presenting the Bill with his usual clarity this evening but also for all the work and engagement in the weeks preceding the Bill. I welcome, as others have done, the fact that that work will continue with the briefing on legacy issues tomorrow, which I hope to attend, like many other noble Lords here this evening.

This piece of legislation is of course, as the noble Lord, Lord Lexden, has said, hardly one that has come to us too quickly, despite the fact that it is in technical terms fast-tracked. But of course it needed to be fast-tracked if it was to be through Parliament here in time for those important elements that refer to the Assembly to be implemented in advance of the Assembly election and the new Executive—and there is the fact that some more time will be given for the construction of the programme for government and the appointment of Ministers, and the pledges of office of Ministers and MLAs.

Like the noble Lord, Lord Empey, I have some scepticism about the value and strength of these pledges of office. As he said, we have had some experience of these kinds of things over a long period. However, in respect of the pledge of office and of other elements of this Bill which refer to the disbandment of paramilitary organisation, the fact that these things are included in the context of an agreement by the Northern Ireland parties at the most senior level is very positive. I was interested to learn that the term "disbandment" was brought forward not by the British and Irish Governments but by the Northern Ireland parties as part of their commitment. That degree of determination in terms of the expression of the language was an encouragement to me.

Indeed, in terms of the achievement of an agreement itself—to some extent brokered and encouraged by the Secretary of State, to whom we rightly pay tribute—there is perhaps a sense in which this agreement was more truly the product of the engagement of the political parties, particularly the two largest parties in Northern Ireland, than most other agreements. That is a very positive thing. The noble Lord, Lord Empey, also referred to the fact that budgets—not just welfare, but beyond that—had not really been properly attended to. He suggested that it was to do with inefficiency. Perhaps so, but I am not entirely sure that that was the driver. I think that in truth the Northern Ireland parties, perhaps particularly Sinn Fein and maybe the SDLP, had come to the position over many years where they expected that in the end the British Government would pay and that if the political pressure was sufficient, a small amount of money—in Treasury terms—was likely to be forthcoming. Given that that has been the history, I do not think that we should be surprised that things were taken right to the limit and a little bit beyond because we have been on that track so often before. If you are going to change that, you need to accept that it will come to the limit and people will stare into the abyss. That is the key point. At that point, the political parties in Northern Ireland and their leaders stared into the abyss and decided that they would draw back and sign up for provisions that, were they held to, would obviate that kind of circumstance in the future. It does not matter what we put in the legislation, if people come to the point where they are prepared to have the whole thing fall to pieces, they will just ride roughshod over it, but if they are prepared to put it into legislation, it is at least some indication of willingness to work together to a good outcome, and I welcome that and the other various provisions.

Then we come to the disbanding of paramilitary organisations, which is not quite so incredibly urgent in terms of the election but is at the heart of the Bill. I declare an interest, which noble Lords know, as one of the three people commissioned by the First Minister and Deputy First Minister to produce a strategy for the disbanding of paramilitary groups. That is the title of the mandate. We have to be careful when we sign up for things. Some things have been said about victims. There are complaints that their interests were not satisfactorily dealt with. We have to accept that the references to victims in the Belfast agreement were very modest. I am not long back from doing some work in Colombia on the peace process there. The first thing they did in Colombia, before even reaching an agreement—in fact they have not yet reached an agreement with FARC—was to put in place legislation specifically to address the needs of victims. They started with the victims. They did not wait until after everything else to address victims. Should we ever have to do things again, we would have to advise that that is a better way of addressing things. We have to bear some responsibility for the fact that that was not the route that we took. One can always learn from the experience of others in other places.

I was also there partly to look at the so-called DDR provisions, the disarmament, demobilisation and reintegration arrangements that they are looking at for FARC and in fact, in the last week or so, for the ELN. Again, we see something that may not have been a mistake on our part but was not the best way that one could have done things. If you are looking for disbandment or demobilisation, what does it mean? It means you are encouraging all the individuals who were involved in terrorist and paramilitary organisations to disperse—not to continue to be engaged with each other, other than in normal networks of friendships. That is not what was done. Instead, the paramilitary organisations

themselves were engaged with, as organisations. In that sense, the leaders of those organisations were enabled to have continuing patronage when it came to dealing with, for example, ex-prisoners' groups. There are not just loyalist ex-prisoners' groups and republican ex-prisoners' groups; there are UVF and UDA ex-prisoners' groups. Even the loyalists do not come together. Why? It is not just because of their history and background; it is because those leaders—of the past or whatever—have a degree of power and patronage within their organisation. We need to think quite a lot about the meaning of that, and about the responsibility we all have to take for the fact that we went down that road. It may be understandable that we did, but maybe in retrospect there were other ways to do it.

What does disbandment mean? There are some paramilitary organisations or—who knows?—former paramilitary organisations that say, "We've already gone away". Whether people believe them or not is another matter. There are other paramilitary organisations that manifestly have not gone away but say that they would like to. In fact, every year they say they would like to, and even sometimes give a date when they will, although it does not actually happen. There are yet others that clearly have not the slightest intention of going away and in fact want to continue, grow and cause us all trouble and difficulty.

We have had reference, quite properly and soberly, to the recent death of the prison officer Adrian Ismay—a horrible reminder of the risks that prison officers and other members of the security services run in the course of their work. However, we also need to get it into perspective. We have probably fewer than 50 prisoners in Northern Ireland prisons in the separated regimes, out of 800 or so prisoners. That is a very small minority—vocal and troublesome, yes, but in comparison with the numbers we were dealing with in the 1970s, 1980s and 1990s, it is a totally different situation. We need to think about it, deal with it and treat it in a different way, perhaps without some of the anxieties about what could be done, internally in the prisons and externally in society, by addressing these kinds of issues.

As noble Lords will understand, those are some of the issues that are very much to the fore in my own mind when it comes to dealing with these matters. Noble Lords have referred to the fact that south of the border, too, there have recently been some horrifying events, but we have to ask ourselves seriously: at what point do we stop thinking about these things as paramilitary and start to identify them as organised crime—or, in some cases, disorganised crime? That is what it is: criminal activity. It has no serious political motivation at all. Other noble Lords have rightly referred to the fact that, just as this Assembly election will to some extent see a generational change in many leaders, there is also a generational change in some of these organisations too, with young people coming in who do not even remember the situation. There was an extremely interesting comment a couple of days ago by the Deputy First Minister Martin McGuinness in response to claims by some people in the dissident republican movement that it was about remembering and implementing the wishes of the men of 1916. Martin McGuinness said—I paraphrase, but I think this gives an accurate impression—"I didn't get involved in the things I got involved in during the 1960s because of the men of 1916. I got involved because of what I saw happening in the 1960s to my community, and that is not what is happening now. The excuse of 1916, or even of the 1960s, does not stand in the here and now". I thought that was an extremely interesting, powerful and in some ways rather courageous thing to say on the centenary of 1916. It says to us that those who are involved and engaged do not have a mandate from some of the most senior people in the republican movement for any political dimension to the use of criminal activity and threat of violence. It was an extremely powerful statement that we should build upon.

I welcome a number of the provisions in respect of the Independent Reporting Commission: for example, that it has a degree of diplomatic immunity and that it cannot be taken to court. Representatives of Her Majesty's Government will recall that they were taken to court—in London, interestingly—by Sinn Fein in respect of the Independent Monitoring Commission, on which I served. It is clear that the IRC will not be susceptible to that—in truth, it was largely clear back then—and there is now a degree of protection. Indeed, subsequent to the whole Boston College issue, the records will be sacrosanct, and that is extremely important if people are to be open and honest.

However, we need to be a little bit careful: this is not a rerun of the IMC. The reporting commission will be looking at the report that my colleagues and I hope to have finished by the end of May and to publish and present the following month, and it will oversee the implementation of that strategy. That is very different from looking at all the activities of organisations. The reporting will take place once a year, not twice, as was the case with the IMC and was supposed to continue to be the case for the Secretary of State for Northern Ireland. That is a different dynamic and a different situation, and there need to be different expectations of what is possible.

The commission also needs to look at how we can change things for those who have been involved so that neither they nor their families feel bound to these organisations. Maybe there are things that we do in officialdom that make it difficult for people to give that up, leave it behind and get on with an ordinary civilian life. I have seen situations where not only the people involved but their children and grandchildren continue to suffer for things that happened some years ago. That is not helpful when we hope that these organisations will go away. We accept that organised crime will not go away, but it is hoped that paramilitary activity can begin to become a thing of the past.

There is much more that one could say, but which at this time of the evening it would not be sensible to say, and in any case there will be other opportunities to say it. However, it is important to point out, and to recognise, that the Bill represents something positive coming out of Northern Ireland and out of the engagement of political leaders. The Government are to be commended on bringing forward this legislation and on not waiting for an omnibus piece of legislation to deal with all the other issues of legacy and so on,

[Lord Alderdice]
thereby delaying getting into place those things we can now put in place relatively easily and non-contentiously, and get on with.

We have to do all we can to ensure that the reporting commission is part of a wider effort to lift the blight of paramilitarism from the people of Northern Ireland. It is not realistic to believe that all criminal activity, or even the criminal activity of all those who have in the past been involved in paramilitary organisations, will be lifted from our community. But the notion of political motivation for organised crime must go, and this Bill is a helpful step in that direction.

10.08 pm

Lord McAvoy (Lab): My Lords, I join all noble Lords who have spoken tonight in paying tribute and compliments to the Minister for his contribution over this whole period. To my mind, it has been a model of involvement through legislation which can be quite contentious; nevertheless, it is taken against a background of consensus in the political system here. We have no hesitation in continuing our policy of bipartisanship and consent in all matters relating to Northern Ireland, and the Minister has played a magnificent part in bringing about this situation so far.

I also thank and pay tribute to my noble friend Lord Murphy of Torfaen. He is a long-standing friend and colleague, and it is an honour to have him here as my minder for the rest of the evening. My noble friend works in a quiet but extremely effective way.

I would also like to pay tribute to every contribution made here tonight. I feel that this debate deserves a wider audience because of the experience and ability here; the wise words and experiences discussed have been terrific. I think that a video should be made of the debate and displayed as often as possible.

I look forward to discussing with the Minister, and, indeed, all Members of this House, this legislation, which represents an important and positive step forward for Northern Ireland. The Bill delivers some of the key elements of last November's fresh start agreement and the 2014 Stormont House agreement. These agreements brought to an end the financial and political impasse in Northern Ireland which had threatened the devolved institutions and exposed us to the very real possibility of a return to direct rule—the "abyss" that the noble Lord, Lord Alderdice, mentioned. This would, of course, have been disastrous, especially when we consider the enormous progress that has been made in the recent past. Therefore, we warmly welcome the Bill.

Before we turn to the detail of the clauses, it is worth reflecting on the events of the past 12 months and what has transpired in order to get us to where we are today. The murders of Gerard Davison and Kevin McGuigan in the summer and the budgetary stalemate over welfare led to a political crisis that required skill, commitment and determination from everyone to get an agreement, break the deadlock and thereby allow progress to be made. We have no hesitation in saying that all those involved—the Secretary of State and her Ministers, including the noble Lord, Lord Dunlop, all the parties in Northern Ireland and the Government of the Republic of Ireland—deserve huge credit for achieving the fresh start agreement, which helped prevent the collapse of devolution. It is a real testament to the incredible progress that has been made that we are here debating this Bill today.

I recognise that there was huge disappointment that there is, as yet, no agreement on how to deal with the past. If anybody needs a lesson on how to use a deep involvement in reconciliation while still concentrating on looking forward, the speech of the noble and right reverend Lord, Lord Eames, is an example of that which is worth quoting. His experience and counsel are certainly worth listening to on all sides of this House and in the Province itself. I also took heart from the debates in the other place. In spite of the regret that legacy issues were not included in the Bill, there was a real sense of optimism about the future and an unwavering commitment from everyone who took part in those discussions to rid Northern Ireland of all forms of paramilitary activity.

Nobody in this House needs convincing that we need a legacy strategy to cope with the hurt, the anger and the deep memories of people who have suffered throughout the years in Northern Ireland. This Bill gives Northern Ireland the tools to work towards this commitment. We recognise that huge progress has been made when it comes to legacy issues, so we should not be too pessimistic. But in the weeks and months ahead, it is important that this progress is built on, while of course recognising the challenges and difficulties that remain. Among those difficulties are the incidents mentioned by the noble Baroness, Lady Harris, who outlined the events that have taken place which could put a block on things.

The publication of the draft treaty on the Independent Commission on Information Retrieval was welcome. It showed not only the direction of travel but also the achievements being made in the talks. At the centre of these talks must be victim and survivor involvement and engagement—we all know that that is key. As the talks progress, it is vital that victims continue to be put at the forefront of these discussions so as to ensure that they are at the heart of any future agreement.

I have tried on occasions to imagine myself in the position of having lost a member of my family and how I would feel if I were in Northern Ireland and something like that had happened. I recognise clearly that there has to be a special process to bring closure—I know that it can be a horrible phrase at times—to the continual, everyday bearing of grudges and hatred. Such feelings are perfectly understandable—I do not criticise anybody—but that is a measure of what we have to do to give the survivors and victims some peace.

Recent allegations with respect to various atrocities of the past demonstrate more than ever the need for a process to be agreed. Victims must not feel that they are locked out of any progress, which is why we continue to urge the Government to be as transparent as possible, even where difficultly remains, and to continue to seek agreement.

Given that legacy issues are not included in the Bill, there is a particular need to consider the resources of the PSNI and the Coroners Service for Northern

Ireland to support investigations and to speed up the inquests that they continue to be required to do. Insufficient resources will lead to further delays for victims, which I am sure everyone recognises is unacceptable.

In the other place, my honourable friend the shadow Secretary of State Vernon Coaker suggested that the Government release some of the £150 million fund which the Treasury will make available for legacy projects for the specific purpose of supporting the PSNI and Coroners Service in this interim period. In response, the Parliamentary Under- Secretary of State, Ben Wallace, stated:

"We cannot just release the money; we need all the actors on the stage to produce the solution. We need the victims, the PSNI, the courts, the Lord Chief Justice and the Executive to support the solution".—[*Official Report*, Commons, 22/2/16; col. 113.]

Can the Minister say whether anything specific has happened on that subject since that statement in the other place?

There is no question that we completely support the need for agreement from across all sections, civil and political, in Northern Ireland on legacy issues, but what does this mean for the PSNI and the Coroners Service here and now? How do the Government intend to support their work while discussions as to how best to implement the legacy programme remain ongoing? The Secretary of State indicated that she was listening to these concerns, particularly relating to inquests, when she said:

"If a credible reform package for inquests is put together, we will of course take very seriously any request for funds to support it".—[*Official Report*, Commons, 22/2/16; col. 26.]

Can the Minister indicate whether the Secretary of State has had, or intends to have, any discussions with the Northern Ireland Assembly about such a package to support the PSNI and Coroners Service?

The Bill will establish an Independent Reporting Commission to monitor progress towards ending paramilitary activity. Indeed, we all know that ending such activity is the key thread which extends throughout this legislation. The commission will be established on the basis of a joint treaty between the UK Government and the Government of the Republic of Ireland. Perhaps during later debates—there might not be enough time now for him to respond to everything—the Minister could update the House on the proposed timeline for the publication of this document.

One matter relating to the IRC which was not discussed in great detail in the other place and which your Lordships' House might consider in Committee was the progress to be made by the commission and why this initiative will work when others have not. How will progress be judged and what will happen as a plan B if it stalls?

Related to this issue of disclosure, which I am sure Members of your Lordships' House will want to explore further, the Bill requires the Secretary of State to provide guidance on how national security and individuals are to be protected. This guidance will be crucial if we are to ensure that the Independent Reporting Commission can carry out the work that it was designed to do. Again, any further information which the Minister can provide would be welcome.

I think it is fair to say that the issue which attracted the greatest level of debate in the other place relates to Clause 7, on the pledge of office made by Ministers, and Clause 8, on the undertaking made by Members of the Assembly. The revised pledge includes fresh obligations, and the Bill also introduces a new undertaking for MLAs, based on the same commitments, to support the rule of law and commit themselves to a peaceful pursuit of change and progress. This is, of course, welcome. There are concerns but, if we continue to work on them, they can be alleviated.

The Bill also extends the period of time available to appoint Ministers following Assembly elections. It also relates to fiscal transparency surrounding the budget process, an issue about which the noble Lord, Lord Empey, expressed concern. The intention of this is that it will help in the delivery of a stable and sustainable budget. I hope there will be time next week to go further into these details.

However, the fact that we will have the opportunity to discuss the Bill over a period reflects its importance and what it represents. This is an agreement, not a crisis, and it is important that we recognise that. That is why we will co-operate in all stages of the Bill. Members of your Lordships' House will know that there is a tendency for Northern Ireland Bills to be dealt with in a single day when a matter requires urgent attention. While we supported an emergency procedure in respect of welfare reform, in this instance we have agreed to an expedited rather than an emergency process. I believe that will strike a tone which will be welcomed by your Lordships.

Agreeing to this timetable means that it will still be possible to secure Royal Assent before the approaching Northern Ireland elections. If a legislative consent Motion is granted—which, we understand, there is agreement for among Northern Ireland parties—the measures relating to the pledge of office, the MLA undertakings and other matters can be dealt with while ensuring that there is enough time for a broader debate about this Bill and related matters.

As I have said, we are able to discuss these issues at greater length because this is an agreement and not a crisis. That shows that we have come an incredibly long way. However, challenges still remain. The Bill is another important milestone in the journey of eradicating the paramilitary activity which is so much at the heart of tackling the issue of violence in Northern Ireland. The impact of paramilitary activity still looms over too many people in Northern Ireland. The success of the Bill, the new pledges and the Independent Reporting Commission will be judged by how far they contribute to bringing about this goal.

The Labour Party is proud of its role in supporting the Government in a genuine spirit of bipartisanship, which exists throughout the House. I hope that some of this debate can resonate in Northern Ireland.

10.23 pm

Lord Dunlop: My Lords, this has been a constructive debate with powerful and moving speeches and I thank noble Lords from all parts of the House for the many and varied contributions they have made. It is fair to say that the speakers list has been short but that

[Lord Dunlop]
the quality of the speakers and the wealth of knowledge and experience that has been brought to bear has more than made up for this. Indeed, as a relative newcomer in this House, I am humbled to be participating in such company. I echo the remarks made by the noble Lord, Lord McAvoy, about the contribution and presence here of the noble Lord, Lord Murphy.

I shall endeavour in my closing remarks to address as many of the points raised as I can. However, perhaps I may first say a few words about the Bill as a whole. As I said earlier, the Bill implements some key elements of both the fresh start and Stormont House agreements. In so doing it takes an important step towards a more peaceful, prosperous and stable Northern Ireland. It is peaceful in that the Bill makes provision for the establishment of an independent body that will both promote and report on progress towards ending paramilitary activity connected with Northern Ireland. It is prosperous in that the Bill will increase fiscal transparency, ensuring that executive budgets are affordable and sustainable. It is stable in that it will allow parties more time to agree a programme for government on a cross-party basis, encouraging a more bipartisan approach, while the additions to the ministerial pledge of office and new undertakings for Assembly Members signal more clearly than ever before the determination of the Northern Ireland political parties to see an end to paramilitary activity once and for all.

Perhaps I may now respond to some of the detailed points raised. The noble Lord, Lord Murphy, referred to the powers of appointment of the First Minister and Deputy First Minister, and expressed the hope that in discharging those powers they would consult more widely. I was encouraged that Minister Pengelly, in the legislative consent Motion debate in the Northern Ireland Assembly, undertook that at the very least there would be consultation with the Minister for Justice. The noble Lord also raised the issue of the role of a new generation, a point echoed by the noble and right reverend Lord, Lord Eames. It is important that the shared future initiatives are very much designed in many respects to engage young people.

I turn now to the contribution of the noble Baroness, Lady Harris. She talked about widening the membership of the IRC. Of course, no decisions on the membership of the commission have yet been made, but it is important to make the general point that the IRC needs collectively to have credibility and to carry confidence across the community. Clearly it is incumbent on the Government, the Irish Government and the First and Deputy First Ministers to consult one another when making their respective nominations to ensure that the criterion laid down in the fresh start agreement is met. The noble Baroness also raised the issue of ring-fencing legacy funding. The Stormont House agreement committed £150 million over five years to fund new legacy institutions. Speaking more widely, I agree with her that it is important that these new institutions are equitable in how they operate. The Government are clear that the new bodies must be transparent, fair and equitable. This is written into the Stormont House agreement and will be in the Bill itself; these are absolutely fundamental values.

The noble Lord, Lord Empey, broadly welcomed the IRC and expressed his hope that it would shine a light into paramilitary activity. Whatever remedial action the IRC might recommend, and it is free to do so, I think that public scrutiny will be a very powerful influence on eradicating paramilitarism in Northern Ireland. The noble Lord also raised the issue of the Executive's finances, a point raised by my noble friend Lord Lexden, who talked about financial prudence. The Executive have committed to establishing an independent fiscal council for Northern Ireland to increase the transparency of the public finances and it will publish an annual assessment of the Executive's revenue streams and spending proposals, showing how the Executive's budget will balance. It is also important that the council will publish a report on the sustainability of the Executive's finances.

I turn to the contribution of the noble and right reverend Lord, Lord Eames. First, I thank him for his kind remarks. He gave a typically moving and authoritative speech about how to reconcile a divided society. I agree with him that reconciliation cannot be achieved solely through legislation. I very much look forward to introducing a Bill to establish the new institutions to deal with the past. He is absolutely right that more is needed. For this reason, my right honourable friend the Secretary of State is engaging intensively with stakeholders, political parties and civil society organisations to move forward in the best interests of victims.

The noble Lord, Lord Browne, sought clarity on the terms of the treaty. That point was also raised by my noble friend Lord Lexden. Discussions with the Government of Ireland on the contents of the international agreement are at an advanced stage. However, it will not be possible to gain final agreement until after the new Government is formed in Ireland. The treaty will set out the IRC's functions, as outlined in *A Fresh Start*, and it will also add further detail on the operations of the commission. I am afraid that, at this point, I cannot be specific or give a date when the IRC will be up and running, but we are aiming for it to be this year. Obviously, the Executive will be publishing their strategy and plans for dealing with paramilitarism by the end of June.

The noble Lord, Lord Lexden, also raised the issue about the legislative consent Motion for this Bill. An LCM was required in the Northern Ireland Assembly for two provisions in the Bill because they alter the competence of a devolved Minister: Clause 1(4), which provides a new power for the First Minister and Deputy First Minister to nominate two members of the IRC; and Clause 9, which seeks to promote fiscal transparency and places a duty on the Northern Ireland Finance Minister to provide statements to the Assembly.

The noble Lord, Lord Bew, raised the issue of the need for an IPSA-style body. Obviously, the Government want to promote the highest standards in public life in all parts of the United Kingdom, including Northern Ireland, but as I said in my opening speech, the Government would not wish to pre-empt detailed Assembly consideration of the most appropriate measures or the most appropriate vehicle to introduce them. Assembly Standing Orders, for instance, exist primarily

to regulate the proceedings of the Assembly, and it is not clear that they would be an appropriate vehicle to make provision for investigation by an independent or external person.

The office of the existing Commissioner for Standards was established by separate Assembly legislation, and any new accountability measures will need to have the greatest possible legitimacy among those who will be affected by them. It is therefore right that the Assembly has the scope to debate these matters and seek political consensus among the Northern Ireland parties on their introduction.

The noble Lord, Lord Alderdice, raised the question of when paramilitarism becomes organised crime. The term "paramilitary" coves a multitude of actions, associations and behaviours. The paramilitary assessment carried out by the PSNI and MI5, and reviewed by an independent panel last year, represents the most recent and up-to-date characterisation of the structure, role and purpose of paramilitary groups in Northern Ireland. Much of this was clearly organised crime. Violent dissident republicans continue to resort to brutal assaults on members of their own communities in an attempt to exert fear and control. This Government are absolutely unequivocal. There is no justification for being a member of a paramilitary organisation in the year 2016, and there was no justification in the past. For that reason, we are introducing the IRC.

I turn finally to the points raised by the noble Lord, Lord McAvoy—and if I have not covered all the points, I will obviously return to them. The noble Lord raised the issue of security funding. Obviously, the Stormont House agreement included provision of £160 million, which was new money, for security funding. I can also confirm that the Secretary of State for Northern Ireland will engage with all relevant stakeholders on inquest reform.

The noble Lord raised the issue of the co-operation of the security agencies with the new commission and how the Government will ensure that they do so. The Government are committed to the measures aimed at tackling paramilitarism outlined in the fresh start agreement and to the success of the Independent Reporting Commission. We urge all bodies, including the security agencies, to co-operate fully and meaningfully with the commission from an early stage and to allow the most accurate reporting possible.

Under Clause 2(5), we will issue guidance for the commission in relation to the access to, handling and use of sensitive information. That is intended to ensure that the relevant agencies and public authorities are able confidently to engage and assist the commission in fulfilling its functions. As for when the guidance will be issued, we will do so in advance of the commission starting work. The guidance will be published in line with the Bill and a copy placed in the Library of the House.

In closing, I remind the House that this is an important Bill—everybody who has spoken recognised that. It has the support of the Northern Ireland Executive and Assembly, where—as we already discussed—a legislative consent Motion was recently passed. It will deliver on commitments made in the fresh start and Stormont House agreements, and it plays a significant part in all our efforts to support a stable and workable devolution settlement in Northern Ireland. I very much look forward to discussing the individual provisions of the Bill in more detail in Committee and, tomorrow, to starting the engagement process not on the Bill but on legacy issues. I commend the Bill to the House.

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

House adjourned at 10.37 pm.

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