Vol. 771
No. 149

Tuesday
10 May 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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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 10 May 2016

2.30 pm

Prayers—read by the Lord Bishop of Truro.

Her Majesty the Queen: 90th Birthday

2.36 pm

The Lord Speaker (Baroness D'Souza): My Lords, I have to inform your Lordships that earlier today I, together with the most reverend Primate the Archbishop of Canterbury, the noble Baronesses, Lady Stowell of Beeston and Lady Smith of Basildon, the noble and learned Lords, Lord Hope of Craighead and Lord Wallace of Tankerness, and the noble Lord, Lord Laming, presented to Her Majesty the Queen the humble Address of 21 April, and that Her Majesty made the following reply:

"My Lords,

I am most grateful to you for your Address on the occasion of my ninetieth birthday.

I have been deeply touched by the many messages of congratulations which I have received on this particular birthday and I warmly reciprocate the good wishes of My Lords at this time".

Economy: High Street Trade

Question

2.37 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government whether they have plans to undertake an urgent review into the financial sustainability of high street trade in England and Wales in the light of the growth of online retail and the increase in overhead costs for shops trading on the high street.

Lord Naseby (Con): My Lords, in asking the Question standing in my name on the Order Paper, I declare an interest in that a member of my family is a retailer.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, there is no plan to undertake a review in England. In Wales this is a matter for the Welsh Assembly. The Government have taken action. Our high streets will benefit from the £6 billion business rates support package announced by the Chancellor at the Budget. We have also given more than £18 million to fund successful initiatives such as Love Your Local Market and the Great British High Street competition, and announced a digital pilot programme.

Lord Naseby: I recognise the work that Her Majesty's Government have done to help retailers. Nevertheless, in essence it amounts to a modest amount of tinkering. Is my noble friend aware that 36 major chains have gone bankrupt, thousands of other retailers have stopped trading and retailers are faced with ever-increasing overheads, declining footfall and increasing competition from online? Against that background, will Her Majesty's Government review the statement that the Minister has just made and recognise that we need a fairer tax covering both retailers and online trading, and that possibly that means a turnover tax rather than a property tax?

Baroness Williams of Trafford: I thank my noble friend for recognising what the Government have done. He talked about various chains going bankrupt and the declining footfall on our high streets. In fact, footfall is now increasing and some high streets have responded very well to the changing patterns of the high street. The ones that have responded well are seeing very good results; for example, in my own town of Altrincham the market has almost completely revitalised the town centre.

Lord Campbell-Savours (Lab): The questioner specifically asked about a turnover tax on online trading. What is the Government's response to that suggestion?

Baroness Williams of Trafford: I have outlined the Government's response to the suggestion, which is that high streets have found numerous ways of responding to the different patterns on our high street. Many chains on the high street are in fact benefiting from things like click and collect.

Baroness Janke (LD): My Lords, does the Minister agree with me that local councils have done a great deal to help to revive local high streets, which are the centres of communities and particularly important to poorer communities? Have the Government considered giving local authorities, particularly the combined authorities, more powers in revaluing and setting the business rate, as suggested by the London Finance Commission and the City Growth Commission?

Baroness Williams of Trafford: First, as the noble Baroness will know, local councils will be able to retain 100% of their business rates by 2020. Combined authorities that also have mayors will have the facility to raise or reduce business rates in their combined authority area. I totally concur with the noble Baroness, because I can think of two local authorities in Greater Manchester where the councils have been absolutely at the forefront of that revitalisation of their local high streets.

Lord Watts (Lab): My Lords, will the Minister adopt the suggestion of reducing the size of town centres to take into account the fact of online trading and perhaps make some finance available to local authorities to achieve that aim?

Baroness Williams of Trafford: The noble Lord makes a good point. One of the things that councils observe is that we need more shoppers in our local high streets and not more shops, hence the expansion into some of the excellent food offers in markets now

[Baroness Williams of Trafford]
and some of the conversions from office to residential that help to revitalise the footfall in local high streets, particularly in the north of England where I am.

Lord Bilimoria (CB): My Lords—

Lord Grade of Yarmouth (Con): My Lords—

Baroness Stowell of Beeston (Con): My Lords, there can be only one of us standing up at any one time. Thank you. We have not heard from the Cross Benches. After hearing from them I suggest that we go to my noble friend Lord Grade.

Lord Bilimoria: My Lords, I have been a non-executive director of Booker, the FTSE 250 company, for eight and a half years. When I started our internet sales were £50 million. Today, out of a turnover of £5 billion, they are £1 billion. Surely the answer is to help the high street to take advantage of the internet age. What are the Government doing to help retailers to take advantage of the internet, whether on payments, winning customers or dealing with their suppliers and the supply chain?

Baroness Williams of Trafford: The noble Lord is absolutely right that the digital age has in many cases been to the high street's advantage. I have mentioned click and collect. Our local high street businesses have to compete in the digital era and we have recently announced a digital pilot programme across Gloucestershire working with partners in the private sector including Argos, IBM and Cisco. This work was developed in close collaboration with the BIS retail unit.

Lord Grade of Yarmouth: Does my noble friend think that there is any connection between the lack of customers in the high street and the tyrannical and punitive parking arrangements that are imposed in our streets that make it impossible to go to the high street and spend money?

Baroness Williams of Trafford: My noble friend is absolutely right. The Government have recognised that some of the punitive practices on our high streets have prevented or discouraged people from going shopping on their local high streets and we have done something about it.

Lord Brooke of Alverthorpe (Lab): Is it not true that online trading is going to grow notwithstanding what might happen in the high streets? Is it not also true that while online trading is welcomed by many people, there are also drawbacks, not the least of these being growth in traffic—white vans are everywhere now—that is creating congestion and poisonous air in the communities? What are the Government going to do to restrain it or at least to make drivers pay for the pollution that they are creating.

Baroness Williams of Trafford: My Lords, whether it is the car going with its owner to the shop or the van from the distribution centre going to the home, I am afraid shopping does, in one way or another, create carbon in our atmosphere. The noble Lord is right that online shopping is increasing vastly. The high streets that acknowledge that, and are responding to it and creating different offers, for example leisure opportunities and markets on the high streets, are the ones that are doing well.

Immigration: Public Services

Question

2.45 pm

Asked by ***Lord Vinson***

To ask Her Majesty's Government, in the light of net immigration continuing at over 300,000 people per year, and the latest Office for National Statistics projections indicating an increase in the United Kingdom population, including births, of 500,000 per year for the next six years, what plans they have to limit immigration and to build more hospitals, schools, housing and prisons to meet an increase in demand.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Government recognise that mass immigration can increase population pressures. That is why we are seeking to reduce net migration to a sustainable level, from the hundreds of thousands to the tens of thousands. The Government are committed to a significant programme of investment in our public services. Taken together, these steps and future measures will ensure that there is adequate provision.

Lord Vinson (Con): I thank the Minister for his somewhat sanguine reply. Would he also agree, though, that the million or so refugees whom Angela Merkel has accepted will soon have the right to come here, and the Turks could be next, adding to the overload on our hospitals, schools and houses, greatly to the detriment of our existing population? Is he also surprised that the effect of uncontrolled immigration from the EU on the stability of our nation and on the welfare of working people appears not to be of concern, with very few exceptions, to the Labour Party?

Lord Keen of Elie: My Lords, the Government are completely reforming the immigration system, cutting abuse and focusing on attracting the brightest and the best. Since 2010, reforms have cut abuse in the student and family visa systems and raised standards in the work routes. In addition, of course, our recent negotiations in Europe have brought to fruition the provision of new settlement agreements for EU migrants, with the requirement for a seven-year emergency brake being in place.

Lord Harris of Haringey (Lab): My Lords, the Minister has told us how wonderful the Government's investment in public services is—apparently to meet all the concerns of the noble Lord, Lord Vinson. Could he then explain, for example, why there is a shortage of primary school places in London, why our health service in so many areas is in crisis and why

there is a problem with social care beds becoming unviable? Why is all that happening if the Government's policies towards the public services have been so benign?

Lord Keen of Elie: It takes time to recover from the experience that we had up until 2010, but major steps are being taken. The Government are committed to investing £7 billion in school places by 2021, to increasing NHS funding in England by £10 billion in real terms by 2020 and to investing £20 billion in housing in the next five years, including £8 billion in affordable housing.

Lord Paddick (LD): My Lords, that is all very well, but clearly, as the noble Lord, Lord Harris of Haringey, said, it is not sufficient. Can the Minister tell the House why the Government are not building more new hospitals, schools and houses, using the additional income they are receiving from foreign workers, who are paying significant sums in income tax and national insurance?

Lord Keen of Elie: As I stated a moment ago, very considerable sums are being expended in these areas. Indeed, we expect to deliver 600,000 new school places by 2021.

Lord Tebbit (Con): My Lords, has my noble and learned friend had any success in establishing a bipartisan policy towards reducing immigration to tens of thousands a year? Or are the Opposition dedicated to an open door to let more and more and more migrants in, with no idea of how we shall pay not just for the schools and the hospitals but for the roads, the waterworks, the power stations and everything else? Whose side does my noble and learned friend think the Opposition are on—the British people or the foreigners?

Lord Keen of Elie: I believe that all Members of this House recognise the importance of a controlled migration system that brings us the best and is the best for this country. Only by means of a controlled migration system can we have an effective, workable society that is integrated and settled.

Lord Rosser (Lab): Today, we have had the opportunity to hear from the authentic voice of the Conservative Party—from behind the Minister.

The previous Labour Government put in place a migration impacts fund. Local authorities and health trusts, for example, could then apply for a share of the funding to support efforts to reduce the impact of migration on public services. It was certainly not a panacea to solve all problems, but it did help to raise new funding to support infrastructure. However, the fund was scrapped by the coalition Government within a few months, and little was then done to ensure that support was still given where it was needed.

We have also said that EU funding should be made available to areas impacted by rapid migration to help with public services such as schools and GP services. Are the Government supporting, or will they support, that step?

Lord Keen of Elie: This Government had to wrestle with the inheritance of 2010 on migration. We found ourselves with more than 900 bogus colleges arranging for the admission into this country of fake students in the hundreds of thousands. Some 920 of those fake colleges have been closed since 2010. That itself has relieved pressure on our services.

Lord Roberts of Llandudno (LD): My Lords—

Lord Flight (Con): My Lords—

Lord Bilimoria (CB): My Lords—

Baroness Afshar (CB): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, it is the turn of the Cross Benches, but I suggest that it be a Member who has not yet asked a question today.

Baroness Afshar: My Lords, as an Iranian born citizen, I must say that not all of us are a drain on the economy. I remind the House that the National Health Service would not run if it were not for people from abroad with high qualifications who are willing to work in it and help the economy. It is important to recognise the contribution they make, because the caring services and the NHS would not function without it.

Lord Keen of Elie: That important contribution is of course recognised. The Government believe that in the long term, it is necessary to train our own nurses in this country. Consequently, the Department of Health has put in place a clear plan to reduce the number of overseas nurses each year until 2019, when we expect to have sufficient nurses to meet demand.

Sport: Integrity

Question

2.52 pm

Asked by ***Lord Addington***

To ask Her Majesty's Government what consideration they have given to placing a duty on all publicly funded and professional sporting bodies to co-operate actively in identifying and punishing anyone damaging the integrity of sport.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): We expect all sports bodies to adhere to the highest standards of governance and to fully co-operate in taking appropriate action against those who damage the integrity of sport. As a result, the Government are introducing a new governance code for sport in the UK later this year. The code will be mandatory for all sports governing bodies in receipt of public funding, and non-compliance with the code will mean that those bodies will lose that funding.

Lord Addington (LD): I thank the Minister for that reply. However, what is her opinion of what happens when some of those bodies reach the end of their authority and have to report on to somebody else to achieve any action against somebody who has broken the spirit of the code—for instance, a doping scandal that ends when it runs out of that authority? Are we to undertake a law review so that action is taken across the board and does not end at artificial boundaries, often there for purely historical reasons?

Baroness Neville-Rolfe: The noble Lord is quite right about the need for things to be joined up. That is why we have set up a group, curiously called the GIGS group—the government integrity group for sport—drawing from across Whitehall and from the key agencies, such as the Gambling Commission and UK Anti-Doping. We will be putting the governance code out to consultation so that the sort of issues that he has identified are properly thought through and dealt with.

Lord Collins of Highbury (Lab): My Lords, this week, we have the anti-corruption summit organised by the Prime Minister. Will the noble Baroness urge the Prime Minister to put this subject on the agenda, bearing in mind the news reports that we have read of government involvement in such corruption? Will she support the aim of funding a body that is independent of sports governing bodies?

Baroness Neville-Rolfe: My Lords, I can confirm that corruption in sport will be on the summit's agenda this week. It is very important that international discussion should take place on this vital subject. UK Sport and Sport England are responsible for this whole area and draw on government money, which has to be properly accounted for. I am not convinced that the direction in which the noble Lord is going is the right one, although, as I said, we are looking at the whole area, including the question of criminal sanctions.

Lord Dobbs (Con): Is my noble friend aware that in ancient Greece, at the entrance to the stadium on Mount Olympus, they erected a row of statues of the great god Zeus to remind those entering what the purpose of the exercise was, and that these statues were paid for by fines levied on cheats? Could we adapt that idea and perhaps erect an avenue of statues of ordinary working men and women outside the entrance to the European Commission in Brussels to remind it what the purpose of the exercise really is? Given that it is Brussels, with all that money sloshing around, there should not be too much trouble in finding the money but, if necessary, I would be happy to chip in.

Baroness Neville-Rolfe: Our country and in fact the whole of European civilisation have learned a huge amount from the Greeks—and indeed from the Romans. I am sure that Brussels has lots to learn.

Lord Wallace of Saltaire (LD): To return to sport, how can the Government intervene in the affairs of these various international sports federations when there is a tremendous problem? In autocratic countries Governments clearly fix what goes on whereas in non-autocratic countries Governments are very much more at arm's length. How are the Government working with British and other representatives on such bodies to make sure that they do not go down the road that, sadly, one or two have done in recent years?

Baroness Neville-Rolfe: In Britain, we care a huge amount about corruption in sport and cleaning things up, and that is in the mouths of all the people who represent us around the world. That is one of the reasons the Prime Minister has put this important issue on his agenda this week. It is fair to say that we work day and night through our representative bodies to try to clean up sport, but there is always more to do. Obviously, the unanimous vote to suspend Russian athletes from all competition was a very good move.

Lord Cormack (Con): Could not all those involved in sport draw some inspiration from the Invictus Games this week?

Baroness Neville-Rolfe: They could indeed draw great inspiration from the Invictus Games and from the Olympics and Paralympics. Of course, the fact that Prince Harry is involved makes us all delighted.

Lord Hayward (Con): When we send a team to Rio, rather than looking at the negative elements of sport, will my noble friend take the opportunity to look at the positive sides and find time, either before or after the team goes, to laud those who make a positive rather than a negative contribution to society?

Baroness Neville-Rolfe: My noble friend makes a very strong point. We can also lead the way on the issue of corruption by making sure that all our athletes are tested before they go and that we have no problems and no reputational issues when we are in Brazil.

Refugees: Unaccompanied Children

Question

2.58 pm

Asked by ***The Lord Bishop of St Albans***

To ask Her Majesty's Government what extra resources they plan to provide to local authorities to support the foster care of unaccompanied refugee children, and what plans they have to engage charities that may have volunteers available to help.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Minister for Immigration will shortly be writing to local authorities to set out the new funding rates for unaccompanied asylum-seeking children. We are consulting with local authorities across the United Kingdom to understand how many children they can support, and we will engage charities with relevant expertise as a part of that process.

The Lord Bishop of St Albans: I thank the Minister for that Answer. In all our debates and statistics, it is vital that we remember that the needs of the child are paramount at every point. A number of my colleagues have signed a letter that was published in the *Times* today, calling on Her Majesty's Government to ensure that the unaccompanied children living in the Calais camps who have families here in the UK are reunited with them in time for the new school term in September—and, furthermore, calling on the Government to act on the 300 unaccompanied children in Greece and Italy and deal with that in the same timeframe. In the light of this profound humanitarian need—indeed, crisis—would the Minister assure the House that the Government will act on these matters immediately?

Lord Keen of Elie: My Lords, the Government are already acting on these matters and have made provision in Calais for suitable experts to be present to assist with the registration of unaccompanied children who may have direct relatives in the United Kingdom and who therefore have a route to the United Kingdom by way of the Dublin regulation. In addition, we have arranged to send experts out to Greece, again to assist with functions there in relation to unaccompanied children. We are at the forefront of attempts to secure as much as we can by way of relief to these unaccompanied children.

Lord Singh of Wimbledon (CB): My Lords, over the last few days there has been a BBC television programme showing how Sikhs are supporting the homeless in London. This evening I shall be meeting people to take that work further forward. I assure the Minister that every Sikh gurdwara in the country will be more than willing to provide not only langar—free food—but every support and assistance to these children.

Lord Keen of Elie: I thank the noble Lord. What he says complements the Government's efforts to develop community sponsorship schemes for children arriving in this country.

Lord Tomlinson (Lab): Could the Minister give a clear and unequivocal statement that the children who are coming into this country will have no pressure or requirement placed on them at 18 to leave these shores?

Lord Keen of Elie: I can give no such assurance. The position of these children when they reach the age of 18 will be assessed and their right to remain will be determined by reference to the country from which they arrived and also by reference to whether it is fair, reasonable and safe for them to return.

Baroness Hamwee (LD): Are the Government in communication with the Government of Canada, who are working with civil society? For instance, Canada has a private sponsorship of refugees programme, whereby sponsors can provide financial and emotional support for a period—usually a year—and the joint assistance programme, partnering with organisations to resettle refugees with special needs.

Lord Keen of Elie: I am not aware of direct contact with the Canadian authorities on that point, but I undertake to write to the noble Baroness on the matter.

Lord Pearson of Rannoch (UKIP): In thinking of our long-term counterterrorism strategy, and bearing in mind the example of the Sikh community, about which we have just heard, are the Government planning to provide an exceptional education for the Muslims among these children—teaching them, for instance, not to follow the Muslim tenets of abrogation and Al-Hijra, and thus to become leaders of integration within our society?

Lord Keen of Elie: These children, we hope, will be fostered along with British children and educated alongside British children, and we believe that they will acquire the same outlook and values.

Lord Alton of Liverpool (CB): My Lords, reverting to the question asked by the right reverend Prelate, will the Minister confirm that Citizens UK, cited in the letter referred to by the right reverend Prelate, has said that there are 157 children in Calais, in the "Jungle", in horrific conditions of mud and squalor, who have a legal claim to come to the United Kingdom because they have relatives here? Will he confirm that he will speak to his officials to see that all possible things will be done to expedite those claims, to see if they have the standing to come to the United Kingdom and start the academic year in September in our schools?

Lord Keen of Elie: The French authorities are taking steps to improve the conditions in Calais, as noble Lords will be aware. As regards the precise number of 157, I cannot comment—but I can say that the Government have made provision in Calais to ensure that those unaccompanied children who have direct relatives in the United Kingdom follow the appropriate path, which is to register with the French authorities and proceed by way of the Dublin regulation.

Lord Elton (Con): My Lords, will the Government take note that it is no good getting these children here two days before term starts and pitching them into a strange school? They must have time to settle into a family or a home before they undertake that very stressful process.

Lord Keen of Elie: It is necessary also to have regard to the capability of local authorities to receive these children. Until there are suitable foster places available for them and until there are suitable schools available for them, it would not be appropriate simply to bring them here.

Baroness Lister of Burtersett (Lab): My Lords, I accept what the noble and learned Lord is saying, but it was suggested in the Commons yesterday that it could be seven months before any child is accepted here. How many more children will go missing in seven months? How many more children will suffer in seven months? This is not the first time that we have said that we need a degree of urgency on this question.

Lord Keen of Elie: I believe that everyone is aware of the urgency of this issue. The Government said last week that we expected that the first children would arrive before the end of the year, not—as was widely reported—that it would take until the end of the year before they arrived.

Lord Roberts of Llandudno (LD): My Lords, surely we remember that this proposal from Save the Children was first made last September. Since that time, it seems that nothing has been prepared by the Government in order to make sure that these children are welcomed here by people who really have warm hearts willing to welcome them. Are not the Government acting totally out of step with the thinking of the majority of caring people in the United Kingdom?

Lord Keen of Elie: I do not accept that for a moment. This Government have been at the forefront of efforts to deal with the refugee problem not only in Syria but also as it has affected Europe. We are taking further steps, as the noble Lord knows, to deal with the question of unaccompanied children. However, noble Lords will remember that those children who are now in Europe are in relatively safe havens. It cannot be suggested that France is anything other than a safe country. For those children who have a connection or direct family links with the United Kingdom, we are taking steps to ensure that that connection is established properly and that they are brought to the United Kingdom.

Baroness Manzoor (LD): My Lords, there are thousands of children who are going missing or have been sexually abused. They are not safe in Europe; we are talking about Europe. Where are these children going and what is happening to them? There needs to be much greater urgency than there is now.

Lord Keen of Elie: We are all aware of the terrible reports that have emanated from Europe about the condition of these children and the fact that their whereabouts in many cases cannot now be ascertained. It is a matter of considerable concern. I reiterate that this Government are at the forefront of efforts to deal with these issues.

House of Commons Members' Fund Bill

Third Reading

3.07 pm

Bill passed.

Immigration Bill

Commons Amendments

3.08 pm

Motion A

Lord Keen of Elie

That this House do not insist on its Amendment 84 and do agree with the Commons in their Amendment 84C in lieu.

84C: After Clause 30, page 108, line 7, at end insert—

"Duty to arrange consideration of bail

(1) Subject as follows, the Secretary of State must arrange a reference to the First-tier Tribunal for the Tribunal to decide whether to grant bail to a person if—

(a) the person is being detained under a provision mentioned in paragraph 1(1)(a) or (c), and

(b) the period of four months beginning with the relevant date has elapsed.

(2) In sub-paragraph (1)(b) "the relevant date" means—

(a) the date on which the person's detention began, or

(b) if a relevant event has occurred in relation to the person since that date, the last date on which such an event has occurred in relation to the person.

(3) The following are relevant events in relation to a person for the purposes of sub-paragraph (2)(b)—

(a) consideration by the First-tier Tribunal of whether to grant immigration bail to the person;

(b) withdrawal by the person of an application for immigration bail treated as made by the person as the result of a reference under this paragraph;

(c) withdrawal by the person of a notice given under sub-paragraph (6)(b).

(4) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person—

(a) includes such consideration regardless of whether there is a hearing or the First-tier Tribunal makes a determination in the case in question;

(b) includes the dismissal of an application by virtue of provision made under paragraph 9(2).

(5) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person does not include such consideration in a case where—

(a) the person has made an application for bail, other than one treated as made by the person as the result of a reference under this paragraph, and

(b) the First-tier Tribunal is prevented from granting bail to the person by paragraph 3(4) (requirement for Secretary of State's consent to bail).

(6) The duty in sub-paragraph (1) to arrange a reference does not apply if—

(a) section 3(2) of the Special Immigration Appeals Commission Act 1997 (persons detained in interests of national security etc) applies to the person, or

(b) the person has given to the Secretary of State, and has not withdrawn, written notice that the person does not wish the person's case to be referred to the First-tier Tribunal under this paragraph.

(7) A reference to the First-tier Tribunal under this paragraph in relation to a person is to be treated for all purposes as an application by that person for the grant of bail under paragraph 1(3)."

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Ramsbotham***

Leave out from "House" to end and insert "do disagree with the Commons in their Amendment 84C, and do insist on its Amendment 84".

The Advocate-General for Scotland (Lord Keen of Elie) (Con): I beg to move that this House do not insist on its Amendment 84 and do agree with the Commons in their Amendment 84C in lieu and disagree with Motion A1 in the name of the noble Lord, Lord Ramsbotham, which seeks to reinstate Amendment 84. I shall speak also to Motion A2 in the name of the noble Baroness, Lady Hamwee, which would amend Amendment 84C to reduce the time limit for automatic bail referrals from four months to two months.

I start by reminding the House of what it has already achieved in its role as a reviewing and revising Chamber. There can be no doubt that the spirited debate in this House has added considerably to the quality of this legislation. This House has done its job, and more. This is indisputably a better Bill for it and, particularly, it does more to protect the interests of the most vulnerable. However, we must now make sure that we deliver what the British public voted for last May and pass this Bill into law.

The Immigration Bill delivers important reforms to our laws, and it is right that we ensure that there is proper consideration and debate of its content. The House's achievement includes ensuring that the detail of the important reforms in the labour market and illegal working provide an effective mechanism to enable us to clamp down on those who exploit vulnerable migrants. The House has delivered improvements to the provisions on the criminal offences and ensured that the duty to have regard to the need to safeguard the welfare of children underpins all the provisions in the Bill. It has pressed the Government for the amendment tabled by the noble Lord, Lord Dubs, to do more to help refugee children, and the Commons yesterday accepted that amendment.

On detention, the Government recognise the strength of feeling on this issue, the need to ensure that detention is for the shortest period possible and that, in particular, there is proper provision to ensure that those who are vulnerable are detained only when necessary and for the shortest period possible.

On time limits on detention, while we do not agree that those are appropriate, we have listened to the concerns expressed in this House. We have listened to the concern that some people may be unaware of their ability to apply for bail or are unable to make such an application. That is why we have proposed our Amendment 84C, which ensures that, unless the detainee has already had a bail hearing, there will be a bail hearing after four months and every four months thereafter. That is an important safeguard, and this House deserves credit for it.

Amendment 84 places an upper limit on detention for all those who are not being deported of a maximum of 28 days in total, which may be extended by the tribunal only on the basis of exceptional circumstances. It might be helpful to remind noble Lords that we will seek to detain and enforce the removal of only those migrants with no basis to remain in the UK who are unwilling to depart of their own volition or who are non-compliant.

As I have stated before, this arbitrary time limit is frankly unworkable and would provide non-compliant migrants with an easy target to aim for in order to secure their release from detention and frustrate their removal. It would lead to meritless asylum claims being made, meritless judicial reviews being lodged and individuals refusing to co-operate with the documentation process. The aggregate limit of 28 days would cause difficulties if we need to redetain a person when a travel document is delayed or where a person disrupts their removal and needs to be taken back into detention until new removal arrangements are put in place.

It may help the House's understanding if I illustrate this with some real examples. Mr R's student visa was curtailed when he failed to enrol at university. He was encountered when giving notice of marriage to a British citizen, which was found to be a sham, and he was detained. The day before he was first due to be removed, he submitted a humans rights claim. He was subsequently removed after 30 days in detention. Mr M was encountered by the police and subsequently detained after his visa had expired. An emergency travel document was applied for, but when he lodged a judicial review he was released on bail. Once the judicial review was resolved he was redetained for removal. He disrupted the first attempt to remove him, so removal had to be rescheduled for a charter flight. Mr M's two periods of detention totalled 130 days. Neither of these examples is likely to qualify as "exceptional circumstances" which would allow the Secretary of State to apply for extended detention.

3.15 pm

This process of considering whether detention should be extended beyond 28 days would be a significant burden on the judiciary, significantly increasing the tribunal's workload, diverting resources away from consideration of asylum and human rights appeals, and therefore leading to delays elsewhere in the immigration system. It would also increase complexity and require a new infrastructure to provide a process for the tribunal to review extended periods of detention without requiring the Secretary of State to make an application.

In our previous debate, the noble and learned Lord, Lord Brown of Eaton-under-Heywood, helpfully quoted from a recent decision of the Supreme Court which supported a flexible and fact-sensitive approach to the duration of detention. It was also noteworthy that the noble Lord, Lord Ramsbotham, clarified, in response to comments from the noble and learned Lord, Lord Brown, and the noble Lord, Lord Pannick, that,

"I never said that immigration detention should be limited to 28 days. What I said was that nobody should be submitted to administrative detention—that is, detention ordered by civil servants—without judicial oversight of that detention within the shortest time possible ".—[*Official Report*, 26/4/16; col. 1097.]

Of course, the noble Lord believes that 28 days is reasonable.

It is on this last point that we disagree. The Government continue to believe that we can best provide the required level of judicial oversight of detention by automatically referring cases to the tribunal at a set point, which we had initially set at six months from either the date of detention or the date of the tribunal's last consideration of release on bail, with referrals at further six-monthly intervals calculated from the point of the last hearing. I am grateful for the encouragement this measure received from the noble and learned Lord, Lord Brown of Eaton-under-Heywood, who expressed his satisfaction that the safeguard this provides, in circumstances where detainees do not themselves apply for bail, properly addresses the problem of detainees having to take the initiative in seeking release from detention.

The duty on the Secretary of State to refer a detainee's case to the tribunal for bail consideration removes the onus from the individual. Bail guidance, issued by the

[LORD KEEN OF ELIE]

President of the First-tier Tribunal (Immigration and Asylum Chamber), provides that judges will focus on several matters when considering a grant of bail, including the reasons for detention, the length of detention so far and its likely future duration, as well as the effect of detention on the individual and the likelihood that they will comply with bail conditions. This guidance explicitly states that the tribunal will need to be shown,

"substantial grounds for believing that detention should be maintained".

The noble Lord, Lord Pannick, also thoughtfully supported the Government's position that a bail hearing every six months was, to use his term, "adequate". However, we have taken on board the concerns expressed by a number of colleagues here and in the other place; it is claimed that six months is still too long without judicial oversight. The Government have therefore tabled a motion in the other place proposing, again, a duty to arrange consideration of bail before the tribunal, but this time reducing the timing of the referral from six to four months.

Much has rightly been made in these debates about how detention affects those suffering from mental health problems. The reforms the Government are putting in place in response to Stephen Shaw's report, including the "adults at risk" policy, will strengthen the existing presumption against detention of those who are particularly vulnerable. This, alongside the overall package of reforms to how immigration detention is managed, including the enhanced gatekeeper role and the new system of quarterly case management reviews, means that we fully expect to see fewer people being detained, and for shorter periods.

Nevertheless, for the small proportion of people who are detained for longer periods, the Government's amendment ensures that, while judicial oversight may happen even earlier if a person applies for bail themselves, those who do not do so and do not opt out of the process will be guaranteed judicial oversight after at least four months in detention, and at future four-monthly intervals from their last tribunal consideration.

However, we now need to press on with delivering the important measures in this Bill. The other Chamber has considered Amendment 84 on two occasions now, and has rejected it—yesterday, without even pressing it to a vote. We should not continue to insist on this measure.

The Government understand the sentiment behind limiting time and detention, but the practicalities involved mean that Amendment 84 is not realistic or workable for the reasons I have set out at length in previous debates. This is not just the view of the Government. The noble Lords, Lord Pannick, and the noble and learned Lord, Lord Brown—both experienced lawyers in this field—supported the government position. Your Lordships have rightly pressed the Government to examine what more can be done to limit time spent in detention. The Government have listened. They have made significant concessions and explained why they can go no further. The Commons has twice agreed with the Government. I urge noble Lords to now accept that decision.

Amendment 84D in the name of the noble Baroness, Lady Hamwee, accepts the principle behind Commons Amendment 84C and automatic bail referrals, but proposes to reduce the timing from four to two months. The Government have already moved their original position from six to four months, accepting that there is a case for more frequent judicial oversight. With respect to the noble Baroness, Lady Hamwee, we believe any further reduction is unworkable.

In our last debate, I noted that Labour had repealed legislation for routine bail hearings at eight or 36 days because they were impracticable. Likewise, if the frequency of referrals was two months, this would still impose a significant extra burden on the tribunal and the Home Office, diverting valuable resources away from the consideration of asylum and human rights appeals, the management of the removal centres, and delivery of the removals programme at a time when their efforts should be focused on supporting faster and more cohesive immigration and asylum processes.

Your Lordships have raised legitimate concerns and the Government have listened and have made significant amendments to this Bill. The time, I submit, has now come to implement it. I beg to move.

Motion A1 (as an amendment to Motion A)
Moved by ***Lord Ramsbotham***

Leave out from "House" to end and insert "do disagree with the Commons in their Amendment 84C, and do insist on its Amendment 84".

Lord Ramsbotham (CB): My Lords, I am very grateful to the Minister for the care with which he has set out the Government's case. I have often thought that the worst experience in life is to be associated with something that you know to be fundamentally wrong, but feel unable to prevent. I am experiencing that today, because, to our collective shame, this House could be about to sanction something that, as a nation, we have roundly condemned, and indeed fought against, when practised by others over the years—namely, the arbitrary detention of innocent people by administrative diktat, rather than the due process of the rule of law.

During the passage of this dreadful Bill, with more than 400 government amendments suggesting that it had not been thought through before it was introduced, the House has twice voted to uphold the recommendation of a committee of the All-Party Group on Refugees and Migration, of which I and the noble Baronesses, Lady Hamwee and Lady Lister of Burtersett, were privileged to be members. The committee recommended that administrative detention, ordered by Home Office civil servants, should be limited to 28 days, after which the Home Secretary should be required, by law, to seek the approval of the First-tier Tribunal for any extension. Last night the Minister in the other place spectacularly missed that point when alleging that to specify a maximum time for immigration detention would be arbitrary, would not take account of individual circumstances, and would have a negative effect on the Government's ability to enforce immigration controls and maintain public safety by encouraging individuals to seek to frustrate the removals process until this time limit was reached.

During the past 19 years I have had frequent cause to express my concern about the appallingly low standard of casework and procedural oversight in our immigration system. This began when, as Chief Inspector of Prisons, I found over 20 people from Bradford, who had been in this country for over 20 years—many of them married and with businesses of their own—who had been arrested and transported to Birmingham prison where, not surprisingly because they had not been charged with any offence, they went on hunger strike against the wholly inappropriate prison regime. Their right to remain in this country had not been processed by the Home Office—which is true today of more than 631,000 others—whose officials saw them as easy pickings for meeting performance indicators. I immediately complained to the Minister responsible, and was asked to take on the inspection of all immigration detention centres for my pains. This included inspecting Campsfield House after a riot, where I found that immigration centre rules were also wholly inappropriate, being based on prison rather than detention rules. My inspectorate and I set about revising them, inviting Home Office officials to work with us, the outcome being the immigration detention rules often quoted in debate on this Bill.

Since retiring as chief inspector, I have been a member of the Independent Asylum Commission, chaired an inquiry into the unlawful killing of an Angolan by G4S guards during an enforced removal, delivered a dossier on deaths and injuries inflicted on others being returned, forwarded reports on the inefficiency of the complaints system to the Home Secretary and lost count of the number of critical reports by inspectors of immigration and prisons that I have read. In other words, my 19-year experience of the immigration system entirely endorses the view of its then titular head, the noble Lord, Lord Reid, who, when Home Secretary, described it as not fit for purpose. Indeed, these experiences have encouraged me to believe that only root-and-branch surgery will enable the system to have any hope of coping with today's requirements, let alone tomorrow's, which will be exacerbated not just by civil wars in the Middle East but by other population movements and the effects of climate change.

I must admit that I was somewhat surprised last week when my noble and learned friend Lord Brown of Eaton-under-Heywood and my noble friend Lord Pannick focused on the periphery of theoretical access to the bail system rather than the fundamental obscenity of administrative detention. Their intervention reminded me that, over the years, successive Ministers have preferred to listen to fudge presented to them by their officials rather than facts immediately apparent to anyone who, like me, has had cause to examine them in detail. As has been reported time and again, conditions in our immigration removal centres are not good for a whole variety of reasons, not least lack of Home Office oversight. Four months is far too long for anyone to be condemned to remain in such conditions, certainly when it seems to be primarily for the convenience of incompetent officials and is not sanctioned by a court of law.

I do not pretend that casework is easy—indeed, one former head of the UK Border Agency decreed that only graduates were to do it—but its present standard, judging by the number of successful appeals against it, is appalling. I am not surprised that first the noble Lord, Lord Bates, and then the noble and learned Lord, Lord Keen, should have announced new arrangements, although I must admit that, having heard similar promises many times in the past 19 years, I will only believe them when I see them.

I now feel squeezed. Not only is time running out before Parliament is prorogued but I fear that, on the evidence of the amendment not being pressed to a vote in the other place last night, should noble Lords support my appeal to put pride in the reputation of our great nation before party-political considerations and vote for what in their hearts they know to be right—namely, that administrative detention of anyone, anywhere, is fundamentally wrong—it may not succeed. I am conscious that it is easy for an independent Cross-Bencher to speak like that, but I am conscious, too, of the constitutional position of this House, which I do not want to put at risk.

The immigration system in this country is so dysfunctional that even the Home Office's favourite reporter, Stephen Shaw, has criticised it in detail. As an optimist, I hope that the Home Secretary will read what he said, and has been said during our debates in this House, before she wilfully damages our global reputation for being a civilised nation by going ahead with her alternative to limiting detention to 28 days. It is with a heavy heart that I beg to move.

3.30 pm

The Lord Speaker (Baroness D'Souza): The original Question was that Motion A be agreed to, since when Amendment A1 has been moved to,

"leave out from 'House' to end and insert …'do insist on its Amendment 84'".

The Question, therefore, is that Amendment A1 be agreed to. I should inform the House that if this amendment is agreed to, I cannot call Amendment A2 by reason of pre-emption.

Baroness Hamwee (LD): My Lords, many of your Lordships will have negotiated a variety of agreements and arrangements, been involved in the toing and froing of proposals and counterproposals, and experienced the feeling of, "Okay, enough, let us move on".

I do not equate that with this issue. I am realistic enough to understand where the Government have got to, but it is not far enough. From my privileged, comfortable position, compared with the asylum seekers, the subject of these amendments, I cannot leave it there. I do not feel, in the words of the noble and learned Lord, that I have done my job and done more.

I want to make it clear that I support the noble Lord, Lord Ramsbotham. To deprive an individual of liberty for the purposes of immigration control should be an absolute last resort. It should be comparatively rare and for the shortest possible time. At the last stage but one of this Bill, the Government introduced their amendment for automatic judicial oversight. We heard then references to detainees still being able to apply for bail and to access legal advice at any time, and so on. That painted a picture which, though technically correct, did not accord with the realities described to me over the years.

[Baroness Hamwee]

The noble and learned Lord introduced the automatic hearing after six months as a "proportionate response", and said that earlier referral might result in work for both the tribunal and the Home Office at a time when an individual's removal from the country was planned and imminent. So I was pleased last night that the Minister in the Commons, "after careful consideration", moved a reduction from six months to four months to reflect the fact that the vast majority are detained for fewer than four months.

At the end of last December, on the latest figures that we have, 2,607 people were detained. Of these, 530—roughly 20% of the detainee population—had been detained for less than four months but longer than two months. Those are the numbers that my amendment is about, although they are 530 individuals, not just faceless numbers.

The impact of immigration detention, which is not a sanction—it is not punishment for wrongdoing—is considerable and reference has rightly been made to the particular impact on mental health. I look forward to Stephen Shaw's further work and hope that it will ameliorate conditions, but there must always be a significant impact. I do not know, though I can speculate on, the Government's reason for moving from the proportionate six months to four months, but if they can move, I suggest they can move further. In the mix of assessing what is proportionate, the impact of administrative detention must be a significant factor. Let us reduce it as much as possible. That is why I propose two months.

I take this opportunity to say, too, that in all this I do not want to lose sight of the objective of improving the whole returns process. Alternatives to detention with case managers who are not decision-makers would be more humane, less costly and more efficient. There is plenty of experience of that in other countries. An improved returns system would reduce the burden on tribunals and the Home Office. It may be trite but it is true that efficiency is much of the answer. I hope noble Lords will be sympathetic to my proposal to reduce it still more, and take us further on the journey that the Government have led us on with regard to the period when there must be an automatic judicial oversight of each individual's position.

Lord Rosser (Lab): In the Commons last night, the government Minister confirmed that the Government accepted that there should be judicial oversight of administrative immigration detention, and that was why they had previously tabled a Motion, the effect of which would be that individuals would automatically be referred to the tribunal for a bail hearing six months after their detention began, or, if the tribunal had already considered whether to release the person within the first six months, six months after that consideration.

That amendment was not accepted in this House, which again carried a Motion providing for a 28-day period of administrative immigration detention, after which the Secretary of State could apply to extend detention in exceptional circumstances. The Commons has again rejected the amendment from this House and has instead passed a government amendment reducing the timing of an automatic bail referral from six to four months, since, apparently, the vast majority of persons are detained for less than four months. Will the Government confirm that that bail hearing after four months of detention will be automatic and will not depend on the individual in detention having to initiate the application?

This is an issue which this House has already sent back to the Commons twice. Consideration obviously has to be given to the role of this unelected House in the legislative process as a revising Chamber, inviting the Commons to think again in a situation where the elected Commons and the Government have made some movement—albeit not enough to meet the views of this House—on the length of administrative immigration detention without automatic judicial oversight.

Lord Pannick (CB): My Lords, the noble Lord, Lord Ramsbotham, made a powerful speech. I will say a word in response to it. I am sorry that the noble Lord thinks that the noble and learned Lord, Lord Brown of Eaton-under-Heywood, and I were focusing on the "periphery" last week and supporting a "fudge", as he put it. Your Lordships need to focus on the noble Lord's amendment. It provides that, after 28 days, there would be no possibility of detention of a person for immigration reasons other than in exceptional circumstances. Last week I found that not to be something that I could support and I still cannot support it, because a person can be detained only for the purpose of removal and only for a reasonable period for that purpose. There is nothing exceptional about it taking longer than 28 days to remove a person who has been detained for immigration reasons. There has to be discussion with the country to which the individual will be removed and persons being removed often do not co-operate with their removal. There is nothing exceptional about it taking longer than 28 days. Of course, the individual concerned is also entitled at any time to require a judicial assessment of whether it is appropriate for them to continue to be detained for immigration purposes. I am pleased that the Government have moved to a four-month period and I think that is the right result.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I, too, support Motion A. I will confine myself to three comparatively brief points. First, as has been made plain, the Government have already moved from the earlier proposal of six months down to four. Yesterday, as those who have read the debate in the other place will know, there was barely a voice and no vote whatever against that proposal.

The noble Lord, Lord Ramsbotham, has few greater admirers than I in this Chamber but, as I suggested earlier, his amendment goes altogether too far. One defect is that it is internally inconsistent. I mentioned this on Report but did not think it necessary to do so in the last round of ping-pong, though I rather regret that now. On its face, it refers in new subsection (1) to detention under any of the relevant powers. These are defined in new subsection (6) and include two dealing with detention pending deportation. However, looking at new subsection (4) of Amendment 84, it does not apply in cases where the Secretary of State is determined that there will be deportation. This is an internal inconsistency.

I suggest that four months properly protects against any risk of what can seriously be called arbitrary detention. One must remember that it is a safeguard over and above the intrinsic ability of those who are detained to seek bail—a safeguard I acknowledge to be appropriate and necessary, not least in the case of those with mental health problems. The proposal in the amendment of the noble Lord, Lord Ramsbotham, that there should be exceptional circumstances to justify detention beyond 28 days, is unworkable. The Minister gave reasons and illustrations, as did the noble Lord, Lord Pannick.

A shorter period, as proposed by the noble Baroness, Lady Hamwee—of whom, again, I am a great admirer—is, frankly, impracticable. Tribunals are already hugely busy and overworked. They really must not be overwhelmed.

Baroness Lister of Burtersett (Lab): My Lords, I will not repeat all the arguments but, as a member of the all-party inquiry, I support Amendments A1 and A2. The Commons had only an hour yesterday. Quite understandably, most of it was spent teasing out the practical implications of my noble friend Lord Dubs' amendment. I do not think we should read too much into the fact that not much was said about these amendments.

Lord Keen of Elie: My Lords, I am obliged to noble Lords for their contributions to this debate. I acknowledge the work done in the past by the noble Lord, Lord Ramsbotham, on detention and on the revising of the immigration and detention rules. I must, however, take issue with the suggestion that access to bail is merely theoretical and that there is an absence of judicial oversight.

The access to bail arises immediately on detention and a tribunal must be persuaded that there are substantial grounds for believing that detention should be maintained. This is not a theoretical right; it is an obligation on the part of the Home Office to persuade a tribunal that detention should be maintained. So far as the period of detention is concerned, I can confirm to the noble Lord, Lord Rosser, that, after a period extending to four months—which is highly unusual—there will be an automatic bail hearing. In these circumstances, I renew my Motion to the House.

Lord Ramsbotham (CB): My Lords, I am grateful to all those who have spoken, not least to my noble and learned friend Lord Brown of Eaton-under-Heywood and my noble friend Lord Pannick. It is rare for me to find myself in disagreement with them and I bow to their superior legal knowledge in this case. We have probably gone as far as we are able. I am pleased that, during the passage of the Bill, we have been able to raise so many issues. I sincerely hope that the Home Secretary and her officials will focus on these, not least when they concentrate on the reports that they have commissioned from Stephen Shaw and the report on the mental health arrangements commissioned by NHS England. I fear that the writing is on the wall for my hope of progressing further with this amendment during the passage of the Bill. With a heavy heart, I beg leave to withdraw the amendment.

Amendment A1 withdrawn.

Amendment A2 not moved.

Motion A agreed.

3.45 pm

Motion B

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

That this House do agree with the Commons in their Amendments 85D, 85E, 85F, 85G, 85H and 85I.

Commons Amendments to Lords Amendment 85C

85D: Line 3, leave out subsection (1)

85E: Line 7, at end insert—

"( ) A woman to whom this section applies may not be detained under a relevant detention power unless the Secretary of State is satisfied that—

(a) the woman will shortly be removed from the United Kingdom, or

(b) there are exceptional circumstances which justify the detention.

( ) In determining whether to authorise the detention under a relevant detention power of a woman to whom this section applies, a person who, apart from this section, has power to authorise the detention must have regard to the woman's welfare."

85F: Line 15, leave out "earlier" and insert "later"

85G: Line 22, leave out subsection (6)

85H: Line 65, leave out subsection (13)

85I: Line 96, leave out subsection (15)

Lord Keen of Elie: My Lords, the Government have continued to listen carefully to the concerns expressed in both Houses on the issue of detaining pregnant women.

Last night, the other place agreed amendments which will make it clear that pregnant women will be detained for the purposes of removal only if they are to be shortly removed from the United Kingdom or if there are exceptional circumstances which justify the detention and which place an additional duty on those making detention decisions in respect of pregnant women to have due regard to their welfare.

The additional measures we are putting in place, alongside the 72-hour time limit on the detention of pregnant women, will act as extra statutory safeguards which will complement the Government's wider package of reform in the area of the detention of vulnerable people. This includes the new adults at risk policy, which is given a statutory basis in this Bill. It includes a new cross-cutting gatekeeper function to help provide consistency in decision-making across the business. It includes new safeguarding teams which will provide an extra level of scrutiny of the cases of detained vulnerable people. As we have previously announced, we also intend to ask Stephen Shaw to carry out a short review in order to assess progress against the key actions from his previous report.

I hope that noble Lords will accept this suite of measures as a clear and positive demonstration of the Government's absolute commitment and desire to ensure that pregnant women are detained only when it is

[Lord Keen of Elie]
absolutely necessary and as a last resort, with their health and welfare being a foremost consideration whenever a decision is made in respect of their detention. These are solid measures which will have a practical impact but which will also give life to the Government's desire to end the routine detention of pregnant women, as was set out in the Written Ministerial Statement on 18 April. The 72-hour time limit announced in that Statement was a clear exposition of the Government's intent, moving to a position in which in no circumstances will a pregnant woman be knowingly detained for longer than a week. That is a major shift from a position in which, theoretically at least and occasionally in practice, detention could persist for a longer period. This will be backed up with the new duty, the clear statement that pregnant women will be detained only for the purposes of quick removal or in exceptional circumstances. I reiterate that, even when there are exceptional circumstances, detention will still be for only the limited period set out in the Bill. It will also be backed up with other measures as I have described. All this represents a new level of safeguarding for pregnant women which, while not going as far as providing an absolute exclusion from detention, ensures that it will occur sparingly and only when it is absolutely necessary.

I turn specifically to Amendment 85J, tabled by the noble Baroness, Lady Lister of Burtersett. The adults at risk policy will effectively replace Chapter 55.10 of the Home Office *Enforcement Instructions and Guidance*, which is where the existing policy is set out, and will represent a different, and better, way of assessing the circumstances that apply in any given case of a vulnerable person, including cases of pregnant women. The amendments tabled in the other place automatically place pregnant women on a separate footing, making it clear that particular consideration needs to be taken in those cases.

The 72-hour time limit, by virtue of its brevity, will ensure that detention is used as a last resort. On that basis, I am of the view that the current formulation in the Bill, combined with the other measures we are putting in place, provides a high level of safeguard for pregnant women. I beg to move Motion B.

Motion B1 (as an amendment to Motion B)
Moved by ***Baroness Lister of Burtersett***

At end insert "and do propose Amendment 85J as an amendment to Amendment 85E—

85J: Line 5, after "are" insert "very""

Baroness Lister of Burtersett: My Lords, I wish I could warmly welcome government Amendments 85D to 85I, given that they go a small way towards meeting the concerns voiced in your Lordships' House on 26 April. However, it is only a very small way and, as I will come on to explain, the word "very" has some significance.

I thank the noble and learned Lord for his attempt last week to reach a compromise that would satisfy both sides. Alas, it was not, apparently, possible. As a very last attempt, I therefore tabled this very modest amendment, which would mean that the circumstances justifying detention have to be "very exceptional" rather than simply "exceptional". This does no more than mirror current Home Office enforcement instructions and guidance which refer to "very exceptional circumstances". We have just learned that that guidance is to be replaced. In the Commons last night, the Immigration Minister assured MPs that the guidance will also make it clear that detention powers,

"should be used in very exceptional circumstances, underlining our expectations in regard to the use of this power".—[*Official Report*, Commons, 9/5/16; col. 486.]

Surely, if the Government want to underline those expectations, they should do so in the Bill itself. Otherwise, they could be sending out entirely the wrong message.

My fear is that, welcome as the new time limit is, unless the legislation states "very exceptional", some might interpret the softening of language as a signal that it does not have to be quite so exceptional now that it is subject to a time limit. I remind noble Lords that, in practice, we are probably talking about 72 hours plus, because the clock starts ticking not at the actual point of detention but when the Secretary of State is satisfied that the woman is pregnant, if that is later, which it probably will be. Given that too many pregnant women are already detained in far from exceptional circumstances, in contravention of the guidance—as made clear by Shaw and the all-party inquiry into detention—this would be highly regrettable. Experience shows that we cannot rely on the guidance alone to underline expectations regarding degree of conditionality.

I turn to some questions raised by the government amendments. First, regarding Amendment 85E, I repeat what was said in the Commons by David Burrowes MP:

"However, we still need to ask about the small word 'or' in amendment (b) to Lords amendment 85C. Why does it make the distinction between

'the Secretary of State is satisfied that—

the woman will shortly be removed from the United Kingdom, or

there are exceptional circumstances which justify the detention'?

Surely, pregnant women should be detained only if there are exceptional circumstances and they can be removed shortly. Why are we distinguishing between the two? If the aim of detention is to remove people and detention should be a last resort, given the new 72-hour limit on detention, when would detention not be exceptional and removal forthcoming? It is important that the Government clarify that".

He expressed the fear that,

"the measure leaves the door open for the excessive detention of pregnant women".—[*Official Report*, Commons, 9/5/16; col. 498.]

That is my fear, too. Given that it was not possible for the Immigration Minister to answer Mr Burrowes yesterday, I trust that the Minister will be able to provide an answer now.

Secondly, could the noble and learned Lord clarify, for the record, the purpose of the qualifying phrase, "apart from this section" in the second paragraph of Amendment 85E? Fears have been expressed by those more expert than I that it would appear to be saying that the Secretary of State does not have to have regard to the woman's welfare. I am sure that that cannot be the case. I cannot see why anyone should be allowed to authorise detention without having regard to the woman's welfare. I welcome the fact that having,

"regard to the woman's welfare",

is now in the Bill. I hope that he can provide reassurance.

I turn to the key sections of Amendment 85C, which the Government have rejected out of hand. These aim to incorporate key elements of the family returns process, which successfully uses engagement to try to resolve cases without the use of detention. Ministers have repeatedly explained, in the words of the Immigration Minister, that,

"we are using precisely that model and approach for pregnant women".—[*Official Report*, Commons, 25/4/16; col. 1195.]

Yet their rejection of this part of Amendment 85C out of hand suggests a mindset that is not attuned to the family returns process, in which it is not assumed that removal requires prior detention. I ask the Minister: if the Government are using precisely that model and approach, why have they refused to countenance writing key elements of it into the legislation? Will he commit now to drawing up guidance that will ensure that the treatment of pregnant women does indeed follow the family returns process model? Otherwise, we have no way of ensuring that this model will be followed. I hope that this would reduce the need for detention but where it does still take place, clear guidelines following the family returns model would at the very least ensure that notice is given so as to minimise the stress involved in the process of being taken into detention, which can have a damaging impact on the mental and physical health of pregnant women. It is simply not good enough for the Government to talk about modelling the approach on the family returns process without giving Parliament any idea of how they plan to operationalise this.

On 26 April the Minister stated that,

"as a matter of fact and practice, all persons who are subject to removal are given notice of liability for removal, and vulnerable women, including pregnant women, receive a further notice via removal directions".—[*Official Report*, 26/4/16; col. 1095.]

That sounded very reassuring but the notice of liability for removal can be three months in advance of removal and the further notice is sent after detention. There is no notice sent of removal into detention as opposed to removal out of the country, and I fear we have been talking at cross purposes on this. Will the Minister therefore now commit to a full review of the process of removal into detention, including how the woman's medical and welfare needs are taken into account? When we last discussed this, I cited some dreadful examples of how pregnant women were in effect treated like animals during the journey into detention, potentially with serious implications for their physical and mental health.

On 26 April the Minister seemed to suggest that some of our concerns were in effect resolved because only one pregnant woman is currently being held in detention. Of course, for those of us, including Stephen Shaw and the members of the all-party group inquiry, who believe that pregnant women should not be detained on principle, one pregnant woman in detention is one too many. Leaving that aside, the numbers of pregnant women in detention have always fluctuated and we do not know the total number who have been detained so far this year. I find it worrying that the Home Office is refusing to comply with an FoI request submitted by Women for Refugee Women for the publication of the statistics on the numbers detained, the length of detention and outcomes. In the Commons debate on 25 April, the Immigration Minister said he would reflect on how best to create "greater transparency". I then suggested that one way would be to commit now to making these statistics on the detention of pregnant women available for public scrutiny on a regular basis, as called for by bodies such as Women for Refugee Women and the Royal College of Midwives. But the Minister did not respond on that point and I would be grateful if he could do so now.

I know there is a reluctance to extend the ping-pong process too far but when your Lordships' House passed Amendment 85C, despite the technical and other objections raised by the Minister, I took that as acceptance of the need to write into the Bill the safeguards necessary to ensure the protection of the welfare of pregnant women, whatever our view on the principle of their detention. I do not believe those safeguards are strong enough. This is a much more modest, even minimalist, amendment. I hope the Government will be able to accept it because it does simply what the Immigration Minister says is the Government's intention, but with the force of primary legislative backing. I beg to move.

4 pm

Baroness Hamwee: My Lords, I support the noble Baroness, Lady Lister, although I would say to her that there are rules about transporting animals.

In the Commons, as the noble Baroness said, the Minister referred to—and indeed relied on—the guidance providing for "very exceptional circumstances" to meet expectations. However, guidance can of course be changed much more easily than primary legislation, and it is easier not to follow. I share the concern of the noble Baroness that the legislation must not weaken the process.

I was also puzzled to read in the government amendment that the person who authorises the detention —I shall come back to that—must have regard to the woman's welfare, not, as the Minister said last night at column 486 of *Hansard*, "due regard". As we have heard, the current equivalent guidance is not effective enough and I do not see that there will be any impact from putting pregnant women into a separate category within the guidance. I agree with the point made by David Burrowes and the noble Baroness about Amendments (a) and (b), rather than (a) or (b). I, too, had two points of concern about interpretation. The noble Baroness has referred to the phrase "apart from this section". I read this as applying to the person with the power to authorise, but I do not know what,

"a person who, apart from this section",

means. I hope the Minister can help me.

The other question concerns the term "shortly" in paragraph (a) of Amendment 85E. The Secretary of State needs to be satisfied that,

"the woman will shortly be removed from the United Kingdom".

In this House we are accustomed to the term "shortly". It is something of an Alice in Wonderland term: it means what it is meant to mean on the occasion when it is mentioned. Will the Minister help us by providing greater precision?

Lord Winston (Lab): My Lords, I shall detail the House only briefly. I am most concerned about this issue. I fear that the Government have completely

[LORD WINSTON]
overlooked a very important point. You are not just detaining a pregnant woman, you are detaining the foetus inside that pregnant woman. The effect on that foetus is something about which science is increasingly concerned. The recent science of epigenetics tells us clearly that the foetus at certain stages during pregnancy is extremely vulnerable to the environment of the mother. Indeed, I have been involved in this area of research at Imperial College, and I shall refer briefly to research going on not only at Imperial but at the University of Singapore, which I shall visit later this week, and McGill University in Canada, among other places.

It turns out that at a certain stage in pregnancy, if a woman's stress hormones, particularly cortisol, are raised, the effect on the foetus may be profound. Working after the ice storm in Ontario some years ago, Michael Meaney undertook cognitive tests on infants aged five, who had effectively been interned within their own houses because of the darkness and lack of electricity over a period of time. He found significant cognitive impairment. There is also some evidence that after massive stress to the mother, some children may behave aberrantly when they grow up —particularly, for example, being more aggressive.

Unfortunately, at this stage the science is not absolutely clear but there is a massive amount of evidence from work on rodents and some other animals. The evidence from human work is increasingly that certain stages of pregnancy—for example, once the foetus is identifiable in the uterus, usually at around 22 to 26 weeks—are a particularly vulnerable time. That is when stressing a woman may have a severely adverse effect.

For that reason, the Government need to recognise that they may be responsible for a heritable effect on that child and possibly even on the grandchildren of the mother. Until that is firmly worked out, I beg the Government to consider that internment, if it must be done at all, must be done only under the most serious circumstances. We cannot go back for women who have previously been detained in prison and other places, but in future we must make sure that we make law which is humane and amendable, so that we cause the minimum amount of damage to future generations.

Lord Alton of Liverpool (CB): My Lords, I will speak very briefly to support the amendment moved so well by the noble Baroness, Lady Lister, this afternoon. I supported her on earlier occasions when we debated these issues. I am particularly pleased to follow the noble Lord, Lord Winston, who has returned us to an aspect of the debate which we discussed at earlier stages.

Members of your Lordships' House may recall the remarks of the noble Baroness, Lady Neuberger, during our earlier debates. She focused on the effects on the unborn child of being detained in these stressful circumstances. I referred to work by the late, eminent psychiatrist, Professor Kenneth McCall, who described the effects later in life on children who had been affected by traumatic events that they had experienced in the womb. On the other side of that coin, of course, the world-famous violinist Yehudi Menuhin said that he believed that he learned his love of music during the time that he was in his mother's womb. So it may be that the empirical evidence needs to be extended and much more work needs to be done around these things—but our own common sense and knowledge of our own human development probably take us in that direction.

But this is not just about concern for the unborn child. The noble Baroness quite rightly reminded us of the recommendations of Stephen Shaw, which were at the very heart of the debate when we looked at this earlier in our proceedings. He of course recommended that there should be an absolute ban—so this falls a long way short of his recommendations. The noble Baroness, Lady Lister, in her phrase, "very exceptional", is reminding the Government that it cannot be right for us to have pregnant women held in detention in these ways.

I was particularly pleased, like the noble Baroness and the noble Baroness, Lady Hamwee, to read the remarks of the Conservative Member of Parliament for Enfield, Southgate, David Burrowes, who spoke so well in the other place yesterday. I hope that when the noble and learned Lord comes to reply, he will respond to the concerns that David Burrowes raised and to the remarks of the Royal College of Midwives—referred to earlier by the noble Baroness—which were quite categorical in saying that we should never keep women in these circumstances.

I have one or two questions to put to the noble and learned Lord. What kind of pre-departure accommodation will be made available when a pregnant woman is being held? Will he say a word about that and will he talk about how those particular needs will be met? Will he also assure us that pregnant women will not, for instance, as has happened in the past, be picked up in dawn raids, put in the back of vans and taken miles away to accommodation, with appalling consequences for the women in those circumstances? There are accounts of nauseous experiences, of vomiting and of people being incredibly distressed by those kinds of experiences. This should be in very exceptional circumstances, as the noble Baroness said.

Finally, I underline the point made by the noble Baronesses, Lady Hamwee and Lady Lister, about the second part of Amendment 85E. An odd phrase has been included at this late stage to say that,

"a person who, apart from this section, has power to authorise the detention must have regard to the woman's welfare".

Those words—"apart from this section"—are, at the very best, ambiguous, and I really cannot see what point they have. Could the noble and learned Lord enlighten us when he comes to reply?

Lord Rosser: Perhaps I could add to the point just made and express the hope that the noble and learned Lord will not only respond to questions raised in this short debate in this House but be doubly determined to do so. I find it extraordinary that when our amendments were discussed in the Commons last night, although they have the not surprising procedure that a Minister opens the debate, there was no reply by a Minister at the end of the debate. So all the legitimate questions raised in that debate after the Minister had finished speaking were not answered at all by the Government. I know very little about House of Commons procedures —that is quite obvious—but it is certainly a fairly remarkable procedure to have a debate where questions

are asked of the Government but there is no Minister replying at the end. I hope that that is a defect that the noble and learned Lord will be able to rectify when he replies to this debate.

We accept that the Government have moved on this issue to a position of not allowing the detention of pregnant women beyond 72 hours—or up to a week with the Secretary of State's approval. This House of course wanted the Government to go further and provide additional safeguards, which were reflected in the amendments sent to the Commons. In the Commons last night, the Minister said that the Government had tabled amendments that made it clear that,

"pregnant women will be detained for the purpose of removal only if they are shortly to be removed from the UK or if there are exceptional circumstances that justify the detention".—[*Official Report*, Commons, 9/5/16; col. 486.]

As has been said, the Minister went on to say that the guidance will also make it clear that the guidance would also make it clear that the power to detain should be used only in very exceptional circumstances. Why does the government amendment passed last night in the Commons refer to "exceptional circumstances" and not to "very exceptional circumstances", which is and will continue to be used in the guidance?

What in the Government's view is the difference in this context between "exceptional circumstances" and "very exceptional circumstances", since it is they who have decided not to use the same wording in the Bill as is and will continue to be used in the guidelines? Through her amendment, my noble friend Lady Lister of Burtersett seeks a credible and reassuring answer to that question, and I hope that the Government can provide it.

Lord Keen of Elie: My Lords, I will begin by answering the question just posed by the noble Lord, Lord Rosser. The provision does refer to "exceptional circumstances". The guidance as it exists talks of only "very exceptional circumstances" applying for the detention of pregnant women, and that will continue to be the policy that is applied in the context of the provision. I reiterate what was said in the other place last night: it is only in very exceptional circumstances that it will be considered appropriate for this provision on detention to be employed.

Baroness Lister of Burtersett: I am sorry to interrupt, but there was a specific question there: if that is the case, why is "very exceptional circumstances" not put in the Bill?

Lord Keen of Elie: In the context of drafting statutory provision, it was not considered that the addition of such words as "most", "much" or "very" would add anything to the proper construction of the provision. However, the policy guidance is there. It is absolutely clear, and both in this place and the other place it has been said that the policy will apply in the context of "very exceptional circumstances".

Lord Williams of Elvel (Lab): With respect to the noble and learned Lord, as a matter of English language, there is a word "exceptional", which is perfectly clear. What is the difference in his mind between "exceptional" and "very exceptional"?

Lord Keen of Elie: With respect, the noble Lord makes my point for me. It is questionable whether there is any distinction to be drawn between exceptional, properly understood, and very exceptional or most exceptional. That is what lies behind the manner in which this provision has been drafted. Nevertheless, to dispel doubt in the minds of others, it has been said in the guidance that, as a matter of policy, the term "very exceptional" may be applied when approaching the application of this provision to the detention of pregnant women.

Baroness Hamwee: My Lords, with the leave of the House, I wish to pursue this issue. There must be a difference, otherwise it would not be necessary to use the word or the distinct phrases. Are the Government not in danger of falling foul of their own legislation by applying guidance that is different from the legislation?

4.15 pm

Lord Keen of Elie: I do not accept that. The purpose of the policy guidance is to lend emphasis to the test that is being applied, and that is what is happening here.

I shall move on to address a point raised by the noble Baronesses, Lady Lister and Lady Hamwee, which concerned the reference to the welfare of the pregnant woman. I emphasise that this provision is there as an additional safeguard. I will not claim that the draftsmanship of this clause is distinguished by its elegance, but its effect ultimately is clear.

In circumstances where it is thought that a pregnant woman may be detained, the party who may be exercising the right to detain will also have to have regard to the welfare of that pregnant woman before a final decision is made. For example, in circumstances where the pregnant woman has arrived at a remote port and there is nowhere in the vicinity that could properly be utilised to detain her when she is in a state of pregnancy, that factor must be taken into account—indeed, it must be a determining factor—in deciding whether to detain her. Somebody in a state of pregnancy arriving, say, at Heathrow can and should be detained because the circumstances are very exceptional and there are facilities to detain her in her state of pregnancy. However, if somebody arrived at a remote port where it was felt that there were very exceptional circumstances that would justify detention but where there was no suitable place for her detention, having regard to her welfare would mean that detention would not take place. I hope that that assists in explaining the purpose of the provision. It is an additional safeguard.

I turn to the question of and/or, which was raised in the context of whether or not detention should take place. Of course, the intended effect of these provisions, so far as pregnant women are concerned, is that they will, like all detainees, be detained only for the purposes of removal. Because there will be a time limit on the detention of pregnant women, all cases of detention of pregnant women will be necessarily short. Some of these cases will have exceptional circumstances attached but, by definition, not many. For example, cases at the border are quite likely not to have exceptional features. The clause as drafted therefore allows for the detention

[Lord Keen of Elie]
of pregnant women only when they can be removed quickly, or when they can be removed and exceptional circumstances pertain. It is merely to allow for the two circumstances—namely, that they can be quickly removed, or that they can be quickly removed and exceptional circumstances pertain. I hope that that explains the way in which that particular provision is drafted.

The noble Baroness, Lady Lister, asked about a further review. With respect, we have already had the review from Stephen Shaw, and he will be instructed to carry out a further short review about the implementation of these provisions. No additional or alternative review is being contemplated. Of course, the policy guidance that we have has been addressed already. The noble Baroness also referred to an FoI request. I cannot reply directly with respect to that request for the relevant statistics. But, of course, there is a process that can be followed through to a conclusion to determine that the FoI request is responded to in due time and in appropriate terms.

The noble Lord, Lord Winston, raised a point echoed by the noble Lord, Lord Alton, on the treatment of pregnant women and the effect of stress on them. Who can doubt how stressful it will be for a person who travels unlawfully to the United Kingdom in a state of pregnancy and then attempts unlawfully to secure entry to the United Kingdom? That alone is a source of stress. The question is how we deal sympathetically and effectively with such persons, particularly when we find that they are either vulnerable or pregnant. What we have developed here is a rational and reasonable approach to that very difficult question.

Finally, I address the question of facilities in the context of a planned departure. Our continuing view is that immigration removal centres remain the most appropriate places to detain pregnant women. Yarl's Wood provides a high level of care for pregnant women. NHS midwives are available; general practitioners and nurses can be accessed seven days a week; there are strong links with local maternity services; and support is provided by a pregnancy liaison officer. In addition, there is a new care suite, staffed by a dedicated female member of staff, to attend to women in the state of pregnancy. Very few pregnant women are detained in these circumstances, but suitable and sufficient facilities are available and, as I observed earlier, where they are not for some reason available the welfare of the pregnant woman will be paramount.

Lord Alton of Liverpool: I am grateful to the Minister. He will recall that he has been asked by three of us about those words that appear in the final section, in the penultimate line of the amendment, "apart from this section". I wondered whether he could tell us why they had been included and what they add.

Lord Keen of Elie: I did say that the relevant provision was not distinguished by its elegance. However, if noble Lords read the clause as a whole, it is intended to refer back to the person with the power of detention in terms of the Bill. How it is drafted at that point is dictated by how that is described in an earlier clause of the Bill.

Lord Winston: Forgive me for intervening once more, but I do not feel at all confident about the question of incarceration. Arriving on these shores, perhaps illegally, and then being incarcerated, is very different from arriving on these shores with hope. What the evidence of the model shows in Canada is that it is the incarceration—in their own houses, even—that caused the stress to these women that resulted in the changes to the foetus that were subsequently inherited. I beg the Minister to consider that point when he finally sums up.

Lord Keen of Elie: I had rather summed up, but I can say to the noble Lord, Lord Winston, that of course there are elements in the journey of such a person that will cause stress. Detention may be a factor in that but, in the round, we have to come to a reasoned conclusion as to how we deal with unlawful entry into the United Kingdom.

Baroness Hamwee: Can I make the Minister an offer? He is obviously as uncomfortable as I am with the drafting of this clause. Can we find a way in which to get it to mean what—whether we like it or not—he is telling us that we ought to understand it to mean early in the next Session? Let us tack it on to something that will come to us fairly shortly.

Lord Keen of Elie: With respect to the noble Baroness, "It means what I say—it does not say what I mean" may be her line, but that is one that we shall take into consideration.

Baroness Lister of Burtersett: My Lords, I am very grateful to everyone who has spoken, and particularly to my noble friend Lord Winston, who made a very powerful point. It has reinforced the sense that this House is very concerned about this issue and not convinced that the welfare of pregnant women and the foetus inside them is being protected by the concessions that the Government have made.

I am grateful to the Minister for addressing all the questions that were asked. I do not think that it is just a question of elegance; it is a question of comprehensibility. I have to say that I did not understand a word of one of his answers, but that is probably me, and I shall put a towel over my head and finally understand it when I read it in *Hansard*. It does have resonances of Humpty Dumpty and words saying what I say they mean, and the,

"question is … which is to be master—that's all".

Unfortunately, it is the Government who are master and who have the power to decide these issues. The answers that I did understand from the noble and learned Lord were very disappointing. I have still not heard a good or proper reason as to why, if it is good enough for the guidance and it means something in the guidance, it is not good enough to be in the legislation. I am still worried that someone looking at both of them will think, "With regard to the legislation, the Government have actually gone backwards".

I was not asking for a whole new review: I was asking for a very focused review of the process by which a woman is taken from her home into detention. As I

understand it, there has already been a commitment to look at transport; I am just asking for that to be broadened out to the whole process. It is not a big thing, and I have still not heard any explanation as to how this is going to be modelled on the family returns process. The noble and learned Lord said there was not going to be any further guidance on this, so it is just an empty claim unless someone can show us otherwise.

I hope that the noble and learned Lord, the Immigration Minister and the Home Secretary will take this away and read what has been said in this House. My noble friend Lord Rosser pointed out the really strange Commons procedures that do not allow the Minister to respond to perfectly good questions, but we at least have a chance to do that in this House. I hope that the people in the other place will all read what has been said in this House and will think about how, within the constraints of the legislation as it is, we could make this a more humane process. As we have heard, there is a lot at stake here. My noble friend Lord Winston said that it could be responsible for a heritable effect on the child. That is very serious, so I hope that this will be looked at further, even if it cannot be in the context of actual legislation. That said, like the noble Lord, Lord Ramsbotham, I recognise when we are coming to the end of the road. Therefore, like him, with a very heavy heart indeed, I beg leave to withdraw the amendment.

Amendment B1 withdrawn.

Motion B agreed.

Child Refugee Resettlement

Statement

4.28 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I shall now repeat as a Statement the Answer to an Urgent Question given earlier today by my right honourable friend the Minister for Immigration on child refugee resettlement from Europe. The Statement is as follows.

"Mr Speaker, as I said last night, the Government are at the forefront of assisting and protecting vulnerable children, wherever they are. As the House is aware, last week the Prime Minister said that we will work with local authorities on plans to resettle unaccompanied children from France, Greece and Italy. We have said we expect the first children to arrive before the end of the year. We have not said that it will take until the end of the year for them to arrive. As I made clear to the House, we are working hard to see isolated children reunited with family, and children at risk of exploitation and abuse come to the UK as quickly as we can, but we have to be satisfied that they will be able to receive appropriate care and support when they arrive.

The revised Dubs amendment to the Immigration Bill obliges us to consult with local authorities. We must ensure that we fulfil our obligations to children who are already in the UK, as well as ensuring that we have the right support for those who may be brought to the UK from Europe. The provisions in the Bill by their nature mean that we have to consult others before finalising our plans, but that does not imply that we will delay getting on with this. We will be contacting council leaders in the coming days. I have already spoken to the Local Government Association on this matter.

We have always been clear that we must do nothing that inadvertently creates a situation in which families see an advantage in sending children ahead, putting their lives at risk by attempting perilous journeys to Europe. That is why only those present in the EU before 20 March will be eligible for resettlement, and even then only when it is in their best interests to come to the UK. This will avoid creating a perverse incentive for families to entrust their children to people traffickers.

We have already starting consulting relevant NGOs, UNHCR, UNICEF and other member states on how best to implement this legislation. Last Friday, I met the Greek Government in Athens to discuss how best we can make progress quickly. We are already working to identify those whom we can help. We have an ongoing plan with France to improve our joint response to children in Calais, accepting more than 30 transfer requests since February, with more than 20 already arrived. We will be working with France over the coming days and weeks to increase the identification of children in France who have family here so that we can bring them over.

In addition, the UK has been playing its full part in supporting European neighbours to provide support to those who have arrived. We have provided nearly £46 million of funding to the Europe-wide response to help the most vulnerable, including children and infants. In addition, the £10 million DfID fund announced on 28 January will support UNHCR, Save the Children and the International Rescue Committee to work with host authorities to care for and assist unaccompanied or separated children. Of course, this is on top of our Syrian resettlement programme and the children at risk resettlement scheme, designed to resettle up to 3,000 children at risk from the Middle East and North Africa, where it is deemed in their best interests. The Government remain committed to making a full contribution to the global refugee crisis.

We are already acting to implement the Bill amendment. We have started discussions with local government. We have begun work with European partners and NGOs to support effective implementation. We will bring refugee children to the UK as quickly as it is safe to do so. I am proud that the commitment of this country and this Government to help those in need both within and outside Europe stands comparison with any other country in the world".

My Lords, that concludes the Statement.

4.32 pm

Lord Rosser (Lab): My Lords, I thank the Minister for repeating the Answer to an Urgent Question asked in the Commons earlier today. We appreciate and welcome the steps that the Government are taking. In the Commons yesterday, the Government confirmed that they were accepting the amendment in the name of my noble friend Lord Dubs which was passed in this House. They also said that they would urgently consult others prior to bringing forward more detailed proposals and that a meeting of the Local Government Association was scheduled for later this week.

[Lord Rosser]

It appears that 10 Downing Street has now told the *Daily Telegraph* that the first children will be arriving by the end of the year, which is a totally different tenor of response to that given in the Commons, which was all about urgency and getting on with it as quickly as possible. Will the Government tell us the estimated timetable for implementing my noble friend's amendment, which the Government have accepted? Will the Minister also say whether it will be an objective to take in at least the first 300 children before the start of the school year in September, since it will not assist the position of such children if they have to join a school well into the start of the school year?

Finally, 157 children have been identified by Citizens UK as being in Calais and having family connections here. I appreciate that earlier a Minister said he could not comment on the figure of 157, but will the Government give an assurance that they will take prompt action to ensure that those children in Calais with a valid legal claim for reunification are reunited as a matter of urgency with their families here under the Dublin arrangements?

Earl Howe: My Lords, I am most grateful to the noble Lord, Lord Rosser, who asked a number of questions. The *Daily Telegraph* picked up the No. 10 statement and misconstrued it. No. 10 said that we would proceed with this programme as quickly as possible and that by the end of the year we will have seen children arriving in this country. That does not mean to say that it will be 31 December before any child arrives.

It is difficult for me to define the estimated timetable because of the need, as specified by the amendment in the name of the noble Lord, Lord Dubs, to consult local authorities before we are in a position to say how many children can be accommodated. I can only assure the noble Lord that we need to take necessary but not undue time to do that, that we are already engaged with the French authorities to ensure that the vulnerable children who I know the noble Lord, Lord Dubs, wants us to prioritise are identified as quickly as possible, and that we will do the same in Greece and Italy.

I cannot, as the noble Lord will therefore surmise, be specific about whether we will admit 300 children before the start of the school year. The very nature of this announcement means that we must take the necessary time to consult others before bringing forward final proposals on how to implement. All I can say is that we will not only implement the letter of this amendment but its spirit, and we will do so enthusiastically and as speedily as we can. Naturally, as I have already emphasised, those children in Calais are likely to be the first candidates.

Lord Paddick (LD): My Lords, Save the Children, following extensive research and consultation, concluded that if the UK took 3,000 unaccompanied asylum-seeking children from within Europe, that would be a fair and proportionate number. I accept, as the Minister said, that there has to be consultation with local authorities, but we also heard earlier this afternoon in this Chamber that charities and other mechanisms can be used to help find homes for these children. Can the Minister tell the House how many of these children the Government intend to take: the smallest number they can get away with or the UK's fair share?

Earl Howe: It is not a question of the smallest number we can get away with. I hope that I have indicated that we are pursuing this amendment in its proper spirit. We have always been clear that we share the objective of identifying and protecting vulnerable refugee children wherever they are—our efforts to date have been designed to do just that—and we have heard many times about the measures that the Government have taken, particularly in the Middle East.

However, we were very clear that setting an arbitrary target, particularly one as high as 3,000, was the wrong approach. We cannot simply wade in and select some children whom we think would be better off in the UK, especially when some local authorities already care for very high numbers of unaccompanied asylum-seeking children—which in some cases is stretching services to breaking point. That is why we believe that the approach of the noble Lord, Lord Dubs, is the right one. We have to consult with local authorities before we can determine the number that we can accommodate, and we must observe the best-interests principle as well.

Lord Dubs (Lab): My Lords, I very much appreciate the way in which the Home Secretary, the Immigration Minister and Home Office officials have put me in the picture throughout this process. It was gratifying, not in a triumphalist sense, to see the Home Secretary's name on the amendment in the Commons yesterday evening.

The Minister put his finger on the right phrase—that the Government intend to accept not only the letter but the spirit of the amendment. I will plead only that, given that we now have officials working with the French authorities, it might be possible to speed up the process of identifying children in Calais who have relatives in Britain and to help them to get to Britain in time for the school term in September. Surely that would be the right thing to do. The Minister cannot make a promise but I hope that he will accept the spirit of what I am saying and that the Government will do their best accordingly.

Earl Howe: I can give the noble Lord that assurance. Clearly it would be desirable to ensure that those children who are most vulnerable and in need of help and support can arrive in this country in time for the school year, but he will understand that at this stage of the exercise I cannot give firm undertakings to that effect. All I can do is to say that we will use our best endeavours in that direction.

Lord Hylton (CB): My Lords, does the Minister accept that it is a national responsibility to do what we reasonably can to help those children who are single, unaccompanied and already in Europe? Can he give an assurance that the costs will not fall on individual local authorities, but will be accepted as a national burden? The issue of the children coming to this country

who eventually reach the age of 18 was raised earlier at Question Time, but we did not get a very clear or very acceptable answer from the Government. After we have invested so much resource, care and education in these children, surely they should be allowed to stay here and not have the sword of Damocles hanging over their heads that they might then be returned.

Earl Howe: My Lords, on the question of costs, as the noble Lord will know, the central Government fund local authorities who care for unaccompanied asylum-seeking children. There is no reason why the implementation of this amendment should place unique challenges on local authorities. Of course, funding arrangements will be discussed with local authorities. The Home Office will engage with local authorities as it goes forward with the main question of how many children can be accommodated. Any additional flow of unaccompanied children needs to be aligned with existing schemes.

As regards giving a pre-emptive undertaking on what will happen to children when they reach the age of 18, I can say only that each case for asylum has to be considered on its individual merits. Where someone demonstrates a genuine fear of persecution, protection will be granted but, where someone is found not to be in need of our protection, we would expect them to leave the UK voluntarily.

Lord Wigley (PC): My Lords, will the noble Earl confirm that he is having close discussions with the Welsh Government on these matters, seeing that many of the responsibilities lie there? We in Wales are anxious to play our part in this programme. Given the emphasis that he placed on co-operation with the French authorities, is he confident that in the unfortunate event of a Brexit vote that co-operation will continue?

Earl Howe: My Lords, the answer is yes and yes. We are in touch with the devolved Administrations—not only the Welsh authorities but those in Scotland and Northern Ireland. I can of course give the noble Lord the undertaking about our dialogue with the French, which will continue whatever happens.

Housing and Planning Bill

Commons Reasons and Amendments

4.42 pm

Motion A

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 10B, to which the Commons have disagreed for their Reason 10C.

10C: Because it would undermine the delivery of starter homes.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, I want to be clear once more that Amendment 10B would undermine our manifesto commitment to build 200,000 starter homes by 2020. The requirement for starter homes would become something entirely different and not what we promised to deliver in our manifesto.

Our manifesto commits to starter home delivery at least three times. Let me quote directly from it to show that the commitment could not be clearer:

"As the party of home ownership, we want to go further and faster—and this manifesto sets out our plan. At its heart, a clear objective to build affordable homes, including 200,000 Starter Homes which will be sold at a 20 per cent discount, and will be built exclusively for first time buyers under the age of 40".

The electorate will expect us to deliver our commitment and we are determined to do so. The Government have listened to this House on a number of aspects of this policy, including allowing for a taper and repayment mechanism when the property is resold. But the Government cannot compromise on the starter homes requirement. It is fundamental to delivering 200,000 starter homes within this Parliament.

More than 85,000 young people from across the country have now registered on our starter homes register of interest. We want these young people to have a chance of home ownership. The starter home model will give them such a chance. It will provide an opportunity for them to own their own home and, unlike many other home ownership products, will enable them to move onwards and upwards over time.

Elected honourable Members in the other place have been clear in their overwhelming support for delivering our starter homes commitment. They recognise the importance of starter homes for the long-term health of their communities and are receiving inquiries from interested constituents asking us to get on with delivering them.

As the honourable Member for North Cornwall said in the other place,

"we in this country have a right to own our own home and this Government are delivering that through this Bill".—[*Official Report*, Commons, 3/5/16; col. 65.]

I am also in agreement with the honourable Member for South Ribble when she said:

"We need to get more houses built—and quickly … Developers and builders want certainty and speed".—[*Official Report*, Commons, 3/5/16; col. 80.]

We will give them certainty through the straightforward, nationally set starter homes requirement.

We remain committed to delivering shared ownership and other forms of affordable home ownership products to help those who aspire to home ownership but cannot afford discounted purchase. They form part of a diverse and thriving housing market.

Our prospectus invites housing associations and other providers to bid for £4.1 billion of funding to deliver 135,000 shared-ownership homes, and £200 million to deliver 10,000 Rent to Buy homes. Local authorities will also still be able to deliver these products on site alongside the starter homes requirement where it would be viable. We estimate that 50,000 to 70,000 affordable homes can still come forward alongside our starter home requirement during this Parliament.

But this Bill focuses on starter homes to ensure the scale of delivery that we need. We strongly believe that a nationally set requirement for starter homes is essential

[Baroness Williams of Trafford]
to meet our manifesto commitment and we are consulting on the details for its operation. The requirement will be put in place through affirmative regulations, so Parliament will have a further opportunity to scrutinise the details.

We intend to deliver our manifesto commitment and I must therefore invite the House not to insist on Amendment 10B. That amendment would fundamentally change the Government's manifesto intention as proposed in the Bill and it is therefore our view that the Salisbury convention is engaged.

We have a clear manifesto mandate to deliver our starter homes policy and I therefore invite the House to support Motion A and reject Motion A1 if it is pressed. I beg to move.

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Kerslake***

Leave out from "House" to end and insert "do insist on its Amendment 10B as an amendment to Amendment 10A".

Lord Kerslake (CB): My Lords, I declare my interests as chair of Peabody and president of the Local Government Association. I stand before you as a reluctant amender. As the Bill has moved towards its final stages, I have been very open to conversation and compromise. This has been possible on a wide range of difficult issues and was close to being achieved on the second amendment that I shall move later today.

However, on this part of the Bill—on housing—there remain two vital issues where I feel strongly that the debate needs to continue. The first, and the subject of Motion A1, is the so-called starter homes requirement. Under this, local authorities will not be able to give approval to individual planning applications unless they have included a specified number of starter homes. This figure is currently set to be 20%—one in five—of the houses approved.

The issues with this have been previously rehearsed, and there are three major concerns. First, it imposes a single, top-down requirement regardless of local circumstances. Secondly, it does so with a product that is still in design and is not tried and tested. Thirdly, the percentage proposed will squeeze out other kinds of affordable housing that are desperately needed. My amendment is not intended to be, nor is it, a wrecking amendment to the manifesto. It seeks only to give greater local flexibility where a need can be demonstrated and to allow other types of low-cost home ownership products to be counted within the starter homes requirement. It will be for individual local authorities to take a view on this within their overall duty to promote starter homes. There need be no delay in getting starter homes going.

Indeed, I think that local planning decisions will be quicker as a result of this flexibility. The low-cost home ownership delivered could quite reasonably count against the Government's 200,000 target. They can, as new low-cost home ownership products, be targeted at the same group of people—young first-time buyers—whom the Government are seeking to help. From the point of view of the buyer, what matters is the opportunity to own their own home.

Before we lock ourselves into a rigid, inflexible, national solution that risks setting local authorities up to fail, I ask Ministers and this House, even at this very late stage, to consider a more localist, market-responsive approach. I beg to move.

Lord Young of Cookham (Con): My Lords, having sat through most of the proceedings on this Bill I recognise that it is probably the most controversial one from last year's Queen's Speech, and I quite understand the very strong feelings that have been aroused. I want to give three brief reasons why I think at this stage we should allow the Bill to go forward.

First, the Government have already made very substantial concessions on this Bill, principally in response to arguments put forward by Cross-Benchers and opposition Members in this House. There have been amendments on high-value assets, exceptions to secure tenancies, pay to stay, starter homes and rural exception sites. Where a case has been made that does not conflict with the manifesto, my noble friend has listened to the arguments and made the necessary changes. No one can accuse the Government of inflexibility.

Secondly, the vote in another place last night was by 80 to 100, without one single dissenting voice on the government Benches. Roughly two-thirds of English MPs rejected the amendments that came from this House. We should think carefully before we seek to second-guess them. Finally, the further Motion A1 seems to me to be against the spirit of the Joint Committee on Conventions. I quote:

"If the Commons have disagreed to Lords amendments on grounds of financial privilege, it is contrary to convention for the Lords to send back amendments in lieu which clearly invite the same response".

I put it to noble Lords that Motion A1 does exactly that.

On reflection, it seems to me that this House has performed its traditional role of scrutinising, amending, revising and asking the other place to think again. We now risk moving to the more controversial territory of challenging the other place. In the debate yesterday, the Minister expressed surprise that your Lordships' House,

"have chosen again to oppose one of our most important manifesto commitments".—[*Official Report*, Commons, 9/5/16; col. 458.]

He went on to describe one of the other amendments as a "wrecking amendment". I urge the noble Lord who moved Motion A1 to reflect on the changes that have already been made to avoid the risk of pressing this further, and to think of the tenants of Peabody, some of whom have written to me, who want the statute book to include this measure so that they can exercise their right to buy.

Lord Cormack (Con): My Lords, I will very briefly give strong support to what my noble friend Lord Young of Cookham said. This House has performed an extremely valuable role in a number of Bills during this Session, which comes to an end this week. This House has every reason to take quiet pride and satisfaction

in, for instance, the Trade Union Bill. I concentrated my endeavours on that Bill, but I have sat in on a lot of debates at the various stages of this Bill, and listened to arguments persuasively put and to answers sympathetically given. There is no doubt that the Government have moved. Of course they have not moved as far as the noble Lord, Lord Kerslake, would like, but in this life we very rarely get everything we like.

The noble Lord has had a very distinguished career in the Civil Service, finishing at its pinnacle. He was deservedly ennobled and sent to your Lordships' House to contribute from his expertise and his wisdom. That he has certainly done. No one could begin to accuse him of not being an active Member of your Lordships' House. But I beg and entreat him to recognise—as, with his distinguished Civil Service background, he must—that there are constitutional proprieties in our system. We are in danger of transgressing. We in this House very rightly passed various amendments. Last week the Government were defeated five times. That may not be unprecedented, but there are very few precedents where five amendments are passed for a second time and the Bill is sent back to the House of Commons.

The other place has deliberated. I am bound to say that I do not think that this is the most perfect Bill that has ever come before Parliament—far from it—but whether we agree with its deliberations or not, the other place has passed by substantial and significant majorities the amendments before us. The noble Lord, Lord Kerslake, is seeking yet again to press them. Of course he has every right to do so, but I suggest to him very gently that he does not have every constitutional right to do so. The elected House, as we say so often in this House, is the superior House when it comes to political power. We should all recognise that. I believe that most of us, in all parts of the House, do.

We have been active on this Bill—the noble Lord, Lord Kerslake, certainly has been most active—but I urge him not to press this today. The constitutional repercussions could be very considerable. We do not want—I certainly do not—to tempt any Prime Minister to send another long list of Peers to your Lordships' House merely to big up the numbers. That is not what we should be about. We should be in the business not of provocation, but of scrutiny and examination. We have fulfilled our tasks in that respect. I believe that the time has now come for us to draw stumps. I very much hope that the noble Lord, Lord Kerslake, will find that there is some merit in my arguments and that he will feel able to desist.

5 pm

Baroness Hollis of Heigham (Lab): My Lords, I was not going to intervene. I certainly do not know what the noble Lord, Lord Kerslake, will do with his amendment. I want to follow up on the wise words of the noble Lord, Lord Cormack, by saying that this is not a wise Bill. Some of us have been in this House for many years and have handled many Bills. The problem is that, in process terms—leaving aside the content—this is the worst Bill I have seen in 25 years. It is a skeleton Bill in which we do not know the detail; this will be carried out by regulations. I do not blame the Minister at all but we do not know—and the Minister does not know—what will be in the regulations because they will depend on consultation exercises. We do not know what these consultation exercises will say because they were started only two-thirds of the way through the parliamentary process.

Noble Lords all around this House have been trying to scrutinise properly and fairly, as we should, a Bill in which there are huge gaps. We do not know the costs, the statistics, the land requirements or the burdens on local authorities. We know none of this. Yet, we, who scrutinised the Bill, are being told that the Commons has overturned our amendments. In a very truncated debate last night, it barely touched half the issues that we had discussed, having read every word of it. The Commons really did not.

This leaves some of us, who respect the conventions of this House, in a very difficult position. This is a half-baked, half-scrutinised, quarter-digested Bill. We are being asked, in the name of constitutional propriety, to allow the Commons to have the final say on something that is, frankly, not fit for purpose. It should not have been introduced this year; it should have been deferred until next year, until all the detail was in place so that we could scrutinise and amend the Bill, as this House should do. Then, and in that context, we would respect the will of the Commons. The Commons is sending through on a conveyor belt a half-baked Bill that it has not scrutinised. It puts many of us who really value the scrutinising role of this House in a very difficult position. I am sure I speak for many noble Lords, including, perhaps, some on the Benches of the noble Lord, Lord Cormack, who share my concerns. We are being asked to scrutinise a Bill that is not fit for purpose.

Lord Beecham (Lab): My Lords, I endorse my noble friend's remarks about the issues perfectly properly raised by the noble Lord, Lord Cormack. From the Minister's remarks, one might have thought that the amendment of the noble Lord, Lord Kerslake, was going to utterly sabotage the Government's proposals for starter homes. There is no evidence to support that as a potential outcome if his amendment were to be approved. It does not replace the principle that the Government seek to advance; it complements it. We seem to be invited to adopt the Government's position on starter homes, failing which we are going to get some starter Peers. We have probably had a few of those in the last few years but that is not a matter that ought to weigh too heavily on us.

I think noble Lords on all sides of the House endorse the Government's ideas for promoting home ownership, particularly—but not necessarily exclusively—among younger people. After all, this is the week in which we are talking about mortgages for people up to 85 years of age. There are people above the age of 40, who have been on the housing ladder for decades, for whom this Bill will do very little. Whereas, a slightly more relaxed approach of the kind that the noble Lord, Lord Kerslake, is advocating, would assist them, without damaging the prospects of those aged 40 and under, for whom this part of the Bill seeks to provide some hope and action. I agree with that.

I sympathise with the noble Lord's amendment. I regret that the Government do not appear willing to move towards something that would make a modest

[LORD BEECHAM]
difference to the provision of housing for more people in a rather different way but not one which, in my judgment, would damage the Government's intentions. It certainly would not contravene their manifesto commitment.

Baroness Williams of Trafford: My Lords, I thank all those who have spoken so clearly on this group.

As I said in my opening speech, and have made completely clear throughout the passage of the Bill in this House, a nationally set starter homes requirement is essential to delivering our 200,000 starter homes commitment. The amendment would mean that the requirement for starter homes would become something entirely different. This is not what we promised to deliver in our manifesto.

The Minister for Housing and Planning last night set out on the Floor of the House in the other place that we need to get on with helping those people to fulfil their dreams and get on to the home ownership ladder. Some 86% of our population want to be given that chance to do so. I am in complete agreement with him, and with my noble friend Lord Young of Cookham for reiterating the point that he made last night. It is,

"beyond astonishing that the upper House should try to amend a measure that has received such a clear message of support from this elected Chamber, and in respect of which we have an election mandate to help young people".—[*Official Report*, Commons, 9/5/16; col. 459.]

Elected honourable Members have been clear in their overwhelming support for delivering our starter homes commitment, and, as my noble friends Lord Young of Cookham and Lord Cormack, said, Amendment 10B was rejected with a majority of 83.

This House has done its duty. It has scrutinised, and the Government have revised as far as they possibly can. It is time to stop and to recognise and respect the will of the electorate and the primacy of a manifesto mandate. The noble Baroness, Lady Hollis, said that the legislation had been rushed through and that the Commons had not scrutinised it properly. However, I understand from the Commons that timings were agreed, including by the Labour Whips. I have already made clear to the House that Amendment 10B would fundamentally change the Government's manifesto intention as proposed in the Bill, and that we therefore consider the Salisbury convention to be engaged.

I once again reassure the House that the Government are completely committed to ensuring that a range of housing tenures come forward. These include shared ownership and other affordable home ownership products. However, we are legislating for starter homes alone as a new product, designed to address a specific gap in the market, and we have a clear manifesto mandate to do that.

I also reassure the House that the Government are consulting on setting the percentage requirement. These proposals include exemptions where a starter home requirement will not be expected. I would be happy to meet noble Lords to discuss this further before the resulting regulations are brought back to this House.

The noble Lord, Lord Kerslake, said that the percentage requirement was set at 20%. Twenty per cent is currently a consultation proposal and is not yet fixed. However, we are consulting the sector on this and other aspects of the starter home regulations. The noble Lord also talked about current proposals being rigid and inflexible. We are consulting on how the starter homes requirement will apply. This includes setting out exceptions on the basis of viability and the types of housing being built, such as housing for older people.

The noble Lord, Lord Beecham, suggested that this was not a wrecking amendment. We promised the electorate that we would deliver 200,000 starter homes by 2020. This was our election mandate and this amendment would undermine delivering that.

I have listened carefully to the debate, and I hope our clear manifesto commitment for starter homes means that there is no need to divide your Lordships' House. With these reassurances in mind, I invite the noble Lord to withdraw his amendment to my Motion.

Lord Kerslake: My Lords, I am grateful for the contributions to this debate on starter homes. I entirely understand and respect the constitutional issues at stake here. This House is clearly a revising and improving Chamber and, ultimately, the other place will prevail. That is the democratic propriety, and that is as it should be. I also recognise the issues associated with how the conventions work. The 2006 report referred to by the noble Lord, Lord Young, was not taken up within the context of the *Companion*, and my amendment complies with the rules as set out in the *Companion*. I absolutely respect the views put forward by the noble Lord, Lord Cormack. He and I worked very productively on the Trade Union Bill and saw very substantial improvements.

The challenge is judging the impact of what is proposed and whether it will deliver more homes—which we desperately need in this country—or, indeed, the 200,000 starter homes the Government seek. Personally, I severely doubt whether it will deliver what is intended. Notwithstanding what the Minister has said, it is in many ways a rigid proposition. I also recognise that it is a manifesto commitment and that Ministers have expressed a concern that the amendment will undermine that. I am alert to the Minister's assurances on the consultation and the flexibility that will be built in. At this point I will, therefore, reluctantly withdraw the motion.

Motion A1, as an amendment to Motion A, withdrawn.

Motion A agreed.

Motion B

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendments 47B and 47C, to which the Commons have disagreed for their Reason 47D.

47D: Because they would alter the financial arrangements made by the Commons, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

Baroness Williams of Trafford: My Lords, I turn to another manifesto commitment—high value vacant local authority housing. I start by reminding your Lordships' House what the manifesto said:

"We will fund the replacement of properties sold under the extended Right to Buy by requiring local authorities to manage their housing assets more efficiently, with the most expensive properties sold off and replaced as they fall vacant".

The Bill delivers that manifesto commitment. It will increase housing supply through the delivery of affordable homes, and extend home ownership by funding the discounts for the ground-breaking voluntary right-to-buy agreement. Let me be clear: the manifesto says that the homes sold will be replaced with new homes. It does not say that there will be like-for-like replacement. We want to make sure that the new homes serve the needs of communities, today. We do not see a reason to commit ourselves to reproducing exactly the same type of home when communities have changed and the need for housing may be different. We want to retain flexibility in the legislation so that the Government, working with local places, can facilitate the development of the type of homes we need today.

Noble Lords have used their scrutiny role to great effect. The House has helped to improve the Bill in many ways. However, we cannot accept amending the Bill in a way that would prevent us delivering on our manifesto commitment. As the Minister for Housing and Planning explained in the Commons yesterday, the Government could not accept Lords Amendments 47B and 47C because they would significantly reduce the funding available for the voluntary right to buy. The other place has been clear that it does not agree with the fundamental changes that have been proposed to the agreements process. Twice it has emphatically rejected amendments from your Lordships' House—by 288 votes to 172 last Tuesday, and then, yesterday, by 291 votes to 203. That shows their strength of feeling.

In addition, the House of Commons has, for a second time, offered a financial privilege reason for rejecting our amendments on this issue. I respect, and would defend, the right of this House to propose an amendment in lieu when the Commons has rejected our original amendment on grounds of financial privilege. However, I remind noble Lords that the Joint Committee on Conventions reported in 2006 that:

"If the Commons have disagreed to Lords Amendments on grounds of financial privilege, it is contrary to convention for the Lords to send back Amendments in lieu which clearly invite the same response".

This House has already sent back one set of amendments in lieu which invited the same response of financial privilege—Amendments 47B and 47C, which were sent to the Commons last Wednesday. Motion B1 in the name of the noble Lord, Lord Kerslake, invites the House to offer Amendment 47E in lieu. At first glance, that amendment also has major implications for how the voluntary right-to-buy commitment will be funded and therefore could invite the same response. I hope the House will be mindful of that convention as we debate and decide on the Motions before us today.

5.15 pm

The Bill has always enabled the Secretary of State to enter into agreements with local authorities. We have made amendments which clarify our intentions concerning replacements. These will ensure that where a local authority has entered into an agreement, at least two new affordable homes will be provided for each home expected to be sold in London. A similar approach will now work outside London as well, with local authorities that choose to enter into an agreement being required to provide at least one new affordable home for each one expected to be sold. Let me be very clear: "affordable" includes a range of different types of housing, meaning homes that will be made available for people whose needs are not adequately served by the commercial housing market, from new homes for sub-market rent to home ownership products such as shared ownership and starter homes.

Receipts will be used to support the delivery of our manifesto commitments to support the delivery of right-to-buy discounts to housing association tenants and the delivery of additional homes. We will of course compensate local authorities for transaction costs and the debt associated with the housing. After that, we have been clear that receipts will be used to fund both right-to-buy discounts for housing association tenants and the delivery of new affordable housing. We are not intending to use them for any other purpose. I beg to move.

Motion B1 (as an amendment to Motion B)
Moved by ***Lord Kerslake***

At end insert ", and do propose Amendment 47E in lieu—

47E: Clause 72, page 31, line 42, at end insert—

"( ) The amount of any reduction agreed under subsection (1) must be sufficient to fund the provision of at least one new affordable home outside Greater London, and at least two new affordable homes in Greater London, for each old dwelling.

( ) Where the local housing authority can demonstrate, whether by reference to its local housing plan or otherwise, that there is a particular need in its area for social rented housing, the Secretary of State, as part of any agreement under subsection (1), must consider any application from the authority to fund the provision of a new dwelling to be let as social housing, in respect of each old dwelling.""

Lord Kerslake: My Lords, Amendment 47E seeks to do two things. First, it seeks to put it beyond doubt that sufficient funding will be available to local authorities to deliver at least one new affordable home for each higher-value property sold; in London this will be at least two for one. Secondly, it gives a local authority the opportunity, where it can demonstrate a need for social rented housing in its area, to make the case for the Secretary of State to consider.

There are few parts of this Bill that have caused such concern at local level and, indeed, where the impacts are so serious. Even today, I have received an open letter from tenants setting out their serious concerns. Even at this very late stage, we still do not have the vital detail needed to properly assess the impact. This point is made very strongly in the recent Public Accounts Committee report.

Shelter has calculated that to deliver the estimated £4.5 billion of receipts identified by the Government, 23,500 vacant council properties a year will need to be sold. This equates to nearly a third of all stock that will become vacant. It follows that it is absolutely vital to be clear in the Bill how this replacement will be delivered in practice. A huge amount depends on getting this right.

[LORD KERSLAKE]

Under Clause 72, the Secretary of State may enter into an agreement with a local authority to reduce the amount that it has to pay under the higher-value sales levy. The Bill now makes it clear that where such an agreement is entered into, the manifesto commitment of at least one-for-one replacement must be delivered. What is glaringly absent from the Bill, however, is that the local authority will be able to retain enough of the levy to pay for this replacement. So we have the ends but not the means in the Bill. The first part of my amendment seeks to put this point right: it seeks to align ends with means. It has been argued previously that this is unnecessary, since Ministers have given a commitment. If that is the case, it ought not to be controversial.

My concern about the Minister's argument in the other place is that it raises precisely the issue of whether the funding will be adequate, because it suggests that to agree this amendment or something close to it would compromise the delivery of the right-to-buy policy. One way or another we need to be clear whether the funds will be there to deliver the policy in the Bill. Given the huge uncertainty about how the sums will add up, it is reasonable for this House to take the precaution of seeking clarity in the Bill that the funding will be there. What would be the purpose of reaching an agreement if it did not have the underpinning funding to support it?

The second part of my amendment has been significantly revised from the version that we previously debated. It simply seeks to give the opportunity to a local authority to make its case on grounds of need to replace a social rented home with another social rented home. It does not require a local authority to make a case if it decides that it already has sufficient social rented housing. If it wishes to go for a different mix of affordable housing, it can do so. Nothing in my amendment prevents the flexibility to which the Minister referred. It simply provides an opportunity.

Equally, my amendment does not require the Secretary of State to agree with those representations. It asks only that the Secretary of State consider the case on its merits. It therefore fits completely with the Government's intention to do bespoke local deals. The discretion is there for the local authority to make its case. The power is there for the Secretary of State to say no if he is not persuaded by that case. It is hard to see how you could be more flexible and responsive than that.

I understand the reluctance that some in this House will have about pressing these issues again. I have thought long and hard about them. I would not put the amendment forward unless I thought it was of such vital importance. Unless we get this replacement policy right now, on funding and discretion, we shall inevitably see fewer genuinely affordable homes available. The consequences of that would be rising numbers of low-income families living in temporary accommodation. There are now some 54,000 homeless families with children living in temporary accommodation. That number is rising. Unless we get this right, it will carry on rising, and we shall have missed a major opportunity. I ask the House to support this amendment. I beg to move.

Lord Forsyth of Drumlean (Con): Before the noble Lord sits down, and given that his previous amendment was subject to a claim by the other place that it was financially privileged, will he explain why this amendment does not meet the same obstacle and why it is not inappropriate for him to press the matter?

Lord Kerslake: My Lords, as I indicated, I have taken on board the comments made in the previous debate and revised my amendment significantly. In particular—and this is the crucial point—it does not seek to impose a requirement on the Secretary of State as regards social rented housing. It is clear beyond doubt, as perhaps the previous amendment was not, that this is a matter that the Secretary of State is asked to consider, but does not necessarily have to agree. It is therefore a choice for the Secretary of State and as such would not have financial implications. Secondly, the first leg of my amendment simply seeks to say that if you reach an agreement, it has to be funded. That is all it says.

Lord Shipley (LD): My Lords, in speaking in support of the amendment of the noble Lord, Lord Kerslake, I remind the House that I am a vice-president of the Local Government Association. I support two principles: first, that councils should be able to keep sufficient funds to replace each home they have to sell; and secondly, that negotiations between central and local government must allow councils to take into account the housing needs in their area. If there is demand for social homes for rent, councils should be enabled by the Government to replace those higher-value homes sold with another home for rent. This is what the amendment proposed by the noble Lord, Lord Kerslake, seeks to do, which seems to me entirely reasonable.

The Minister reminded us of what was said in the other place last night. The Minister in the Commons said that these proposals,

"would also significantly reduce the funding available for the voluntary right to buy".—[*Official Report*, Commons, 9/5/16; col. 461.]

This suggests that the Government are refusing to accept what, on the face of it, is a very reasonable amendment because the priority for the money released by the forced sale of higher-value council homes is not replacement council homes for rent. This amendment remains vital for that reason.

We now have one-for-one replacement in the Bill, although not like for like, and I acknowledge the Government's limited movement on the former. However, certainty that the funding will be available for that one-for-one replacement is now needed, as the noble Lord, Lord Kerslake, pointed out. Can the Minister make a clear statement that the funding will indeed be available for the replacement home, and that where that replacement home is a social home for rent, it will be funded from the sum realised by the sale of the higher-value council home before the residue goes to the Government to fund the voluntary right to buy?

When we last debated this matter a few days ago, the noble Lord, Lord Porter, quoted the Conservative Party's manifesto and the accompanying press release. The press release said that sold council homes would be,

"replaced in the same area with normal affordable housing".

I asked the Minister in that debate if a definition could be supplied of what a normal affordable home actually was. The press release went on:

"After funding replacement affordable housing on a one for one basis, the surplus proceeds will be used to fund the extension of right to buy".

In other words, the Conservative Party made a commitment, in the press release accompanying its manifesto, that a replacement home would come first. There is a clear implication in the wording of that statement—

"After funding replacement affordable housing"—

that the home will be of the same type. That is what a lot of people believed to be the case. However, it becomes clearer that this is not the Government's intention. Instead, a voluntary right to buy has to be funded first, and the resource available to supply a replacement council home will in practice be extremely limited.

The noble Lord, Lord Kerslake, gave one or two facts and figures. A rising number of people are homeless and a large number of people are now living in temporary accommodation, a figure that also seems to be rising.

We have more than 1 million people on council waiting lists. It is anticipated that under the existing right to buy, by 2020, 66,000 council homes will have been sold to tenants. The Government's introduction of a 1% rent reduction each year for the next four years for social housing will reduce the number of replacements that can be built, because the revenue stream matters in paying the bills. Finally, the forced sale of higher-value council homes will reduce the number of social rented homes available, unless the amendment is accepted.

In my view, what the noble Lord, Lord Kerslake, has now proposed is entirely reasonable. I very much hope that the Minister will feel able to accept the amendment and the need for it, because in so doing, the Government would remove the all too transparent doubt that surrounds this debate.

5.30 pm

Lord Porter of Spalding (Con): My Lords, first, I thank the noble Lord, Lord Shipley, for mentioning me. There was a little competition going on here as to who was going to get in next, and because he put my name in the frame, my noble friends have given way to me—so thank you.

I respectfully ask the noble Lord, Lord Kerslake, to withdraw his amendment. He knows that I refused to work on it with him yesterday because I believe that the Minister has already given us the assurance that noble Lords such as the noble Lord, Lord Shipley, require: that we will be able to replace those council homes sold. In fact, the Prime Minister was very specific: he expects us to do that if that is what we need in our areas.

Given that this is the first time that I have spoken at this stage, I should probably refer again to my entry in the register of interests, one of them being chairman of the Local Government Association, although I am sure that a few Members on the Benches opposite will smile, because it looks as though I will not be saying that too many times in future—it looks like that is passing; happy days.

From a council perspective, the danger of the amendment of the noble Lord, Lord Kerslake, is that it will damage councils' ability to replace their housing stock. At the moment, with the manifesto commitment, the Secretary of State will be compelled to allow us to do something; under the amendment, he will be invited to allow us to do something. Straightaway, that will weaken our position. I have complete and utter respect for the current Secretary of State, but who knows what a future Secretary of State may do? Even worse from a council perspective, when the Secretary of State works out what type of units will be replaced and who will be landlord, one factor will be value for money. We all know that when a council builds a house, it can do it for less real money than an RSL, but we also know that when the Treasury does its thing with smoke and mirrors around the public sector borrowing requirement, all of a sudden the council house becomes more expensive. If the amendment were to get through, one—unintended, I hope—consequence would be to allow a future Secretary of State to take resource from a local council and give it to an RSL. I vehemently hope that every elected Member opposite will resist the amendment.

Lord Cormack: My Lords, I thank the noble Lord, Lord Kerslake, for the gracious way in which he withdrew the previous amendment. He must have been a formidable Sir Humphrey, but as such, he would know when the time came to say, "Yes, Minister". He has moved the amendment with quiet passion and a most persuasive speech, but we have reached the stage where we really should not be gainsaying the elected House. I hope that, with all his wisdom and experience, he will recognise that.

I also hope that my noble friend, who has done the equivalent of running several marathons over the past few weeks and deserves the thanks of us all for her unflappable demeanour, will recognise that worry is shared in all parts of the House about what I would call the Henry VIII aspects of the Bill. They were referred to in a short but persuasive contribution by the noble Baroness, Lady Hollis. I would like to think that my noble friend will gather a few people around, including the noble Lord, Lord Kerslake, to discuss the contents of some of the regulations that will undoubtedly need to be tabled and will be subject to affirmative resolution in your Lordships' House. If people such as the noble Lord, Lord Kerslake, can have an input, that can only be helpful and to the benefit of us all.

I know that my noble friend is not in a position, as was slightly mischievously suggested by the noble Lord, Lord Shipley, to accept the amendment tonight. Of course she is not. The amendment either goes back to the Commons yet again or we accept that constitutionally, we do not really have the authority to do so. There are always things that we would like to get better. There are things that we would like to test to the ultimate. I am told that my car could go at 120 miles an hour, but would I do that? I would be not only a criminal but an idiot to attempt it.

I believe that we have taken this as far as we can in your Lordships' House. It is good that the arguments are being rehearsed; it would be good if there were

[LORD CORMACK]
proper input from the noble Lord, Lord Kerslake, and others when the regulations come to be devised; but enough is enough, and I hope that we will not divide on this.

Lord True (Con): My Lords, I declare an interest as leader of a local authority and someone who has sat through a number of hours of proceedings on the Bill. Anyone who has read *Hansard* will know that my enthusiasm for aspects of it as it first appeared was perhaps a little way short of ecstasy, but it also contains some fundamental and important things that the Government promised in their manifesto and which people in this country want, such as starter homes, the right to buy and many others.

The House needs to find a balance, take part in a parliamentary dialogue and, ultimately, reach an accommodation. In that accommodation, I speak as someone who is elected, albeit as leader of a local authority. There is no doubt that the authority of election is substantial and different. It lies in the authority of the other Chamber and it does not lie in ours.

In the course of the past century, the House of Commons has not succeeded as a parliamentary Chamber capable of legislating as well as it should. That is a problem for the other place and one which the other place alone can resolve. It is because it has failed in that respect that your Lordships' House has with great distinction developed this role as an advising and revising Chamber, which it has shown with exemplary quality and patience in the course of the Bill.

However, I ask the noble Lord, Lord Kerslake, not to press this matter further. This House cannot—it is not constitutional for it and it is not capable of it—construe the view that the other place, the elected House, takes of its own financial privilege. That is a matter entirely for the House of Commons. It is not for us to debate and say, "They won't think this ventures into their financial privilege; we can get away with something else". This is a matter for the other place. Twice, the other place has said to this Chamber that the Commons disagrees because it is asserting financial privilege.

The noble Lord, Lord Kerslake, is perfectly within his rights, and no one on this side or from the Government should ever say that a Member of your Lordships' House is unable to propose an amendment in lieu when the other place has cited its privilege, but there comes a point when you have to say that batting back against the will of the elected House is not a profitable course to follow, either as a collective, as a House, or as an individual. I might give some gentle advice to the noble Lord: if I were seeking admission to the counsels of the Government, I would not necessarily keep shoving back the same thing time and again. I think there are perhaps better ways to proceed.

As the leader of a local authority, I have appreciated some of the many points that the noble Lord made. I wish, in some respects, that the Government had been able to listen on other points, but we are where we are. This is a much improved Bill; that has been acknowledged in the other place by Ministers who have welcomed the amendments that have been made. But now the time has come to accept the will of the elected House on this question. The noble Lord, Lord Kerslake, has had a good run—from the "Today" studio before he even became a Member of this House, through this long Bill. With the greatest respect, it is now time for him to head to the pavilion on this matter.

Lord Foster of Bath (LD): My Lords, I will not detain the House very long. A passing comment by the noble Lord, Lord True, has caused me to ask the Minister a basic question about financial privilege. The Minister has made it very clear to your Lordships' House, and even clearer today, that when a higher-value affordable home is sold off, a local authority, should it negotiate with the Secretary of State, will be able to replace it with another property—a one-for-one replacement, or two for one in London.

The Minister has also made it very clear today that, when that takes place, the transaction costs and the cost of building the new property will be made available from the sale figures of the higher-value affordable home. I hope the Minister will confirm that that is definitely the case. Indeed, it covers the first part of the amendment from the noble Lord, Lord Kerslake. If that is the case, and the Minister has agreed that a new property to replace—not like for like but one for one—will be funded, I am at a loss to understand why the discussion about what the tenure of that property will be makes any difference to the amount of money that will then be left available to pay for the other aspects of government policy.

In the other place, the Minister, Mr Brandon Lewis, said that these proposals,

"would significantly reduce the funding available for the voluntary right to buy, again preventing this Government fulfilling their manifesto commitment. Let me be very clear: this is a wrecking amendment".—[*Official Report*, Commons, 9/5/16; col. 461.]

The noble Baroness the Minister has repeated those very words today. I am at a total loss to understand where the loss of money comes from, because she has acknowledged that the building of a new property will be funded. What the tenure is does not alter the building cost. I hope that the noble Baroness can give a very clear explanation of the statement made by the Minister in another place and repeated by her today.

Lord Forsyth of Drumlean: My Lords, I do not wish to address any issues of policy in respect of the Bill or the merits or otherwise of the proposals contained in the Bill. Unlike my noble friend Lord True, I am not elected or standing for election, so perhaps my words to the noble Lord, Lord Kerslake, will be a little less diplomatic than those of others. I do not know how much time Members of this House spend talking to people in the other place as we go about our work. I love this House and I think it does a fantastic job, but there is increasing irritation at the other end of the corridor about the activities of this House, and we should take account of that. There are proposals to reduce our powers, to which I am very strongly opposed. I believe that there are major issues concerning the use of secondary legislation and the provision of Henry VIII clauses, and no doubt we will address those in the next Parliament.

I have always very strongly supported the idea that the Cross Benches should have an important presence and role in this House. Traditionally, the Cross Benches

have been composed of people with great expertise—the noble Lord, Lord Kerslake, is a notable example—but they have always known where to draw the line and have respected the conventions of this House. We are in danger of crossing that line. I do not seek to argue whether the noble Lord's view is correct or the Minister's view is correct. What matters is that the other place has rejected this matter and has claimed financial privilege. As my noble friend Lord True has pointed out, the question of financial privilege is a matter for the elected House. We, in this House, have always respected the view that we do not put forward Motions in lieu where they have been rejected on the grounds of financial privilege in the past, and this is what we are in danger of doing this afternoon.

5.45 pm

I hope that the noble Lord, Lord Kerslake, will show the same degree of sensitivity in his position on the Cross Benches as he did on the previous amendment. I supported him in some respects—although I regret the way in which the Government finally came to the right conclusion on some aspects of the Trade Union Bill—but he is in danger of looking like a Member of the Opposition and not a Cross-Bench Member if he proceeds to push this amendment against the conventions that have applied. The Opposition may disagree. We know the position of the Liberal Democrats—having lost their democratic position in the other place, they have made it clear from the start that they wish to raise their standard here.

I urge Members of the House to think carefully, because this House has a great and important role, and it will be undermined if we behave in a way that causes extreme irritation to the other place, which, after all, has been elected to do a job on manifesto commitments with which we are concerned today. I give way to my noble friend.

Lord Lansley (Con): I am grateful to my noble friend. I think the argument is stronger than he put in relation to financial privilege being claimed, because that has happened twice. The second time, which was last Wednesday, the noble Lord, Lord Kerslake, believed that the amendment would not invoke financial privilege, but it did. In that sense, the House has perhaps inadvertently sent an amendment back in lieu once, in contradiction of the financial privilege argument. To do so twice seems a serious breach of the convention.

Lord Forsyth of Drumlean: My noble friend is absolutely right. As he knows, I always pull my punches, but he is right to invite me to make the case even more strongly. Of course, when I intervened earlier and asked the noble Lord, Lord Kerslake, if he would deal with the issue of financial privilege, he said that in his opinion his amendment did not breach that; but that is what he said the last time, and the House of Commons took a different view. He has made his argument, and my noble friend the Minister has shown enormous patience throughout the passage of this Bill, along with the rest of us who have been here to support her in the Division Lobbies. I hope that the noble Lord will accept, as my noble friend Lord Cormack said, that he has taken this matter as far as he can and that it is a matter for the elected Government and for the House of Commons to take things forward.

Lord Beecham: My Lords, last night the Commons spent all of 52 minutes debating the amendments passed by your Lordships' House. In the course of the debate, the Minister, Brandon Lewis, asserted that this House had,

"chosen again to oppose one of",

the Government's,

"most important manifesto commitments, namely the commitment to ensure that more homes are built: homes that we need, and homes that young people are crying out for".

To borrow a phrase from a somewhat more famous Conservative, Winston Churchill, that is a "terminological inexactitude". It is perhaps less personal than the assertion by a Conservative Back-Bencher that the manifesto commitment was,

"struck down and circumscribed by the unelected, unaccountable panjandrums in the House of Lords".—[*Official Report*, Commons, 9/5/16; cols. 458-59.]

I declare my interest, and perhaps others of your Lordships do so as well.

The Conservative manifesto commitment was to build 275,000 affordable homes by 2020 and all of—my words, not theirs—10,000 homes to rent at below market rents. Nothing in the Motion moved by the noble Lord, Lord Kerslake, conflicts with the manifesto commitment to build more homes. Part of the problem lies in the repeated use of the adjective "affordable", and the failure of the Bill—and Ministers—to define the term other than in relation to starter homes, where the examples of affordability, reaching up to £450,000, are widely recognised as unrealistic. But the particular difficulty is the evident and extreme reluctance of the Government to acknowledge the need for affordable housing, which essentially means social housing, for rent, beyond identifying the massive programme of 2,000 houses a year at below market rents for the next five years.

The Government purport to address this issue by the provisions of the Bill which allow, but do not require, the Secretary of State to enter into agreements with councils to reduce the amounts they would have to pay to the Secretary of State, principally to fund the right to buy of housing association tenants. There is no requirement to do so, beyond the need in London, under an agreement for two-for-one replacement, and one-for-one elsewhere; but there is no requirement for the replacement to be by way of like-for-like tenure—only that replacements should be "affordable". Moreover, as we have heard at some length during the passage of this Bill, the Government are unable to produce figures defining the meaning of "high value", or the number of properties affected locally or nationally, or the likely rate of vacancies, or the cost of administering the scheme, or how they will judge how much to require councils to pay up-front annually, since the Bill envisages such payment will be required whether or not sales are effected. To misquote Marx—Groucho, not Karl—"A child of five could understand the impact of this policy. Bring me a child of five", or perhaps, in these days, a special adviser.

[LORD BEECHAM]

Ministers constantly state that there are 16 million pieces of paper relevant to this issue and they are therefore unable to make any assessments. In that case, surely the answer is not to legislate before any real assessment of the impact is made, and not to rely on unamendable secondary legislation to ram through controversial and untested policies. That brings me to the claim that financial privilege prevents us from amending the Bill. The Government have already accepted some amendments with possible financial consequences, but the point is that financial privilege is not some God-given formula by which this House is prevented from amending legislation. We are not in the Moses Room with tablets of legislative stone; Governments can choose not to invoke or apply financial privilege, and we are entitled to invite them to do so. In any case, as the noble Lord, Lord Kerslake, suggested, the amendment does not breach financial privilege.

The Motion moved by the noble Lord is a modest one. All that it seeks is that in calculating the financial adjustments to be made on the forced sale of high-value properties, councils should be able to retain sufficient money to provide two-for-one replacements in London, and one for one elsewhere, with the rider that the Secretary of State should consider allowing sufficient to be retained to permit that replacement by social housing for rent, when they can demonstrate need. It is not carte blanche—it is still a matter for the Minister to agree. It is the least that could reasonably be asked for. It is consistent with the manifesto pledge to build more homes, and it deserves the support of the House, and indeed of the Commons. In no way does it override a manifesto commitment, and if the noble Lord invites the House to ask the Commons to think again, the Opposition will support him.

Baroness Williams of Trafford: My Lords, I thank all noble Lords who have spoken so eloquently on the amendment, particularly my noble friends who are such constitutional experts, far more so than me—my noble friends Lord Forsyth, Lord True and Lord Cormack. My noble friend Lord Cormack asked initially about the regulations and working with noble Lords. I hope that, whatever noble Lords think about the Bill, they will agree that I have taken the time whenever needed to engage with noble Lords from across the House to discuss any aspect of legislation or regulations that they might wish—and I fully intend to continue in that role.

Amendment 47E, proposed by the noble Lord, Lord Kerslake, in lieu of Amendment 47, is not acceptable to the Government. It would require that, when the Secretary of State enters into an agreement, sufficient funding must be provided to fully fund the cost of the new home. I hope that noble Lords will not misinterpret me when I say that the Government want more housing to be built, and I hope that the noble Lord will recognise that the arguments that this House recognised in relation to the last group apply just as strongly now. We have listened, and I have reassured this House strongly on how flexible agreements will be. It is now time to stop undermining our ability to proceed and to let us deliver our manifesto commitments.

We support the involvement of local authorities in delivering new homes. We value the creative partnerships across the sector to increase housing supply. But additional homes should not be funded simply through retained payments from the sale of high-value vacant housing. We have discussed that at length throughout the course of the Bill. There should be opportunities for local authorities to contribute their land, assets or funding, and to work in partnership with other providers in their area to build homes. We also want to ensure that value for money is secured, and ensure that the homes are delivered as cost effectively as possible.

In placing expectations on receipts, the amendment would prevent the Government from fulfilling their manifesto commitment, because it would significantly reduce the funding available for the voluntary right to buy. Since November last year, more than 29,000 housing association tenants have asked to be kept up to date with the right-to-buy scheme via our website. It is not right that we should deny these tenants their dream of home ownership.

The noble Lord, Lord Beecham, talked about numbers. Let us reflect a bit back to the Conservative-led coalition being the first Government to end a Parliament with more affordable homes than we started with. Labour oversaw the loss of 420,000, by contrast. This is about our manifesto commitment to extend the right to buy.

The noble Lord, Lord Beecham, talked about the financial privilege that the Government look to invoke. That is not true—it is a matter for the Commons Speaker on the advice of Commons clerks. It is not a political decision. I do not know a lot about the constitution, but I do know that.

The noble Lord, Lord Kerslake, talked about increased homelessness. A key part of this policy is to release the value locked up in vacant higher-value housing assets in order to build more homes. We are committed to supporting the most vulnerable in our society to have a decent place to live. Since 2010, we have invested more than £500 million to help local authorities prevent nearly 1 million households becoming homeless. Time spent in temporary accommodation ensures that no family is without a roof over their heads. We have made common-sense changes to the law to allow local authorities to offer accommodation in good-quality private sector accommodation, and households, on leaving temporary accommodation, now spend on average less time in temporary accommodation than they did in 2010.

The noble Lord, Lord Shipley, asked why we would not agree to the amendment proposed by the noble Lord, Lord Kerslake, to enable homes to be built on a like-for-like basis. Our manifesto made it clear that we wanted to increase home ownership and drive up the supply of new homes. The receipts from the sale of high-value assets will enable us to deliver both of these commitments. The receipts will be used to give up to 1.3 million housing association tenants the right to the same level of right-to-buy discount as has been enjoyed by local authority tenants for decades.

But—and this is equally important—it will provide receipts that local authorities that enter into agreement with us will use to provide affordable homes. When they choose not to—and some will choose not to—the money will be returned to government to provide additional homes. As I have previously explained, the proceeds from right to buy will contribute to the

funding that the housing association will use to provide an additional home for the one that is being sold, and an additional two homes in London.

6 pm

The noble Lord, Lord Shipley, suggested that the policy would result in fewer social rented homes. I say again that we have a national housing crisis. We need more homes across different tenures and across the country. At the heart of this policy is the building of more homes, funded by part of the receipts from the sale of high-value council housing. The Secretary of State and a local authority can enter into an agreement for the local authority to retain part of its receipts to lead the delivery of more homes that meet housing need. In the case of London, where we know that there is an acute housing crisis, this agreement must result in the delivery of at least two more affordable homes for each high-value vacant dwelling that is taken into account under the determination.

I urge your Lordships' House to respect the will of the other place, recognising that this is a manifesto commitment and that, as the House of Commons has offered a financial-privilege reason for rejecting our amendments, we should be wary of proposing an alternative that would invite the same response. I therefore urge noble Lords to accept the Commons reason and not support Amendment 47E.

Lord Kerslake: I thank noble Lords for their contributions to this debate. I have listened intently to all of them. One of the things that I have discovered as a Cross-Bencher is that—to put it bluntly—you are on your own. You have to make your own judgments based on the arguments and listen to the debate very carefully.

Let me explain my underpinning dilemma here. We have two manifesto commitments. The one that the noble Lord, Lord Shipley, spoke about is the commitment to fund the replacement of a property sold. The other, to which the Minister alluded, is the manifesto commitment to fund the extension of right to buy. As we all sit here now, we do not know whether those two commitments stand together. Quite extraordinarily, during the whole passage of the Bill we have still not been able to answer that question.

This leaves us with a real dilemma. I should say that before I was a Sir Humphrey, I was an accountant. I would not employ me as an accountant now, but that is what my past was, and one of the things that I like to see is the numbers adding up. We are now faced with a real dilemma in this situation about a proposal that simply does not enable two contradictory things to happen. So the judgment we have to make is where we place the positioning of the amendment in relation to that. It remains my very strong view that what I have put forward here simply seeks to say that if you reach an agreement on one-for-one replacement—not like-for-like but one-for-one—it is not unreasonable to say that the funding should be there. I am perfectly comfortable with a range of funding being brought in to do more, but at a core level it should do what it says on the tin: fund a replacement.

The second part of my amendment simply says: give consideration to social rented housing. It is hard to see how anyone could see that as objectionable in any part of this House or the other place. So, having agonised and listened through this debate very carefully, I have very reluctantly concluded that I would like to test the opinion of the House on this issue.

6.03 pm

Division on Motion B1

Contents 256; Not-Contents 245.

Motion B1 agreed.

Division No. 1

CONTENTS

Adams of Craigielea, B.
Addington, L.
Ahmed, L.
Alderdice, L.
Allan of Hallam, L.
Alli, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Ashdown of Norton-sub-Hamdon, L.
Bakewell, B.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beecham, L.
Benjamin, B.
Bhattacharyya, L.
Blackstone, B.
Blood, B.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bradley, L.
Bradshaw, L.
Bragg, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brookman, L.
Burnett, L.
Burt of Solihull, B.
Campbell of Surbiton, B.
Campbell-Savours, L.
Cashman, L.
Chandos, V.
Christopher, L.
Clancarty, E.
Clark of Windermere, L.
Clarke of Hampstead, L.
Clement-Jones, L.
Collins of Highbury, L.
Corston, B.
Cotter, L.
Coussins, B.
Darling of Roulanish, L.
Davies of Abersoch, L.
Davies of Oldham, L.
Davies of Stamford, L.
Dean of Thornton-le-Fylde, B.
Desai, L.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Doocey, B.
Drake, B.
Dubs, L.
Elder, L.
Elystan-Morgan, L.
Falkner of Margravine, B.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Fearn, L.
Ford, B.
Foster of Bath, L.
Foster of Bishop Auckland, L.
Foulkes of Cumnock, L.
Gale, B.
German, L.
Giddens, L.
Glasgow, E.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Gordon of Strathblane, L.
Gould of Potternewton, B.
Grantchester, L.
Greaves, L.
Grender, B.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hamwee, B.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Hart of Chilton, L.
Haskel, L.
Haworth, L.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hollick, L.
Hollis of Heigham, B.
Howarth of Newport, L.
Howells of St Davids, B.
Howie of Troon, L.
Hoyle, L.
Hughes of Stretford, B.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Chesterton, L.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Irvine of Lairg, L.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones, L.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jowell, B.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kerr of Kinlochard, L.
Kerslake, L. [Teller]
King of Bow, B.

Kinnock, L.
Kinnock of Holyhead, B.
Kirkhill, L.
Kirkwood of Kirkhope, L.
Knight of Weymouth, L.
Kramer, B.
Krebs, L. [Teller]
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Lester of Herne Hill, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Livermore, L.
Low of Dalston, L.
McAvoy, L.
McDonagh, B.
McFall of Alcluith, L.
McIntosh of Hudnall, B.
Mackenzie of Framwellgate, L.
McKenzie of Luton, L.
McNally, L.
Maddock, B.
Mandelson, L.
Manzoor, B.
Marks of Henley-on-Thames, L.
Massey of Darwen, B.
Maxton, L.
Meacher, B.
Mendelsohn, L.
Miller of Chilthorne Domer, B.
Mitchell, L.
Moonie, L.
Morgan, L.
Morgan of Ely, B.
Morris of Handsworth, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Newby, L.
Nicholson of Winterbourne, B.
Northover, B.
Nye, B.
Oates, L.
O'Neill of Clackmannan, L.
Oxford and Asquith, E.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patel of Bradford, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Primarolo, B.
Prosser, B.
Quirk, L.
Radice, L.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rea, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Richard, L.
Roberts of Llandudno, L.
Rodgers of Quarry Bank, L.
Rooker, L.
Rosser, L.
Rowlands, L.
Royall of Blaisdon, B.
Sawyer, L.
Scott of Needham Market, B.
Sharkey, L.
Sharp of Guildford, B.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Smith of Leigh, L.
Smith of Newnham, B.
Snape, L.
Soley, L.
Stephen, L.
Stoddart of Swindon, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Blackburn, L.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Temple-Morris, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurso, V.
Tomlinson, L.
Tonge, B.
Tope, L.
Touhig, L.
Truscott, L.
Tunnicliffe, L.
Turnberg, L.
Tyler, L.
Uddin, B.
Wall of New Barnet, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watts, L.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Williams of Baglan, L.
Willis of Knaresborough, L.
Wills, L.
Wood of Anfield, L.
Woolmer of Leeds, L.
Wrigglesworth, L.
Young of Hornsey, B.
Young of Norwood Green, L.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Armstrong of Ilminster, L.
Arran, E.
Ashton of Hyde, L.
Astor, V.
Astor of Hever, L.
Attlee, E.
Balfe, L.
Barker of Battle, L.
Bell, L.
Berkeley of Knighton, L.
Berridge, B.
Bew, L.
Black of Brentwood, L.
Blencathra, L.
Boothroyd, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Burns, L.
Buscombe, B.
Byford, B.
Caithness, E.
Callanan, L.
Cameron of Dillington, L.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chisholm of Owlpen, B.
Colwyn, L.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Crickhowell, L.
Cromwell, L.
Cumberlege, B.
Curry of Kirkharle, L.
De Mauley, L.
Dear, L.
Deben, L.
Deighton, L.
Dixon-Smith, L.
Dobbs, L.
Dunlop, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Empey, L.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Falkland, V.
Fall, B.
Farmer, L.
Faulks, L.
Fink, L.
Finkelstein, L.
Finn, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goodlad, L.
Grade of Yarmouth, L.
Green of Hurstpierpoint, L.
Greenway, L.
Griffiths of Fforestfach, L.
Hague of Richmond, L.
Hailsham, V.
Hannay of Chiswick, L.
Harding of Winscombe, B.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Heseltine, L.
Heyhoe Flint, B.
Higgins, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Lympne, L.
Howe, E.
Howe of Idlicote, B.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Janvrin, L.
Jay of Ewelme, L.
Jenkin of Kennington, B.
Jopling, L.
Judge, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Lang of Monkton, L.
Lansley, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Luce, L.
Lupton, L.
Lyell, L.
MacGregor of Pulham Market, L.
McGregor-Smith, B.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
Mar, C.
Marland, L.
Marlesford, L.
Masham of Ilton, B.
Mawhinney, L.
Mobarik, B.
Mone, B.
Montrose, D.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.

Noakes, B.
Norton of Louth, L.
O'Cathain, B.
O'Neill of Bengarve, B.
O'Neill of Gatley, L.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Pannick, L.
Patten, L.
Perry of Southwark, B.
Pidding, B.
Plumb, L.
Polak, L.
Popat, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Prior of Brampton, L.
Rawlings, B.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Robathan, L.
Rock, B.
Rogan, L.
Rowe-Beddoe, L.
Ryder of Wensum, L.
Saatchi, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Slim, V.
Smith of Hindhead, L.
Somerset, D.
Spicer, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Tebbit, L.
Thurlow, L.
Trees, L.
Trefgarne, L.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Verma, B.
Vinson, L.
Wakeham, L.
Waldegrave of North Hill, L.
Walpole, L.
Warsi, B.
Wasserman, L.
Watkins of Tavistock, B.
Wei, L.
Wellington, D.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wilson of Tillyorn, L.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

6.19 pm

Motion C

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its disagreement with the Commons in their Amendment 97A in lieu of Lords Amendment 97 and do not insist on its Amendment 97B in lieu of that Lords Amendment, to which the Commons have disagreed for their Reason 97C.

97C: Because Lords Amendment 97B would add complexity and unpredictability to the planning system.

Baroness Williams of Trafford: My Lords, the Government place communities at the heart of the planning system. We have gone further than ever in giving communities the power to develop neighbourhood plans that set the planning policies for their area. The strength of feeling in this House on the issue of a neighbourhood right to appeal was made very clear. However, with more than 150 adopted neighbourhood plans in England, and more than 1,700 more at various stages of completion, the introduction of a right of appeal could have far-reaching consequences. As I have reiterated in these debates, we believe that a third-party right of appeal would add complexity to the planning system and slow down housing delivery.

We trust communities to shape future development through neighbourhood plans. We trust local planning authorities to take decisions for sustainable development and to listen to their communities. We cannot maintain a balanced planning system if every decision to approve a sustainable development is open to a lengthy and costly appeal.

The other place—the elected House—did not accept the Lords amendment on a neighbourhood right of appeal. It has rejected it twice without even a vote, so this is not the time to push any further. I hope that I can reassure noble Lords that they have been heard. The Minister for Planning and Housing has given an undertaking to the other place that he will look into this matter further.

I am obviously disappointed that your Lordships' House did not previously support the Government's amendment in lieu, which would have ensured that local planning authorities provided a very clear explanation of why the authority could justify recommending a decision that would conflict with a neighbourhood plan. However, we have the opportunity to return to this matter now. The Government's amendment in lieu would require local planning authorities to set out in any report to a planning committee that recommends granting planning permission how any neighbourhood plan has been considered. They will also be required to identify in the report any conflict between their recommendation and the neighbourhood plan. This will ensure that the planning committee cannot fail to appreciate how the development accords with the neighbourhood plan and provides communities with the opportunity to raise any further concerns directly with their local councillors or to attend and request to speak at the planning committee. It also draws attention to the issues of conflict in case the community wishes to request call-in by the Secretary of State. Let me be very clear that communities can request that any application is considered for call-in before a decision letter is issued.

This added level of transparency and explanation will ensure that local planning authorities are absolutely clear about how they have balanced the neighbourhood plan against other material considerations that they are required to take into account. This amendment is a proportionate and appropriate response to ensuring that neighbourhood plans are given the respect and consideration they deserve. I beg to move.

Motion C1 (as an amendment to Motion C)

Moved by ***Baroness Parminter***

Leave out from "House" to end and insert "do insist on its disagreement with the Commons in their Amendment 97A, do not insist on its Amendment 97B, and do propose Amendment 97D in lieu of Amendment 97A—

97D: After Clause 140, insert the following new Clause—

"Neighbourhood right to be heard

(1) After section 75ZA of the Town and Country Planning Act 1990 (inserted by section 140 above) insert—

"75ZB Responsibilities of decision-makers in respect of neighbourhood development plans in the exercise of planning functions

(1) For the purposes of this section—

(a) an "emerging" neighbourhood development plan means a neighbourhood development plan that has been examined, is

[BARONESS PARMINTER]
being examined, or is due to be examined, having met the public consultation requirements necessary to proceed to this stage, and

(b) a "neighbourhood planning body" means a town or parish council or neighbourhood forum, as defined in section 61F of the 1990 Act (authorisation to act in relation to neighbourhood areas).

(2) In considering whether to grant planning permission or permission in principle for development which affects land all or part of which is included within the area covered by a made or emerging neighbourhood development plan, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the policies and proposals of that neighbourhood development plan.

(3) A planning authority must, before determining an application for planning permission or permission in principle, give any neighbourhood planning body whose made or emerging neighbourhood development plan includes all or part of the area of land to which the application relates, a period of 21 days, from the date of receipt of the application by the neighbourhood planning body, within which to make recommendations about the manner in which the application should be determined; and must take any such recommendations into account.

(4) Where a planning authority does not propose to refuse an application for planning permission or permission in principle where a neighbourhood planning body has recommended, under subsection (3), that permission be refused, the planning authority shall not grant planning permission until it has consulted the Secretary of State following the procedures set out in provisions 10 to 12 of the Town & Country Planning (Consultation) (England) Direction 2009."""

Baroness Parminter (LD): My Lords, I very much welcome the comments made last night by the Minister in the other place, who said that he intends,

"to work with colleagues to ensure that neighbourhood plans enjoy the primacy that we intend them to have in planning law".—[*Official Report*, Commons, 9/5/16; col. 462.]

I wholeheartedly endorse and welcome that commitment. However, I have prepared what I believe to be a significant compromise on the proposal that was agreed by this House during our last debate as a means to do just that.

Our previous amendment included a right of appeal—a limited one, but a right of appeal nevertheless. I understand that the Government saw that as a third-party right of appeal, which they did not wish to agree to. Therefore the amendment before your Lordships today does not push a third-party right of appeal but proposes a right to be heard. The proposal makes it clear that local authorities should have special regard to the policies in neighbourhood plans. It proposes that planning authorities must consult with neighbourhood plans and take account of their views before decisions are taken and, crucially, it provides for a call-in decision. I heard what the Minister said about call-ins if neighbourhood plan groups wish to ask for a call-in before a local authority makes a decision, but, crucially, they do not have that right once local authorities have refused an application which is contrary to that within a neighbourhood plan. That is a major barrier to encouraging more local groups to get involved in neighbourhood planning, which this House—and the Government—has said on many occasions we want to achieve because we know that neighbourhood plans deliver more homes.

The Bill needs to do all it can to ensure that local people invest the time and the effort in putting together neighbourhood plans so that we get the housing we need through consensus. Giving this extra weight to neighbourhood plans by allowing for this right to be heard—not a right of appeal—will mean that their plans will not be ignored or easily overturned. That seems a key to encouraging more neighbourhood plans to come into being, which is what the Government and all noble Peers have made it quite clear we want to achieve. This is a compromise amendment, therefore, on that basis, I beg to move.

Lord Kennedy of Southwark (Lab): My Lords, first, I refer noble Lords to my declaration of interests and declare that I am a locally elected councillor in the London Borough of Lewisham.

We have discussed the neighbourhood right of appeal on a number of occasions in your Lordships' House, and I was convinced that the limited right of appeal, which the noble Baroness, Lady Parminter, has put forward on a number of occasions, was the right approach. However, despite that and numerous discussions, the Government have not been persuaded that this is the correct way forward. That is disappointing.

The government amendment agreed in the Commons makes some moves in the right direction but, as the noble Baroness told the House on 4 May, what is proposed here, set out on page 5 of the Marshalled List before us today, is what you would expect any good local planning authority or planning officer to do anyway. Therefore, I am under no illusion that what is before us from the Government is a particularly significant concession. As I said earlier, that is disappointing, and we should go a bit further.

When I look at this Bill, I often reflect back on the Localism Act. It appears that the government Benches are less keen on localism than they may have been a few years ago. In general, they talk about localism when they like what is going on, and when they do not like it, we have to do what they say. As I said, there is a bit of a hokey-cokey on localism from the government Benches. That is not the way to go, and it is disappointing. The noble Baroness has given us another possibility, and maybe we will have some good news from the Minister.

Baroness Williams of Trafford: My Lords, I thank the noble Baroness, Lady Parminter, for her amendment and for the way she has worked with me throughout the passage of the Bill—she might think not to very great effect, but we have had extensive debates regarding a neighbourhood right to appeal, and I am pleased that we are able to return to this issue in quite a constructive manner. We all agree on the importance of neighbourhood plans and we wish to see the planning system working without unnecessary costs and delays. We also wish to see the planning system deliver sustainable development and the homes our communities need.

While I very much welcome the direction of travel of the amendment, which is focused on the call-in process, now is not the time to pursue the matter. This issue was not part of the original Bill and the other place has made clear its approval of the Government's amendment in lieu. The Minister for Planning and Housing has made it very clear that he is willing to work with colleagues to return to this issue in due

course. I hope that this is as encouraging to noble Lords as it was to certain Members of the other place—and particularly to organisations such as CPRE which have lobbied on this matter.

Although the Government cannot support this amendment, I understand the advantage of an approach that is based on the existing call-in system and the constructive manner in which it was laid. The Government are willing to look at this issue further, and I hope that provides the reassurance to the noble Baroness for her to withdraw her amendment.

6.30 pm

Baroness Parminter: I thank the Minister for those remarks. I am obviously disappointed that, at this late stage, after, as she knows, so many compromises have been brought forward from this side on this issue, the Government do not feel able to accept something that will deliver what they want to achieve—more homes—because it will bring about more neighbourhood planning. I thank the noble Lord, Lord Kennedy, for his comments and share his reflections that localism does not always mean what we would wish it to mean on the government Benches. On these Benches, we trust local people and want them to get engaged in the planning process, and we believe that that is the way to deliver more homes and the stable communities of the future.

I accept, however, that there is more than one way to achieve what we all want to achieve. In withdrawing this amendment, I hope that the Minister's comments yesterday about working with colleagues applies not only to colleagues in the other place, but to colleagues in this House who feel so strongly that local communities need to be involved and that that will help us to deliver the sustainable homes that we need.

Motion C1 withdrawn.

Motion C agreed.

Motion D

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 108 and do agree with the Commons in their Amendment 108C in lieu.

108C: Page 76, line 26, at end insert the following new Clause—

"Review of minimum energy performance requirements

After section 2B of the Building Act 1984 insert—

"Duty to review minimum energy performance requirements

2C Review of minimum energy performance requirements

The Secretary of State must carry out a review of any minimum energy performance requirements approved by the Secretary of State under building regulations in relation to dwellings in England.""

Baroness Williams of Trafford: My Lords, this amendment would place a statutory duty on the Government to undertake a review of minimum energy performance standards for new homes in England. It should be noted that there was very strong support in the other place for this new amendment, with a vote of 292 in favour of rejection compared to 205 against.

We share a common goal of wanting new homes to be energy efficient and for their occupants to have low energy bills. That is why in the last Parliament we introduced tough but fair minimum standards that require homebuilders to deliver highly energy-efficient homes that reduce energy bills by £200 a year compared to homes built before 2010.

We have said throughout the various debates that putting a minimum energy performance for new homes in primary legislation, without the benefit of any evidence that it will work or consultation, has the potential to push some small builders out of the industry and make developing much-needed homes in some areas unviable.

The Home Builders Federation—the voice of the industry—completely agrees with us about these concerns. It said of Amendment 108 that,

"such a standard would add to the complexity and costs for all sizes of home builder but would hit smaller home builders hard".

The HBF also draws attention to,

"the specific challenges entailed in delivering performance standards such as the 'carbon compliance standard' successfully at scale and the consequent risks to housing supply of not getting the answers right."

We recognise, however, that costs of energy efficiency measures and the industry's understanding of them can improve over time. That is why we propose placing a statutory duty on this Government to undertake a review of energy standards for new homes. It will seek evidence on the costs of energy measures and the impact on housing supply and the benefits in terms of fuel bill and carbon savings. It will identify what is cost-effective and feasible.

The HBF also fully endorses such a review and says:

"Given the wide range of technical and other challenges involved in this field, the risk to businesses and housing delivery in further changes to regulatory requirements and the importance of increasing housing supply, such a review would provide the opportunity for all relevant issues and considerations to be properly weighed in determining the way ahead. It is essential such issues are fully addressed".

Prescribing an energy performance standard without up-to-date evidence and analysis risks slowing down or halting much-needed new homes and driving small homebuilders away from the industry. We should not take such a risk with homes and businesses. I beg to move.

Motion D1 (as an amendment to Motion D)

Moved by ***Baroness Parminter***

Leave out from "108" to end and insert ", do disagree with the Commons in their Amendment 108C, and do propose Amendment 108D in lieu—

108D: After Clause 143, insert the following new Clause—

"Carbon compliance standard for new homes

(1) The Secretary of State must within twelve months of the passing of this Act make regulations under section 1(1) of the Building Act 1984 (power to make building regulations) for the purpose of ensuring that all new homes in England built from 1 April 2018 achieve the carbon compliance standard.

(2) For the purpose of subsection (1), "carbon compliance standard" means an improvement on the target carbon dioxide emission rate, as set out in the Building Regulations 2006, of 44%.""

Baroness Parminter: My Lords, we return again the to the issue of building the homes that we need, ensuring at the same time that we contribute fully to meeting our greenhouse gas emission targets and lowering fuel bills.

I am very disappointed to see that the Government and the other place did not feel able to accept the amendment that we proposed. In lieu, the Government are proposing a review. I remind noble Lords that the zero-carbon homes standards were agreed during the time of the coalition, with industry-wide support. Again, we ask why there is a need for a review. As the noble Lord, Lord Krebs, so powerfully asked last week: how many more homes will have to be built before this review and the implementation date and any action coming out of that review takes place? Given that we are looking to build a million new homes, how many more of those homes will have to be retrofitted—at great cost to individual home owners—because we have added a requirement for a review, when we know what we need to do now? There is no guarantee of action at the end of the review proposed by the Government. Indeed, the Government are obliged anyway to review the building regulations by June next year as a condition of the 2010 energy performance of buildings directive.

Finally, on that point, given that it was the Government and the Chancellor who scrapped the zero-carbon homes last year—the Government throughout the process of this debate have refused to engage on anything other than the viability issues around the housebuilding industry; again, the Minister chose to quote only from the housebuilding industry this evening—it gives this House little confidence that the review will look, alongside viability for housebuilders, equally at the need to ensure that we meet our greenhouse gas emission targets and lower the energy bills of people so that we can contribute to meeting our fuel-poverty targets. Given that a third of our greenhouse gas emissions in this country come from buildings and two-thirds come from homes, my contention is that this is too important to leave to a review.

I accept, however, that at this late stage there is a need to move to a compromise. Therefore that is again what I have done today. The amendment before your Lordships is a compromise. At the last stage we were proposing carbon standards of 60% for detached properties, 56% for attached properties and 44% for flats. This compromise would set the reductions at 44% in greenhouse gases on the basis of comparison with the building regulations in 2016. That is the level that the Government recommended during their time in coalition as the on-site zero-carbon standards, which would take effect from this year. It is those standards that a growing number of local authorities were setting as a condition of giving planning permission, until they were scrapped by the then Secretary of State, Eric Pickles, last year. I point out that, between 2007 and 2014, 79,000 homes in England and Wales were built to this standard. Further, Scotland has introduced this standard already, last October, and the volume of houses to this standard is growing. Therefore, the standard is proven to be both effective and achievable.

As I told the Minister, I trawled through the Conservative manifesto this morning to study exactly what their commitments were in this area. The Conservative manifesto made a clear commitment to the legally binding climate change targets and to tackling fuel poverty. It made a very clear commitment—some of us in this House may not have liked it—to offer no further public subsidy to wind farms. That was the Government's priority; it was in the manifesto and this House can therefore understand it. However, while they made no commitments on rowing back on building standards, they made a commitment to deliver on the greenhouse gas targets and to tackle fuel poverty.

Throughout this debate, all sides of this House have challenged the Government endlessly to make quite clear, if they intend to meet their greenhouse gas targets and are not prepared to accept this amendment, how they will meet those targets. The Bill is an opportunity to provide us with the sustainable homes that we need. This compromise amendment would put us back on the right trajectory towards getting more zero-carbon homes. It would help deliver on our greenhouse gas targets, ensure that people's fuel bills were lower and at the same time deliver the homes that we need. I beg to move.

Lord Krebs (CB): My Lords, I support the amendment. I, too, am sorry that the Government have not accepted the compromise that has been brought forward from our previous discussion.

The Government's reason for rejecting the amendment is that it would increase burdens on housebuilders and threaten delivery of the large number of new homes that is proposed, but, as the noble Baroness, Lady Parminter, pointed out, how can this be true if 79,000 homes have already been built to this standard? The Scottish Government have adopted this standard; it is lower than the standard that has been adopted in London; and it is already being adopted by an increasing number of local authorities in their local plans. All that evidence seems to fly in the face of the Government's objection. I find it hard to accept that it is a burden that the housebuilding industry would not be able to cope with and that it would threaten the delivery of new homes; the evidence on that just does not stack up.

We are offered instead a review. As the noble Baroness, Lady Parminter, said, the problem with a review—we have the evidence, but let us say that we agree a review—is that we do not have a clear date for completing it nor a clear set of actions that will arise from it, and a review would not add to what is required under Article 4 of the 2010 energy performance of buildings directive. I hope that the Minister will give us some tighter commitments on the nature of the review that the Government are proposing. When will it be completed? Who will take part in it? What actions will flow from it? How does it go beyond what is required in the 2010 directive?

I do not want to reiterate the arguments that we have had, but we have not heard any argument throughout the passage of this Bill that says that this is not the right thing to do. We know that it is the right thing to do to cut our greenhouse gas emissions and to help to resolve the issues of fuel poverty. All the arguments

against it have been obstacles such as, "It'll be too difficult. The industry won't like it. It's all going to need more analysis"—paralysis by analysis, as we often hear. We know that it is the right thing to do. We know that if we do not do it now, we will have to come back to those houses that have been built and retrofit them with improved carbon standards in the future. The Minister should give us as much hope as possible that the Government are really committed to cutting our greenhouse gas emissions through buildings as well as through other sources—in this case, through buildings—and she should go further than simply offering yet another review.

Lord True: My Lords, I obviously bow to the zeal of the noble Lord, Lord Krebs, on these matters. I only say to him that this is a Bill about housing and planning, and that I had not seen it as a stage to have a great national debate about energy policy.

This amendment seems to be very little different—it is in minor details, with the 44% applying as a base rather than a higher base relating to detached and attached houses—from that which the other place considered and voted on. As my noble friend from the Front Bench has said, that decision from the other place was conclusive and I see no reason to expect that it would be different in this case.

Having been a long observer of this Bill, I have to say that the Benches opposite have had a fair number of concessions and have been heard on quite a few things. With their offer of a review, the Government have given a fair and good response—I am sure that my noble friend will be able to provide more details to satisfy the noble Lord, Lord Krebs—and I hope that this House will not send back an amendment that is broadly the same as that which has already been rejected by the other place. I urge my noble friend to stand firm on the matter.

6.45 pm

Lord Kennedy of Southwark: My Lords, I was surprised that the Government rejected the Lords amendment in the other place last night and am pleased that the noble Baroness, Lady Parminter, has brought back another amendment to be considered today by your Lordships' House.

Resistance to this measure is puzzling to say the least. Delivering zero-carbon homes is an important standard that we should strive to achieve. It helps reduce our carbon footprint and gives people living in the properties to be built cheaper fuel bills.

In previous debates, the noble Viscount, Lord Younger of Leckie, and the noble Baroness, Lady Williams of Trafford, have relied a number of times on the opposition of the Federation of Master Builders despite there being numerous organisations that support the measure. The noble Viscount said that he would write to me giving a list of other organisations that support the Government's position. I have not had that letter yet; perhaps the Minister could tell me when I will get it, because it would be useful to see who these other organisations are. It is also important to remember, as the noble Baroness, Lady Parminter, reminded us, that the zero-carbon homes standard was agreed by the coalition Government in the last Parliament.

As the noble Lord, Lord Krebs, said—the noble Baroness, Lady Parminter, also mentioned it—we do not want in a few years' time to be required to undertake expensive retrofit measures when we could have done the work during the initial construction at a fraction of the cost.

The Government's claims as to the initial costs are just not convincing. At no point during our consideration of this part of the Bill have I felt that the Government made a convincing or compelling case for why this measure should not be supported. If the noble Baroness wishes to test the opinion of the House, we will support her.

Baroness Williams of Trafford: My Lords, just to say to the noble Lord, Lord Kennedy, I will chase my noble friend. I think he might have gone to get the letter, actually.

It is helpful that the noble Baroness, Lady Parminter, has revised the carbon compliance standard in her new amendment, but we still do not know the risks it may pose to the viability of home building in some parts of the country, or the impact it may have on the home building industry, particularly some small builders. We need a clear understanding of what is technically possible, viable and cost effective to make any changes to energy performance standards for new homes. That is why we are introducing a statutory duty on this Government to undertake a full and comprehensive review of energy standards based on cost effectiveness and the impact on housing supply. We will report back to this House on the outcome of the review within the next 12 months.

The other place has given its considerable support to this review based on cost effectiveness, and it is supported by the Home Builders Federation—the main trade body that represents home builders of all sizes. The Housing Minister in the other place also pointed out the following yesterday:

> "We said in our manifesto that we will meet our climate change commitments and that we will do so by cutting emissions 'as cost-effectively as possible'. The electorate voted for that and the review will help to ensure that we can deliver it".—[*Official Report,* Commons, 9/5/16; col. 463.]

So before the other place considers any changes to energy performance standards, home builders and the electorate think that we first need to have an understanding of what is cost effective. Is it right that we should go against their views?

Finally, I remind the House that it is not prudent to set requirements such as this in primary legislation. If, in the light of consultation, any slight adjustment to requirements were needed, we would not be able to do so without further primary legislation. Therefore, I ask the noble Baroness, Lady Parminter, to withdraw her amendment.

Baroness Parminter: My Lords, I am deeply disappointed that the Government do not feel able to accept this amendment. While I heard what the Minister said, it is still not clear exactly how the Government will meet their binding climate change commitments if they will not accept the amendment. They talk about doing so in a cost-effective manner, but the trajectory of the roadmap is unclear if we do not propose a building standards target.

[Baroness Parminter]

The Minister talks about the risks the amendment might pose to building homes, yet we know that local authorities up and down the country already insist on this standard as a condition for planning permission. We know that London is going further and that Scotland is taking this forward in an effective way. My contention, therefore, is that the Government have not been able to prove beyond reasonable doubt that their measure will not stop us building the houses we need; it certainly will not help us to meet our greenhouse gas targets or our fuel poverty obligations.

Even if we accepted the case for a review, there is absolutely no commitment in what the Minister has said today to government action at the end of the review. Nothing might happen. It was the Chancellor who last year cancelled and scrapped the zero carbon aims, and it was the previous Secretary of State who cancelled the code for sustainable homes, and I am afraid that that does not give me enough comfort that there is a real and genuine commitment to act. Similarly, the Minister again talked about cost effectiveness. Yes, we need homes that are cost effective but we must at the same time meet our greenhouse gas targets and contribute to our fuel poverty obligations. It is those three things together, not just cost effectiveness.

This amendment is another compromise, and it should be accepted this time. It would make a significant contribution in delivering the homes we need, in meeting our greenhouse gas targets and in lowering fuel bills. I deeply regret that the Government will not accept it, and I wish to test the opinion of the House.

6.52 pm

Division on Amendment D1

Contents 230; Not-Contents 234.

Amendment D1 disagreed.

Division No. 2

CONTENTS

Adams of Craigielea, B.
Addington, L.
Alderdice, L.
Allan of Hallam, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Ashdown of Norton-sub-Hamdon, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beecham, L.
Benjamin, B.
Blackstone, B.
Blood, B.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bradley, L.
Bradshaw, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brookman, L.
Burnett, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Cashman, L.
Chandos, V.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Collins of Highbury, L.
Corston, B.
Cotter, L.
Davies of Oldham, L.
Davies of Stamford, L.
Dean of Thornton-le-Fylde, B.
Desai, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
Dubs, L.
Elder, L.
Elystan-Morgan, L.
Falkner of Margravine, B.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Foster of Bath, L.
Foster of Bishop Auckland, L.
Foulkes of Cumnock, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Glasgow, E.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Gordon of Strathblane, L.
Grantchester, L.
Greaves, L.
Grender, B.
Griffiths of Burry Port, L.
Grocott, L.
Hain, L.
Hamwee, B.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Hart of Chilton, L.
Haskel, L.
Haworth, L.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hollick, L.
Hollis of Heigham, B.
Howarth of Newport, L.
Howells of St Davids, B.
Howie of Troon, L.
Hoyle, L.
Hughes of Woodside, L.
Humphreys, B. [Teller]
Hunt of Chesterton, L.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Hutton of Furness, L.
Irvine of Lairg, L.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones, L.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jowell, B.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kerslake, L.
King of Bow, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkhill, L.
Kirkwood of Kirkhope, L.
Knight of Weymouth, L.
Kramer, B.
Krebs, L.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtersett, B.
Livermore, L.
Low of Dalston, L.
McAvoy, L.
McFall of Alcluith, L.
McIntosh of Hudnall, B.
McKenzie of Luton, L.
McNally, L.
Maddock, B.
Mandelson, L.
Manzoor, B.
Marks of Henley-on-Thames, L.
Massey of Darwen, B.
Maxton, L.
Mendelsohn, L.
Miller of Chilthorne Domer, B.
Mitchell, L.
Moonie, L.
Morgan, L.
Morgan of Ely, B.
Morris of Handsworth, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Newby, L. [Teller]
Nicholson of Winterbourne, B.
Northover, B.
Nye, B.
Oates, L.
O'Neill of Clackmannan, L.
Oxford and Asquith, E.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patel of Bradford, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Primarolo, B.
Prosser, B.
Radice, L.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rea, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Richard, L.
Roberts of Llandudno, L.
Rodgers of Quarry Bank, L.
Rooker, L.
Rosser, L.
Rowlands, L.
Royall of Blaisdon, B.
Sandwich, E.
Scott of Needham Market, B.
Sharkey, L.
Sharp of Guildford, B.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Smith of Leigh, L.
Smith of Newnham, B.
Snape, L.
Soley, L.
Stephen, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Symons of Vernham Dean, B.
Taverne, L.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Temple-Morris, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thurso, V.

Tomlinson, L.
Tonge, B.
Tope, L.
Touhig, L.
Trees, L.
Truscott, L.
Tunnicliffe, L.
Tyler, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Watson of Invergowrie, L.
Watts, L.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Williams of Baglan, L.
Willis of Knaresborough, L.
Wills, L.
Wood of Anfield, L.
Woolmer of Leeds, L.
Wrigglesworth, L.
Young of Norwood Green, L.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Armstrong of Ilminster, L.
Arran, E.
Ashton of Hyde, L.
Astor, V.
Astor of Hever, L.
Attlee, E.
Baker of Dorking, L.
Balfe, L.
Barker of Battle, L.
Berkeley of Knighton, L.
Berridge, B.
Blencathra, L.
Boothroyd, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Bridgeman, V.
Bridges of Headley, L.
Brookeborough, V.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Burns, L.
Buscombe, B.
Butler of Brockwell, L.
Byford, B.
Caithness, E.
Callanan, L.
Cameron of Dillington, L.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chisholm of Owlpen, B.
Colwyn, L.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Crickhowell, L.
Cumberlege, B.
Curry of Kirkharle, L.
De Mauley, L.
Dear, L.
Deben, L.
Deighton, L.
Dixon-Smith, L.
Dobbs, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Feldman of Elstree, L.
Fink, L.
Finkelstein, L.
Finlay of Llandaff, B.
Finn, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goodlad, L.
Grade of Yarmouth, L.
Green of Hurstpierpoint, L.
Greenway, L.
Hague of Richmond, L.
Hailsham, V.
Harding of Winscombe, B.
Hay of Ballyore, L.
Hayward, L.
Heyhoe Flint, B.
Higgins, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Lympne, L.
Howe, E.
Howe of Idlicote, B.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Janvrin, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Luce, L.
Lupton, L.
Lyell, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
McGregor-Smith, B.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
Mancroft, L.
Mar, C.
Marland, L.
Marlesford, L.
Mawhinney, L.
Mobarik, B.
Mone, B.
Montrose, D.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Cathain, B.
O'Neill of Gatley, L.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Pannick, L.
Patten, L.
Perry of Southwark, B.
Pidding, B.
Plumb, L.
Polak, L.
Popat, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Prior of Brampton, L.
Rawlings, B.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Robathan, L.
Rock, B.
Rogan, L.
Rowe-Beddoe, L.
Ryder of Wensum, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Smith of Hindhead, L.
Somerset, D.
Spicer, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stoddart of Swindon, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Tebbit, L.
Thurlow, L.
Trefgarne, L.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Verma, B.
Vinson, L.
Wakeham, L.
Waldegrave of North Hill, L.
Walpole, L.
Wasserman, L.
Wei, L.
Wellington, D.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wolfson of Aspley Guise, L.
Young of Cookham, L.
Younger of Leckie, V.

7.05 pm

Motion D agreed.

Motion E

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 110 and do agree with the Commons in their Amendment 110C in lieu.

110C: Page 77, line 42, at end insert the following new Clause—

"Sustainable drainage

The Secretary of State must carry out a review of planning legislation, government planning policy and local planning policies concerning sustainable drainage in relation to the development of land in England."

Baroness Williams of Trafford: My Lords, the Government have recognised, here and in the other place, the depths of everyone's concerns about managing the risk from flooding. My colleague the Minister of State for Housing and Planning said in the other place:

"The Government are committed to ensuring that developments are safe from flooding, and the delivery of sustainable drainage systems is part of our planning policy, which was strengthened just over a year ago. Our policy is still new, as I outlined in more detail last week, and I am willing to consider issues further as it matures. I am happy to review the effectiveness of current policy and legislation on sustainable drainage and to place that commitment on the face of the Bill".—[*Official Report*, Commons, 9/5/16; col. 463.]

This amendment, proposed by the other place, introduces an express duty on the Government to carry out a statutory review of the strengthened planning policy in respect of sustainable drainage systems.

As I have made clear, the National Planning Policy Framework includes strong planning policies aimed at assessing, avoiding and managing risk from flooding. These policies apply to all sources of flooding, including from surface water run-off and overloaded sewers. Our planning policy guidance makes it plain that local councils must consider the strict policy tests that protect people and property from flooding, and gives local councils a clear mandate to reject unacceptable planning applications. This includes consideration of whether sustainable drainage provision in a development is appropriate. This planning policy was strengthened just last year.

I am confident that we have a strong package of measures in place that will ensure development is safe from flooding. I am also confident that sustainable drainage is given a full role in this. However, it is very important that any judgment about how this planning policy is performing on the ground must be based on reliable, up-to-date evidence. For that reason, we believe that the correct approach is to review how effective the policy has been over a sensible period of time before putting in place any new requirements or changes. Any changes should be based on the evidence and recommendations from the review. Evidence offered to this House to date is at best anecdotal and cannot be a firm basis for legislation. I therefore ask that noble Lords accept that this is a sensible approach. I beg to move.

Motion E1 (as an amendment to Motion E)

Moved by ***Baroness Parminter***

Leave out from "110" to end and insert ", do disagree with the Commons in their Amendment 110C, and do propose Amendment 110D in lieu—

110D: After Clause 151, insert the following new Clause—

"Review of sustainable drainage

(1) The Secretary of State must—

(a) carry out a review of planning legislation, government planning policy and local planning policies concerning sustainable drainage in relation to the development of land in England,

(b) carry out a review of the proportion of new developments in England that include sustainable drainage systems that are constructed and maintained in accordance with the non-statutory technical standards for sustainable drainage systems, or any replacement standards as may be published by the Minister from time to time,

(c) prepare a report setting out the findings of the reviews and any action that the Secretary of State proposes to take in response to those findings, and

(d) lay the report before Parliament no later than 31 April 2017.

(2) In subsection (1) "development" includes both development that is major development (within the meaning given by article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595)) and development that is not.""

Baroness Parminter: My Lords, this amendment and the previous debates concern ensuring that the homes that we want deliver sustainable drainage, with the benefit of protecting home owners from floods and wider amenity benefits to communities and to biodiversity. I am disappointed that the Government and the Commons did not feel able to accept amendments that this House voted for to end the automatic right to connect for housebuilders. However, I thank the Minister for what is being proposed now in terms of a concession on the review, which we believe will demonstrate all too clearly that the evidence on the ground that we have heard about in this Chamber on numerous occasions shows that SUDS are not being delivered.

However, the amendment we propose is to ensure that the review will be thorough. First, it would ensure that the review looks not just at policy but at actual developments; and that there is a robust sample size, taking into account the proportion of new developments and the type of SUDS being implemented. Secondly, it would ensure that the review is timely. The Climate Change Committee will report to Parliament next June. I am sure that the noble Lord, Lord Krebs, will want to say more about this. It will consider the penetration of sustainable urban drainage. It is therefore vital that any review undertaken can report so that the adaptation sub-committee has that information, can assess it and provide appropriate advice to Parliament by the time the report is published in June.

I hope that the Minister, in summing up, will be able to reassure the House that the review will indeed be thorough; that she will reassure the House that the Government accept the strength of feeling on this issue that the House has demonstrated on numerous occasions; and that we will be able to deliver the sustainable urban drainage systems that we all want to see. I beg to move.

Lord Krebs: My Lords, I should declare that I am the chairman of the Adaptation Sub-Committee, to which the noble Baroness, Lady Parminter, referred. Listening to what both she and the Minister said, I did not think there was too big a gap between their amendments. The Minister said that the review of policies would be robust and evidence-based. For me, part of the evidence base will be whether the policies are working on the ground. I hope that, when the Minister sums up, she will say that the review will also include looking at evidence of what is happening on the ground.

It is important to recognise that this is not just evidence from high flood risk areas. According to figures that I have been given from the insurance

industry, 70% of claims for flood damage come from buildings outside high flood risk areas. This is because surface water flooding does not necessarily occur in the same place as coastal or fluvial flooding. If we could get confirmation on that point, it would be extremely reassuring both to me and to the noble Baroness, Lady Parminter.

On the question of timing, as the noble Baroness has said, my committee will submit its statutory report to Parliament next summer on the Government's progress in preparing for the impacts of climate change. This includes the impacts of flood risk, which are likely to increase in future. In writing our report, it would be helpful for us to have the output of this review available at some time in the spring of 2017. I look forward to the Minister's response.

Lord Kennedy of Southwark: My Lords, I was surprised that the Government rejected this amendment when it went to the other place. Ensuring that we build homes and have sustainable drainage is a positive thing. When we discussed this matter the other day, the amendment of the noble Baroness, Lady Parminter, sought to remove the automatic right of connection to ensure that the drainage system would be considered and resolved early on and not left to the end. It was suggested that the amendment was unnecessary or unworkable. I am not convinced that either is the case.

The noble Baroness, Lady Williams of Trafford, proposed Motion E. This goes some way in the right direction. It commits the Government to,

"carry out a review concerning sustainable drainage in relation to the development of land in England".

That is to be welcomed, but I am aware that a review is a review and it commits the Government to nothing beyond that. The noble Baroness, Lady Parminter, and the noble Lord, Lord Krebs, asked some pertinent questions about timescales—when the review will come before Parliament and what action will come out of it. When the Minister responds to the debate, it would be useful if she could cover these points.

Baroness Williams of Trafford: My Lords, I emphasise that we are committed to ensuring that developments are safe from flooding and that the delivery of SUDS—if I can call it that—forms part of our policy approach. Both the noble Lord, Lord Krebs, and the noble Baroness, Lady Parminter, asked whether the review would be thorough, robust and look at evidence on the ground. The answer to all three is yes.

The Motion moved by the noble Baroness, Lady Parminter, would include a review of all development, the scope of which would be too broad. The amendment also refers to the non-statutory technical standards, which is for guidance only. I therefore cannot accept the amendment. I hope that noble Lords will accept that, while we join them in supporting the use of SUDS, it would not be appropriate to make changes at this point, until we have the evidence on which to base any changes.

Lord Kennedy of Southwark: My Lords, the amendment from the noble Baroness, Lady Parminter, talks about a date of 31 April 2017. There is nothing in the government amendment. Can the Minister give the House any idea of timescale?

Baroness Williams of Trafford: My Lords, I appreciate what the noble Lord, Lord Krebs, said about his committee reporting back next summer, so I will work, as I hope I always do, with noble Lords constructively towards a suitable timescale, though I cannot give the commitment at this point.

Baroness Parminter: My Lords, I thank the noble Baroness for those remarks. They are indicative of the thoughtful and careful way in which she has handled negotiations on this difficult Bill. I am grateful for the time she has given to me and to other Members of this Chamber, particularly on this issue. I know it means so much to her and to other Members around this House. It will directly affect home owners who have already, in recent months, been so devastatingly affected by flooding. We have to ensure that houses we build in future do not lay them open to unnecessary flooding risks.

I am clearly disappointed that previous amendments which I think were reasonable were rejected but I accept the kind offer from the Government of a review. The Minister has given reassurances from the Dispatch Box around the thoroughness of the review and working towards a date to enable comments to come forward in a timely manner so that the House can hear from the Committee on Climate Change. I beg leave to withdraw the Motion.

Motion E1, as an amendment to Motion E, withdrawn.

Motion E agreed.

Energy Bill [HL]

Commons Reason

7.18 pm

Motion A

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

That this House do not insist on its Amendment 7TB to Commons Amendment 7, to which the Commons have disagreed for their Reason 7TC.

Lords Amendment in lieu

7TB: 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 no later than three months 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."

Commons Reason

The Commons disagree to Lords Amendment 7TB for the following reason—

7TC: Because it is not appropriate for renewables obligation certificates to be issued in respect of electricity generated after the date on which the Energy Bill is passed by onshore wind generating stations for which planning permission was granted in the circumstances described in the Lords Amendment.

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the elected Members in the other place have again sent a very clear message to this House. I do not wish to prolong the debate on this issue. We have discussed many times now the importance of ensuring that the Bill comes to a swift conclusion. As I noted during our last debate, industry bodies such as Energy UK, RenewableUK and Scottish Power have highlighted the need for swift passage of the Bill. In addition, the GMB Scotland secretary, Gary Smith, said today:

"'The Energy Bill contains important measures to help alleviate the severe pressures on jobs… across our oil and gas sector".

He went on:

"It makes no sense whatsoever to compromise the Bill and the future of Scotland's oil and gas sector over a taxpayer subsidy that will only end up in the pockets of the hedge funds and wealthy landowners".

He added that,

"some 200,000 jobs in Scotland depend on our oil and gas industry".

He then urged MPs and noble Lords to get the Bill passed —I agree.

I do not wish to repeat the arguments that have been much debated both here and in the other place. We are all aware that this is a manifesto commitment which was signalled well in advance of the 18 June announcement last year. Indeed, the noble Baroness, Lady Parminter, acknowledged as much in the previous debate.

Lord Foulkes of Cumnock (Lab): The noble Lord quoted Gary Smith, whom I know well. He is the Scottish secretary of my own union—the GMB. We all want the Bill passed in relation to oil and gas, but there are different ways of getting it passed. It could be passed very simply if the noble Lord, Lord Bourne, agreed to accept our amendment. There would be no problems; it would be passed straightaway. Am I not right?

Lord Bourne of Aberystwyth: My Lords, the noble Lord appears to disagree with the general secretary of the GMB, who said quite clearly that we did not need taxpayer subsidies. That is where the Government stand and that is where he stands, and 200,000 jobs are at stake, of which we should be conscious.

Onshore wind is a well-established technology, the costs of which continue to fall, so it is right that Government should scale back subsidy. The Government have a mandate to deliver on their manifesto commitment to end new subsidies for onshore wind. Yesterday, Members in the other place removed Amendment 7TB, inserted at our last debate on the Bill. Amendment 7TB sought to widen the scope of the grace period to allow certain projects to accredit under the renewables obligation beyond the early closure date. As I have said before, these are projects that did not have planning permission when the early closure was announced on 18 June last year, and therefore do not meet the grace period criteria proposed by the Government. The date of 18 June 2015 was set out as a clear, definitive line for industry, and the Government have continued to maintain the importance of this as a clear cut-off date. As I have said previously, the prolonged debate on this issue is stopping the Bill proceeding to Royal Assent—Royal Assent which is so urgently needed so that we can implement the much-needed measures relating to the Oil and Gas Authority.

As my honourable friend the Minister of State for Energy and Climate Change, Andrea Leadsom, noted in the other place:

"It is vital that the Oil and Gas Authority gets the functions and duties it needs to maximise the economic recovery of the UK's remaining oil and gas reserves, while building its capacity and capability to attract investment and jobs, and helping to retain valuable skills in the UK. I received an email just this morning from the head of Oil & Gas UK urging me to ensure the safe passage of the Bill at what is a very challenging time for the industry. The need for an independent, robust and effective regulator for the North Sea is greater than ever. We cannot afford the loss of confidence that delaying the establishment of the Oil and Gas Authority would generate among existing operators and the regulatory uncertainty it would generate among investors".—[*Official Report*, Commons, 9/5/16; col. 447.]

The policy as set out by the Government strikes a fair balance between the public interest, including protecting consumer bills and ensuring an appropriate energy mix, and the interests of onshore wind developers.

Once again, I urge noble Lords to take careful note of what Members in the other place have said and not seek again to undo the Government's clear position by insisting on amending the Bill repeatedly. I beg to move.

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Grantchester***

Leave out from "House" to end and insert "do insist on its Amendment 7TB".

Lord Grantchester (Lab): My Lords, today, once again your Lordships' House returns to the Energy Bill.

It is deeply disappointing that the Government are unable to agree an entirely fair, minor adjustment to the grace period concessions that have had to be woven into the Bill following the opportunistic inclusion of the decision on the early closure of the renewables obligation.

I, too, will not repeat all the arguments used two weeks ago when your Lordships' House agreed to ask the Government in the Commons to reconsider. By bringing this measure back again, the Government have hardly won the argument on the issue. Yes, the Conservatives won the election and had included in their manifesto a commitment not to undertake new subsidies for onshore wind. However that may be interpreted, it cannot really mean that voters—especially the little over a third of the electorate who voted Conservative at the last election—thought that they were voting for disruptive, arbitrary decisions regarding schemes with local backing that were nearing implementation. That the Government understood that there had to be a grace period with reasonable conditions to allow an orderly process to scheme completion must at least be recognised and congratulated. That a line must be drawn in these circumstances is

saying the obvious. However, it behoves the Government to be equitable, consistent, logical and proportionate with where the line is drawn.

To allow through schemes where they meet approved development conditions, where they can demonstrate financing arrangements were disrupted due to legislative uncertainty, and where there were unforeseen grid or radar problems—all this can be applauded. However, where a scheme has only a three-month delay due to a Section 75/106 agreement and is being ruled out, while another was initially denied planning approval but subsequently won on appeal after the cut-off date, we must draw this to the attention of the House and ask the Government to reconsider their unfair, illogical concessions.

The concession promoted by this amendment was the very minimum, limited case put to your Lordships' House and supported. Many other cases promoted by the noble and learned Lord, Lord Wallace, and my noble friend Lord Foulkes are well worth considering. But this amendment whittles the merits of all those cases down to this obvious anomaly. Limiting these few schemes caught by how the Government have drawn their line down to four seems highly reasonable and a fair compromise. By turning this down, the Conservative Government are following an ideological belligerence against onshore wind farms that enjoy local support and offer value for money, while simultaneously defending generous handouts to fund more expensive alternatives.

Your Lordships' House has returned this Bill twice to the Commons for reconsideration. We now have to recognise the constitutional position we are in, with two days to Prorogation. The Minister has given a clear view that the Government are emphatic, even if that view was won by only a small majority in the Commons. This side of the House recognises that the House has looked carefully at the Bill and proposed common-sense amendments to the Government. Naturally, we are disappointed that the Government continue with their disagreement.

Before I finish, I should reflect that on this minor point we are contesting wider issues to which this gives rise. This Energy Bill is concerned primarily with setting up the Oil and Gas Authority. That the Government are willing to hold up, and even put at risk, support for our struggling North Sea industries underlines the extent to which they are prepared to go to block these few popular schemes from going ahead. Blocking projects with local support that have done everything correctly regarding planning consents before an arbitrary cut-off date shows how ideological the Government now are. As has been said and underlined, the litany of actions taken by the Government is generating uncertainty and putting up household energy bills, such that the House of Commons departmental Energy Committee conducted an inquiry into investor confidence in the energy sector, highlighting that policy inconsistencies and contradictory approaches have sent mixed messages to the investment community. Today is another example of the Government claiming to want to decarbonise at lowest cost while simultaneously halting onshore wind.

A study by the Royal Academy of Engineering reported that replacing a single onshore wind turbine with offshore wind power would cost UK taxpayers an extra £300,000 a year in subsidies. The Institute for Public Policy Research, among others, has warned that ruling out onshore wind—the cheapest energy option—could put up energy bills by millions of pounds. Today, Ernst & Young published the *Renewable Energy Country Attractiveness Index*, showing that the UK has slipped to an all-time low of 13th place among the 40 most attractive renewable energy markets globally, primarily due to the Government's decision to opt for gas and nuclear rather than be technology-neutral. This approach goes against the grain of almost universal global support for renewables and obstructs a growing energy imperative, as ageing power plants are retired, given the UK's strong natural resources and efficient and effective capital markets.

Today the Government may get their way but tomorrow the UK will start paying the price. I beg to move.

7.30 pm

Lord Wallace of Tankerness (LD): My Lords, I support the Motion which has just been so eloquently moved by the noble Lord, Lord Grantchester. I do not intend to rehearse all the arguments that we have been through, but I will make some points which have arisen in our lengthy debates and again this evening. The Minister seeks to raise the red herring of this Bill being totally threatened and of the threat to the oil and gas industry. There is no division across your Lordships' House on the importance of setting up the Oil and Gas Authority. We want to see it as much as he does and, as the noble Lord, Lord Foulkes of Cumnock, said, the simple way for the Government to do that would be to accept the amendment which your Lordships' House passed last week.

We have also heard another red herring about the manifesto commitment. I will not go into all the details again about how ambiguous, or not, it was. Let us take it at its best from the Government's point of view and accept that it was a manifesto commitment. They are actually going to get that commitment because a substantive clause which brings forward an even earlier closure of the renewables obligation for onshore wind is already passed: it is there. What this amendment is about, what we are currently debating and what we have been ping-ponging about is a very limited point about the kind of grace period given to developers who have spent millions of pounds—not to mention time, energy and effort—to try and bring their projects to fruition but who have been thwarted by a very arbitrary cut-off date. It was probably a date which had to be fitted in with other announcements in the No. 10 grid, yet these people are being frustrated in taking forward their developments.

This begs the question of what is the scrutiny role of your Lordships' House. We have accepted the principal manifesto position, but if your Lordships' House means anything it must go into detail and try to ensure fairness. There has been no movement whatever from the Government on these points since, very late in the day, they brought forward their amendments immediately before Report in this House. The Opposition have put forward a number of improvements to the grace period which we have whittled down and down until we now have one which applies to only about four developments, all of them in Scotland.

[Lord Wallace of Tankerness]

The Minister has been very generous with his time; he has wanted to engage with us and I have huge respect for him, as he knows. But I must ask myself: what was the point of it all? What was the point of all these cups of tea and discussions in the tea room if the Government never intended to give anything? I think I know where the noble Lord is: I think that he does recognise the strength of the arguments. No doubt—well, I am not going to speculate but will stop there. Your Lordships' House would hope that there might be some give and take, but we have not seen any of that.

This is a very limited amendment. It will affect the confidence of investors who will no longer trust what the outcome will be when they have made investments. The Minister referred to public subsidy. On the four developments we are talking about, the amount of public subsidy will be infinitesimally minimal compared to the amount that Hinkley Point will be getting over 35 years. So the public subsidy argument does not ring true.

I will finish by talking about the constitutional role of your Lordships' House. Having conceded that the manifesto commitment will be substantially delivered, we are just looking at the detail. It is important that there is one House of Parliament that will stand up and look after the interests of developers and private individuals who invest their money and yet find that their rights and reasonable expectations are thwarted by an arbitrary decision of government. I repeat that when Andrea Leadsom was asked the purpose of the grace period by the Energy and Climate Change Committee in the other place, she said that it was to ensure fairness, and,

"that those who have spent money in a significant investment and achieved everything technically to meet the cut-off date, but through reasons beyond their control have not actually made it, are not penalised for reasons beyond their control".

I do not think that it could be put any more succinctly or eloquently. That is what this amendment tries to do for a very limited number of cases and that is why it is worthy of support.

Lord Foulkes of Cumnock: My Lords, I also speak in favour of my noble friend's Motion. Unfortunately, the noble and learned Lord, Lord Wallace, has stolen just about every point that I wanted to make, so I shall be mercifully brief. I remind the Minister of what I said earlier. As the noble and learned Lord said, we are all in favour of the Oil and Gas Authority. The Government could have had this Bill weeks ago if they had accepted the arguments that we have been putting forward. It is the Government's recalcitrance which has delayed the Bill.

I will make just two points. In the House of Commons yesterday, Andrea Leadsom said:

"The other place has seen fit yet again to try to overturn that manifesto commitment".—[*Official Report*, Commons, 9/5/16; col. 446.]

That is not the case. We are not trying to do that. I do not know how many times we need to repeat that and argue the case before noble Lords and honourable Members understand it.

Whether we like it or not, the subsidy date has been brought forward. All that we are talking about now are the grace periods. Three of these have been accepted: we are down to the last one. I cannot say it any better than my honourable friend Alan Whitehead, who said in the other place yesterday:

"The amendment from their Lordships' House does not seek to alter the premise of grace periods. It does not seek to overturn the early closing date for onshore renewables, sad though that is. It does not seek to alter in any way the vast bulk of this well-crafted Bill, with all its important provisions concerning the North Sea oil industry. It simply seeks to put right one of the great anomalies in the grace period sections of the Bill, and, in that way, strengthen the proper application of those periods. As the Minister may have noted, it now does so in a way that it did not do in a previous amended incarnation. It places a specific time limit after the cut-off date of three months, reflecting the view that grace periods should be just that. This is now a very brief grace period window in which to put right the most difficult cases frozen out for doing the right thing".—[*Official Report*, Commons, 9/5/16; col. 449.]

As I said on a previous occasion, one example of doing the right thing is in Sorbie. This family farm has, unfortunately, not been running so profitably in past years. Under advice, guidance and suggestion from the Government, they diversified into onshore wind and are now suddenly being told that they cannot get the subsidies that they were promised. As a result, they are in danger of going into liquidation. These are the kinds of small employers who are going to suffer if the Government press ahead with their policy.

I will make one last plea. I know that the Minister in this place has some sympathies. We have had the tea and we have had some sympathy: we have not had the result. We have not had anything because people down at the other end are so blind that they cannot see. I hope that Members of this House will understand it and that we will send it back and ask them, once more, to think again.

Lord Bourne of Aberystwyth: My Lords, I am grateful to noble Lords who have participated in this debate. They are three of the most fluent and persuasive Peers on the other side and I quite understand their intent and the passion that drives them. I will come to the points in the order in which they were raised. First, the noble Lord, Lord Grantchester, very generously acknowledged that it was in the manifesto and that we have moved on grace periods to address radar/grid delays. In his words, he "applauded" the concessions we have made. We have also made some on the investment freeze. But he seemed to suggest that we were engaged in some kind of ideological and belligerent—I think those were his words—warfare against renewables in general and wind in particular.

The United Kingdom has a proven track record of growth in renewable electricity, which goes on. We will be spending more this year than we did last year, and in every year of this Parliament we will be spending more on renewables. Nearly £52 billion has been invested in renewables since 2010. More than half the total investment in the EU in 2015 occurred in the United Kingdom, and that was just another record year based on several earlier record years. So I hope the noble Lord will accept that that is not the case. We recognise the vast importance of renewables.

One reason for the action and for it being in the manifesto was that we were deploying at a far speedier rate than had been anticipated. It was not anticipated by the coalition Government that we would be well

above the top range of what could be expected. We are not taking action for any ideological reason. We have massive deployment and that deployment goes on. But we are reaching the end of subsidies for solar and for onshore wind because they can be deployed without the subsidy. It is widely recognised, including by the general secretary of GMB Scotland, whom I quoted, that we do not need these subsidies any longer and that often we are subsidising people who do not need the subsidy. That is another reason for the action.

The noble and learned Lord, Lord Wallace, put the case very eloquently, as he always does. I think he accepted that we had moved on grace periods. He suggested, as did the noble Lord, Lord Grantchester, that the date we set was arbitrary. Well, it was—only in the sense that any date is arbitrary. The noble and learned Lord will know very well that dates are set and they are very often arbitrary and somebody will fall the other side of them; even if you move the date, somebody else will fall the other side of it. I do not accept that it was arbitrary in the sense that he seemed to be suggesting—that it was somehow capricious. That was not the case and it was not a question of it fitting in with the grid. It was the date that the Government chose to announce the policy that had been signalled in the manifesto. I hope he will accept that the case is borne out: we accepted many amendments on the Oil and Gas Authority as the legislation went through; and we have amended the position on onshore wind to take account of grace periods, appeals and radar grid delays. All these things we have done.

The noble Lord, Lord Foulkes, was very generous and spoke with great passion and very eloquently, as he always does. Yes, I accept that the intentions are benign but the will of the other place has been expressed now three times. Surely now is the time to recognise that this House should not keep overriding the will of the other place on an issue where it has expressed its position very clearly.

Lord Wallace of Tankerness: Can the Minister indicate any amendment to the grace period provisions, which have been there since they were first tabled when the Bill was recommitted to the Grand Committee?

Lord Bourne of Aberystwyth: As the noble and learned Lord knows, those provisions were not there when the Bill was introduced. They were introduced subsequently, after consultation with industry. I accept that they were not subsequently altered but there was consultation, as he will recall, about what was fair on the grace periods. I think many people recognise that these amendments from the original position were fairer and more just. That is the position. They were not amended subsequently—he is quite right on that.

We have been round the circuit on this so many times that I will not delay the House any further. The view of the other place is clear. We do not want to hold up this legislation with its vital Oil and Gas Authority provisions. I beg to move the original Motion.

Lord Grantchester: I am very grateful to noble Lords who have responded on my behalf to the Government's stance regarding the position we are now in, and to the Minister for the way he has replied. I may well have been injudicious in the words I used regarding the Minister's motives. However, I am disappointed that I still find his remarks less than convincing. I am not entirely satisfied with his response and I am not happy with the lack of movement towards a compromise.

This issue will not go away. It goes beyond the few cases in the amendment. It concerns the lack of inclusion and the ability of the wind industry to take part in the future bidding rounds for contracts for difference. There is a concern that the Government are not being technology-neutral. It also concerns jobs and investment in Scotland. We remain as determined as ever that we will return to this, but we accept where we are now with the Government—they are not listening and they will not concede. Indeed, it could well be the end of the parliamentary road. Reluctantly, I beg leave to withdraw the Motion.

Some Lords objected to the request for leave to withdraw the Motion, so it was not granted.

7.45 pm

Division on Motion A1

Contents 109; Not-Contents 204.

Motion A1 disagreed.

Division No. 3

CONTENTS

Adams of Craigielea, B.
Addington, L.
Alderdice, L.
Alton of Liverpool, L.
Ashdown of Norton-sub-Hamdon, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beecham, L.
Benjamin, B.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Burnett, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Corston, B.
Cotter, L.
Davies of Stamford, L.
Dholakia, L.
Doocey, B.
Falkner of Margravine, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Garden of Frognal, B.
German, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Greaves, L.
Grender, B.
Hamwee, B.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Henig, B.
Hollis of Heigham, B.
Humphreys, B.
Hussain, L.
Hussein-Ece, B.
Jolly, B.
Jones, L.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Kennedy of Southwark, L.
Kirkwood of Kirkhope, L.
Kramer, B.
Lee of Trafford, L.
McAvoy, L.
McKenzie of Luton, L.
McNally, L.
Maddock, B. [Teller]
Manzoor, B.
Marks of Henley-on-Thames, L.
Maxton, L.
Miller of Chilthorne Domer, B.
Murphy of Torfaen, L.
Newby, L. [Teller]
Nicholson of Winterbourne, B.
Northover, B.
Oates, L.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.

Patel of Bradford, L.
Pinnock, B.
Pitkeathley, B.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Randerson, B.
Rea, L.
Redesdale, L.
Roberts of Llandudno, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Smith of Basildon, B.
Smith of Newnham, B.
Soley, L.
Stephen, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taverne, L.
Taylor of Bolton, B.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Tope, L.
Tunnicliffe, L.
Tyler, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Whitty, L.
Wills, L.
Wrigglesworth, L.
Young of Norwood Green, L.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L.
Astor, V.
Attlee, E.
Baker of Dorking, L.
Balfe, L.
Barker of Battle, L.
Berridge, B.
Blencathra, L.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Buscombe, B.
Caithness, E.
Callanan, L.
Cameron of Dillington, L.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Furness, L.
Chisholm of Owlpen, B.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Craig of Radley, L.
Craigavon, V.
Crickhowell, L.
Cumberlege, B.
De Mauley, L.
Deben, L.
Dixon-Smith, L.
Dobbs, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Feldman of Elstree, L.
Fink, L.
Finkelstein, L.
Finlay of Llandaff, B.
Finn, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Grade of Yarmouth, L.
Green of Hurstpierpoint, L.
Hailsham, V.
Harding of Winscombe, B.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Higgins, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Lympne, L.
Howe, E.
Howe of Idlicote, B.
Howell of Guildford, L.
Inglewood, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Lang of Monkton, L.
Lansley, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lingfield, L.
Liverpool, E.
Lucas, L.
Lupton, L.
Lyell, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
McGregor-Smith, B.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
Mancroft, L.
Mar, C.
Marlesford, L.
Mawhinney, L.
Mobarik, B.
Mone, B.
Montrose, D.
Morris of Bolton, B.
Moynihan, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Cathain, B.
O'Neill of Gatley, L.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Pannick, L.
Patten, L.
Perry of Southwark, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Prior of Brampton, L.
Rawlings, B.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Robathan, L.
Rock, B.
Rogan, L.
Rowe-Beddoe, L.
Ryder of Wensum, L.
St John of Bletso, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Smith of Hindhead, L.
Somerset, D.
Spicer, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Suri, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Tebbit, L.
Trees, L.
Trefgarne, L.
Trimble, L.
True, L.
Ullswater, V.
Verma, B.
Vinson, L.
Wakeham, L.
Waldegrave of North Hill, L.
Wasserman, L.
Wei, L.
Wellington, D.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wolfson of Aspley Guise, L.
Young of Cookham, L.
Younger of Leckie, V.

7.57 pm

Motion A agreed.

House adjourned at 7.57 pm.

Grand Committee

Tuesday 10 May 2016

Arrangement of Business

Announcement

3.31 pm

The Deputy Chairman of Committees (Lord Bichard) (CB): Good afternoon, my Lords. If there is a Division in the House, the Committee will adjourn for 10 minutes.

National Health Service Trust Development Authority (Directions and Miscellaneous Amendments etc.) Regulations 2016.

Motion to Take Note

3.32 pm

Moved by ***Lord Hunt of Kings Heath***

That the Grand Committee takes note of the National Health Service Trust Development Authority (Directions and Miscellaneous Amendments etc.) Regulations 2016 (2016/214).

Lord Hunt of Kings Heath (Lab): My Lords, in moving this Motion, I should make it clear that, in raising issues around the governance of NHS Improvement, I make no criticism of the relatively newly appointed chairman and chief executive of that body, both of whom have outstanding records and have, I know, much to contribute to the National Health Service. I want to raise two sets of issues: the governance arrangements for NHS Improvement; and, linked to that, the future of NHS foundation trusts.

The Motion and the order relate to the National Health Service Trust Development Authority, which was established, as a result of a special health authority order in 2012, to manage the performance of English NHS trusts with the objective of assisting them to become foundation trusts. In contrast, NHS foundation trusts are regulated by Monitor under a number of pieces of legislation, including the Health and Social Care Act 2012. Therefore, both the NHS Trust Development Authority and Monitor are responsible for overseeing and, where necessary, helping to improve the performance of their respective cohorts of providers —NHS trusts and NHS foundation trusts.

The Government have argued that, in recent years, both the NHS TDA and Monitor have been working more closely together and are increasingly utilising similar interventions with their respective cohorts. Last summer, the Government announced that NHS TDA and Monitor would come together under a single leadership and operating model. As part of these arrangements, they would share a single leadership team—comprising the chief exec, chair and a joint board—with the organisations to be known as NHS Improvement. In addition, safety and quality would be key components of the new arrangements, with the national safety function previously exercised by NHS England being transferred essentially to NHS Improvement but formally exercised by the NHS Trust Development Authority.

This seems to be a complex governance arrangement, and no one should underestimate the challenge for NHS Improvement, which has to manage a complex range of functions and accountabilities. Monitor's duties, as economic sector regulator and its role in ensuring the regulation of foundation trusts, remain risk based and proportionate, in line with the "earned freedoms and autonomy" accorded to the foundation trust model. Alongside that, the function of the NHS TDA in supporting and offering oversight for NHS trusts is equally important in the current, challenging financial climate. Then there are NHS Improvement's new duties to improve trusts and integrate the safety function formerly hosted by NHS England.

The governance structure is therefore complex. NHS TDA and Monitor remain separate institutions—one a special health authority and the other an organisation established in statute and subject to extensive provision in primary legislation. Indeed, the Health and Social Care Act 2012 contains no less than 85 clauses relating directly to Monitor and about 85 days were spent in your Lordships' House debating them. There is no clause relating to the NHS Trust Development Authority because it is a special health authority, yet it seems to be the principal vehicle by which functions are to be transferred to NHS Improvement.

NHS Improvement is itself subject to no legislation, but a board using its name as a banner will oversee both the NHS TDA and Monitor with the same executive team and operating procedures. My understanding from what has been said is that, in statute, Monitor and the TDA will continue to have their own boards but these will have identical membership and meet as one NHS Improvement board. They will also continue to publish separate annual reports alongside an aggregate report from NHS Improvement. To all intents and purposes, NHS Improvement will operate as one board, with one set of staff and operating procedures, but the legislative provisions under which it operates will be quite separate for NHS foundation trusts and NHS trusts.

I ask the Minister how realistic it is to expect staff to work under a single operating procedure, given the hugely different legislative provisions relating to foundation and non-foundation trusts, unless the market and competition provisions in the 2012 Act are effectively ignored. The King's Fund, in its analysis of the planning guidance for 2016-17, has said that it effectively spells the end of the emphasis on competition and the principle of autonomy.

Linked to this is the question of the future of NHS foundation trusts. In effect, if FTs and non-FTs are treated in the same way, overseen by the same board, the same members of staff and the same operating procedures, what on earth is the point of being a foundation trust? What will happen to non-FTs that were in the pipeline to gain FT status—what is the point of them applying? I raise this question as an unashamed supporter of the concept of NHS foundation trusts. I think they were the right approach and I am

[Lord Hunt of Kings Heath]
convinced that their governance model, whereby the board is accountable through the governing body to local members, has many advantages.

The noble Lord, Lord Prior, was a distinguished chairman of a very successful foundation trust, and I had a similar experience. While, having been the chairman of a board, I can say that meetings of the governing body were not always comfortable, I thought it was a strength that the board had to account to local people for its performance. Of course, that is not the situation for non-foundation trusts but, if I were now the chairman of a non-foundation trust, I could not see what advantage there would be to me in becoming a foundation trust, because essentially the economic regulator would manage my trust in the same way as it would a foundation trust. At least, that seems to be the implication of the regulations and the changes made to NHS Improvement.

I have seen an intimation that, following these regulations, there will be no further pieces of legislation in relation to operating procedures. I ask the noble Lord, Lord Prior, why that is and whether he can assure me that, with the same group of staff and the same board, the autonomy and independence of foundation trusts, as opposed to NHS trusts, will be respected. I also ask him how this then relates to the development of the strategic transformation plans at local level, which on any reading also signals to me that we are moving back to a planning model of the health service. Again, it would be very interesting to get the Minister's comments on that. Above all else, I hope that he can reassure me that the Government are still committed to the model of foundation trusts, particularly regarding the strength that it brings to local autonomy and governance. I beg to move.

Baroness Walmsley (LD): My Lords, I have no intention of detaining the Committee, as I agree with everything that the noble Lord, Lord Hunt, has said. I look forward to hearing the Minister's reply. I am particularly concerned that a very complex system of governance will not produce transparency and accountability, and I look forward to reassurance on that score.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, that was a short intervention from the noble Baroness. I was very struck by the noble Lord, Lord Hunt, saying that, when the 2012 legislation went through Parliament, it took 85 days and 85 of the Bill's clauses dealt with Monitor alone. I am afraid that that is part of the response that I shall give him today. We did not have 85 days—or maybe 165 days, if we take into account the TDA and the restructuring—because matters are too urgent. However, the noble Lord is right to bring this issue up today, because I do not think that there has been enough scrutiny around Monitor, the TDA and NHS Improvement.

Responding to the points that he raised about foundation trusts will perhaps in part answer both questions. The distinction between foundation trusts and trusts has been eroding over time—there is no question about that. The roles of Monitor and the TDA were becoming more duplicated over time. It is interesting that, when David Bennett was at Monitor, he saw the need to develop an improvement agency within Monitor, almost mirroring the TDA. Simply being a financial and economic regulator was clearly not enough at a time of such huge stress and pressures within the system.

However, there are two other important factors that I should mention. At the time, I agreed that the principle of foundation trusts—I think it was called "earned autonomy"—was absolutely right, as was the governance structure, with clear accountability through locally elected and appointed governors to the local population. But when the King's Fund says that what we now have is the end of competition and autonomy, it is partly right. Using competition as a means of driving improvement through the NHS has been tested almost to destruction. It started back in 2005-06, with the new Labour Government and ISTCs, foundation trusts and the like. Increasingly, we are of the view that competition has a role to play but a pretty limited one, and we cannot rely upon competition—or the market, if you like—to drive the kinds of improvements and change that are needed within the system.

3.45 pm

There has also been another development, which the noble Lord touched on, which is the sustainability and transformation plans and the new models of care. These are largely the harbinger of vertical integration and a system approach to delivering healthcare to the population, rather than a series of individual, more atomised organisations like foundation trusts. So, in a sense, the concept of the foundation trust and a governance structure that is accountable to the local people is still the right one, but it should probably be at the system level rather than at the individual organisation level. You can read the direction of travel from the five-year forward view through to the STP process that is now under way and, indeed, the formation of NHS Improvement. It is a move away from autonomous, individual organisations—by and large, acute hospitals—driving the agenda to one in which the system as a whole, including social care and local authorities, is involved. Those are three fairly big changes that are now running through the development of the NHS.

If I may go back to where the noble Lord started, the regulations made a number of changes to the TDA's underpinning legislation. These changes were made in order that the two organisations would be able to work together under the operational name of NHS Improvement, which would in turn improve the way in which the NHS provider sector is supported and regulated, drive improvements in the care that people receive and arrest the deterioration in the financial position of the sector. That really recognised what was happening. There was a general feeling, probably shared by the noble Lord, that somehow Monitor had remained much as it was when it was set up—an economic and financial regulator—at a time when the whole system was under such stress that it required a completely different role.

Under the regulations, Monitor and the TDA were not abolished or dissolved, and NHS Improvement has not been established as a new entity in primary

legislation. Indeed, it was never the intention that these regulatory changes would establish a statutory basis for NHS Improvement. Rather, NHS Improvement is the operational name given to the collaboration between Monitor and the TDA, whereby they pool resources and administrative functions in order to reinvigorate the support and regulatory offer to trusts and foundation trusts. Both organisations continue to be underpinned by their respective legislative frameworks, with distinct statutory functions and legal powers. They will continue to be held to account by Parliament, the Secretary of State and the Department of Health.

I understand that there may be a concern that, by not setting NHS Improvement on a statutory footing, clear governance may be lacking—this is the issue that goes to the root of the noble Lord's concerns. I echo his comments that the leadership at non-executive and executive level in NHS Improvement is of a very high calibre. Both the chief executive and the chair of NHS Improvement are well aware of the need to put in place robust governance arrangements. Under their leadership, a substantial exercise is under way to recast the board and executive structure of NHS Improvement to fuse the business of the two organisations much more effectively in practice. From my discussions with the chairman and chief executive, I think that that is happening. Clearly, Rome was not built in a day, but they are making very substantial improvements and progress. There is now one board which is effectively running NHS Improvement.

A significant amount of NHS Improvement's business will not need separate governance or decision-making, such as in the case of challenged providers where all trusts, regardless of their composition, deserve access to the same level of support and advice. Having said that, in cases where separation is appropriate and the specific functions of either main organisation are being exercised, such as TDA's role in appointments or Monitor's competition function, this will be transparently articulated in all relevant documentation.

NHS Improvement's detailed governance arrangements are in the process of being finalised, as is its new single oversight framework. The arrangements will be fully and transparently set out in rules of procedure and standing orders, which will be publicly available for consultation in the summer. Also, the formal accountability framework documents in place for both Monitor and the TDA, which set out how the department will hold them to account and more generally how we will all work together, are currently under review. It is intended that a revised joint framework document, as well as a formal remit letter establishing NHS Improvement's objectives, will be published in the summer.

I should repeat that NHS Improvement will be accountable directly to Parliament, the Secretary of State and the Department of Health's principal accounting officer for the discharge of Monitor's statutory regulatory functions and to the Secretary of State for the specific functions of the TDA.

Speaking more generally, we see NHS Improvement more as being essentially an improvement agency holding trusts to account and giving them help and support to achieve high levels of performance rather than being purely a regulator, which is I think how Monitor was originally established. Clearly, the role of the foundation trust that the noble Lord mentioned in his speech is going to change over time, but I can assure him that the benefits of foundation trusts, through the clearer accountability and earned autonomy, will still be very much a part of the future.

Lord Hunt of Kings Heath: I thank the noble Lord, Lord Prior, for his response. I certainly understand the need for speed and the erosion over time of the distinction between foundation trusts and non-foundation trusts. I also agree with the Minister on the issue of competition. The past years have shown that while it can play a role, that role should be limited, and I have no objection to that, nor, indeed, to the extended remit of improvement. That is something which has been missing from the regulatory apparatus and it is to be welcomed.

I would like to make a couple of points. First, the Minister said that we are moving locally to system-level leadership and development. I am sure that that is right, but I hope that local accountability will be borne in mind. I have just had responses to a number of Questions for Written Answer that I tabled about accountability in the sustainability and transformation plans. As the Minister knows, they have to be in by 30 June. We know that they will all say that the acute care footprint will be reduced by so many hundreds of beds—to be honest, this has all been done before—and they will then say that there is going to be heroic demand management and, somehow or other, there will be miraculous developments in the community. But they will not have ownership locally because, essentially, they are being top-down led. At some point, they will have to go through formal consultation procedures and I believe that, unless there are some powerful forms of local accountability, they will run into trouble.

Lord Prior of Brampton: I think that the noble Lord has put his finger on it. If the STP process is just another top-down-led system redesign, it will not have any teeth to it. But what has happened in Manchester, for example, is that there is clear local leadership and accountability, which mean that some of the really difficult decisions that have not been taken for generations are now being addressed. There must be effective local accountability and governance around the STPs.

Lord Hunt of Kings Heath: The other area, which I have raised with the Minister before, is in relation to clinical commissioning groups. First, the creation of federations of GPs makes the model unsustainable in the long term, because in some parts of the country the electoral body for the GP members of CCGs will be almost coterminous with the federations. Clearly, there is a conflict of interest in that. Secondly, there is still an issue about the accountability of CCGs. If ever one needed a governance structure that made them somehow locally accountable, the foundation trust model would provide some answers which I hope that the Government will look at.

My final point is on what legislation will be in the Queen's Speech. Clearly, from all that the Minister has said, much of the 2012 Act is defunct in practice. We are moving to a planning model, and the Act is very

[Lord Hunt of Kings Heath]
different from that. The longer that this goes on, the more need there will be at some point for some legislative change, because at the moment people in the health service are at risk. They are essentially being asked to develop a system-led planning model, but that is challengeable because the Act is very different from that. I believe that at some point it will be challenged. The Government may not want to have core health legislation debated, but at some point that will have to be done. I also remind him that we still have a draft Law Commission Bill and I am hoping that, at the very least, we will see a short form of that announced in the Queen's Speech.

This has been an excellent debate and I am very grateful to the noble Baroness, Lady Walmsley, and the noble Lord, Lord Prior.

Motion agreed.

Care Quality Commission (Fees) (Reviews and Performance Assessments) Regulations 2016

Motion to Take Note

3.56 pm

Moved by ***Lord Hunt of Kings Heath***

That the Grand Committee takes note of the Care Quality Commission (Fees) (Reviews and Performance Assessments) Regulations 2016 (2016/249).

Relevant document: 30th Report from the Secondary Legislation Scrutiny Committee

Lord Hunt of Kings Heath (Lab): My Lords, this is rather like the previous debate in the sense that it is important that this matter is at least discussed and given some form of parliamentary scrutiny, given that the CQC is going to impose very large increases on NHS and private care providers at a time of great financial challenge. I am someone who is impressed with the way that the CQC has developed, and I pay tribute to the work of the noble Lord, Lord Prior, who was the chair of the CQC. It clearly performs a vital role.

At the same time as Ministers have increased the responsibilities of the CQC, they have squeezed its budget and my understanding is that, over the next four years, its overall budget will be reduced by £32 million. The proportion of its budget as grant in aid from the department will reduce and the proportion charged to providers will increase. I understand that its budget next year will be £236 million, which is a sharp reduction of £13 million from that of 2015-16. Like all public bodies with fee-setting powers, CQC expects to follow government policy by levying fees that will, over time, fully cover the cost of its chargeable activities. Previously, CQC was able to charge for some but not all of its activities, so these regulations are a prerequisite to enable it to meet the Government-set target of full cost recovery through a dramatic increase in fees.

Given the budgetary pressure it faces, the CQC undertook a consultation—I will come back to this consultation process—that recommended to the Secretary of State that the CQC should move to full cost recovery in just two years. I understand that there was a good deal of toing and froing between the CQC and the Government on this and that the CQC reluctantly asked for a two-year full cost recovery. The Government have really refused to help out or to give greater flexibility in relation to the number of years that it should take to meet full cost recovery.

I want to raise three issues. First, there is no doubt that this will have a financial impact of some significance on struggling providers by diverting resources away from front-line patient care. Secondly, there is the timing, given that the CQC is about to implement a new strategy in which it will evolve its approach to regulation considerably. Thirdly, there is the illogical series of consultations which took place with regard to these regulations, resulting in a lack of meaningful engagement by the Department of Health with the front line.

If the Government proceed, CQC fees will increase by a massive amount for individual secondary care providers. The estimate from NHS providers is the equivalent to every NHS provider losing two senior nurses. As the Minister knows, providers of NHS ambulance, acute, mental health and community services are already facing unprecedented financial challenges. I would have thought that the last thing the Government would want to do is put extra pressure on those providers at this time.

It is noticeable that, in the care sector, the care providers are facing huge financial acute pressure. Work in the past two weeks shows that up to a quarter of care homes fear financial catastrophe over the next 12 months. Again, I question the Government's approach to regulation and the sustainability of these homes following such a large increase in fees.

The Government talk about a light-touch regulatory approach, and I suspect that in our next debate we might discuss that in detail. However, providers of health and care services had only two days' notice of the fee increases before they came into effect. As no provision for this extra expense has been made through the national tariff, providers have to pay for it from money that would otherwise fund patient care.

We could debate the CQC as a whole, but I do not want to do that. I actually think that the CQC has been going in the right direction and I am keen to see its new strategic five-year plan, which is due for publication in the next week or so. David Behan, the chief inspector, commands a great deal of confidence in his mature, sensible approach. Certainly, my experience of large CQC inspections is that they can offer many insights and are getting better in quality as greater experience is gained. Therefore, this is not a criticism of CQC; it is about the impact on the NHS of a sudden increase in fees which, in relation to large NHS trusts, can amount to thousands and thousands of pounds.

On the consultation process, the decision to raise fees over two years has been made amidst a convoluted array of consultations, all of which have a bearing on the issues to be debated today. First, the CQC consulted on the timescale for moving on to full cost recovery. The Department of Health then consulted on a proposal that was a prerequisite for enabling the CQC to adopt full cost recovery for its current inspection model, amending legislation through the regulations debated today to allow full cost recovery of its comprehensive

inspection regime through fees. Previously, the CQC had the power to charge health and care providers only for activities related to its core remit of ensuring minimum quality standards. So respondents to the CQC's consultation were therefore obliged to opt for a trajectory to full year cost recovery of either two or four years before being invited to express views on whether such a move to full cost recovery was appropriate.

Further, the CQC was required to consult on the pace to full cost recovery before the final discussions regarding the spending review and the CQC's budget for 2016-17 and before it consulted on its new strategy for the next five years. This did not allow for appropriate engagement on the proposals. Clearly, in the logical order of things, the CQC would have been allowed to finalise its strategy before making decisions about future fees. That was wholly unsatisfactory.

The consultation produced an almost unanimous conclusion that full cost recovery should be undertaken over four years rather than two. We need to remember that what this is doing is transferring money back from the Department of Health to the Treasury—we are talking about public money and it is about the way it goes through the system. But at a time of critical financial challenge in health and social care, the Government have bizarrely chosen to take money out of front-line services in order to give the Treasury more money. That essentially is what is happening at the core of this discussion.

At some point in the future, we are going to debate the NHS mandate—I think that it will finally reach us in the new Session—but, at the same time as this financial squeeze is being made, we have the extra CQC fees while another arm of government, in the form of NHS PropCo, is now charging market rates for accommodation rented by the NHS. That is another transfer of money, a paper transfer, presumably to the DH's central budget. However, it is coming from front-line services. We know that there are other examples, such as in relation to pension costs, which again is essentially a Treasury decision to take money out of front-line services, so it is not as if the CQC decision is isolated. A number of peculiar decisions are being made to take money out of funds going to the NHS.

Those of us who have picked up on the evidence given yesterday by the Secretary of State to the Health Select Committee can see that he made that abundantly clear. Let us go back to the £30 billion for five years estimated by NHS England. The Government claim that they have given £10 billion—which of course is £8 billion because they added an extra year in order to get up to £10 billion—but the Secretary of State made it clear yesterday that about half of that money has been taken away from central department resources. So the reality is that in fact very little extra money is being put into the NHS.

I know that we are not going to debate the overall finances of the health service today, but it is important that decisions about the CQC are seen in the context of a very stretched service. I hope that, at the very least, the Government will reconsider this because it is a bit much to say to health services and care providers that they are facing a huge financial challenge that is going to be made worse by insisting that they pay full cost recovery over two years. I beg to move.

Baroness Walmsley (LD): My Lords, it strikes me that this situation is rather like sending out the lifeboat to a swimmer in trouble in the sea and, instead of pulling him on board, pushing him further under the waves.

The issue raises a number of questions in my mind. First, is it right that providers should be expected to pay fully for the regulator, resulting in a dramatic increase of 75% in a single year and, I have been told, of 176% over the very short period of two years? If the Government believe that the CQC inspection is the "single definition of success", they should be expected to pay for some of that quality assurance on behalf of the taxpayer, at least in the short term, in order to achieve the sustainability that we need not just for the CQC but for individual providers.

Over what time period should this new demand on the finances of providers be implemented? How much notice is being given? There were two days for implementation. That does not strike me as sensible, because it allows absolutely no time for proper budget planning.

The other question is whether providers can afford it. In particular, small GP practices in rural areas, I have been told, will be paying 1.75% of their turnover for the CQC. No wonder GPs are charging care homes for attending their residents, even though they already receive a per capita payment for them. What about the care homes, many of which are unprofitable even now? Let us face it: they are businesses—60% of patients are in private care—and we are heading for mass closure, which will be a disaster for all the old and vulnerable who need care.

As the noble Lord, Lord Hunt, said, what else will have to be cut from the front line in order for providers to pay for this at a time of unprecedented financial pressure? It will cost £28.7 million over four years, which has to come from a sector which already has a projected deficit of £2.8 billion. It seems that the Government are simply moving around the deficit deck-chairs on the "Titanic". This is being done while the demand for efficiencies on the part of the CQC are marginal. It therefore follows that we should ask whether the regulator is giving good value for money and whether it is moving fast enough.

I wonder why the Government have chosen to ignore the overwhelming view of providers in the consultation, as the noble Lord, Lord Hunt, mentioned—the so-called consultation, perhaps I should say—given that the consultation on the proposed action was done before the CQC had completed and published its five-year strategy. As the strategy is expected to include significant changes to the inspection model, and therefore the costs, surely it should have been done the other way round.

Has any consideration been given to the idea of a risk-based approach to regulation, such as the one used by Ofsted, where schools that are consistently showing excellent results have a more light-touch inspection regime? Obviously, there would have to be safeguards and triggers for snap inspections, but it seems to work reasonably well in education so why not in health? It saves a lot of time and money.

There are a lot of questions there for the Minister.

The Earl of Lindsay (Con): My Lords, I want to address some of the issues raised by the noble Lord, Lord Hunt, and the noble Baroness, Lady Walmsley, especially in respect of the need for the Care Quality Commission to minimise the burdens on those it is regulating, including the financial burdens of these proposed regulatory fees, going forward.

I recognise that the CQC cannot be readily excluded from the Government's full cost recovery policy for the setting of regulatory fees in all sectors. However, I believe that there are opportunities for the CQC's regulatory inspections to be less burdensome and less costly without compromising robust and effective oversight. This particularly applies in the care sector, where care home providers currently face significant challenges, as we have heard, and the CQC faces significant budgetary pressures.

I am speaking in my capacity as chair of the United Kingdom Accreditation Service, or UKAS, which is the sole national body recognised by government for the accreditation of organisations providing inspection services, as well as certification, testing and calibration. We welcome the active encouragement by this and previous Governments of UKAS accreditation as an alternative to regulation as an intelligent, efficient and effective approach to inspection.

UKAS stands ready to assist all regulators in all sectors which wish to develop a more risk-based approach. This includes the CQC, which has indicated particularly that it plans to inspect adult social care services less often and to concentrate its efforts on providers perceived to pose the greatest risks to their residents, such as those homes that have been inspected by the CQC and given summary ratings for their quality of care of "Inadequate" or "Requires improvement".

UKAS has been developing expertise and experience in the social care sector, having launched a pilot programme in 2014 for the accreditation of independent inspection companies in the care home sector. It has accredited one organisation, RDB Star Rating, which provides comprehensive ratings of the quality of care homes on the basis of wide-ranging inspections. We expect to accredit a number of similar inspection organisations over the coming months. These organisations all believe that there is an important role in the care home sector for independent quality assurance underpinned by UKAS accreditation. In turn, the part played by UKAS as the national accreditation body is key to this role—I am reminded here of the reference of the noble Baroness, Lady Walmsley, to safeguards and triggers.

To ensure reliability, UKAS will verify that any organisation that it accredits as an inspection body in the social care sector has proven its competence, impartiality, operational capabilities and consistency, and the equivalence of its assessments. Importantly, UKAS also ensures that accredited inspection bodies use standards that map on to those used by the CQC, so that their findings can be drawn on by the CQC in support of its regulatory responsibilities. If the CQC were to take account of the findings from UKAS-accredited inspection bodies as part of its risk-based assessment of services—as it so easily could—that would enable it to have a credible, up-to-date and holistic view of homes, and one in which it could have trust and confidence.

4.15 pm

To date, the footprint of independent inspection and quality-rating bodies in the care sector is relatively small when one considers that the sector comprises over 17,000 care homes. However, if the CQC were to take greater account of the findings from UKAS-accredited inspection bodies, it would both encourage their development and the take-up of their assessments and ratings by care homes. More importantly, and of specific relevance to the issues raised by the noble Lord, Lord Hunt, it would provide opportunities for the CQC to reduce the scale, frequency and cost of its own inspections of care homes, enabling it to focus only on those deemed to be most at risk in terms of quality of care. This would help to address general concerns about increasing budgetary pressures being felt by the CQC and the rising fees being felt by the healthcare providers and care homes that it regulates.

Furthermore, in the interests of reducing the red tape experienced by providers of social care services—the need for which was emphasised in a recent report from the Government's Better Regulation Executive—the findings from UKAS-accredited inspection bodies could be used not only by the CQC but also by local authority commissioners and local clinical commissioning groups to avoid duplication and reduce burdens placed on providers through unnecessary data requests and inspections.

Comparable opportunities have been developed by regulators in other sectors. For example, in support of delivering the Control of Asbestos at Work Regulations 2002, UKAS accredits testing laboratories and inspectors. The confidence that this engenders has enabled the Health and Safety Executive to reduce its regulatory inspection and monitoring activities. Similarly, the Environment Agency recognises the value of UKAS-accredited certification of environmental systems to ISO 14001. This has resulted in reduced inspection requirements for the Environment Agency and reduced environmental levies on businesses. Likewise, in the NHS the Human Fertilisation and Embryology Authority, the Human Tissue Authority and the NHS newborn screening programme increasingly rely on UKAS assessments of clinical services. The HTA, for instance, is undertaking joint inspections of mortuaries with UKAS.

The opportunity that I have outlined for the CQC in response to this Motion is timely for other reasons as well. In its recently published business plan, the CQC makes a commitment to:

> "Delivering an intelligence-driven approach to regulation".

This includes working with providers,

> "to develop appropriate methods for them to share their own information and assessments of their quality with CQC, to inform ongoing, transparent conversations about quality".

The CQC already recognises the established UKAS accreditation regimes for pathology, imaging and physiological services as useful and credible sources of information that contribute to "intelligent monitoring" when planning and carrying out inspections. This recognition can reduce the necessity for the time-consuming duplication of assessments by the CQC of pressurised clinical services.

I believe that this approach can be developed further to increase the efficiency and effectiveness of the regulation and inspection in health and social care. It can also demonstrate the CQC's commitment to an "intelligence-driven approach to regulation" that is at the same time robust and credible. Such an approach would offer the very real prospect of easing both budgetary pressures and regulatory fees in the future.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, I first acknowledge the fact that any increase in fees, at a time when providers of adult social care, the NHS and elsewhere are going through a very tough time, is clearly very unwelcome. So perhaps it was not surprising, in a sense, that in the consultation when given the choice of spreading the increase over four years or two years, everyone voted for four years rather than two. I think everyone knows that, over time, it was the intention of the previous Government, as well as this one, to have full cost recovery. In the end, that must be right, but it is a question of how long it takes to get from where we are to where we need to be.

Most people will understand why the scope of the CQC's work has developed over the past three or four years. The origins of the new CQC lay in what happened in Mid Staffordshire, Morecambe Bay and Winterbourne View, and a feeling that those tragedies could not be allowed to happen again. A much more comprehensive, expert-led inspection regime was the right way to try to unearth those awful things.

I totally understand what has been said by my noble friend Lord Lindsay and the noble Baroness, Lady Walmsley, about moving towards a more risk-based form of inspection. In the CQC's strategy, which will be announced in a week or so, I hope there will be some reference to it having a more risk-based inspection regime. Of course, that has to be based, as my noble friend Lord Lindsay mentioned, on good intelligence. Over the past three years, the CQC has been able to collect intelligence, particularly on NHS trusts, where there are much better data—we are also using soft data as well as hard data—and that does enable one to put in place a more risk-based system of inspection. It has already said that it will re-inspect institutions that have a "Good" or "Outstanding" rating after a longer period of time than the ones with "Requires improvement" or "Inadequate". But we will see when it produces its strategy next week exactly what it is planning to do.

On the comments of my noble friend Lord Lindsay, we did have some discussions when I was at the CQC, but I have to accept that they did not get very far. However, I would encourage him to meet the new chairman of the CQC, Peter Wyman, as well as David Behan, whom he already knows, to see whether or not there is any way that UKAS accreditation can help not just in adult social care but in aspects of clinical care as well.

On the points made by the noble Lord, Lord Hunt, about the consultation, the consultation period did go from 21 December 2015 to 1 February 2016. There was a reasonable period of consultation, but I accept that the implementation of the increase was much quicker. I also know that, although it did not sound very much in the context of the whole, for individual trusts this was just another cost increase that they had to bear. It is worth noting that the total cost of the CQC as a proportion of the whole that is expected for adult social care and the NHS is around 0.19%—very similar to the cost of Ofsted in education. So it is not as though it is expensive; it is just that the level of cost recovery has been ordained to be over a shorter time.

It is also worth noting that, for domiciliary care, the period of time is over four years and not two years. For GPs, where it was felt that the cost increase was the straw that might break the camel's back, the baseline funding has been increased to allow for the extra increase.

Baroness Walmsley: My Lords, am I right in thinking that the help for GPs will be over just one year?

Lord Prior of Brampton: I believe that it has gone into the baseline funding of the GP contract, but if I am wrong about that I shall write to the noble Baroness.

More generally, the CQC's scope and the way that it does its inspections is just much broader than it used to be. They are done in more depth and detail. This statutory instrument was introduced to Parliament so that it would reflect what the CQC is now doing and recognise its enlarged scope. The regulations do not extend the remit of the CQC's activity or the scope of reviews or performance assessments to additional providers or services; neither does it change the fees actually charged.

The CQC, like every other aspect of the NHS, is going to have to save a considerable amount of money over the next five years, which the noble Lord, Lord Hunt, referred to in his speech. This means that the kind of inspections which we have seen in some NHS trusts, where a large number of very expensive people descend upon a trust, will have to be scaled back to some extent. As the noble Baroness intimated, I think that we will see a more risk-based inspection model—a bit more like the Ofsted model. I suspect that we will see more unannounced inspections as well, because a large part of the cost of the CQC is not just its direct cost but the indirect costs on the trusts preparing for the inspections. Sometimes the degree of preparation undermines the validity and insightfulness of the actual inspection.

I take on board entirely the strictures of the noble Lord, Lord Hunt. This is another expense when times are extremely hard, but it reflects the fact that the scope of the CQC is now broader than it was three years ago, and the need to have full cost recovery over a fairly limited time.

Lord Hunt of Kings Heath: My Lords, again, I am grateful to all noble Lords who have spoken in this debate and to the Minister. I have no problems whatever with the wider scope of the CQC's responsibility, which inevitably has an impact on its cost base. Nor do I object to full cost recovery as a principle, because that has obviously been accepted by Governments over many years.

My complaint is that it is hugely insensitive for the Government to insist, which is essentially what has happened, that the NHS and parts of the care sector had to move to two-year full cost recovery. I note the alleviation given to GPs and domiciliary care, but I am

[Lord Hunt of Kings Heath]
puzzled that residential care was not given the same amelioration, given that, as we know, the care sector is in such a parlous state at the moment. We obviously look forward to the CQC strategy; I am sure it is right that it should be more risk based.

I very much welcomed the intervention of the noble Earl, Lord Lindsay. The United Kingdom Accreditation Service does its role very well. I also recently met RDB Star Rating, which is based in Sussex although it covers a number of institutions nationwide. It also made the point to me that, if you have a strong accreditation system, not only is there greater ownership by the bodies being accredited—because they have volunteered for it—but it ought to tie into the CQC process. The Minister has encouraged the noble Earl to meet the CQC; I hope that he might encourage the CQC to meet the noble Earl to see whether further progress can be made, because we clearly ought to take up the offer in relation to accreditation, if at all possible.

This has been a good debate. It is not at all a criticism of the CQC but of the Government and their approach, and it has been useful to raise those issues.

Motion agreed.

Tobacco and Related Products Regulations 2016

Motion to Take Note

4.30 pm

Moved by ***Viscount Ridley***

That the Grand Committee takes note of the Tobacco and Related Products Regulations 2016 (SI 2016/507).

Viscount Ridley (Con): My Lords, first, I apologise for springing this debate on my noble friend the Minister, in particular, at such short notice right at the end of a Session, but he will appreciate why this is an urgent matter. In 10 days' time, the EU tobacco products directive may become law through a negative statutory instrument recently laid before this House. I emphasise right at the start that I have no problem with most of the regulations—just the parts relating to e-cigarettes and vaping, which are essentially Parts 6 and 7. My Motion is a little vague on that; the original draft was a little more specific.

As noble Lords will know, it has long been my view that the directive scores an own goal by bringing in measures that would discourage the take-up of vaping and thereby drive people back to cigarettes or prevent them quitting. However, it is not just I who take that view. Increasingly, it is the view of Public Health England and of the Royal College of Physicians, whose recent report on this topic is, I think, a game-changer in this debate. So I am here, at the 11th hour, to help my noble friend prevent a historic mistake being made, or at least to raise the issue. In passing, I note that I have nothing to declare: I own no shares and take no income from anything related to vaping or smoking.

The horrific death toll from smoking—100,000 of our citizens die every year—has, I suspect, touched the lives of many in this Room. It is the biggest cause of preventable death on a scale that is hard to comprehend: it is a Hillsborough every eight hours. It is a scourge that deserves the very best of technical ingenuity and policy-making skills to solve.

Vaping offers, as the Royal College of Physicians said, a great opportunity to apply to smoking the principle of harm reduction—an idea pioneered in this country. When people behave in harmful ways, how do you stop them? You can punish them in the hope of deterrence, as we do with murder and fraud; you can hector them, as we do with alcohol and sugar; or you can try to offer safer alternatives, which is how we tackled HIV infection and heroin addiction in this country in particular, and it is how I believe we should now deal with tobacco. In the case of addictions, where people find it genuinely very hard to resist temptation, harm reduction surely makes sense.

Britain is probably the world's leading vaping nation. Virtually all of South America has banned the practice entirely, at the behest of the tobacco industry. In America, it is largely demonised and quite a lot of people do not know what it is. Almost all the 2.6 million vapers in Britain are smokers or ex-smokers, and the quit rate for those who try vaping is faster and greater than it is with nicotine replacement therapies or cold-turkey cessation. In other words, this is a public health revolution, and it is costing the taxpayer nothing. By saving smokers a fortune, rewarding entrepreneurs and averting ill health, it is boosting the economy.

However, we have before us a piece of legislation that strangles that breakthrough in red tape. It is the product of big-company lobbying and back-room deals in Brussels. It is legislation which last month the Department of Health admitted, in its impact assessment, risks increasing, not reducing, the amount of smoking. I hope in his remarks today that the Minister will be fully candid and accept that this part of the directive is a mess which does not deserve defending but does need ameliorating. I have alerted him already to three specific matters on which I seek clarity.

First, given that the Royal College of Physicians last month told the Government that they should promote vaping to smokers "as widely as possible", what new, emphatic and unambiguous statement will the Minister make in support of vaping?

Secondly, given that the department estimates that the tobacco products directive rules will ban 90% of advertising that would have helped to promote switching, what budget has the department specifically set aside for a public information campaign to encourage smokers to move to vaping, as the royal college and Public Health England both want?

Thirdly, given that the regulatory burden that the department is about to place on the industry is so extreme that his officials estimate—at least, this is the only estimate in the impact assessment—that the number of notifiable products will be reduced by 96%, from 25,000 to possibly as low as 1,000, what expenditure will the department make specifically to reduce the cost of the onerous testing regime on the industry?

I would ask the Minister to avoid repeating the erroneous suggestion his officials have been making that any of the £13 billion of public health benefits that his department surmises will come from the tobacco products directive would be the result of Article 20, or

Parts 6 and 7 of these regulations. In the table set out on page 45 of the impact assessment, the department has not been able to quantify a single benefit from vaping regulation.

Let me put this in a little context. At the beginning of this decade, attempts to reduce smoking were stalling. We had taxed the habit to the point where the main beneficiaries were black market traders, we had barred smoking from every public building, and nicotine patches were proving unpopular with smokers. Then along comes a technical breakthrough, thanks to a man who I have met named Hon Lik, working in central China. It was something that gives a nicotine hit in the same fashion as smoking but is far safer and cleaner. It is a fantastic piece of luck, or rather ingenuity. As the Prime Minister told the other place in December, vaping has now helped more than 1 million people in this country to stop smoking altogether.

How safe is vaping? We know that concentrations of harmful and potentially harmful constituents such as carbonyl compounds, tobacco-specific nitrosamines, polycyclic aromatic hydrocarbons and other constituents are in the order of 1,500 times higher in cigarette smoke than in vapour. A well-controlled trial has recently been carried out by Dr Grant O'Connell and colleagues working for the vaping manufacturer Fontem Ventures. They asked 15 smokers to give up altogether for five days, 15 to vape only for five days, and another 15 to mix vaping and smoking for five days. They measured the harmful and potentially harmful constituents in the urine, blood and breath of each group, and the results were striking. After five days, the vapers' carboxyhaemoglobin levels—an indication of how much carbon monoxide they had in their systems—had dropped by 83%, which was an even bigger drop than in the cold-turkey cessation group, whose levels dropped by 75%. Even the dual users had seen a drop of 23%. The amount of carbon monoxide they exhaled had halved in both the vapers and the cessation group. Much the same was true for all the other biomarkers except, of course, for nicotine.

In other words, in terms of harmful constituents vaping is almost indistinguishable from not smoking at all. Both Public Health England and the Royal College of Physicians agree that it is much safer than smoking. As far as we can tell, nicotine addiction without smoking is about as dangerous as caffeine addiction.

Vaping is therefore a public health triumph that the Department of Health has, to its extreme shame, done its utmost to block. In 2010, the department's medicines regulator, the MHRA, tried to ban vaping devices completely. In 2013, the agency—which is financed largely by the pharmaceutical industry—tried to insist that every e-cigarette should be licensed as a medicine. This would again have amounted to a de facto ban. After six years of trying, the agency has so far only managed to license one e-cigarette, which is still not available to the public. If the Department of Health had had its way, there would not be 25,000 varieties of vaping product on the market today, but zero. The only winners from the Department of Health's policy prescriptions would be undertakers.

Thankfully—and my noble friends will know how painful it is for me to say this—the European Parliament voted down the folly of exclusive medicinal regulation, but it did not vote down the rest of Article 20 of the tobacco products directive which, in that wonderfully undemocratic way, is now being forced upon us. The truth is that these regulations were scripted in Brussels by pharmaceutical companies desperately trying to protect the sales of their widely unloved nicotine replacement therapies. What we have before the House is still a piece of legislation that is not fit for purpose. When even the Department of Health says that it risks increasing smoking, we know that we are facing a moral responsibility as legislators to review this in great detail. It most certainly should not just be nodded through.

It is no defence to say that some regulation is required. No sensible person would argue against us knowing what is going into e-liquids and what comes out in vapour. Potential toxins should be tested, as happens with food, cosmetics and other consumer products. But as the department admitted in an Answer to a Written Question, far more adverse incidents are reported by doctors about pharmaceutical nicotine replacement therapies than e-cigarettes. At most, a bit of tidying up of the testing process was needed.

Let me put three more questions to the Minister. The Royal College of Physicians describes the big warning labels that will deter smokers from using vaping devices as "illogical". Does the Minister agree with the royal college on this?

Secondly, the ban on stronger vaping devices—the ones most likely to wean heavy smokers into vaping—was criticised two years ago by a dozen scientists writing to the Commission, which ignored their advice. Economists now predict that 105,000 extra deaths every year across Europe will result from the ban on stronger devices. Does the Minister agree with this estimate? If not, what is his estimate?

Thirdly, the directive proposes that, to cut down the risks of children starting smoking, it is necessary to create a minimum cigarette packet size of 20, yet it imposes a maximum size for vaping devices. This miniaturisation will raise prices and generate more packaging waste. Where is the logic in making the most successful substitute to tobacco more difficult to use?

The Minister has a choice. He can blame Brussels and say this is now a good reason to quit the EU in order to help people quit smoking—a lot of the country's vapers, who are natural libertarians, are beginning to take that view and to dream of the day after Brexit when Britain abolishes the tobacco products directive and goes back to pioneering the virtual elimination of smoking and its replacement by something much less harmful. Or, if the Minister does not wish to turn this into a referendum issue, he can have a quick rethink and try to alter the implementation of the directive. We have a statutory instrument before us, about a third of which is devoted to stifling an exciting innovation that is saving lives. I beg to move.

Lord Brabazon of Tara (Con): My Lords, I thank my noble friend Lord Ridley for raising this issue today. Like him, I intend to concentrate solely upon e-cigarettes and vaping. I have no views whatever on the rest of the directive.

[Lord Brabazon of Tara]

Unlike my noble friend, I must declare a major interest in this subject, in that I smoked 20 cigarettes, a packet, a day for the best part of 50 years. I tried a number of different ways of giving up—patches, chewing gum and will-power, none of which worked—until two years ago when I took up using an e-cigarette. I have not had a cigarette since. I am pleased to hear of the health benefits my noble friend has described, which I hope I am now enjoying. I am also pleased that I now have the endorsement of the Royal College of Physicians and Public Health England in my course of action. It is, I believe, recognised by the Department of Health as the number No. 1 tool for helping smokers give up.

I do not know whether my noble friend has the figures—I do not—but I would estimate that 99% of people who smoke e-cigarettes are those who are trying to give up, or have given up, smoking real cigarettes. I cannot believe that anyone would start using an e-cigarette if they had not smoked an ordinary cigarette beforehand. Maybe some people have, but I do not know.

I can also tell the Committee that it is extremely good for the pocket, as well as the health, in that 20 cigarettes now cost something like £9 a packet, a large amount of which goes to the Treasury of course. I was spending £9 a day on cigarettes, whereas now I use a nicotine liquid, which comes in a 10 millilitre bottle, costs £5 and lasts me a whole week. So it is very good for my pocket.

I understand that nowadays a large proportion of cigarette smokers come from the lower-income categories of people and therefore it would be of great benefit to them if they were able to give up smoking cigarettes. I hope my noble friend can confirm that the type of nicotine liquid I use—which is 1.1% in 10 millilitre plastic bottles—will not be banned by this new regulation.

This directive was dreamt up in 2012, quite a long time ago before I—and, I suspect, most people—had heard of e-cigarettes. Like a lot of things that come from Brussels, it has not been adapted to the facts, including the fact that e-cigarettes are now recognised as a good thing. I hope my noble friend can assure me that he will do all he can to limit the damage that this directive might have on people who are trying to give up smoking.

4.45 pm

Lord Callanan (Con): My Lords, I, too, pay tribute to my noble friend for introducing this debate. I have a great sense of déjà vu because I was one of the people in the European Parliament that he referred to, who helped achieve the original decision against this directive's restrictions on e-cigarettes. I was also the shadow rapporteur for my group and part of the European Parliament negotiating team that sat until about 11.30 pm in the Berlaymont, with the Commission chairing the meeting and the Council on the other side of the table, thrashing out the messy compromise that we see before us now in the tobacco products directive. Again, I have no difficulties with the vast majority of the directive; my concern was with the articles on e-cigarettes.

Before I started working on this, I had no particular knowledge of the subject. But when any dossier is placed before you, the first thing you do is read the various publications available and listen to all the lobbying and advice and you are also contacted by constituents. I was first alerted to the issue when my email inbox started filling up with literally hundreds of emails from people all over the country—and, indeed, Europe—concerned that these magical devices they had used to give up smoking were going to be banned or severely restricted. Together with a number of MEPs from all sides—including members of both the Liberal Democrats and the Labour Party in the UK—we started a campaign to improve the directive.

I have to say that we were not particularly helped by Department of Health officials. I tried to speak to Ministers many times to find out who was behind the restrictions and why there was such a campaign against something which so self-evidently provides great public health benefits and harm-reduction measures, but I never got a clear answer. I was pointed to a recording of a former public health Minister appearing in front of the European Scrutiny Committee of the House of Commons. When she was asked why she voted for this directive on behalf of the Government, she turned to her officials and said "I think the e-cigarette provisions were removed from it, weren't they?"—which showed a worrying lack of understanding of what she was voting for on behalf of the Government.

Nevertheless, we ended up with this directive. It was a messy compromise and it is very badly worded, but it is a lot better than it could have been had we not campaigned on it. My noble friend Lord Ridley is quite right to point out the somewhat murky role of various pharmaceutical interests in the production of the directive. When I asked questions in the Commission and the Council—it seemed to me self-evident that these devices were brilliant for reducing tobacco smoking, which I thought was what we all wanted—I asked why they were even in the directive in the first place, given that it is called a tobacco products directive and e-cigarettes are not tobacco products in any sense of the word. The answer I received many times was that this was argued for by the pharmaceutical industry, which would have an awful lot to lose if e-cigarettes supplanted or replaced nicotine patches and gum. I do not know the truth of that, but it seems that it was very successful in getting what it wanted.

I completely agree with all the points made by my noble friends, but I have two additional points to make. First, on advertising, the Royal College of Physicians has a proud history at the heart of tobacco control. Since its first report, *Smoking and Health*, in 1962, it has been an intellectual leader in the field and is worth listening to. When the headline on the press release on its latest report states in bold,

"Promote e-cigarettes widely as substitute for smoking",

one would hope that the Government would get the message that its 21 world-renowned authors are trying to put across. But we would be wrong if we thought that, for the regulations that the department wants us to approve are not about the promotion of e-cigarettes but about the suppression of information about them.

Paragraph 176 of the department's impact assessment forecasts that the EU rules will reduce e-cigarette advertising by 90%. How are smokers supposed to

hear about e-cigarettes? In paragraph 167, the department nonchalantly claims that cutting advertising will in fact not reduce the number of smokers switching to e-cigarettes. We have heard this old argument many times before—not from health officials but from tobacco company executives trying to pretend that advertising smoking would somehow not increase the amount of smoking.

The messages that we give really matter. In the complex decisions that smokers make every day about whether to smoke or consume nicotine through much cleaner forms, their perceptions of the relative risks of these products are crucial. The Royal College of Physicians, Public Health England and Action on Smoking and Health have all raised deep concerns about how smokers perceive e-cigarettes to be much more risky than they actually are. It is very interesting that Action on Smoking and Health should now say that, because I recall that that was not the message that it was giving when we dealt with the directive.

We are certainly not going to give that message by banning 90% of advertising, nor by insisting on e-cigarette packaging carrying big health warnings, which is what the Government are asking us to approve in these regulations. The Royal College of Physicians described the imposition of these warnings as "illogical", bearing in mind that nicotine patch boxes do not have to warn of the dangers of nicotine.

Much of the problem stems from media reporting of junk science. The worst example was a headline in the *Telegraph* in December, which screamed:

"E-cigarettes are no safer than smoking tobacco".

It was a nonsense report based on, as I said, junk science.

The second point that I want to raise concerns novel tobacco products. A number of new products have been introduced in this category, particularly products called "heat-not-burn". These are very interesting developments, and a range of other alternative products is also in development. Some of the ones coming to market contain tobacco, but they work by heating it and not burning it. The absence of combustion is key. We all know that, as my noble friend Lord Ridley has said, harm from smoking comes primarily through the toxins produced by the burning of tobacco. In 1976, Professor Michael Russell wrote:

"People smoke for the nicotine but they die from the tar".

That was reflected in the title of the recent study by the Royal College of Physicians on e-cigarettes, *Nicotine without Smoke*. With such technological developments, and a new regulatory basis with the introduction of the TPD, are the Government looking at the opportunities to be had from the available range of products, in addition to e-cigarettes, as part of a harm reduction agenda in the new tobacco control plan?

This is truly a terrible piece of legislation, and I plead guilty for the part I played in helping to produce it in the first place. However, it is not too late to undo some of that harm and to help encourage the taking up of e-cigarettes and, consequently, a reduction in tobacco consumption. Instead of trying to restrict e-cigarettes, the Government should in fact be trying positively to encourage them.

Earl Cathcart (Con): My Lords, these regulations, or the directive, directly affect me, my health and indeed my well-being. I started smoking before I was a teenager, building up to about 50 cigarettes a day. I tried every trick in the book to kick the habit, but nothing seemed to work. I knew that it would kill me—that I would be gathered by the grim reaper before my time—but I just could not stop. I could not kick the habit.

Then, two summers ago, I was in a taxi in a traffic jam. I was chatting to the driver and at one point I said, "I do wish we could hurry up because I'm dying for a fag". He turned round with an e-cigarette in his hand and said, "Have you tried one of these?". I said, "No. What is it?". He explained that he had tried them and had not smoked a cigarette since. He kindly wrote down the details for me to google, but he insisted that if I tried e-cigarettes I must try the strongest ones I could get because, if I did not, I would not get the necessary nicotine hit and would be back on fags in no time at all. I took his advice about using the strongest nicotine—2.4%—and I have not looked back. I have not had one puff of tobacco since two summers ago, rather like my noble friend Lord Brabazon. So they do work and they do help people to stop smoking.

As we have been told, there are 2.6 million people vaping in the UK. Of those, 40% are, like me, ex-smokers and 59% are dual users who both vape and smoke. The Committee will agree that a single vape is better than a single drag on a fag. Interestingly, only 0.2% of under-18 year-old non-smokers have tried vaping, although continued use is negligible. Research conducted by Cancer Research UK found that smokers who vape are 60% more likely to quit than those who use will-power or over-the-counter nicotine products. These statistics demonstrate that vaping is used almost entirely—99%—by current and ex-smokers. Sixty-one per cent of them say that the sole reason for vaping is to stop using traditional tobacco products.

So why have we got this directive and these regulations? Our masters in Brussels believe that vaping could provide a gateway to smoking and that these tough new laws are necessary to protect non-smokers, particularly children, from using e-cigarettes. However, as I have tried to explain, there is no evidence of this. Ninety-nine per cent of those vaping are current or ex-smokers like me. As to children, as I said earlier, only 0.2% of under-18 year-old non-smokers have tried vaping. There is no evidence that vaping is a gateway to tobacco and no evidence that vaping products influence children.

As vaping is estimated to be 95% safer than smoking, you would think Brussels would want to encourage it. Where does Brussels get its evidence that vaping is harmful? I do not know. Has it been got at by the tobacco lobbyists, who have seen their sales of traditional tobacco fall, or by the pharmaceutical industry, as my noble friends Lord Callanan and Lord Ridley have already suggested?

Brussels is banning advertising; e-cigarettes must carry health warnings; and nicotine strengths are to be restricted. To my mind, restricting nicotine strength to 2% will be particularly damaging, but I would say that, as I still use the 2.4%—as do about a quarter of e-cigarette users. By taking up vaping, I hope to keep

[Earl Cathcart]

the grim reaper at bay for a little longer. I hope that when I run out of my 2.4% nicotine supply and I am forced to use the weaker nicotine, I do not switch back to smoking. That is the danger for many e-cigarette users. Perhaps by the time I run out of my 2.4% nicotine supply, stronger nicotine may be available on the black market, with all the dangers that that will entail.

I would like to use one or two quotes to back up my previous assertions. The Office for National Statistics has said:

"E-cigarettes are almost exclusively used by smokers and ex-smokers … and almost none of those who had never smoked cigarettes",

were e-cigarette users. Public Health England has said:

"There is a need to publicise the current best estimate that using EC is … 95% safer than smoking".

It went on to say that:

"Encouraging smokers who cannot or do not want to stop smoking to switch to EC could help reduce smoking related disease, death and health inequalities".

This was backed by the Royal College of Physicians, which said:

"On the basis of the available evidence, the RCP believes that e-cigarettes could lead to significant falls in the prevalence of smoking in the UK, prevent many deaths and episodes of serious illness".

Even the Prime Minister, last December, said:

"We need to be guided by the experts, and we should look at the report from Public Health England, but it is promising that over 1 million people are estimated to have used e-cigarettes to help them quit or have replaced smoking with e-cigarettes completely. We should be making it clear that this a very legitimate path for many people to improve their health and therefore the health of the nation".—[*Official Report*, Commons, 16/12/15; col. 1548.]

Quite so.

I do not know what my noble friend the Minister is going to say when he responds, but I expect him to support the regulations and the EU directive. There is very little else he can do. Our masters in Brussels have told us to jump and, sadly, the only thing that the British Government can do is jump—until 24 June, of course.

5 pm

Lord Stoddart of Swindon (Ind Lab): My Lords, I first declare an interest, because this is a tobacco and related products order and I am an associate member of the Houses of Parliament Pipe and Cigar Smokers' Club. I am an associate member because I am a non-smoker, so they tolerate me. I am pleased to be a member of that club because I believe that the attitude towards smoking has been quite absurd in many respects. Measures have been taken against the smoking population—I am talking about the adult smoking population—that are not appropriate in a democratic society, which should allow adults to make choices about their lifestyle and not be dictated to by government.

However, we are not talking about tobacco today. I only just saw the Prayer from the noble Viscount, Lord Ridley—if it is a Prayer—for the debate that he has instituted today, and I think that he and other noble Lords have really put the case. As far as I am concerned, there is probably nothing else to say, except to give them support in resisting the Government's, and of course the EU's, decisions to restrict a product that is going to assist others in giving up tobacco smoking. That is almost impossible to believe: that a Government who have been so anti-smoking, and who have themselves brought in so many anti-smoking measures over the years—I have been involved with them for at least 25 years—should now, when we are on the brink of assisting people to give up tobacco smoking, put these very stringent restrictions upon them. Why on earth are they banning the advertising of them if they are a health benefit to people who smoke and the Government think that people ought to give up smoking? To me, that seems to be an absolutely absurd position.

Have there been consultations with the producers of what are called e-cigarettes, but perhaps that was a mistake because they are not cigarettes? Anyone who mentions cigarettes is immediately jumped on by the Government and the department, so it may have been a mistake to label them as cigarettes since they clearly are not and should not be treated as such. Have Ministers had discussions with these producers? I ask that question because the department and Ministers refuse even to meet and have discussions with the tobacco companies. Perhaps that is understandable because the World Health Organization recommends that they should not be given a voice. However, in this case it is something that will help people to give up tobacco. Again, have they had discussions with the people who produce e-cigarettes? I should like to know the answer to that.

The only other thing I have to say is this. I hope that the Government will listen to this debate, although in fact there is not much hope of that because in the past trying to get the Government to listen to reason is like banging your head against a brick wall. It does not matter what you say. They have their policies, but when they get into government, they often change them. I can remember sitting on the other side of the Moses Room and listening to a former health Minister speaking—not voting—against some of the measures that were being introduced by the Labour Party. An example of those was the hiding of cigarettes behind blinds. He was against that, and indeed I well remember him meeting with retailers and saying how a Conservative Government would see that that was repealed. But of course they are in government now and so they are in favour of it, and they have brought forward this legislation. It is not about banning a dangerous product like cigarettes; it is about a product which helps people to stop smoking.

So I hope that the Minister will listen carefully to the experiences of those who have spoken in this debate. I should add that I have met many people, including a relative of mine, who had been heavy smokers but were weaned off smoking by using e-cigarettes. I am obliged to the noble Viscount, Lord Ridley, for seeing to it that we have had a proper debate and I hope that the Government will listen to it.

Lord Snape (Lab): My Lords, I should start by apologising to the noble Viscount, Lord Ridley, for missing the first few minutes of his speech. I appear to be a dupe to the railway industry at the moment. Today's excuse for the cancellation of my train was a

broken windscreen, which I thought was pretty unique. It was a 125 mile-an-hour Pendolino, so I suppose that the windscreen ought to be intact for the whole of the journey.

I agree very much with what has been said from both sides. I do not have any financial or personal interests to declare, although at the age of 74 I know that my generation are habitual smokers. I was surrounded by smokers. Both my parents smoked and, when I went to work for the railway industry, virtually everybody I worked with smoked. However, unlike the noble Lord, Lord Brabazon, or the noble Earl, Lord Cathcart, I managed to find the will-power to give up about 30 years ago. I did it purely by terrifying myself. It became apparent that smoking was synonymous with lung cancer. I convinced myself that every cigarette I lit was the one that was going to give me lung cancer, so eventually I terrified myself into stopping.

However, I do not understand the purpose of this SI or the fact that we are going to ban products that will help people to give up smoking. Like other speakers, I do not believe that someone who is currently a non-smoker will move from vaping to tobacco. Surely it has been proved, or is obvious enough, that people move the other way—from tobacco to vaping—and I cannot understand why the Government are so ready to accept this SI. That is not to say that I am getting involved in what is going to happen on 23 June.

There is a group of people whom the Government ought to be concerned about regarding smoking in the future. As I go round the country, I am concerned about the number of young people who smoke, particularly the number of young women, many of whom believe that smoking helps them to stay fairly slim—I was going to say "fit", although obviously it does not do that. Anything that would help them to come off tobacco would be good. I have no doubt that the two medical doctors who will reply for both sides will tell us that there is no scientific evidence that smoking keeps you trim. However, I again quote my own experience. I put on a stone and a half quite quickly when I gave up smoking. There was no medical reason for that. It is a fact that smokers are anxious to put down their knives and forks and head for the door to have a cigarette immediately after the main course. Once I gave up smoking, I stayed for the ice cream and puddings and so on. So I want to know from the medical profession, from both sides of the Room, which will kill me first—smoking or my spare tyre. Understandably, I have been warned about both.

Mention was made by the noble Lord, Lord Callanan, of the reduced-risk tobacco products, such as the "heat-not-burn" products, which I understand the industry is currently looking at. I understand that the Chancellor mentioned these products in his recent Budget. I would be interested to know from the Minister what the Government's intentions are. I fear that if the Treasury acts in the way that it usually acts under any Government, it will be another excuse to tax something as heavily as possible. However, if we are serious—which we are—about weaning people off the demon that is tobacco, then banning alternative products which are proven to be less dangerous is a far from sensible way forward, and I would be interested to hear from both Front Benches why they are apparently supporting this SI.

The Earl of Erroll (CB): My Lords, I want to say just a couple of words about this. First, I do not really have an interest to declare. I have a wife who is a very heavy chain-smoker, but I do not smoke—I let her go on smoking because it keeps her slightly calmer and liveable-with, and it is probably better than her going on to Valium. Personally, I am a chocoholic, which is a different problem altogether.

I think that we should separate out in our minds the difference between the harm done by the burning of substances which we inhale and the harm, or not, from a particular drug within it—nicotine. If you separate those as two different issues, you realise that this is not the right directive, because this is about tobacco, which at the end of the day is a herbaceous substance which we dry and burn. That is what it is meant to be about; it is not about whether or not nicotine is a beneficial drug.

I do not know much about this because I am not a doctor. I read things in the press which say, for instance, that it can help with Alzheimer's and dementia, and I read other things which say that that is rubbish. I agree with the noble Lord, Lord Snape, that nicotine definitely used to be an appetite suppressant. One thing that I predicted when tobacco was cracked down on was that we would have an obesity crisis. It is one of the few things that I have been right about and it happened very quickly. If we wanted to prevent all the problems with people being overweight, we could perhaps recommend smoking—it is a question of which way you go.

The calming effect is well known for people who are quite nervous and tense; again, I think that is from the nicotine rather than the burning part of it. We also now have signs over the motorways saying, "Tiredness kills—take a break". In the old days, you had a cigarette when you were driving and felt tired. I know that you should take a break but sometimes it is 30 miles to the next place where you can stop or you have a deadline, so a nicotine hit was a perfectly acceptable way of keeping yourself awake. Maybe vaping would do that, but the point I really want to make is that we should not be confusing the two things.

5.15 pm

The point made by the noble Lord, Lord Stoddart of Swindon, was also apt and very good: "What's in a name?". They should never have been called e-cigarettes because they are not cigarettes. This goes back to the point of the noble Viscount, Lord Ridley, about having to separate the two issues. He was absolutely right there.

I have two things to finish on. One is that this is a directive which we are trying to implement into UK law, not a regulation, which would mean that it was directly applicable in the UK. You should be able to modify the purpose of a directive slightly, in light of the local circumstances, while still trying to comply with its spirit. I have not read the directive at all, so I do not know whether there should be some room for manoeuvre. If we feel that it would be better for the UK population to write it into our local laws in a different way, I hope that such an amount of latitude exists within the directive—and within the EU—to allow us to do that.

[The Earl of Erroll]

The final thing is that wonderful conspiracy theory: that the Treasury gets huge amounts of tax from the smokers but not from the vapers, so the Treasury may rather see us smoking than see vaping take off, and that the Government have a vested interest in making sure that this directive goes through unchanged to prevent vaping. Maybe they should declare that every time they try to promote the directive.

Lord Hunt of Kings Heath (Lab): My Lords, this has been a great debate and I am grateful to the noble Viscount, Lord Ridley, for once again bringing our attention to this matter. It is a pity that we are in Grand Committee and not in the Chamber, but I can understand the reason for that. I should declare my presidency of the Royal Society for Public Health, which has of course produced documentary evidence on electronic cigarettes.

It is tempting to debate Europe—and I look forward to the view of the noble Lord, Lord Prior, on that, as it clearly seems to be part of our debate—and it looks as if we have quite a long time to wait this evening. I am in favour of remaining in the EU, but I would remark that this directive does not seem to show much evidence of the Prime Minister's claim to have negotiated a new concordat and relationship with the EU.

I am very doubtful about the argument that, if we were outside the EU, we would not be doing this. The fact is—I speak as president of the RSPH—that some elements in the public health world were prejudiced from the start against e-cigarettes. That clearly influenced the Department of Health and is the reason why it has taken such a mealy-mouthed approach to e-cigarettes, which is simply not based on evidence at all. It is interesting that, if you look at some of the papers produced by public health bodies, there are some weaselly words around this issue: "We still don't know and we need to be very careful". They are really trying to find a legitimisation for the initial very negative reaction, which I am afraid has laid the foundations for where we are today, because this is bonkers. It is simply madness. Here we have a product which is clearly of benefit to smokers and there is no evidence whatever that it will be used by non-smokers, which is where all this nonsense has come from. Why would a non-smoker take up these e-cigarettes?

The noble Lord, Lord Stoddart, and I have debated tobacco issues for many years, and he will know that I have been strongly in favour of very strong legislation. I moved the amendment to ban the smoking of tobacco in cars with children only a year or two ago, so I am not at all worried about being very tough on smoking, but e-cigarettes are completely different. I do not understand why they are part of the directive at all or classified in the same way.

The evidence is abundantly clear that e-cigarettes are almost wholly beneficial. My concern is that it is also clear that the public are, at the moment, confused. RSPH research revealed that 90% of the public still regard nicotine itself as harmful. Going back to September 2015, Public Health England issued a joint statement with other UK health organisations, saying:

"And yet, millions of smokers have the impression that e-cigarettes are at least as harmful as tobacco".

It seems to me that one of the real adverse consequences of this is that, as it becomes known that there are going to be major restrictions on the promotion of e-cigarettes, all that will do is emphasise the belief that they are harmful. I have seen the RIA, but I could not see there any analysis of the impact that that could have on reducing the uptake of e-cigarettes among smokers. However, it is a very important point.

I want to put three points to the Minister. First, the noble Viscount, Lord Ridley, asked him what would happen to the investment in smoking cessation services. My understanding is that, as a result of the Government's cut to the grant to local authorities for public health, smoking cessation services investment is going down. Will the Minister confirm that and say what he is doing to reverse the pattern?

The second point is that, clearly, this directive will go through, because there is no Motion to stop it. What monitoring will take place, and how soon will the Government undertake an assessment of the impact? Assuming that we are still in the EU, is the Minister prepared to go back to the EU if evidence becomes clear that this is having an adverse impact on smokers giving up smoking? I hope he can give some reassurance on that.

The third issue relates to enforcement. In the statutory instrument, regulation 53 makes it clear that:

"It is the duty of each weights and measures authority in Great Britain and each district council in Northern Ireland to enforce these Regulations within their area".

What guidance is going to be given to the weights and measures authorities about taking a light-handed approach to enforcement?

It is quite clear that these provisions are not supported. It is pretty obvious that the Government themselves do not support them because of the amelioration that they have attempted in transposing the directive. At the very least, one could expect a message to be given to weights and measures authorities that the Government expect enforcement to be proportionate, minimalist and certainly light touch.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, I do not know whether to thank my noble friend Lord Ridley for bringing this debate here today or not. The arguments that have been put have been very powerful and it would be obtuse of me to say otherwise.

Perhaps I can start by going back to the opening words of my noble friend Lord Ridley, who said that there are three ways of trying to influence the behaviour of people doing things that do harm: you can punish them; you can hector them; or you can try to offer safer alternatives. In the article he wrote in the *Times* some time ago, he used the example of methadone as something that is not desirable in itself but is used as a means of treating people with heroin addiction.

In the case of tobacco we have tried all three things. We have penalised people through taxation, we have hectored them incessantly for years, and having tried nicotine replacement therapies, in a sense vaping is a way of encouraging people to use something that is considerably less harmful than smoking. Actually, most people would agree that we have been hugely successful

in reducing the consumption of tobacco in England. I was asked for a statement of the Government's view on vaping; I think I can say unequivocally that we are in favour of it as a means for people to come off smoking cigarettes. There is absolutely no question about that. The reports produced by Public Health England and most recently and very powerfully by the Royal College of Physicians entirely endorse that view. The president of the Royal College of Physicians, Professor Jane Dacre, said in response to the report:

"With careful management and proportionate regulation, harm reduction provides an opportunity to improve the lives of millions of people".

I pick that out because she used the words "proportionate regulation", and that is really what we are discussing today. It is not about whether we are in favour of vaping or not, it is about what kind of regulation should be around it.

On the European element, given that the noble Lord, Lord Hunt, could not resist throwing that in as one of his questions, I am not sure whether if we had been left to our own devices we might not have come out with something far worse several years ago. The noble Lord was kind enough to mention the original views of PHE and the MHRA, so we may well have brought in a licensing system or even have banned them altogether. I am not sure that one can lay this at the door of Brussels or indeed our own Government. We have been far too quick to resort to regulation in many areas and as a rule I am wholly in sympathy with less regulation. That is the best place to start. What we are discussing today is whether this regulation is proportionate, what damage it could do or what the directive's unintended consequences might be.

I should just mention while I have it to hand, to put the concerns of my noble friend Lord Brabazon of Tara to rest, that the concentration which he is taking it at will not be affected. It will not have to be licensed by the MHRA, but sadly I cannot say the same to my noble friend Lord Cathcart, who at 2.4% is higher than 2%, which is the cut-off point for licensing. But I shall come to that in more detail in a minute, if I can.

Perhaps I may pick up on a few of the fears that noble Lords have expressed about the directive and see whether I can allay their minds today. It has been said that the directive will ban flavourings in e-liquids. I should make it clear that it will not do so. What it does say is that flavourings which pose a risk to human health should not be used; we could probably all agree that that is a sensible rule. There is an additive called diacetyl, which I think is also used in the making of popcorn, and there are other flavourings where there is some evidence that airways can be inflamed. The noble Lord appears to be questioning that, but I think the RCP report cites evidence that some flavourings can cause damage.

It has also been said that the directive will ban all advertising and prevent shop owners communicating with their customers. It does not do that. The new rules do not prevent information being provided to customers either online or in physical retail outlets, nor does it ban online forums, independently compiled reviews or blogs. Some advertising will also be allowed, such as point-of-sale, billboards and leaflets, subject to the rules set out in existing advertising codes to ensure that these do not appeal to people aged under 18 or non-users. There will therefore remain a wide range of information on the products available to smokers who wish to buy these products.

Lord Stoddart of Swindon: I take it that they will not be allowed to advertise on television—am I right about that? I see television adverts from the pharmaceutical companies for Nicorette and that sort of thing, so why on earth should these products be treated differently?

5.30 pm

Lord Prior of Brampton: What the directive is trying to do, though it may not be doing it well, is to differentiate between smokers and non-smokers, particularly non-smokers under the age of 18. It wants to encourage information being given to smokers but does not want to risk the unintended consequence of normalizing vaping so that people who do not smoke start doing so. That is the purpose behind it.

The noble Viscount, Lord Ridley, asked how much money would be spent on public information. If there is evidence that the impact on advertising is such that smokers are not getting the right information about switching to e-cigarettes or vaping then there will be a strong case for a public information campaign to correct that, but we will have to wait and see what impact the directive has. It has also been said that the directive will ban certain types of products and make those that are available less effective. No current type of e-cigarette will be banned. In addition, it is worth noting that this is a fast-growing, highly disruptive and innovative market—I read somewhere that Goldman Sachs has put vaping down as one of the eight most disruptive products being marketed worldwide at the moment. Although we do not know how many products there are in this new and dynamic market, there may be as many as 25,000. Officials are persuaded that after this directive comes through there will still be many products on the market.

Concerns have been raised about the cost of notification for products that are below 20 milligrams per millilitre. The MHRA has announced that the fee for notification will be £150 per product and has been leading work with our partners in other member states and UK industry to develop and publish pragmatic guidance on the reporting requirements to minimise the burden on business. So, we will have to wait and see but I do not think it is right to assume that there will be a significant diminution of the number of products in the market.

Lastly, concerns have been expressed that the limit of 20 milligrams per millilitre will not meet the needs of smokers who are most addicted and that they will be unable to benefit from the harm reduction potential of these products. Again, this is not the case. Higher strength products can still access the market after 20 May, but they will need a medicines licence. Indeed, the Government would welcome a wider range of applications for licensed products. The noble Viscount, Lord Ridley, said that there is only one at the moment—which is true—and that it has not been properly marketed. But the Government would welcome more products in this space so that they can be made available to those such as the noble Earl, Lord Cathcart, who need and would benefit from them.

[Lord Prior of Brampton]

We know that the most commonly purchased products are below 20 milligrams per millilitre, though we do not know the exact number above that limit. We also know that at this strength or below, it meets the demands of the majority of current users and balances the risk of exposure of nicotine to children with the needs of users. Last week the European court agreed with this assessment, ruling that the provisions set out in the tobacco products directive, including those limiting strengths, were proportionate and valid.

It would be a massive unintended consequence if, as a result of this directive, fewer people gave up smoking.

Lord Lawson of Blaby (Con): It may well be unintended. I would not know the intentions of the curious people who devised this measure, but it is certainly an inevitable consequence, and it is the consequence that matters, not the intention.

Lord Prior of Brampton: The intention of the regulations is to make vaping safer and less variable than it currently is. The intention of the directive is to make it a better product and to cause more people to use it. If it does indeed result in smokers not giving up smoking, then it will have achieved the reverse of what the Government wish to do. The Government's view is clear: we wish people to quit altogether but if, as a way of quitting, they can give up smoking and take up vaping, that is something that we wish to encourage. Of course, I understand that nothing I can say today will satisfy my noble friends and other noble Lords, but I have done my best to put our case forward.

Lord Hunt of Kings Heath: The Minister is very gracious to keep giving way. It is interesting that he used those terms. There is a reluctance to promote vaping. Even in the words that he used there was a qualification. The Government would prefer everyone to give up smoking but it sounds as though they are half-hearted about this. I understand why they are in that position but the issue that I raised with the Minister is that the evidence is that the public are confused. My concern is that if weights and measures authorities enforce this in a heavy-handed way, it will confirm the public's view that there is something wrong with vaping. For goodness' sake, if we could persuade all smokers to vape, it would be a fantastic public health movement. Why is there this hesitation? I do not understand it.

Lord Prior of Brampton: I think that the hesitation comes because for a number of years the evidence around vaping was not clear. Many distinguished scientists felt that it was potentially harmful; it was not just the tobacco lobby. It is now absolutely clear, as I said earlier—I am unequivocal about this—that vaping is far more preferable to smoking. That does not alter the fact that quitting altogether, either smoking or vaping, is probably the best outcome.

Lord Snape: The noble Lord, Lord Callanan, and I mentioned the "heat-not-burn" products. I know that strictly speaking they are not covered by the SI but, as I understand it, they are covered by the legislation emanating from Brussels as a whole. As the Chancellor mentioned in his Budget that he was looking at an alternative to cigarettes, I wonder whether the Minister can comment on the Government's future intentions.

Lord Prior of Brampton: If that is on the taxation point, I am not aware of any intentions to tax these products. I will find out more about that question and write to the noble Lord but, as things stand, I am not aware of any intention to do so.

Earl Cathcart: My Lords, the noble Lord, Lord Hunt, has twice mentioned weights and measures authorities enforcing this in a heavy-handed or a light-touch way. Can the Minister comment on which he thinks they will do?

Lord Prior of Brampton: I certainly hope that enforcement will be more Italian than traditionally British, if I may put it that way.

Lord Stoddart of Swindon: I am obliged to the Minister for giving way yet again. I understand that he has no power over taxation but, as a member of the department, he has the opportunity to make recommendations to the Treasury. Would he be prepared to ask his department to recommend to the Treasury that it should not put any tax, other than VAT, on this product?

Lord Prior of Brampton: My Lords, I am not responsible for public health in the Department of Health but I will talk to my honourable friend Jane Ellison, who is the Minister for Public Health and will put that view to her very strongly.

Viscount Ridley: My Lords, I will be brief because I know that other noble Lords are waiting to start the next debate. I am most grateful to all those who have spoken in the debate: my noble friends Lord Brabazon, Lord Callanan and Lord Cathcart; the noble Lords, Lord Stoddart, Lord Hunt and Lord Snape; the noble Earl, Lord Erroll; and my noble friend Lord Prior. I say to the noble Lord, Lord Snape, that he looks in extremely good shape. He did not get the advice he was looking for about his health and I am not medically qualified, but he looks fine to me.

Lord Snape: I apologise for interrupting, but what are his medical qualifications in reassuring me?

Viscount Ridley: I withdraw the advice.

I agree with the noble Lord, Lord Stoddart, and the noble Earl, Lord Erroll, that we need to change the vocabulary in this area. Indeed, I myself now use the phrase vaping device rather than e-cigarette whenever possible because it makes more sense and it is a shorter term. I was also fascinated to recall when listening to the noble Earl, Lord Erroll, how one kept awake on motorways before Red Bull was invented. I did not realise that cigarettes had that effect. The noble Lord, Lord Hunt, has put his finger on it. There is still a real issue of public confusion, which we have seen reflected in recent opinion polls. Over the past couple of years, people's suspicions about these products have increased because of the misinformation in the

studies that were cited by others. The issue of harm is a tricky one to get across to the public because you cannot say that vaping is absolutely safe or that it is good for you. Vaping devices are certainly good for smokers, but in absolute terms they are not good. However, that is not the point. The point is relative harm and harm reduction.

I had originally wanted to put down a regret Motion to express stronger dissatisfaction with the directive and the way it is being brought into law, but the best chance of getting a debate before the end of the Session was through a take note Motion. I am sure that the Grand Committee wants to take note. Perhaps I may make a couple of other brief points. My noble friend Lord Brabazon mentioned that smoking is very regressive at the moment: it bears down much more heavily in terms of cost and suffering on poorer people than richer people. It is no longer an equal opportunity killer, if I can put it that way.

I am most grateful to my noble friend the Minister for the very different tone in his response from that of his predecessor, when we first debated this matter some two years ago in this Room, and for his unequivocal statement that it is a good thing for smokers to take up vaping. I was also encouraged to hear him make the point, and I will press him on it as we go forward, that although the directive prevents advertising, it does not prevent public information campaigns to get the point across to smokers. With that, and the promise of Italian light-style implementation, I beg to move.

Motion agreed.

Diversity in the Media

Question for Short Debate

5.44 pm

Asked by ***Baroness King of Bow***

To ask Her Majesty's Government what is their current assessment of diversity in the British media.

Baroness King of Bow (Lab): My Lords, I have spent seven long years as a diversity executive and only in the last year or so have I suddenly felt wanted. These days everyone wants advice about improving diversity. Let me start with the housekeeping and draw attention to my entries in the Register of Members' interests. I am Channel 4's diversity executive and the lead member on the board of governors for the British Film Institute with responsibility for diversity.

In the past I used to be very lonely but now things are hotting up, I am pleased to report. Everyone wants a piece of the action. After seven years as diversity executive, I thought the time had come to summarise what needs to happen to turbo boost diversity in Britain's media and which principles we must embrace to secure change. I would therefore like to place before the Committee six principles and one fact.

In other speeches to Parliament, I have outlined the extraordinary strength of Britain's creative industries and I will not repeat it now. Suffice to say that the creative industries in general and TV and film in particular are special cases. To some extent they create our culture and in many ways make us who we are. We like to think of ourselves as open, accessible, imaginative, innovative, transformational, wealth generating and, perhaps more than anything, fair—we are British, after all. So how is it that the representation we see on British TV does not always seem that fair? How is it that many under-represented groups feel locked out? In a nutshell, why does not British TV reflect Britain adequately? What are we doing wrong?

That question was posed last week on Radio 4's "The Media Show" about the BBC's latest diversity strategy. That strategy is hot off the press, but it is the 29th such strategy in 15 years. There is therefore an inevitable feeling that this strategy is just as likely as the last 28 strategies to slowly sink without trace. Simon Albury, chair of the Campaign for Broadcasting Equality and former chair of the Royal Television Society, does a great job of holding all the broadcasters' feet to the fire. His article in the *Guardian* last week was entitled, "The BBC's diversity strategy is not good enough", so that gives a clue about its content. He then explains why the BBC's current BAME employment rates are woeful and he praises Channel 4 for being frank about our own progress around diversity and setting,

"a benchmark that other public service broadcasters should seek to match".

Let me be frank: a diversity strategy is not worth the paper it is written on unless it gives others the tools to measure its success. We can all spin our way out of trouble—or at least try to—and so the first principle we must all embrace is transparency, and we must link that transparency firmly to diversity data. Without it, there is little chance of making progress.

Here the broadcasters deserve credit for creating and funding a system that will allow others to judge them on how they perform on diversity. I know that the broadcasters are not thinking, "Let us sink £2 million on a system that is going to possibly criticise us hugely and be happy about that spend". However, they have stepped up to the table and are working closely with Ed Vaizey, the Minister responsible—he has provided fantastic leadership in this area—because everyone recognises that it will bring transparency.

DIAMOND is the name for this system. It stands for Diversity Analysis Monitoring Data—a snappy little title that I came up with in the middle of the night but nevertheless serves its purpose. DIAMOND, as the Creative Diversity Network sets out on its website, will switch the lights on. It will enable British broadcasting to be the first of its kind in the world to answer the question: who is on our TV and who makes our TV? That question basically is: who chooses which stories are told and which voices are heard? These questions go to the heart of what it is to be a free society with a free press, so let us not accidently file away the "Diversity in the media" debate as being boring but worthy. It fundamentally deals with questions about who we are and what sort of society we are.

While I am being frank, let me also state what I think one of my greatest mistakes was for five of my seven years at Channel 4, where I was first head of diversity and then, when I came into this House,

[Baroness King of Bow]
became diversity executive. My mistake was largely ignoring the situation facing women in the industry. Because I am a woman, I probably thought, subconsciously or not, that I better not start going on and on about women's issues. But then you reflect a bit. Five years go by and you realise that women's issues are society's issues; that if you wipe out discrimination against 52% of the population, you boost employment and expand the talent pool, and if you change gender stereotypes, rather than perpetuate them—which too often the media do—you make things better for girls and boys, because boys are just as distorted by sexist stereotypes as girls.

That brings me on to my second and third principles: accountability that must be data-driven. We need accountability and we need our decisions to be data-driven. The data show us which groups are most excluded. They show us that, extraordinarily important as on-screen diversity is, the lack of off-screen diversity is even more concerning.

One example of data helping to inform opinion is the Channel 4 report on gender in the media. I hope that we at Channel 4 made good a small absence on gender for a few years, although we have had some extraordinary on-screen triumphs in terms of very strong roles for women and so forth. The report looked at how sexist TV is, basically. The report found that British TV is awash with low-level sexism. There are 30 incidents of sexism an hour being broadcast in prime time, all day, every day. It is no doubt the same the rest of the time, but prime time is what we measured.

We also found that the greatest amount of sexism was in comedy. You might not be that surprised by that, but think back to all the "light-hearted" racism—I am calling it light-hearted—of the 1970s. We would not say that that humour was acceptable now and yet, if you start talking about comedy and diversity and women, people say, "Oh, haven't you got a sense of humour?". However, we would not these days say that it was acceptable to think about race in the way that we did in comedy in the 1970s. We need to make some improvement there.

We also need to look at things by genre. Here, we found that in on-screen representation, the group that had the fewest women presenters was sport. In sport, the presenters are 98% male and 2% female. This is truly diabolical when you think that 52% of the population are women. Girls looking at sporting events are not ever seeing themselves engaging, commentating or having anything to do with it. The data help you clearly see where the gaps and problems are. They give you insight, and we all need that.

There is no excuse for not improving on-screen diversity, but as I said off-screen diversity remains far worse. Look at the situation facing women directors and ethnic-minority directors. I hope in future to have the stats for the LGBT community, for disability and for social class. These stats came from Directors UK. Once DIAMOND is up and running, the broadcasters will be able to give us all those stats, for instance around LGBT and disability, although not yet social class, another area where we need to make progress. With those caveats, the recently highlighted stats from Directors UK are truly shocking. Ethnic-minority directors make up just 3.5% of the directing community, despite making up 14% of the UK population, and women, despite being the majority, make up just 13.6% of working film directors. What is even more shocking is that these figures have not budged a millimetre in a decade. We have to think about how slowly we are making progress here.

The Directors UK report looks at why this has happened and outlines all the interwoven factors such as,

"career progression … budgets, genres, critics, audiences and public funding".

The chair of Directors UK, Beryl Richards, stated that,

"the industry culture leads to vastly different outcomes for men and women".

This is the bottom line for me—culture.

I would of course like to draw your Lordships' attention to Channel 4's *360° Diversity Charter*, which deals with that culture, but it is also important that we look at the principle of systemic change. Policies that force systemic change are as important as cultural change. I will just name the principles: transparency; accountability; being data-driven; having systemic change; being genre-specific; and resource. That is what we need and what will make the BBC's strategy, and all the other diversity strategies, a success.

5.56 pm

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to speak in this debate and to follow the noble Baroness, Lady King. I congratulate her on getting this debate and on the work she has done in this area. I am going to speak about the work I have been involved with at the Equality and Human Rights Commission—my interests are declared in the register—and the role of sport in this area and its power to transform.

This is in no sense a new issue. When I spoke last year with my noble friend Lord Grade, he said at the Edinburgh TV Festival that he first spoke on diversity in 1973. If it is not new, perhaps what is new is the number of initiatives we currently see coming from all the major broadcasters—BBC, ITV, Channel 4, Channel 5 and Sky. This should give us some encouragement that we are perhaps at a moment in time where significant transformational change can occur, because that is what we are talking about with diversity and inclusion. It is not about protected characteristics per se but about transformational change and how that can be achieved.

If we look at the BBC and the forthcoming White Paper, the potential for diversity to be hardwired into the charter could make such a significant difference to that institution. If we look at ITV's commitment to inclusive programming, inclusive workforce and inclusive culture it is fantastic for a commercial broadcaster to be doing that. Channel 4's *360° Diversity Charter*, as already referenced by the noble Baroness, Lady King, is a phenomenally significant document.

When I was director of Paralympic integration at LOCOG, I was lucky to do the deal for the broadcaster of the 2012 Paralympic Games. We went with Channel 4 not just because of the job it could do at Games time

but because of its commitment to inclusive broadcasting, in front of and behind the cameras. It committed to that right from signing the contract, which demonstrated the absolute need for leadership if we are to get transformational change with diversity and inclusion. That leadership came from its excellent chief executive, David Abraham, and chief marketing officer, Dan Brooke, who led on this and pushed it through every element of Channel 4 so that 50% of on-screen talent covering the Paralympic Games were disabled people. There were similar levels behind the cameras. You could see that in the on-screen portrayals, in the commercial "Meet the Superhumans" and in the fantastic jape at the end of the Olympics when there were Paralympians in the tunnel of the Olympic Stadium with the strapline, "Thanks for the warm-up". This is what is possible to make inclusion happen and to have transformational change at the heart of what one does.

At the Equality and Human Rights Commission, I was lucky to lead on the work in broadcasting. When we released our guidance, *Thinking Outside the Box*, at the Edinburgh TV Festival last summer, I was absolutely convinced that I was the only man there not to have a goatee or a crushed velvet jacket but I continued nevertheless. What were we getting at with that guidance? We had the support and funding of the DCMS and the support of my right honourable friend Ed Vaizey. We worked in partnership with Ofcom, the CDN and PACT and had round tables throughout last year, meeting with people right across the industry to get to the heart of it. What are the issues? What are the problems? What are the things which people see as barriers in this area? This fact that people feel things are illegal when in fact, when you get into discussions, they may not be.

We are looking at the use of databases; positive action versus positive discrimination; the Rooney rule—all of these issues and more—awareness schemes across the broadcasters; and work practices. Within the guidance, which I recommend to everybody, *Thinking Outside the Box*, a number of recommendations are suggested to put to broadcasters on how to address and drive diversity and inclusion throughout our broadcasting industry. As to the use of unpaid interns and networks, if you go down those routes you will always get the same results and people will be able to say, "Broadcasting is a meritocracy". It is absolutely a meritocracy if you are a white, middle-class, middle-aged man, but it needs to be a meritocracy for everybody.

We need to look at the positive use of targets. Self-imposed targets can be a good thing to drive the correct behaviours in this area. On positive actions against positive discrimination, I mean positive action in the general sense to develop those talent pools from which to draw people, not falling into the trap of positive discrimination which would go across the line. How do we get more disabled people into the workforce of the broadcasters? Some 50% of disabled people of working age do not work. That is unacceptable in the fifth richest economy on the planet. We need to use the guaranteed interview scheme, to develop disability talent pools, as we did when I was at LOCOG, to get that talent in front of people and offer them the opportunity to get into these roles, and not only in broadcasting.

Let us look at ring-fencing. It is possible to have ring-fenced funds for particular characteristics within organisations. This is what Lenny Henry has pushed excellently and which was so well noted at last Sunday's BAFTAs. Crucially, we need to look at "indies". Quite rightly, a great deal of production is happening through that sector, where there is great creativity. We are world leaders in producing this stuff but we need to help the smaller production houses to get to grips with how they can really embrace and drive inclusion.

None of this is new. For decades a lack of diversity in British broadcasting has been a stain on all broadcasters. It is not new, but what is different are the alternatives that now exist. If you are a young person coming into the industry for the first time, you do not see programmes made that you want to watch; you do not see programmes that represent people like you. Now, TV is not necessarily the sexiest thing in town. There are alternatives such as gaming or going abroad. Idris Elba goes to the US to be in the programmes that he wants to be part of, which was not possible in the UK. If you do not like what is being made, you can become a producer, a maker, and have millions of followers on YouTube.

British broadcasters must become diverse or die. They must become inclusive or become increasingly irrelevant. This is about nothing other than transformational change. It is not about political correctness or even about doing the right thing: it is simply about competitive, creative edge. So many schemes are out there. I hope that we are at a tipping point because the potential is massive to have all of those voices in the mix. We can have people from every background, belief and geography, disabled people and non-disabled people, with every voice informing, educating, entertaining, reflecting and representing. Every voice should represent, reflect and address that most significant of issues. Talent is everywhere, opportunity is not.

6.03 pm

Baroness Prosser (Lab): My Lords, I thank my noble friend Lady King for introducing this debate, which is important and always current. It is more than 50 years since the Race Relations Act was passed in this country. In 1965 many people thought that a new dawn had broken. In 1975 we had the Sex Discrimination Act, which sat alongside the Equal Pay Act. The disability lobby, after much innovative and sometimes brave campaigning, saw the introduction of the Disability Discrimination Act 1995.

6.04 pm

Sitting suspended for a Division in the House.

6.17 pm

Baroness Prosser: The disability lobby, after much innovative and sometimes brave campaigning, saw the introduction of the Disability Discrimination Act 1995. The Equality Act 2010 introduced the public sector equality duty designed to require public bodies to consider the possible impact of their decisions on what are known as protected groups. These include, in addition to the groups mentioned above, age, sexuality

[Baroness Prosser]

and religion. All this legislation and yet here we are with masses of evidence that for many people none of the above seems to have entered their psyche.

Just last week there was a piece in the *Guardian* on a report entitled *Cut Out of the Picture* commissioned by Directors UK—this is the report that my noble friend Lady King quoted earlier. It is a report about the film industry, but what goes on in film has a knock-on effect and an influence on what is shown on our TVs and what we read in the papers; that is, on how the world is depicted. The findings are pretty shocking, showing that matters on the gender front have barely improved with 11.5% of directors being female in 2005 and a measly 11.9% in 2014. The report covers more than gender parity, calling for an amendment to film tax relief to require all UK films to account for diversity, and an industry-wide campaign to rebalance gender equality. Apparently an equal number of men and women are choosing to study film, but women drop out at every level, particularly as budgets increase. What kind of bias pops into the head of the person with the funds who says, "Be careful here. Mustn't upset the norm. Let's stay with the status quo". Only 3.3% of blockbuster movies were directed by women and yet, at the other end of the scale, 27% of short films with a limited budget had female directors. That sounds like a big and unnecessary loss of talent to me. Publicly funded films have the worst reputation, with the figure for female directors falling from 32.9% in 2007 to just 17% in 2014.

If we turn to TV, the situation is not much better. The female TV population is younger than in real life, with 47% of females being aged between 20 and 39 compared to the real-world figure of 26%. Men on TV outnumber women by six to four, when in reality of course women make up 51% of the population. Other protected groups fare even worse. There is just a 2.5% disabled presence on our screens compared to 20% in the community at large. Older people do no better. For example, there is only 15% representation of women aged over 55—precisely half of that of the real population.

These matters are important not just to demonstrate even-handedness or fair dibs at jobs and possible fame and fortune, although of course all of that is important. What really matters is the message it sends out. For example, how would an Asian woman aged over 60 feel if she never saw a serious representation of herself, be it in a play or a factual programme? The only person we ever see on TV in a wheelchair who is not there to talk about disability or Paralympic sport is Frank Gardner, the BBC's security correspondent, who was of course already a TV presenter before he was so shamefully attacked by an al-Qaeda gunman. People who are physically handicapped can be just as capable as anyone else of being an actor or of speaking up generally but somehow it does not happen. Despite the fact that the world of entertainment has always had a significant gay presence, it could only ever be recognised by jokes or innuendo. LGBT actors or presenters being depicted as ordinary citizens would be a welcome change.

Behind the scenes, work is going on to improve the employment levels of the various protected groups. Under the Communications Act 2003, Ofcom is required to take such steps as it considers appropriate to,

"promote equality of opportunity in relation to employment by broadcasters and the training and retraining of persons for such employment … promote the equalisation of opportunities for disabled persons in relation to such employment, training and re-training".

The Act also provides that Ofcom must require holders of a TV broadcast licence to,

"make and from time to time review arrangements for: promoting, in relation to employment with the relevant licensee … equality of opportunity between men and women and between persons of different racial groups; and … the equalisation of opportunities for disabled persons".

The public sector equality duty also of course applies as appropriate. A 2014 survey carried out by Creative Skillset shows that there is room for improvement here, with, for example, only 5% of the workforce having a disability compared to the estimated 11% of all UK employed. Research by Directors UK found that only 1.5% of British TV programmes were made by a black and minority ethnic director, while only 14% of dramas had been directed by women.

In my humble opinion, things will improve only when the current decision-makers see that change will bring some advantage to themselves, or alternatively when they see that not making changes will bring a disadvantage. I do not know enough about the film tax relief mentioned earlier in my speech to say whether such a measure would be possible or would make a difference. I do know, though, that what gets measured gets done and that if the measurement of equalities' advancement and change were to be taken into account when determining the salaries and bonuses of decision-makers, for example, change would then leap over the horizon. As my friend Lord Morris of Handsworth used to say, we have enough policies to paper the walls of the conference room, it is time to take action. We have had 51 years of legislation and progress has been far too slow. Only bold steps will make change come faster.

6.25 pm

Baroness Grender (LD): My Lords, I thank the noble Baroness, Lady King, for initiating this debate. She has played such a critical and determined role in advancing diversity in broadcasting. Her role as the diversity executive for Channel 4 has been deeply impressive, as well as being a proud mum of four—no mean feat. This debate is timely. First, we are speaking in a city which has had the pride and multicultural self-confidence to elect a mayor who is BAME and Muslim—one of my better second preferences in my history. It is also being held in the week when we are expecting the White Paper on the next BBC charter.

Seventeen years ago, the noble Lord, Lord Smith of Finsbury, made the first significant attempt by any Minister to address BAME under-representation in the creative industries. He established the Cultural Diversity Network, and in September 2000 at the CDN launch the BBC published its first comprehensive diversity action plan. There is as yet no gold standard in public service broadcasting for driving diversity, but Channel 4 has done more than any other public service broadcaster. It is worth looking briefly at its history.

Thirty-five years ago, Channel 4 demonstrated that it was not difficult to drive diversity. Two of the key elements were institutional commitment from Jeremy Isaacs, the then chief executive, and the leadership and vision of Sue Woodford-Hollick, then the commissioning editor of multicultural programming. They delivered the current affairs series "Eastern Eye", "Black on Black", the "Bandung File" and "No Problem", and then "Desmond's" about a British black family made and set in Peckham. The resurgence of Channel 4's commitment to diversity is thanks to the appointment of the noble Baroness, Lady King, in 2009 and the full support that she receives from David Abraham, the chief executive.

I think we are all aware that permanent remits and licence conditions can encourage diversity, but they cannot drive it. Only determined and committed leadership at the most senior level can drive diversity, and so far no other institution has matched the quality of leadership on diversity that Channel 4 has enjoyed. The increase in BAME leaders in Channel 4 from 2014 to 2015 alone is something to be proud of, but I am sure we all agree that there is a long way to go. In March 2014, Lenny Henry gave his now famous BAFTA lecture, which painted an appalling picture of the lack of diversity in UK TV. A week later, here in the Moses Room, my noble friend Lady Bonham-Carter made the point about how critical it is that diversity is at every level: commissioning, editing, presenting and, above all, leading. She set out the following challenge:

"How is this for a fact? Of the key PSB bodies—Ofcom, BBC Trust, ITV and Channel 4—where the Government have some influence, 42 board seats are available, of which just one, a BBC trustee, is not white".—[*Official Report*, 20/3/14; col. GC 90.]

She went on to point out that all seats on the Sky board were filled by white appointees. That was the case in early 2014, so with a hopeful heart this morning I checked the details on those same boards, and guess what? I cannot detect any change in the figures, although I am happy to be proved wrong.

Sir Lenny Henry told the Commons Culture, Media and Sport Committee that there have been 29 BBC diversity initiatives over the past 15 years, so there is no lack of commitment on the part of the BBC. The noble Lord, Lord Hall, has spoken of his vision for a BBC where audiences will see and hear diversity in everything the BBC does. Indeed, the new diversity strategy target for 2020 is ambitious but welcome. At the current time, 48.7% of the BBC workforce is women, and the number of BAME employees is at a record high for the corporation, with approximately 20% in London and Birmingham. The diversity of the entry level schemes at the BBC is encouraging. The 2015 intake of TV production apprentices was 45% BAME. Meanwhile, its 2015 digital journalism apprenticeships are 50% black, Asian and ethnic minority.

However, we all know that the entry level is not the problem; it is the creatives, the leaders and the commissioners. Last week in a *Guardian* article, already referred to, Simon Albury, chair of the Campaign for Broadcasting Equality, argued that the real figure for UK BAME employment in the BBC, particularly in creative production roles, was 9.2% rather than the 13.4% that the BBC has been suggesting. Does the Minister agree with that analysis or with the BBC's statistical analysis? Is there a need for greater transparency in this area to ensure that we have as many data as possible?

My second question relates to reduced funding and the top-slicing of the BBC in the context of diversity. If the BBC had to cut staff who deliver on content, how is it possible to recruit and grow diversity? During the coalition Government we strongly opposed the Conservative proposals to take money from the licence fee to fund free TV licences for the over-75s. We argued that government policy should be funded by the Government. The Deputy Prime Minister, Nick Clegg, vetoed the proposal and it did not take place. We are very disappointed that the current Government have now gone ahead, to the detriment of the BBC.

Proposals for further top-slicing or new contestable funding will mean less money for the BBC to spend on its services and will create additional costs. Two-thirds of BBC contents spend is already contested and that figure is set to increase. I ask the Minister: how can diversity be delivered if you are cutting a workforce?

While the Liberal Democrats remain critical and watchful of the BBC on diversity, I should stress, with the White Paper imminent, that we believe it is undoubtedly the best broadcaster in the world. We hope that the White Paper will do nothing to damage that or its reputation.

The print media should not get off the hook on this. A report from the Reuters Institute for the Study of Journalism, recently published, said that a journalist entering the trade today will almost certainly have a bachelor's degree, probably a master's, and will almost certainly be white. If they are women—and 45% will be—they will find themselves less well paid than their male counterparts and less likely to be promoted. Black Britons are under-represented by a factor of more than one in 10.

Given the pessimism that I have laid before the Committee, I should like to end on a more optimistic and upbeat note. I return to the example of the Paralympics and Channel 4. As the noble Lord, Lord Holmes, explained in much greater detail, it is a perfect example of where a media outlet, if it gets its act together, can make a change to perception, understanding and admiration. It can, for people like my 10 year-old, turn people who were previously ignored in society—that is, people with disabilities—into superheroes. It is quite extraordinary and the media are perfectly capable of doing it. I look forward to seeing that and more, especially in relation to race, where the record is very poor at the moment, as well as gender. It will be about time too.

6.34 pm

Lord Taylor of Warwick (Non-Afl): My Lords, I would like to thank the noble Baroness, Lady King, for securing this important debate. This issue is not a minority one. It concerns who we all are today in modern Britain.

Diversity is a very wide topic. I am aware that gender, sexuality, disability, culture, age and religious issues are all important aspects of diversity, but if I may, I wish to focus on racial diversity in the media. Of the UK's 63 million population, 14% are black and ethnic minority. The media industry is a very influential

[Lord Taylor of Warwick]
sector of society, so it is vital that it represents society as it really is. The reality is that Britain is multiracial, and all the better for it. I can still recall watching with disbelief the 1999 British film "Notting Hill", starring Julia Roberts and Hugh Grant. It was a lovely romantic story, but no black people at all were portrayed as living in Notting Hill, which is famous for its Caribbean carnival. It was a major film that was shown worldwide, yet it presented a false image of modern London and modern Britain.

While television is using more black and Asian presenters, the recent report by Directors UK, to which the noble Baroness, Lady King referred, states that the number of BAME directors working in UK TV is "critically low". A sample of 55,000 episodes drawn from 546 titles found that only 1.29% of programmes were made by black, Asian and ethnic minority directors. That is clearly disgraceful. In some areas such as period dramas, talk shows, panel shows and sketch shows, not a single episode had been made by a BAME director. In the mid-1990s I was a television producer at the BBC at White City. It got to the stage when I asked if it was called White City because everyone else above kitchen level was white.

While at BBC Television, I started presenting early morning newspaper reviews. I would do two each morning, the last being just before the 9 am news on BBC1. In those days Ainsley Harriott would follow with his fantastic food show. I recall that one day a letter came in from a very disgruntled lady stating, "I have just seen a black chap doing the newspapers. I think his name is Taylor. Then there was a black cook who came on immediately afterwards. Please, is the BBC being taken over by black people?". I believe that Britain has moved on from those attitudes, but every speaker has made the point that we have a long way to go.

It was during that period that I also started in radio and loved presenting shows on BBC Radio 2. I was delighted when the BBC said that I would have my own radio show at 4 o'clock. I said, "Wow, this could not be better. Drive time". The commissioner said, "Er no, it is going to be 4 am, not 4 pm". But I did it because I had to learn, and I eventually got a 5 pm slot. I enjoyed it and was delighted to then get a call from BBC Radio London about presenting a show for it as well. I went for the interview and was met by two very pleasant white middle-aged producers. One asked, "Right, John, can you speak Patois?"—remember that this was more than 20 years ago. When I asked why, the producer said, "Well, we have a lot of black listeners these days and we thought it would be good if you could speak Jamaican. Can you do a black voice?". The producer then attempted to demonstrate by lifting her arm and saying, "Haile Selassie, Rastafari". I realised that the job was not for me.

The point I am making is that diversity should not be about putting people in boxes. I was a barrister for some years and became the legal adviser to the BBC's top television gardening show. I went along to Shepherd's Bush to speak to the independent producer of the series. To my pleasant surprise he was black, from the Caribbean. I did not realise he had been producing that series for well over a decade. When I asked why he did not do any personal interviews to make his success more public, he replied that he was concerned that if it was known that the producer of that middle-class show was black, there could be a backlash against him. He was keener to show that he had green fingers than brown ones. He just wanted the commissions each year. The goal for him was simply to get commissioned without any fanfare. Although I understood and respected his view, I thought it rather sad that he felt he could not come out as being black. As for newspapers, Amol Rajan is the only ethnic minority editor of a national newspaper, the *Independent*, which I note that recently became available online only. City University's survey in March this year found that British journalism as a whole is 94% white. Is that right? I do not think so.

For 10 years I was vice-president of the BBFC, the British Board of Film Classification. Although the board treated me extremely well, it was a very white organisation when I first joined. If I achieved anything at all there, at least I encouraged it to place job adverts for the BBFC not only in the mainstream papers but in the ethnic minority newspapers such as the *Voice* and the *New Nation.*

Last Sunday evening, we had the BAFTA awards. Apart from the high-profile Sir Lenny Henry, there was a distinct lack of racial diversity among the award winners. However, I did note that there were at least four ethnic minority award presenters. Two of them remarked that BAFTA appeared to be ticking the diversity box. Those comments brought a rather nervous laugh, but it shows that we still have a long way to go where diversity is concerned. As to the programmes that were showcased at the BAFTAs, the ones that had any links to race had names such as, "Refugee Crisis", "Paris Attacks Special", "My Son the Jihadi" and "Britain's Forgotten Slave Owners". These are quality programmes that needed to be shown. All I am saying is that it would be good for the media, especially television, also to portray the successes of minorities in Britain. I know that major broadcasters such as Sky and Channel 4 do take this issue seriously, but it was the BBC that dominated the BAFTAs, so I support Sir Lenny Henry's call for diversity to be written into the BBC charter. That would be an important signal.

It is also vital that a more diverse pool of programme commissioners is established. Ideas need to be drawn from the widest field possible. I understand that the BBC is developing a diversity creative talent fund, and I welcome that because class is also an issue. Poorer communities have that extra disadvantage in breaking into the media. There is also a place for more training internships for high-potential BAME graduates. I am glad to hear about the BBC Academy and its enlarged apprenticeship and social inclusion initiatives. I sort of fell into the media industry: there was no career path and no mentoring, which I would have appreciated.

I noticed that one of the BAFTA award winners was Channel 4's "Humans"—a great series. This of course is the hit science fiction TV series about robots. I long for the day when diversity is no longer an issue to be discussed and agonised over. After all, in reality, unlike science fiction, there is only one race: the human race.

6.42 pm

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, I thank the noble Baroness, Lady King, for introducing this important debate, and for doing so with such passion and eloquence. I start by congratulating her on the role model that she represents, not only in politics but at Channel 4, the BFI and across the media more generally. I also thank other noble Lords who have spoken today—including my noble friend Lord Holmes of Richmond, and the noble Baronesses, Lady Prosser and Lady Grender—who reminded us quite rightly of the work that has been done by the Mayors of London over the years, particularly on LGBT issues. The noble Baroness also gave third-party endorsement to the work of Channel 4. It is clear that it is delivering on its important remit of serving minority communities, which is a key feature of Channel 4. It was also good to hear from the noble Lord, Lord Taylor.

It is clear that the old world needs to change and that the media, with its high profile and creativity, can play a vital part. I want to move to a world where ethnicity, gender and disability are not issues and only skills and experience count, for example, when it comes to recruitment, promotion and assessing people for appointments. My ambition is to see a sea change which takes us beyond identity politics and constant talk of quotas and targets.

The noble Lord, Lord Taylor, gave us some important examples of how things have changed in his working life. Last week, he kindly participated in a full debate on the Floor of the House on the review that BIS has initiated under the chairmanship of another role model, my noble friend Lady McGregor-Smith. That looked at the issues faced by black, Asian and minority-ethnic people in the workplace and how to harness the potential to call on the very widest pool of talent. We talked about the work that we are doing to improve representation of women and BME people on boards. The media could and should be a leader and not a laggard in this area. It is at the heart—

Baroness King of Bow: I thank the Minister for her very generous remarks. On the point about the media being a leader, will she join me in congratulating the BBC as the first broadcaster to say that by 2020 50% of the people that it portrays on screen will be women?

Baroness Neville-Rolfe: I thank the noble Baroness. I was not aware of that. It is certainly a very brave ambition and it is relevant to the debates that we will no doubt be having very imminently on the future of the BBC. The point that I was making is that the media industry is at the heart of a vast creative machine. It is growing by 10%, with exports of film and television approaching £3 billion a year.

I believe strongly that we need to reach a situation where the prospects for BME individuals, for LGBT, for the disabled and of course for women who want to progress in the media are as good as those for their white or male counterparts in the same situation—neither better nor worse. I think we all agree that there is work to do.

The noble Baroness, Lady King, has been very supportive of the Minister for Culture, Ed Vaizey, in his great efforts to raise the profile of diversity. I pay tribute to Mr Vaizey. He gives government by round table a genuinely good name—he is a modern-day King Arthur. He has been tireless in his work on diversity, especially on BME, and in encouraging the industry to be proactive in increasing diversity both on and off the screen, including in the representation of disabled people. On International Women's Day, he launched Women in Digital to tackle some of the barriers which mean that women still make up less than 20% of our digital workforce.

The conference that Ed Vaizey held in January raised the wider issue of lack of representation of disabled people in the creative industries. I was very glad that the noble Baroness, Lady Prosser, made some strong points about disability in acting and more generally. Indeed, she rightly referred to Ofcom's equality remit. Addressing the problems of the disabled is an important area and I think that it has to be addressed in the glamorous media industry. There is a huge spectrum of disabilities, and individuals encounter unique problems. More needs to be done to ensure that they can contribute and that their voices are heard.

More generally, people who are unfortunate enough to have a permanent or temporary disability tell me again and again how difficult life is. It is a mixture of countless physical and mental barriers—such as bad attitudes, with people looking through you and even avoiding you. It is for this reason that ground-breaking legislation was put through Parliament by William Hague—now my noble friend Lord Hague of Richmond—in the 1990s. That was important—the position encountered when travelling overseas is still worse than here. Broadcasting shapes and reflects our society's values, so increasing the visibility of disabled people's impact in the media is essential. I emphasise that because it is not always talked about as much as it should be.

I turn to the BBC. The noble Baroness, Lady King, has expressed some of her reservations. As an ex-businesswoman, I believe in the power of encouragement, so we should applaud the efforts of the BBC, as she has just done, in relation to gender.

The BBC has established a fund to help black, Asian and minority-ethnic talent on and off screen to develop new programmes. It will be accepting more training internships, and it is setting new targets to increase senior BME staff in priority areas.

I welcome the work that the BBC is doing with the Shaw Trust to open up business support roles to disabled candidates. I congratulate the BBC on establishing an independent diversity advisory group, with experts and role models including Sir Lenny Henry—of course, we were all glad to see Sir Lenny celebrated at the BAFTAs, as was mentioned by my noble friend Lord Holmes—and the noble Baronesses, Lady Grey-Thompson and Lady Benjamin. They, with others, represent quite a challenge to the BBC on diversity, which I think will be helpful and encouraging.

The BBC charter review has allowed Government to look across the whole of the BBC's performance. It has given us a great opportunity to review the BBC's

[Baroness Neville-Rolfe]
approach to diversity and to ask some forthright questions, some of which were repeated by the noble Baroness, Lady Grender, and the noble Lord, Lord Taylor. The fact is that the BBC should lead the way in representing the nation it serves, and I can assure noble Lords that diversity will feature prominently in the White Paper which is to be published imminently.

Of course, the BBC is not alone in trying to do better. The noble Baroness, Lady Prosser, mentioned film tax relief and diversity. The BFI led the way with a £1 million fund and the "three ticks" scheme that she spoke of. The Government introduced that tax relief for UK films in 2014 and I think that it has been helpful and good for the industry. Sky, Channel 4 and ITV have also all responded positively. My noble friend Lord Holmes rightly highlighted Channel 4's *360° Diversity Charter*, as well as the work done by David Abraham and Channel 4's support of the Paralympics. To mention a former competitor, Sainsbury's also supported the Paralympics. These instances of good practice are to be celebrated. I am also encouraged that partly as a result of the round table process, Channel 5 has now joined the other main broadcasters in taking action on diversity. It is doing various things, including special annual apprenticeships and paid internships.

I want to turn now to the Creative Diversity Network because it is a great example of how the major broadcasters can come together to tackle a problem. The noble Baroness, Lady King, talked about "switching on the lights", soon to be designated as Project Diamond, which is due to go live this summer. I welcome the project because it will monitor diversity on television, as has been explained, and data are important. As has been said, what gets measured tends to get done—not entirely, but it certainly helps to know what you are up to. It will be critical in allowing broadcasters to judge how well they are doing and whether the targets that they have set themselves are being met. I should also like to mention, as did my noble friend Lord Holmes, the guidance entitled *Thinking Outside the Box* provided by Ofcom.

6.53 pm

Sitting suspended for a Division in the House.

7.02 pm

Baroness Neville-Rolfe: My Lords, I was referring to the point made by my noble friend Lord Holmes about *Thinking Outside the Box*. This guidance, provided through a unique partnership between the EHRC and Ofcom, is part of a range of advice to help broadcasters with fair recruitment, commissioning, broadcasting, programme making and, indeed, procurement practice.

As the noble Baroness, Lady Grender, pointed out, the media getting its act together on-screen makes a huge difference. There are some great examples of where the BBC and the media in general have got it right. The Sunday night series "Under Cover" on the BBC, with Adrian Lester and Sophie Okonedo, would be a good example. Channel 4, as we have said, has been at the forefront of producing popular programmes, including those representing LGBT people like the "Cucumber" trilogy, its well-received transgender series. I also commend Channel 4 Racing—one of my own sporting passions—for pioneering female presenters very early on.

My noble friend Lord Holmes talked about gaming. That caused me to reflect that this is another area for potential transformational change. And we certainly need more female directors such as Thea Sharrock.

Baroness King of Bow: The subject of gaming is really important if we are going to keep up with the times. I echo the Minister's praise of the BFI—I have stated my interest there—but does she think that if it is to encompass gaming it will need to have enough resources to do so?

Baroness Neville-Rolfe: Of course the BFI has to be well run and properly funded but I was not suggesting that it change its remit. I was saying that the gaming industry is an important and growing part of the media industry, which I spend a lot of time encouraging, and that I think the point was rightly made—for the first time to my mind in this Chamber—that that is an area that should be within the remit of some of the work we are agreeing on.

I also welcome the efforts of the publishing industry with its EQUIP charter, which pushes for better diversity in another industry that is not generally renowned for it. It has brought together publishers, authors and others to make improvements, so that, for example, many employers in the industry now accept CVs without personal data to avoid unconscious bias.

I do not have a great deal to add on funding, top-slicing and ring-fencing, but I am sure we will return to these issues in the coming weeks and months.

I agree with the sentiment of the debate that there is much more to do across the media industries, not only in representation on and off-screen but also in portrayal. Unless more action is taken now, this will become increasingly challenging as audiences diversify further, as the country and demographics change, and as different groups continue to move away from our mainstream media sources. It is in all our hands to improve practice and attitudes. The Government have a part to play, as we have acknowledged, as do business and industry, including the media industries—and, as we discussed last time, as does the education sector and its teachers and lecturers. Led by the Prime Minister, we have set various targets for 2020.

We especially want to increase diversity across the media so that all the UK's communities feel represented. I believe that our industries can and will rise to the challenge.

Committee adjourned at 7.06 pm.

Volume 771
No. 149

Tuesday
10 May 2016

CONTENTS

Tuesday 10 May 2016