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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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

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House of Lords

Thursday 9 June 2016

11 am

Prayers—read by the Lord Bishop of Derby.

Retirement of a Member: Lord Hurd of Westwell

Announcement

11.06 am

The Lord Speaker (Baroness D’Souza): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble Lord, Lord Hurd of Westwell, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble Lord for his much-valued service to the House.

Leave of Absence

11.06 am

The Lord Speaker (Baroness D’Souza): May I also take the opportunity to inform the House that I will be attending the national service of thanksgiving to celebrate the 90th birthday of Her Majesty the Queen at St Paul’s Cathedral tomorrow when the House will be sitting? Accordingly, I trust that the House will grant me leave of absence.

Government Websites: Titles

Question

11.06 am

Asked by Lord Hayward

To ask Her Majesty’s Government whether they will take steps to allow people to include honours in titles when completing forms on government websites.

Baroness Chisholm of Owlpen (Con): My Lords, this is a matter for individual departments, which are responsible for determining the level of information required for their online forms. However, my right honourable friend the Minister for the Cabinet Office has asked officials in the Government Digital Service to look into the feasibility of the proposal. I will write to my noble friend with the outcome of the review on completion.

Lord Hayward (Con): I thank my noble friend for that very helpful Answer. Given that in two days’ time the Queen will announce the birthday honours, granting recognition to many people who have dedicated their lives to society at large and the community, or showed gallantry in the face of the enemy, it seems unfortunate that up to now—I note my noble friend’s Answer—government departments have not provided an appropriate

field in “addresses” in order that the nation can continue to recognise the great public service that these people have given.

Baroness Chisholm of Owlpen: My Lords, I agree with my noble friend. Indeed, they have given great public service. Departments can agree requirements with the Government Digital Service to include a field for honours. This is a matter for individual departments, which are responsible for determining the level of information required in online forms. At present, there is nothing to stop someone putting their honours in the field after their surname, although this is not explicitly referred to in the explanations on the forms. Guidance to departments at present suggests a free-text field and not a drop-down list, as this would be too exhaustive to create.

Lord Tyler (LD): My Lords, some months before the last general election, I completed a questionnaire—perhaps designed by the noble Lord, Lord Hayward—from the Conservative Party. I completed it very correctly, but as a result I kept receiving missives directed to “Mr Lord Other”. Not a problem—but what I think might be a problem, on which the noble Baroness might like to comment, is how much it has cost already to undertake to respond to this extraordinary Question. I was going to say “ridiculous Question”, but perhaps that is going too far. How much is the exercise that she has now described going to cost? It seems to me really rather reactionary.

Baroness Chisholm of Owlpen: I thank the noble Lord for that question. I do not think that it will cost anything. This is available at the moment; it is just that each department can choose what it wants to do. It is not up to the Minister for the Cabinet Office to tell departments how to design their websites. There is no specific field for this, but, as I said, you can already put it in the space for surnames; you can add your honorifics to that space.

Lord Wright of Richmond (CB): Remembering from a past existence the occasional experience of addressing envelopes to Lord Mountbatten of Burma, should departments perhaps be advised to limit the number of awards that they give to each person?

Baroness Chisholm of Owlpen: I can certainly take that back to the department.

Lord Elton (Con): My Lords, can my noble friend give me guidance? When I write to people similarly loaded with decorations, at what point in the catalogue does one simply put “et cetera”?

Baroness Chisholm of Owlpen: I thank my noble friend for that question. I do not think that one should ever put “et cetera”. One should just keep on adding them, because no one honour is better than the other, so it is right that one should put every single honour, one after the other.

Lord Geddes (Con): I am sure that I am not the only Member of your Lordships' House who has had trouble with websites, be they government or not, regarding both titles and honours. Will my noble friend encourage all departments to form a joined-up Government in this respect?

Baroness Chisholm of Owlpen: That certainly is what will happen. The Government Digital Service is working very closely with all the departments to have joined-up thinking on how they do their forms. The Cabinet Office is looking into the possibility of a special field for honorifics.

Baroness Butler-Sloss (CB): When this investigation goes ahead, will the Government consider looking at honorary titles for the spouses of women Members of this House?

Baroness Chisholm of Owlpen: Yes, certainly we will do that.

Learning Disabilities: Transforming Care Question

11.12 am

Asked by **Baroness Hollins**

To ask Her Majesty's Government what progress has been made by the Transforming Care programme in supporting people with learning disabilities to leave in-patient settings and live with enhanced support in the community.

Baroness Hollins (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and to draw attention to my interests in the register.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, the data show a small but sustained reduction in in-patient numbers over the last year. Some 2,565 patients were recorded in hospital at the end of April 2016, compared with 2,800 at the end of March 2015. Forty-eight local transforming care partnerships have mobilised to deliver the three-year service transformation detailed in *Building the Right Support*, which was published in October 2015, with a national ambition of closing 35% to 50% of in-patient capacity and building community-based support.

Baroness Hollins: My Lords, I thank the Minister for his reply. Does he agree that this programme will succeed only if robust community support helps people to live in their own homes and prevents new admissions? Is the Minister confident that enough money is being provided to local areas to develop and commission the right support and services, as outlined in the NHS England service model, in particular to develop a trained and supervised social care workforce, which is currently seriously underdeveloped?

Lord Prior of Brampton: My Lords, progress since the horrendous events at Winterbourne View some five years ago has not been as fast as we would like. Under the *Building the Right Support* programme, NHS England is putting in an extra £30 million, which will be match-funded by CCGs, and another £20 million for capital investment. That is a very significant commitment of extra resource, but the proof will be in the eating.

Lord Hunt of Kings Heath (Lab): My Lords, as the noble Lord said, it is five years since "Panorama" exposed the scandals in Winterbourne View. Ministers' responses at the time and since have been admirable in their expressions of concern and the action they require in the NHS. The problem is that very little has happened. Is the Minister satisfied that NHS England, which has been consistently charged with implementing the changes, understands what it is required to do by Ministers? So far there is very little evidence that it does.

Lord Prior of Brampton: It is very clear in the NHS mandate that it knows exactly what it has to do. It was NHS England that produced *Building the Right Support*. There is a lot more governance around the programme now. Every month we will see the numbers of patients in in-patient care settings. The noble Lord will be interested to know that over the last year 185 people who had been in hospital for more than five years have now left hospital and gone into the community. There are signs that things are happening, but I would advise the noble Lord that what is needed is constant scrutiny.

Baroness Emerton (CB): My Lords, I thank the Minister for reminding us how many patients have been removed from hospital, but I declare an interest that goes back to the 1970s, when I was responsible for transferring 1,500 and then another 1,200 patients from hospital through a joint working party involving social services and the health service. It seems that we have discharged patients. The Royal College of Nursing demonstrated in a recent report that, from the nursing point of view, never have so few nurses been trained in mental handicaps. People with learning disabilities have physical and mental requirements, as well as environmental ones. Safe staffing is the issue here. Following on from what the noble Lord, Lord Hunt, said, will the Minister please consider getting out an edict on the importance of looking not just at hospital staff but at community staff?

Lord Prior of Brampton: The noble Baroness raises a very important point. It is worth saying that an assurance board monitors the national transformation plan on a monthly basis and comprises local authorities as well as CCGs and others. On the workforce front, which is obviously crucial, it is no good putting money into a system if you do not have the right people to deliver the care. We expect the number of whole-time learning-difficulty nurses to increase from around 3,000 to more than 5,000 over the next five years, so there should be more resource going into this very important area.

Baroness Jolly (LD): My Lords, I declare my interest as chair of Hft, a learning disability charity delivering such services across England. It is really very difficult to plan at the moment. We anticipate an element of growth, but we are not sure where or when that will come. The Minister outlined issues such as that. Could the NHS learn from some local authorities that are charged with managing their markets so that when they are ready to discharge such patients they have already established settings for them?

Lord Prior of Brampton: All the transforming care partnerships will comprise both CCGs and local authorities, so all the experiences learned by local authorities should be paid into the process.

Baroness Pitkeathley (Lab): My Lords, does the Minister agree that when such in-patients leave in-patient care, much of the responsibility for looking after them actually lies with their families? As this is Carers Week, would the Minister update the House on the Government's attitude to this with the revision of the carers' strategy?

Lord Prior of Brampton: I think we have a direct Question on carers next week. We are absolutely committed to supporting carers. Where people who have been in hospital for more than five years are discharged back into the community, as it were, the CCGs will provide them with a dowry to cover their costs. It will be very clear that the funding of those patients will stay with the CCGs.

Lord Pearson of Rannoch (UKIP): My Lords, will the Government encourage village and intentional communities, which have proved so successful for those covered by this Question and are in great demand by their families, a demand that cannot be met at the moment? I declare an interest, as my daughter lives in such a community.

Lord Prior of Brampton: Yes, I am very happy to do that. There are some concerns about changes in social housing and rent caps, which might have the unintentional consequence of making it more difficult to build new houses that can accommodate these kinds of people. That is very much under review by the Government. We absolutely support what the noble Lord says.

Baroness Gardner of Parkes (Con): My Lords, is the Minister aware that some of the establishments of the type just described by the noble Lord, Lord Pearson, are closing? The Camphill communities are an example of that. I was disturbed to see that, because we cannot afford to lose those facilities. Is he aware of that, and can anything be done to help?

Lord Prior of Brampton: I am not aware of the specific case of the Camphill communities, although I know about Camphill. Certainly, the preference is to have an environment where there are not too many people, with houses containing between, say, five, 10 or 15 people, rather than large organisations with sometimes many hundreds of people. I believe that Calderstones

Hospital in the north-west, for example, has 223 in-patient beds. The intention is to close that and reprovide those facilities in the community. The key thing that we should always bear in mind is the best interests of the individual.

Baroness Royall of Blaisdon (Lab): My Lords, the Camphill Village Trust is an excellent organisation that provides small family units. May I ask the Minister to visit the excellent Camphill Village Trust in the Forest of Dean?

Lord Prior of Brampton: This is an area of healthcare about which I am least informed, so I would very much like to do that.

Baroness Brinton (LD): My Lords, Sir Stephen Bubb's update report also said that the review was going forward very slowly. The Minister has also referred to this. What is the new timetable for the full implementation of the Bubb report?

Lord Prior of Brampton: It is a three-year timetable. The intention is to reduce the number of in-patient hospital beds by between 35% and 50%, as I said. There will be a review at the end of the three years to see whether that can be taken further. The truth is that progress seems painfully slow until you look back to where we have come from. We have come a long way over the last 20 years, but nothing like far enough or fast enough. An old Chinese proverb says that it is better to light one candle than curse the darkness. We are making progress, but it could be quicker.

National Clinical Director of Adult Neurology *Question*

11.22 am

Asked by Baroness Gale

To ask Her Majesty's Government why the National Clinical Director of Adult Neurology post was ended, and what assessment they have made of the consequences of that decision.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, the reduction in national clinical directors resulted from NHS England's review of its clinical advisory resource. This review sought to refocus capacity on areas where major programmes were being taken forward and in areas identified as priorities for improvement. NHS England will still be able to access neurological clinical advice in future. From 1 July 2016, clinical expertise will be provided by NHS clinical leads, the neurology clinical reference group, royal colleges and wider engagement.

Baroness Gale (Lab): While I thank the Minister for his response, I am very disappointed. I am sure he is aware that there has been no transparency whatever, and no consultation on making this post redundant.

[BARONESS GALE]

He will be aware that the Neurological Alliance and the Public Accounts Committee have urged that this post should remain where it is. There was great rejoicing when the post was created three years ago and great disappointment that it has now been ended. Will the Minister agree to meet the Neurological Alliance so that we can have a full discussion and a full understanding of why this post was made redundant? Nobody seems to understand it, as it has all been done very quietly. I hope that this is not just a cost-cutting exercise.

Lord Prior of Brampton: My Lords, I am of course very happy to meet the Neurological Alliance with the noble Baroness. I just say this: if the medical director and board of NHS England cannot make decisions about where they should get their clinical advice, one is bound to ask what on earth the point of them is. There are certain decisions that must be made by NHS England and Bruce Keogh, its medical director, came to this decision. I think it is a decision that he should make, not politicians.

Baroness Walmsley (LD): If three years has been long enough for NHS England to decide that the national clinical director and the regional clinical networks are not working well enough for neurology, how long is it planning to give the new system to prove that it is better for patients?

Lord Prior of Brampton: I do not think that anyone is saying that the system was not working well enough. The argument that NHS England put was that it had to focus its resources on a smaller number of key national priorities—for example, mental health, cancer and learning disabilities—and that is what it is doing. It is poking the resource into a smaller number of well-focused and well-defined areas, but it can still get all the advice that it needs on neurology from the clinical reference groups and other sources.

Baroness Finlay of Llandaff (CB): Do the Government recognise that the UK has only one-sixth of the number of neurologists that the rest of Europe has, which accounts for delays in diagnosis, poor outcomes for patients and wide variation in services? That needs to be addressed urgently for patients to have earlier diagnosis and better outcomes, and for their families to be better supported. Co-ordination of clinical and research efforts needs to be across the UK. I declare an interest at Cardiff University, where the amazing CUBRIC has just been opened by Her Majesty the Queen. It has the potential to transform neurological diagnosis in the UK, but there needs to be UK-wide effort.

Lord Prior of Brampton: Health is of course a devolved matter in the UK, but there is absolutely nothing to stop the devolved parts of the UK—Scotland, Wales, Northern Ireland and England—from working closely together on these issues. I do not think that the lack of a national clinical director prevents us in any way from doing that.

Lord Polak (Con): I want to register a sort of interest: 28 years ago, almost to the day, I was given six months to live. I had a brain tumour and was saved by a team of neurologists at the Royal Free Hospital. I hope that, in listening to this, the Minister and the department will always remember that individuals and families are at the forefront of this. If there is a belief that somebody central is needed to ensure that the best treatment is given, maybe we could look at it again.

Lord Prior of Brampton: I do not want in any way to diminish the huge clinical importance of this and the suffering of many people with long-term neurological conditions. They are among some of the worst illnesses that anyone can have and I am delighted that my noble friend recovered from his. From everything that I have been told by NHS England and Bruce Keogh, I do not believe that the lack of a national clinical director will in any way detract from the resources that we are making available to neurology.

Lord Hunt of Kings Heath (Lab): My Lords, I have enormous respect for Sir Bruce Keogh but, as my noble friend Lady Gale said, NHS England has essentially set out to decimate the influence of clinical advisers at the level of senior decision-making teams. When we set up national clinical directors, they were based in the Department of Health, had direct access to Ministers and were hugely influential. The current situation in NHS England is that they are often part-time appointments with virtually no support and limited influence. Is it not time that Ministers started to reassert control over services for which they are accountable to Parliament?

Lord Prior of Brampton: I do not think I agree with the last part of the question. We have set up NHS England as an arm's-length body, and a key part of the reforms—the bit that probably everyone supported in the 2012 Act—was to get politicians more out of the day-to-day running of the NHS and to give more power to clinicians. It is better that clinicians rather than politicians should make these decisions. On what the noble Lord said about decimating the influence of clinical advice in NHS England, I just do not think that that is the case. In so far as he has raised it with me, I will have a meeting with Bruce Keogh and put that point to him and get his response.

Baroness Masham of Ilton (CB): My Lords, is the Minister aware that there are many very complex neurological conditions? Surely there should be a co-ordinator and an adviser. It is really very difficult. Surely it should be upgraded, not downgraded.

Lord Prior of Brampton: My Lords, it would be a great mistake to think this was a downgrading exercise. This is NHS England deciding to get its clinical inputs from a clinical reference group rather than having a national clinical director. It has reduced the number of clinical directors by six. We are not talking about just neurology; five others have gone in different specialties—for example, pathology. It would be a great mistake if

the House went away with the impression that NHS England was in any way decimating or downgrading the importance of neurology.

Migrants

Question

11.30 am

Asked by Lord Higgins

To ask Her Majesty's Government whether it is their policy that migrants rescued from the English Channel should be returned to France, rather than brought to the United Kingdom.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, we work closely with the French to protect the border and prevent illegal migration. This includes on maritime threats. Our focus is on stopping boats leaving Europe and on developing strong intelligence processes. Migrants encountered in United Kingdom territorial waters by UK agencies are brought here, where they will be processed under UK legislation, in line with EU and international law. For those not claiming asylum, we seek a quick return.

Lord Higgins (Con): My Lords, is it not clear that people smugglers and traffickers are able to persuade migrants to risk crossing the Channel despite the fact that their boats are unsafe and it is extremely dangerous to cross shipping lanes and so on, because they will be rescued and taken to the United Kingdom? Would it not frustrate the traffickers and people smugglers if we were absolutely clear that if people are rescued they will be returned to France, where, if they are genuine asylum seekers, they can anyway claim asylum?

Lord Keen of Elie: With respect, it is necessary to have regard to international law in this respect, and the extent of our territorial waters. Pursuant to the UN convention on the seas, our territorial waters extend 12 miles from the coast, as do those of France. Our borders agency works within those territorial waters. Equally, the French work within their territorial waters. Of course, at Dover and Calais La Manche is only 20 miles wide. Nevertheless, although it may meet at a median point, we have to respect each other's territorial waters. Those who are found in UK territorial waters are brought to the United Kingdom. Those found in French territorial waters are taken to France.

Lord Hain (Lab): Is it not the case that if we left the European Union, the Dublin agreement would no longer operate and the French would have no obligation to receive people who came to their shores but ended up in Britain or in the sea? Of course, the same applies to every other member state where they might have first crossed European Union boundaries. Furthermore, is it not the case that if we left the French would shift the whole horrendous problem of refugees in Calais straight over to the White Cliffs of Dover? What consequence would that have for the people of the surrounding area?

Lord Keen of Elie: Strictly speaking, our agreements with France over these matters are not predicated on our membership of the European Union, so we should be clear about that. Nevertheless, we benefit greatly from close co-operation with the French in these matters; indeed, not only with France but with Belgium and the Netherlands. The degree of intelligence co-operation reflects the very close union we have with these countries.

Baroness Smith of Newnham (LD): My Lords, in light of the comments by the French Interior Minister, Bernard Cazeneuve, that if Britain left the European Union after the referendum, there might be a risk that the Le Touquet accords—the very bilateral agreements that the Minister has just referred to—may not be maintained, is it not clear that leaving the European Union would give the United Kingdom less control over our borders, and that by alienating our nearest neighbours we would be helping nobody, asylum seekers least of all?

Lord Keen of Elie: I reiterate that the agreement we have with France is not predicated on our membership of the Union, as the noble Baroness herself acknowledged. Nevertheless, we cannot carry out the protection of our borders unilaterally; we depend on co-operation with our neighbours.

Lord West of Spithead (Lab): My Lords, who exactly is responsible for the recognised surface picture in our territorial seas, both down the North Sea coast and in the channel? There has been talk of three hubs being set up and of the Border Force working with the Navy. There is talk of working with HMRC. There are many agencies. Who is actually responsible for knowing which ships are coming across, with migrants, terrorists or whatever, and making sure that they are properly intercepted? Which department has that responsibility?

Lord Keen of Elie: I am obliged to the noble Lord. The National Maritime Information Centre brings together information and intelligence provided by Border Force, the coastguard, the police, the Armed Forces, the Foreign and Commonwealth Office and the Marine Management Organisation, as well as by the National Crime Agency. It co-ordinates that intelligence for the benefit of all these agencies.

Lord Berkeley (Lab): My Lords, is the Minister aware that an agreement between Britain and France on migrants involves both parties agreeing? Has he seen a report from Paris this morning which says that the French Government are so concerned about the UK leaving the European Union that they will abrogate all those agreements as quickly as possible and encourage many more migrants to set foot in England and claim asylum?

Lord Keen of Elie: One has to bear in mind that the French authorities are concerned about the movement of migrants through France, as well as those entering Britain. They therefore maintain an intelligence and border presence for these purposes. In these circumstances,

[LORD KEEN OF ELIE]

it is difficult to believe that they would abandon these efforts simply because one country chose to leave the Union.

Baroness Jowell (Lab): My Lords, I should like the Minister to update the House on the progress being made in processing the applications of those unaccompanied children still in the Calais camp, who may be entitled to asylum in this country under Dublin III, and who are among the most vulnerable to being preyed on by traffickers and most likely to undertake some of the most dangerous risks to get themselves to this country. What are the Government doing in discharging their obligation and the undertakings that they gave?

Lord Keen of Elie: The process in respect of these children involves an application to the French authorities in the first instance. Where it is disclosed that they have a right to come to the United Kingdom, that is then addressed. This Government are assisting in these matters and have personnel available at Calais to assist in these cases.

Automatic Electoral Registration (School Students) Bill [HL]

First Reading

11.37 am

A Bill to make provision for the automatic electoral registration of school students who have reached the age of 16; and for connected purposes.

The Bill was introduced by Lord Roberts of Llandudno, read a first time and ordered to be printed.

Assisted Dying Bill [HL]

First Reading

11.38 am

A Bill to enable competent adults who are terminally ill to be provided at their request with specified assistance to end their own life; and for connected purposes.

The Bill was introduced by Lord Hayward, read a first time and ordered to be printed.

Access to Palliative Care Bill [HL]

First Reading

11.38 am

A Bill to make provision for equitable access to palliative care services; for advancing education, training and research in palliative care; and for connected purposes.

The Bill was introduced by Baroness Finlay of Llandaff, read a first time and ordered to be printed.

Carers (Leave Entitlement) Bill [HL]

First Reading

11.39 am

A Bill to entitle employees to take a period of leave to fulfil certain caring responsibilities in respect of dependants; and for connected purposes.

The Bill was introduced by Baroness Walmsley (on behalf of Baroness Tyler of Enfield), read a first time and ordered to be printed.

Age of Criminal Responsibility Bill [HL]

First Reading

11.39 am

A Bill to raise the age of criminal responsibility; and for connected purposes.

The Bill was introduced by Lord Dholakia, read a first time and ordered to be printed.

Business of the House

Motion on Standing Orders

11.39 am

Moved by Baroness Stowell of Beeston

That Standing Order 72 (*Affirmative Instruments*) be dispensed with to enable a motion to approve the draft European Union Referendum (Voter Registration) Regulations 2016 laid before the House on 8 June to be moved today, notwithstanding that no report from the Joint Committee on Statutory Instruments on the instrument has been laid before the House.

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I beg to move the first Motion standing in my name on the Order Paper.

Lord Foulkes of Cumnock (Lab): My Lords, I wonder whether the Leader of the House can help me in relation to business of the House. In the other place, if a Minister misleads the House, it can be raised on a point of order. We do not have that procedure. On Tuesday, the noble Baroness, Lady Verma, told the House that the St Helena airport was open, and it is not. She said that RMS “St Helena” was going to be available to continue taking people on and off the island; at that very moment, RMS “St Helena” was sailing up the Thames, about to be decommissioned, apparently. Could the Leader of the House arrange for the noble Baroness, Lady Verma, to make a Statement to the House next week correcting the mistake she has made and giving us true information about the situation regarding the airport on St Helena?

Baroness Stowell of Beeston: On the procedural point that the noble Lord raised, as he has acknowledged, we do not have points of order in this House. That is

an established arrangement in the way we conduct our business. I will have to take away the substantive point that he has raised and explore it further, and give it proper and due consideration.

Motion agreed.

Business of the House

Timing of Debates

11.41 am

Moved by Baroness Stowell of Beeston

That the debate on the motion in the name of Lord Haskel set down for today shall be limited to two hours and that in the name of Baroness Smith of Basildon to three hours.

Motion agreed.

Economy and Finance

Motion to Take Note

11.42 am

Moved by Lord Haskel

That this House takes note of the economic and financial prospects of the United Kingdom.

Lord Haskel (Lab): My Lords, I welcome this opportunity to introduce an economics debate because so much has happened in recent months regarding our business and our economy. Ten months ago, we debated the economy after austerity. We looked at the impact of technology, of climate change, of terrorism, of conflict and of low oil prices. Even though these problems remain, I would have liked to have called this debate, “Bremain”. However, the powers that be thought that we should look beyond 23 June, and they are right. There is life after the referendum, and possibly a life more turbulent because added to these old pressures are: the uncertainties of protectionism and trade wars after the elections in the USA and Europe; the effect of excess capacity in China; redundancies in the UK oil industry, even though the price of oil has risen; and the fall in manufacturing output since the last debate.

In addition, we are seeing sentiment moving away from our preoccupation with the deficit. Two weeks ago, the OECD and the IMF both suggested that we might have avoided the low investment in our infrastructure, rising inequality and poor productivity by growing out of our financial difficulties instead of cutting costs. There is much to debate, and I am most grateful to noble Lords who are participating and to the Front Benches.

There is more of a social dimension, too. In recent months, when speaking of the economy, the Government also speak of increasing life chances and helping people who face economic challenge and disadvantage, with a more generous and humane concern about people’s economic insecurities and difficulties. Does this mean that the Government are coming round to our way of thinking—that the market also has to serve people,

not just business? Does it mean that there might be government intervention, not only when there is market failure but when there is environmental and social failure—in fact, reflecting the ideas of Labour Business, an organisation of which I have the pleasure to be an honorary officer?

For some time, many have felt that things are not working out as they should—that the cost of austerity could be much larger than the economic benefit. Now there are important allies, whose “disquieting conclusions” as the OECD puts it, is that these policies result in increasing inequality and undermine economic growth. On Tuesday, I heard a major City investor say they now look for good social, environmental and governance factors as a condition for investment, because that is where they are finding competitive advantage. When people feel more secure about the welfare state, they become more willing to accept change, to accept the onset of intelligent machines and robots and the digital economy, which disrupts working patterns—although whether to the extent of 47% of existing jobs, as experts have said, I do not know. Meanwhile, we are stuck in a jobs-rich and low-investment economy, with flat productivity, stagnant wages and lacking in skills, with many workplaces reluctant to utilise labour-saving technologies. At this time of change, when many workers are not with any employer, or are with many employers for a short length of time, it is important to ensure that people enjoy the basic protections when it comes to health, pensions, job security and training. As part of their concern for people, will the Government work towards this end, perhaps in association with the trade unions, which understand these things, where business is concerned? Otherwise, technical progress will become demised, and investment will go elsewhere.

These ideas are not new; they just need active implementation. The recent papers from the IMF and OECD are just one more nudge in this direction, a nudge to which I hope the Government will pay attention. Another nudge came from the recent EY report about inward investment. The point of the EY report is that inward investors found Britain attractive because of our quality of life, our stable social climate, our diversity and our culture. But inward investors, like that City investor, are now having concerns, largely because of the effect that austerity is having on those elements. The report voiced other concerns—about the environment and the high cost of housing. But, of course, another major threat to foreign direct investment is our leaving the single market. I suspect that foreign direct investment is one reason why many people in business are in the remain camp, together with the practical advantages of free trade.

Part of the remain case should be to present a vision of what we want the European Union and single market to look like when we remain, and particularly what we would try to achieve during our probable presidency in 2017—how the economic welfare of people as well as business can be improved by setting basic standards to prevent a race to the bottom, a race that not only workers but good companies would suffer from.

Initiatives of this kind will indicate that not only are we staying in the single market but we intend to play an important and leading role in its development.

[LORD HASKEL]

However, there is more to do. Half our exports to the EU are manufactured. This is because the uniform regulations and standards make it easy, with many facilities being available for 28 countries. For instance, you can register your trade mark on one piece of paper, and it is valid in 28 countries. Many companies now sell their products or services by profiling potential customers from data available over the internet, but different countries have different rules about personal privacy and protection. We in the UK are rather more liberal over data protection, but this form of direct marketing is growing strongly and we need one rule for all.

So much about the economic strategy in Brussels. What about the economic strategy at home? Many have accused the Government of having none. In response, Ministers trot out the various technology centres and institutes that have been set up—the Advanced Manufacturing Research Centre, the Centre of Nuclear Excellence, offshore wind investment or the British Business Bank—but this is not a strategy; it is filling in gaps. Certainly it is sometimes filling them in well, but many gaps remain.

Ministers also point to our world-class science. Yes, we have world-class science and technology, and we have world-class scientists and technologists, but we have very few world-class science and technology businesses. Why? This has been answered many times by people such as John Kay and the noble Lord, Lord Turner, and we are waiting for the Government to act. Perhaps they need an emergency to act, as is happening in the steel industry, but that is not a strategy; it is being a fire brigade.

It is the same with productivity. Ministers produced a productivity paper last year which we debated in this House hoping that it would be an important part of the Government's industrial strategy, but it has disappeared. The BIS committee in another place described the proposals in it as a vague "collection of existing policies" with non-existent milestones. We also know that with long-term interest rates available to the Government at virtually zero, now is the time to invest in the infrastructure, housing, technologies, training and intangible investments needed to raise our productivity. Yes, we have passed the Enterprise Act, but again that was just a catch-up exercise to plug gaps which were becoming more and more obvious. A strategy is not just filling in the gaps as they arise, it is not just dealing with emergencies as they arise, it is not just something spoken of and then forgotten; a strategy is long term. It needs constant nurturing. All these elements need an annual review to understand the short-term changes and to learn lessons. This is the kind of commitment that we seek to raise our productivity.

On 25 May, I asked the Minister about our balance of trade. He surprised me and many noble Lords when he complacently replied that,

"our trade deficit has been relatively stable at around 2% of GDP for the last seven years".—[*Official Report*, 25/5/16; col. 383.]

However, that deficit accumulates, and it is now at an all-time high of 7% of GDP. One thing is clear: because of the trade deficit, we are completely dependent on inward investment to pay our way in the world. In

no other developed country have inward investors taken control of such a large part of business and industry, finance and public services, welfare and health. I can certainly see the big advantages of foreign investment in industry, with its policy of long-term investment in production and skills. We certainly gain in technology, but ownership matters. Big decisions are taken elsewhere. UK firms are told where they can and cannot export.

Also, much of the money is spent on buying and selling assets, not investing in growth and development. If you walk through my part of London, you will find that the hospital building is owned by a Japanese bank, the street lights by a Swedish finance company, the buses by a state-owned Dutch company and the water by a company in Jersey. The brochure promoting the northern powerhouse presents it as a great opportunity for overseas investors.

There have been a series of initiatives to support foreign direct investment, but if a local citizen is unhappy with what is provided, it is becoming less a matter for the council and more a matter of the terms of the contract with the provider. Meanwhile, we in Parliament are doing what we can to encourage localism. Does the Minister agree that there must be a limit as to how far this can go, not only because this is affecting our democracy but because it restricts our choices in economic development and balancing our economy? I am all for free trade and against trade barriers, but I think a public interest element should be present in these negotiations. The Government are obsessed by the wrong deficit. Paying our way in the world is becoming more important than just balancing our books.

This debate is about the economy. So I ask the Minister: are we a stronger economy when we have a vision for the single market after the end of this month? Are we a stronger economy when we have political control over our basic services and industries? Are we a stronger economy when we carefully invest in our future with a long-term strategy? Are we a stronger economy when we pay our way? Are we a stronger economy when there is a safety net to see us all through these hard times of economic and technical change? I look forward to hearing the views of other noble Lords, and I beg to move.

11.57 am

Lord Leigh of Hurley (Con): My Lords, it is as always a great honour to speak in this debate on the economy, and I congratulate the noble Lord, Lord Haskel, on securing it. Between this and his other recent erudite contributions on the economy, he has consistently been carrying the torch of rational economic arguments for the Opposition that some would say has been strangely discarded by his colleagues in the other place. His contribution today was extremely well measured, and I hope that the rest of the debate does not descend into a rant about the forthcoming referendum or views on the EU, but focuses on the questions he has raised.

We are asked today to consider the UK's economic and financial prospects—no small matter indeed. Having said all that I have and meant it, I of course do not agree with everything the noble Lord said. I am happy to say that, thanks to the enduring wisdom of the

British electorate, our prospects are good. Not content with a coalition Government who made great strides in restoring our economic credibility, they voted for more of the same in 2015: a resounding mandate to continue the restoration of our public finances and improve the competitiveness of our business climate. “Why would they not?”, we might well ask. The UK economy is on the right track. Employment is up, bringing 2.5 million new jobs to the UK, giving to so many the dignity of a job and a means to support their family. As the noble Lord has observed, the deficit is down from a record post-war high to less than 3% this year, and this morning’s trade figures show a reduction in the trade deficit and an increase in exports.

I believe that FDI is actually of great benefit to this country. The noble Lord asked a Question on 25 May about the current account deficit. The point was made that if we had more FDI externally into other countries from UK investors, the current account deficit would close. However, analysis of the UK economy is to some extent best left to experts—specifically those of the IMF, which said in its assessment of our prospects:

“The UK’s recent economic performance has been strong, and considerable progress has been achieved in addressing underlying vulnerabilities. Growth has been robust, the unemployment rate has fallen substantially, employment has reached an historic high, the fiscal deficit has been reduced, and financial sector resilience has increased”.

Those are the IMF’s words, and we continue to grow, create jobs and attract inward investment. I, too, quote from the OECD, which forecast that we would have the fastest-growing major advanced economy this year.

The debate today specifically asks: what of our prospects? To that I say: if this reverse of Labour’s economic management can be achieved over the past six years, imagine what we can do in six more. There are clouds on the horizon. Falling oil prices have plunged Russia and Brazil into recession, and China’s rebalancing has led to lower growth in many economies. So the risks are great and we cannot rest on our laurels. Since some in the party opposite want to question the whole basis of capitalism back to the time of Chairman Mao instead of looking forward, we should at least ask ourselves what is next. In response to that I would like to say a few things specifically about the SME business sector—small and medium-sized businesses—and what can be done to enable it to play a bigger role in our economic future.

The House may be aware that SMEs are a constituency worth looking after, since in 2015 they were responsible for half of employment and a third of turnover in the private sector. Furthermore, a recent interesting online survey by eBay showed that two-thirds of small businesses in the UK are planning to increase investment in the period 2016-17. Let us help them help the British economy.

Budget 2016 set out important measures to help our small businesses thrive. Lower corporation tax, down to 17% in 2020, encourages entrepreneurship and economic activity in small and medium-sized businesses. That it is the lowest in the G20 serves as a lighthouse, gathering small, entrepreneurial ships to our shores to innovate and create jobs.

Small business rate relief—I declare an interest, as noted in the register, as a director of a retailer—has also helped, as the relief for small businesses is being doubled to 100%. We have also seen cuts to capital gains tax—again, I declare an interest as an adviser to businesses which are seeking an exit. This cut in capital gains tax, in combination with continued improvements to entrepreneurs’ relief, which I particularly welcome, will encourage investment in small businesses and start-ups. So we will create the world-class tech businesses that the noble Lord, Lord Haskel, wants to see emanating from these shores.

Most importantly, I am pleased to see tax avoidance being addressed. As I have said in previous debates—I believe that Members in all parts of the House are keen to see this—it is important that large companies are made to pay their fair share but also that the tax system is made easier to use for those who are less well resourced: our small businesses and entrepreneurs. Thanks to measures in the Finance Bill, the self-employed will enjoy simpler treatment through digital filing, and investment in HMRC will help. I hope there will be more to come in this Parliament to support small businesses further.

However, I think the EU referendum is the right call because it is clear from the level of debate in the country that there is a need to discuss many issues. It has been alleged that there is a disparity of views between small and large businesses, with large businesses preferring to remain in the EU—for debatable reasons—and small businesses preferring to come out. I am not sure that that is the correct distinction. To my mind, it is more significant—and the distinction perhaps easier to make—to look at the owners of those businesses. We can look no further than Members of our own House—the people who invest in their own businesses, such as my noble friends Lord Harris of Peckham, Lord Wolfson, Lord Borwick and Lord Bamford, and Lord Edmiston, who has recently retired. They are all entrepreneurs who, in the true definition of entrepreneurship, have invested their own money in their businesses, and they have made their views clear. I only hope that, whatever the result of the referendum and whichever direction we go in, the Government will have listened to the debate and to the businesses that have said changes need to happen.

We have a competitive policy and regulatory climate for small businesses that is attractive. It is not easily built up but it is easily destroyed. We must not return to the old approach of a new regulation here and a new tax rise there. I urge the Government to stick to their strategy of setting out a clear direction of travel for business tax and regulation, one that survives the buffeting of global economic events. If they do this, to return to the subject of our debate today, our prospects look bright indeed.

12.05 pm

Lord McFall of Alcluith (Lab): My Lords, it is a pleasure to participate in this debate and to congratulate my noble friend Lord Haskel not only on his excellent speech but on his persistence in ensuring that this subject is at the forefront of our attention in the House of Lords.

[LORD MCFALL OF ALCLUITH]

I suggest that the economic and financial prospects for the UK are grim if we leave the European Union. I agree, actually, with the late Margaret Thatcher, who, in quoting approvingly from Clem Attlee, said that referendums are a device for dictators and demagogues. This referendum mirrors the Scottish referendum in that there are bitter and bad-tempered exchanges, and it will leave a poisonous residue long after 23 June. It has denigrated the term “immigrant” to the extent that it has seeped into the bones of the electorate.

Facts and expertise have been disregarded and discarded. On ITV last week, Michael Gove, supposedly the most cerebral of the Vote Leave MPs, said that people have “had enough of experts”. I have more reason than anyone to be cautious of experts. As chairman of the Treasury Committee, I drilled holes in the Budget proposals of every Chancellor who came before us. However, although economic models are often wrong, that does not mean that they give no knowledge at all. Indeed, they build up a picture of evidence and trends. Forget the precise figures from the Chancellor—that house prices will fall by 18% and that every household will be poorer by £4,300 per annum. The important point is that the findings by a gamut of economic institutions and researchers—internationally, in the IMF, OECD and WTO; and nationally, in the Bank of England, the IFS and the National Institute of Economic and Social Research—are unequivocal in their belief that Brexit would be a very costly option in both the short and long term.

Only one economic modelling exercise has generated a positive case for Brexit, and that is from a Vote Leave economist called Professor Patrick Minford, of Cardiff University. His analysis has been demolished by the London School of Economics economists, and fellow Vote Leave member Andrea Leadsom, a Tory Minister, disavowed it in a recent “Newsnight” debate.

Let us assume that no precise figures are correct in the Brexit debate. What is incontrovertible is that the negative economic impact ranges from “pretty bad” to, in the words of Christine Lagarde of the IMF, “very, very bad”.

As it stands, Britain has 1% of the world’s population but 4% of global GDP. Already, as an EU member, we are well interconnected in today’s global world. That is a world that has three hubs: the USA, with NAFTA; Asia, with China and the Asian Development Bank; and Europe, with a single market and 500 million people.

Recently, I had the opportunity to have a reunion with a chemistry student who I taught over 40 years ago. He is immersed in the global hub that is Europe and is now leading on research into the Zika virus, which is blighting the lives of many infants in Brazil. I came face to face with a case where UK science is in the vanguard of the search for global solutions. His message to me—and the message of leading university chemistry heads in a letter published this morning in the *Times*—is that membership of the EU is integral to the success of science. I well remember the wise words of the noble Lord, Lord Parekh, when he said in a debate here on the Scottish referendum, in January 2014, that in conducting our argument we should always emphasise “the shared ‘we’” and our commonality. We should recognise how we would feel pain, and

how both of us would suffer, if Brexit were to happen. On the commonality theme, I am reminded of Pope Francis’s short but hugely symbolic visit to the island of Lampedusa. When he visited the migrants there, he spoke about the issue of global indifference and stressed the physical, environmental and moral space we share, which is under threat as never before.

Mindful of our shared and common endeavours, let us ensure that the questions we ask in this debate are liberating rather than destructive. In that vein, we should pose questions such as: do we wish the European Union to become more effective in the way that it works; and, if so, how do we tackle a democratic deficit and ensure that the home country parliaments have their wishes better respected? Do we wish to strengthen and enhance areas such as international law, human rights, environmental justice and global peace and security, almost all of which hang by a thread at the moment? If we do, others will be safer, but we will be safer as well. On tax havens and the global financial system, do we wish to continue working with our EU partners so that we check rising inequality, enhance our public services and provide a more secure future for our young people?

This referendum is all about young people. They will be the losers if we persist in the bitter, negative and destructive exchanges. Economists are unanimous that Brexit will be a very costly political, economic and social option. I submit that that is too high a price for future generations to pay.

12.12 pm

Lord Shipley (LD): My Lords, I am grateful to the noble Lord, Lord Haskel, for giving us the opportunity to have this extremely important debate. I am glad that its context concerns the prospects for our economy. It is always a pleasure to follow the noble Lord, Lord McFall. I agree with his words: our prospects are grim if we leave the European Union. We are one of the world’s largest economies, but we are so because we are in the European Union, not because we are outside it.

I want to put this debate into the context of the north-east of England—where I live—our manufacturing base there and this referendum debate. The north-east of England is a manufacturing and exporting region. Many thousands of jobs—around 150,000 in the north-east of England and millions across the UK—depend on exporting to our European partners. Leaving the EU’s single market, which is the world’s largest free trade zone, would hit our trade and investment and increase unemployment.

I am proud that, because we make things, my region has a positive balance of trade. We manufacture cars and now we manufacture trains. We have huge supply chains in support of our manufacturing. It would increase unemployment significantly if we voted to leave the European Union. The north-east of England simply cannot afford the cost of Brexit. It would be a massive own goal disrupting our economy and the livelihoods of very many households.

Last year, 44 foreign inward investment projects came to the north-east, but this will be put at risk if we leave the EU. Why would an overseas company seeking to expand in the EU want to put itself outside the single market, facing tariff barriers to its exports?

The north-east needs access to the EU single market of 500 million people, with a say over the rules of doing business across Europe. That means more jobs and more financial security for our region.

In addition to manufacturing, sectors such as farming, science, higher education, tourism and hospitality would also be adversely affected by Brexit, and the north-east of England would lose access to hundreds of millions of pounds of EU funding for regional development. The success of our universities relies heavily on EU research funding and our businesses rely on free movement of skilled workers both to and from the UK to drive growth and jobs.

As the noble Lord, Lord Haskel, pointed out, manufacturing still provides half of our country's exports, three-quarters of scientific innovation and 2.5 million jobs. Almost all UK economists support our remaining in the EU but, amazingly, one economist who favours Brexit—Professor Minford—has admitted that if we left the EU it seems likely that we would mostly eliminate manufacturing. This is unacceptable. We need manufacturing and the innovation, jobs and growth it can bring. Car manufacturers and rail manufacturers—indeed, all manufacturers who export or plan to export—want access to the European single market to enable them to trade freely on common technical standards. Small businesses need the same because they form part of the critical supply chain to bigger businesses.

The EU helps all these industries by eliminating both tariff and non-tariff barriers. The next stage of development of the single market will bring down the remaining barriers to trade in services, energy and digital industries, which will be hugely beneficial to the UK. Our success at manufacturing and in the north-east of England depends on our continued membership of the European Union. In the north-east, the warnings from Hitachi and Nissan need to be taken seriously. They want us to be in the single market and their views matter profoundly. The north-east needs the jobs and the prosperity they bring.

The prospects of the north-east of England depend on our being part of the EU and its single market. Voting to leave would do immense damage to our economy, to our growth prospects and to the prospects of our next generation.

12.17 pm

Lord Suri (Con): I thank the noble Lord, Lord Haskel, for securing the time for this debate. It is an extremely pertinent debate given that we will in two weeks be able to choose whether to guarantee our financial and economic prospects or endanger the flow of trade to and from the single market, which accounts for some 10% of our GDP.

Already we can observe the outflow of money from British assets. Some £65 billion either left the UK or was converted into other currencies in March and April. This is the fastest rate since the financial crisis in early 2009. Alternatively, we could look at it as £1.3 million a minute leaching out.

I am disappointed to see the populists of the leave campaign start to turn the polls around. It is notable to see the pound drop more and more as they gain in the polls. People need to understand that this means

higher prices in the shops and, if we pull out of Europe, import tariffs. For my business and all the people we employ this will be utterly disastrous. Jobs will be lost and I and others will find it harder to attract the investment that drives so much of our growth.

The sheer foolishness of cutting our trade links with the body that receives just under half of all our trade is extreme. I do not know if we will be trading on Norwegian terms or Turkish terms or Canadian terms. I think that one of the Ministers leading the campaign even suggested that we use Albanian terms. This is the single biggest risk to the economic prospects of the UK. Every single reputable body, from the Treasury to the IFS, from the OECD to our allies, has told us to stay in.

We would be voting for permanently lower growth, higher prices, diminished living standards and a recession. Being in Europe does not act as a muffler; it is a loudspeaker. It is one of the most important international institutions in which we can make our voice heard. Simply, to secure our economic future, we must stay in Europe.

There is another issue which has been somewhat lost in the din of this campaign and will no doubt emerge once the debris has settled. Infrastructure is of critical importance to our future economic growth. I welcomed the decisive moves by the Government earlier in the year to roll out superfast broadband. Physical infrastructure still plays a significant role in the ability of businesses to scale up and sell goods to other nations.

Since I arrived in this country, there has been the perennial blight of airport capacity in the south of England. I, like many others in this and the other place, have seen numerous signs and adverts for Heathrow or Gatwick expansion. The arguments are finely balanced and I will admit that I have been swayed by the warnings of ground-level pollution in west London should Heathrow expand. Noise is also an issue, but ultimately we must weigh up the decision and balance it against the undoubted boost to productivity and growth that it will bring.

My message to the Government is simple: expand one airport or the other, or both. The lack of capacity makes freighting goods overseas far more expensive and the tremendous crowding actually leads to more noise as jumbo jets taxi around the metropolis. Also, we are seeing other hub airports eat our lunch. Amsterdam has captured large swathes of commercial flights, especially on routes that were not in demand a decade ago, such as to Lagos or Manila. Unless the Ministers responsible are capable of screwing up their courage, the UK will continue to be denied growth and transport opportunities for those goods that cannot be transported by sea or overland.

The other pressing infrastructure question concerns our rail capacity. Crossrail has recently been completed and is in my view a roaring success for British engineering, manufacturing, and of course tunnelling. The evidence of the Eddington report showed that the pressing issue of rail capacity was overcrowded commuter lines around big cities such as London, Bristol and Manchester. I still cannot see the case for spending £55 billion on a high-speed connective link when it makes more sense to invest money in higher-capacity and faster regional

[LORD SURI]

and metropolitan services. As with most big infrastructure projects, I can confidently predict that the figure will rise during construction.

Trimming half an hour off train trips from London to Manchester will not heal the north/south divide or boost growth in any meaningful sense. The London train will not even stop at a well-connected station due to the decision to make it stop at Euston instead of Old Oak Common. Reinvesting that budget in road improvements or regional train networks will yield fewer photoshoots but greater transport flexibility and capacity. Shorter commuting times around often badly connected suburbs in our big cities will boost productivity, which is where we can reap significant gains. I would urge the Department for Transport to rethink its strategy and redirect at least some investment into regional infrastructure rather than this expensive project.

12.23 pm

Baroness Armstrong of Hill Top (Lab): My Lords, it is a great pleasure to take part in this debate and to congratulate my noble friend. Not only did he make a really good speech, he has shown over many years a real consistency in terms of good business, making sure that business is supported and seen as part of the nature of our society and our communities. In a sense, that is what I should have liked to pursue in my remarks, but I am afraid I shall upset the noble Lord, Lord Leigh, because I, too, will have a rant about the crisis that we have been plunged into, totally unnecessarily, and the effect that it will have on my region, which I suspect he does not know in any great depth.

Those of us who come from the north-east—I shall have to be careful not simply to repeat what the noble Lord, Lord Shipley, said—are extremely concerned about the referendum and the potential effect on our region. I very much agree with my noble friend Lord McFall on referendums, and I think this one is not about listening to the British people. I could not help but smile when I heard the noble Lord, Lord Leigh, talk about the great debate. It has been a terrible debate and most of the British people are turned off by it, but they know that they will have to make a decision when they do not feel that they have heard honest assessments of what the outcomes will mean.

What sort of economy do we want? That is where I want to start. I am dismayed that many of the people who are talking about leaving say that manufacturing is not as important as it used to be, and they are satisfied with that. I want an economy that takes manufacturing seriously and goes back to understanding that what we are able to make is still very important. Yes, services are important and I am pleased that the European Union is well down the track in negotiating a service agreement and free trade, in addition to the current agreements that there are within Europe. None the less, I would have thought we had learned the lessons from the crash and what happened to the banks and to the rest of us following that crash. A service industry-led economy will have problems. We need a strong manufacturing economy to make sure that services can succeed.

In the north-east in 2014, we exported £7 billion of goods to the European Union. That was 56% of the total of goods exported from this country. Is it any wonder that those of us from the north-east are very worried about Brexit when we overwhelmingly export the most of what this country exports to Europe? We know that we have to increase the amount so that we can do such things as tackle what is still the largest unemployment rate in the country. We want to do that around jobs that people can value and where they are valued in doing those jobs.

Think about Nissan and consider all the arguments that took place in our region, and elsewhere when Nissan first came to Sunderland. It is now the UK's largest car manufacturing facility. One in three cars built in the UK are built in the town I was born in. That is a matter of pride. When I talk to people who work at Nissan, they have an amazing experience. I have one friend whose son started at Nissan, having had a somewhat troubled adolescence, I might say. His dad was just so pleased that he got a job. Then he got involved in training and ended up being a senior salesperson who frequently went across to Europe to make sure that the cars were sold. Nobody would have imagined him doing that. That was because the company got hold of training, spotted his potential and developed it even though he did not join with lots of qualifications. Nissan built more than 500,000 cars in 2013 and more than 80% of those were exported. The bulk went to Europe; most of the rest went to other countries on the back of EU agreements with them.

Hitachi has now established itself in Newton Aycliffe, which is not very far from the constituency that I represented in County Durham. It is building trains there. Its chairman made absolutely clear a couple of weeks ago that the only reason it came to the UK was because it is a gateway to Europe. We know from Nissan's example that Japanese manufacturers like to be in the UK because English is their second language. Hitachi's chairman came to the north-east because of very good negotiating from my honourable friend the Member for Sedgefield in the other House, Phil Wilson. It has just started and has made clear that it is thinking about contingency plans in case Brexit goes wrong. Its investment is there because the UK is the gateway to Europe.

I have lots more to say about other companies, but I do not have time. This is a rant, but it comes from the heart because I want my region to continue to succeed and succeed even more. It will not if we leave Europe.

12.31 pm

Lord Lee of Trafford (LD): My Lords, I congratulate the noble Lord, Lord Haskel, on securing the debate. With only a fortnight to go until the referendum, which is so crucial to our country's economic future, I must focus my contribution on it. I very much disagree with the noble Lord, Lord Leigh, on this, although we share the same tailor.

My mood is a mix of anger and sadness—anger that the leaders of the Brexit campaign choose wilfully to ignore the warnings of so many who have far more experience of international trade and finance than they do. They do not care that virtually all trade

bodies that have polled their members want to remain, from manufacturers to tourism bodies, from bankers to the NFU. Some 80% of members of the CBI want to remain, as do 80% of the Society of Motor Manufacturers and Traders, 80% of the Engineering Employers' Federation, 80% of the leading tourism body, UKinbound, and 80% of the leading chairmen of our retailers, as polled recently by Korn Ferry. The leaders of the Brexit campaign do not care that the heads of our great international trading companies, such as Shell, Vodafone, GKN, Rolls Royce and Diageo are in favour of remaining, as are all our airline chiefs, who warn that travel and holiday costs would rise if we leave. The leaders of the campaign do not care if our construction industry is deeply concerned that a severe shortage of skilled workers would arise on Brexit, that our hospitality industry would virtually collapse without migrant workers from mainland Europe, or that our banks, such as JP Morgan, have warned of severe job losses.

Brexiters talk of increasing trade with countries such as China and India. What are these products that we could sell but are not at the present time? Please name me a company that has said it needs Brexit to export more. Of course, Europe would still want to trade with us on Brexit, but it would not make it easy, if only to discourage other countries from following us. On renegotiating trade deals, as Robert Azevêdo, the director-general of the World Trade Organization, said earlier this week:

"It seems that there is a great deal of confusion about the trade implications of a British exit from the EU. I think it's important to provide the facts. The likelihood is that a British exit would lead to a sequence of complex negotiations—with the EU itself, with the 58 countries that have trade agreements with the EU, and also with all the other members of the WTO. These negotiations would be complex and drawn out".

Brexiters peddle another myth: that onerous EEC regulations could and would be swept away. The Chartered Institute of Personnel and Development, which represents 140,000 personnel directors and managers, says that Brexit would lead to "very little ... change" in UK employment law. I could do no better than quote Sir Roger Carr, the chair of BAE Systems, who said in the *Times* on Monday:

"To leave Europe would dislocate the momentum of our steady recovery and threaten exports today and productivity tomorrow. It would be both foolhardy and disruptive".

How dare those Brexit leaders such as Duncan Smith, Gove and Johnson, with near-zero commercial experience themselves, arrogantly challenge all those bodies and individuals that I have quoted today?

I said I was also saddened by so many of the older generation interviewed in our pubs and clubs just focusing on immigrants and immigration as a reason for voting "out", as if, by a stroke on Brexit, our borders will be closed and the sad flow of refugees internationally stemmed. Sadly, many of those older Brexiteer voters would suffer if we exited, through stock market turbulence affecting their pensions, price rises on imported goods and more expensive holidays. Their children and grandchildren would suffer through fewer job opportunities as foreign investors chose to invest within the EEC rather than the UK, where they would have to surmount tariff barriers to export to Europe.

Anyone who knows anything about investing and business expansion knows that an economic background of certainty and confidence is crucial. Brexit would provide just the opposite: turbulence and uncertainty; stock market and sterling falls; likely interest rate rises; and a flight from sterling that has indeed already started. I hope and pray that we vote "remain" on 23 June, and that in the end our people pull back from the brink and from the tragedy that Brexit would deliver for this and future generations.

12.36 pm

Viscount Chandos (Lab): My noble friend Lord Haskel eloquently introduced what is the third debate on the economy in this House in the past three months. In doing so, he made a compelling case for your Lordships returning to this subject. If a week is a long time in politics, a month is an age in the global economy, even before considering the agonising feeling of time dragging as the EU referendum campaign grinds its way towards a conclusion.

The referendum to be held two weeks today is an inescapable factor in considering the prospects for the UK's economic and financial prospects. The powers that be have not had the chance to discourage me or a number of other noble Lords from making this a central part of our speeches. In the short term, the referendum itself has clearly had some effect on confidence levels, leading to delays in investment and some consequential slowing up of economic activity. In the longer term, however difficult it is to forecast even one scenario let alone two, the decision that will be taken in two weeks' time is highly likely to have a significant impact on the economy's path. The protagonists on both sides have framed their arguments substantially, though not exclusively, around the economic implications of Brexit or remain.

An unexamined life is not worth living, so I do not believe that our membership of the European Union should have been exempt from critical scrutiny. Indeed, even though the great Groucho Marx was American, I think the Groucho principle of not being sure you want to be a member of any club that will have you represents the best form of British scepticism—though I am even more attracted to one of the graffiti seen in Paris in May 1968:

"Je suis Marxiste, tendance Groucho".

I commend that to others, from the supporters of Bernie Sanders to some members of my own party.

Reform and clarification have been, and will continue to be, needed; and the agreement reached to exempt the UK from ever-closer union and to ensure that non-members of the eurozone should not be discriminated against are important, both symbolically and practically for the UK and other members of the EU. None the less, it is difficult not to feel that these and other reforms could not have been achieved without the cost and uncertainty involved in the referendum, as opposed to considerations of party management and electoral tactics by the party opposite.

Yesterday's *Financial Times* carried a measured but powerful article by Douglas Flint, the chairman of HSBC, based on his conversations with the bank's

[VISCOUNT CHANDOS]

mid-market UK corporate customers—the very SME sector to which the noble Lord, Lord Leigh of Hurley, referred. He concluded:

“Leaving the EU risks dismantling the very apparatus that has enabled UK firms to compete, while distracting them from the priority of growing their business and creating wealth”.

He also said that these companies felt,

“a frustration over the lack of a clearly defined alternative to Britain’s current EU membership”.

In this context, perhaps Boris Johnson’s amusing, but economically illiterate, quip:

“My policy on cake is pro having it and pro eating it”.

is an illuminating explanation of why the Brexiters believe that the UK could have all the benefits of the single market and none of the obligations and costs.

The decision on our membership of the EU is being taken against a background of huge uncertainty and challenges both in the global economy and domestically, such as: low growth in productivity in many major economies, all the more baffling for its occurrence during a period of rapid technological innovation and implementation; the challenge of moving from the current, exceptional monetary policies to more normal ones; and in the UK—and at least as much in the eurozone—an incomplete reconstitution of the banking system, which constrains the supply of capital to business.

There is evidence that quantitative easing and other monetary policies in response to the financial crisis have not been the sole, or even the principal, cause of the unprecedentedly low level of interest rates. Ben Broadbent, the deputy governor of the Bank of England, has spoken on this, which has been taken up in turn by Martin Wolf in the *Financial Times*. Whatever the other causes may be—the declining rate of productivity growth, an exaggerated level of caution in the system, a generally low level of business confidence—the effect has been to keep the cost of equity capital high, even while the risk-free rate has fallen so far. The equity risk premium is twice the level that it was at the turn of the century.

These challenges should not obscure the strength and competitive advantages that we have in this country: an education system which, despite the stresses and strains of past decades, at its best still helps turn out outstanding scientists, engineers, entrepreneurs and managers; global leadership in a range of manufacturing and service industries; a budding technology start-up sector; and generally efficient and, as my noble friend Lord Haskel told your Lordships, increasingly sensitive capital markets. How, therefore, can we best protect and enhance this base of excellence and growth? The noble Lord, Lord Leigh of Hurley, suggested that we should look to the undoubtedly successful business owners and managers whom he cited for a lead. However, a lead in the opposite remain direction is given by innumerable other successful entrepreneurs, particularly at the cutting edge of new technology, whether in IT, drug discovery, FinTech or AI.

In economic and, I believe, social and cultural terms, there is a decisive argument in favour of remaining in, and continuing to work to improve, the EU. I fervently

hope that in 15 days’ time we will find that every part of our economy and society are still able to benefit from that membership.

12.44 pm

Lord Polak (Con): My Lords, I, too, congratulate the noble Lord, Lord Haskel, on securing this debate. The financial and economic prospects of the UK look far better balanced and stronger than many had predicted. This position has been achieved due to the sensible stewardship of the economy by the Chancellor of the Exchequer and his team and so, after seven years of low interest rates, low inflation, rising living standards and real GDP growth—currently the second fastest in the G7, at 2.2%—today we have the highest full-time employment levels of any major EU economy and a country where the poorest communities have seen a fivefold increase in employment since 2009.

The economy is in a relatively healthy state, but how can this be maintained and enhanced? Those among your Lordships who saw the recent Barclaycard 50th anniversary advert will recall that David Mitchell reminds us that Napoleon may well have called us a “nation of shopkeepers”, but I would like to add that we have always been a nation of entrepreneurs, innovators and inventors—people who work hard and want to get on in life. A story goes that a shopkeeper was dismayed when a brand-new business much like his own opened right next door and erected a sign reading, “Best quality”. He was horrified when another competitor opened up on the other side of his shop and put up an even larger sign reading, “Lowest prices”. The shopkeeper was clearly distraught and panicked, until he got the idea—after all, he was an entrepreneur, innovator and inventor—to put up the biggest sign of all above his shop, which read, “Main entrance”.

It is therefore no surprise that, in 2015, the UK was placed among the leaders of the world in entrepreneurship and as the highest in the EU by several highly rated think tanks. It is also encouraging to see our European partners taking further steps to encourage an environment in which entrepreneurs can flourish across Europe, such as the entrepreneurship 2020 action plan—and I am confident that they will remain our partners in the coming weeks. However, what is perhaps most encouraging is that Britain could soon become a nation of young entrepreneurs, with statistics published by YouGov showing that almost a quarter of young people between the ages of 15 and 18 have the aspiration to start their own business here in the UK.

The Government must therefore continue their determined efforts to support the development of new start-up businesses across the entirety of the United Kingdom and help to fulfil the ambition of the so-called “wired generation” to start businesses in the UK. I am delighted that progress towards this has already begun; Britain’s world-leading tech sector gives us a competitive edge that is not just transforming our daily lives but driving the whole economy forward.

Not only does the UK have one of the lowest corporation tax rates in the G20 but you can register a company within 48 hours for as little as £15 and have access to the second largest workforce in the EU. The Government have also supported a number of initiatives,

both directly and indirectly, to encourage people at different stages in life to be entrepreneurial. But to best fulfil the aspirations of those young entrepreneurs and, therefore, to drive the financial and economic prosperity of the UK, we must teach them the skills they need to succeed in life. In key areas such as computer science, we must build on the work of this Government to introduce coding classes in schools and further encourage pioneering UK charities such as the Raspberry Pi Foundation. Its credit card-sized, single-board devices, costing only around £30, have the potential to be used in an unlimited number of ways, and its efforts to use these devices to encourage children to learn more about computing are highly commendable.

The Raspberry Pi Foundation poses the question: why buy a child a toy when you could buy them something with the potential to create 1,000 toys, allowing them to use their imagination and create something unique? Developers in all age ranges have used this device to create music players, gaming consoles and remote-controlled cars, among other things. The learning experience, alongside the entertainment value of the device, will only help children grow in a world of automation and software development. I congratulate the six founders of this charity, who not only are helping the next generation of entrepreneurs grow but have been successful UK entrepreneurs themselves, including, of course, the noble Baroness, Lady Lane-Fox. The recent announcement that they have sold 8 million devices, making Raspberry Pi the bestselling personal computer in the UK ever, is truly astonishing. Through efforts such as this, I am confident that the UK will be able to maintain and enhance its position as a place of entrepreneurship and technology, and drive its economic and financial prosperity into the future.

In conclusion, will my noble friend the Minister confirm that the Government will continue to support entrepreneurs, especially the aspiring young entrepreneurs I spoke about, in their quest to drive our economy forward and increase the financial prosperity of the UK?

12.50 pm

Viscount Hanworth (Lab): My Lords, two weeks ago there was a brief debate at Question Time on the state of our balance of payments. The debate was prompted by my noble friend Lord Haskel, who asked Her Majesty's Government,

“what steps they are taking to reduce the United Kingdom's deficit on the balance of payments in overseas trade”.

I am indebted to him for providing this opportunity to pursue the matter further.

In answering the Question, the noble Lord, Lord O'Neill, the Commercial Secretary to the Treasury, asserted that the UK's current account deficit has been driven by “changes in investment income”. He added, somewhat counterintuitively, that this has been a reflection of,

“Britain's attractiveness as a destination for investors”.

He explained that,

“the recent deterioration is due to the growing attractiveness of the United Kingdom ... in the minds of investors all over the world”.—[*Official Report*, 25/5/16; cols. 383-84.]

This seemed to defy logic. Therefore, I must attempt to uncover what may have been in his mind and what might also be believed by some of his colleagues.

The country's international transactions fall into two major categories. On the one hand is the current account, comprising the income from the trade in goods and services and the income from investments; on the other hand is the capital account, which I shall examine in more detail hereafter. There can be a surplus or a deficit on either account but, by the logic of accountancy, this must be met by an equal and opposite deficit or surplus on the other account. My noble friend Lord Haskel was alluding to the fact that today Britain has an unprecedented deficit on the current account. This ought to be a major cause for concern.

Our international creditworthiness cannot survive a prolonged current account deficit and to lose it will have dire consequences. The effect will be similar to that of a run on a bank, albeit on a much larger scale. The money invested by foreigners in the UK will be withdrawn and the value of the pound on the international currency markets will plummet. In an attempt to stem the flight of capital, the Government will be forced to raise interest rates. Growth and investment will cease and there will be a prolonged period of economic misery.

The UK has recorded current account deficits every year since 1994. The latest figures show that the current account deficit was 5.2% of nominal GDP in 2015, which is the largest deficit since the records began in 1948. The deficit is worsening. In the fourth quarter of 2015, it was running at 7% of GDP. Unless this situation is amended, the cumulative total of the deficits will sooner or later pass a threshold or a tipping point, and the miserable consequences will ensue.

The principal cause of our current account deficit has been the failure over many years of our export trade in manufactured goods. Our export of goods has diminished both as a proportion of our foreign trade and in absolute terms. In contrast to the deficit in the trade of manufactured goods, there has been a surplus in the trade in services. This surplus defrays part of the deficit in the trade of goods. However, it is less than the deficit, and its growth has ceased.

There are two more items in the current account. These are the so-called primary income account and the secondary income account. The secondary income account concerns payments to and receipts from international organisations, and other miscellaneous transfers. This is something that for present purposes we can afford to ignore, albeit that the relatively modest transfers to and from the European Union are commanding disproportionate attention at present. The primary income account concerns earnings from investments. Our own earnings from investments overseas must be set against the earnings of foreigners from assets held in the UK. In the past, our net earnings have been positive and, at times, substantial. Now, the account is in deficit. The most significant factor in determining the deficit on the income account is the balance between the value of the overseas assets owned by the UK and the assets that are in foreign ownership. The balance is no longer in favour of the UK. In 2014,

[VISCOUNT HANWORTH]

the stock of UK liabilities surpassed that of UK assets, for the first time since records began. The deficit on the primary income account is a reflection of this circumstance.

We have sought to defray our current account deficit and to balance our payments by divesting ourselves of the ownership of our capital assets and selling them to foreigners. As the Commercial Secretary, the noble Lord, Lord O'Neill, has remarked, they have been keen to acquire the ownership. He has described our divestment of the ownership of our assets as "foreign direct investment". This terminology is highly deceptive. In the inverted logic of the Minister, the growth of foreign ownership is the cause of our current account deficit. Of course, he is mistaking an effect for a cause. The true cause of our current account deficit has been our failure to export manufactured goods in sufficient quantities. The effect is that we have to rely on the sales of our capital assets in order to maintain the overall balance of payments.

On a previous occasion, I have described the remarkable extent of the foreign ownership of our assets and how this is prejudicing our economic welfare. We have only a finite supply of companies and properties for sale abroad. Eventually, the supply will be exhausted and the consequences that I have mentioned will ensue. The only way in which to mend the balance of payments is to increase substantially our exports of manufactured goods. For our goods to become saleable abroad, the value of the pound must be reduced. If nothing is done to overcome the balance of payments problems, it is inevitable that the value of the pound will eventually plummet.

I asked the Minister, in the course of the brief Question Time debate, whether he could envisage a more orderly way of reducing the value of the pound. There are many ways of achieving this which our economic competitors have applied to their own currencies. However, the answer from the Minister implied that he did not recognise the significance of the problem with the balance of payments. I wish to emphasise the severity of that problem and to call for action to address it.

12.57 pm

Lord Stoneham of Droxford (LD): My Lords, this has been a wide-ranging debate and I will start by recalling the words of the noble Lord, Lord Leigh, who is sadly not in his seat, who reminded us in his speech that the country voted for the Conservatives' economic plan last year—but not quite by the massive mandate of his imagination. More pointedly, the noble Lord, Lord Haskel, said that the Government are still searching for a strategy and are mainly just filling in the gaps. That has been one of the themes of this debate.

I thank my own colleagues: my noble friend Lord Shipley, for the very strong case that he made for remain in respect of the north-east, and my noble friend Lord Lee who, with all his investment experience, warned us of the great dangers of uncertainty for the British economy. Whatever else we must assume from this debate today, I think we would probably all agree that the economy is at a turning point or even on a

knife edge. We have had very hard times over the last six years to get the deficit down. We have to ask ourselves: can we sustain the growth in jobs and employment that we have had, and the economic growth, so that the benefits can be shared by those who have experienced the pain of the past six years?

I would say that after 23 June, this country will still have to ask itself four basic questions in respect of the economy. First, can we still close the current government spending deficit while protecting long-term investment in infrastructure? Can productivity, which has recently been flatlining, be improved so that we can close the gap with other G7 nations? Can we reverse the worrying trend of the past three years of recovery, during which the balance of trade, as explained by the noble Lord, Lord Haskel, and the noble Viscount, Lord Hanworth, has actually worsened? There is currently a £100 billion deficit on the current account. We should be more worried about paying our way in the world as well as paying our way at home.

The fourth question is broader than the ones that the debate has tried to encompass so far. Can we counter, through our economic policies, the populism of Trump, Farage and Le Pen? They are feeding on the concerns of working and middle class people, who see their previous certainties and security undermined by globalisation. We are seeing a very slow growth in real income: that has been so over the past 10 years among these groups. The pace of change has been undermining the old skills and making them redundant, and driving people out of well-paid jobs into lower-paying and less secure jobs. There is constant pressure on industry and all other sectors to lower costs and improve efficiency. Home ownership is out of reach of the children of these people unless they downsize and help their children into ownership. There are pressures on public services which people previously took for granted. Pension security is being undermined as well.

On top of globalisation, we are having to deal with digitalisation, robotics, and the transformation of job structures by the application of artificial intelligence to replace layers of routine administrative and support jobs. The insecurity and uncertainty are increased by a growing resentment or outrage in our society at the hollowing-out process whereby it appears that there are a few rich people benefiting from all this while the rest—certainly those at the bottom—have to rely on lower-paying and very flexible jobs. In this very uncertain and insecure world, should we now be baling out from the principal organisation designed to develop and extend our trade within a fair, competitive environment?

It needs explaining to people that this organisation is about developing trade while ensuring that unfair competition does not deplete jobs and that we also retain reasonable working conditions for people in the Union. Of course government, immigrants and distant organisations such as the EU—or London, if you live in Scotland—get all the blame, but that is not a rational analysis. We joined the EU to take advantage of a bigger market in order to raise productivity and growth and to improve competition. So as we look beyond 23 June, whatever happens, let us just return to the principal concerns that we should have: the need to improve productivity; the need for more

exports; the need to deal with the deficit and the problem of capital spending; and the impact of digitalisation.

What are we going to do? The Government have been dealing with the steel industry over the last six months, and I hope that they will use that experience. The Secretary of State for Business should give more attention to the industrial strategy initiated by his predecessors. Developing skills, funding research and helping to restructure the development of businesses all require a partnership between business and the state. There is also a vital role within the EU to ensure fair competition.

Our advanced manufacturing sector—whether it is the automotive, aerospace, defence, nuclear or rail sector—requires the development and manufacture of new steels. But here is the rub: development and research can be undertaken more rapidly in this field if we retain our domestic steel production as a partner in the research that needs to be done, alongside end-users, research institutes and universities. Reliance on overseas producers of materials will simply slow the pace of development and risks leading to the offshoring of this whole supply chain. After dealing with pension issues, energy prices and Chinese dumping, using the negotiating power of the EU, we should also as a country set up a materials catapult focusing on technology developments to support future growth in manufacturing.

The second issue is that of supply chains. I do not think that the complexity of supply chains crossing borders is understood in the EU debate. The more we can do to have supplies in this country the better, but, given the complexity of these supply chains and the benefit we get from them, there will be total disruption if we leave the EU. The benefits of sourcing lower supply costs help the competitive position of our exports. It is a little-known fact that in the motor industry, the export of cars has been slower within the EU than in the outside world, which undermines the argument that Europe is holding us back. The export of cars outside the EU between 1998 and 2014 grew from £2.9 billion to £13 billion, against growth inside the EU from £8 billion to £11.9 billion. The complexity of sorting out cross-border sourcing of supply without the EU framework is frightening. We have the opportunity for the UK to source more components here—but, without the EU, all the potential investment will go.

The third area is infrastructure. As we rightly address the current deficit in the public sector, we need to separate out the capital account. Transport, communications and housing are all underinvested in, and a decision on airport capacity will perhaps be symbolic for the business community; the Government will be taking years of underinvestment and stagnant productivity seriously again.

The EU provides a framework to open up trade and ensure fair play. It provides a framework against excessive competition, protects wages and conditions, prevents a driving down of taxation rates and prevents government spending or subsidies going up through unfair competitive practices. It is a framework which still needs reform and better understanding, but, with the issues we need to confront in the next five to 10 years, remain essential to the current debate over our social and economic progress as one nation.

1.07 pm

Lord Davies of Oldham (Lab): My Lords, I of course congratulate my noble friend Lord Haskel on securing this debate and on introducing the third of our economic debates in recent times with issues of real moment and substance as far as the future of the UK economy is concerned. Inevitably, in a debate in which a very substantial number of my noble friends and other noble Lords in the House have discussed Europe, I have to make some reference to it. However, I bear in mind that my noble friend Lord Haskel wanted us to focus on other issues in the economy and will therefore dispense with Europe in fairly short order: first, because I expect the Minister to express the predominant views of the Prime Minister, which my own party substantially supports as far as the referendum is concerned; and secondly, because nearly all the opinions expressed in the House today have been clearly in favour of remain. In fact, where is the noble Lord, Lord Pearson, when we need him? We have had no alternative stance, not least because noble Lords participating in this debate know enough about economics to recognise that there is in fact no case for leaving Europe.

I will make the obvious political point as well: no serious major industrial country in Europe is going to give good terms to a country which withdraws from the European Community and then seeks to negotiate reasonable terms. It is not going to happen, and Brexit better take on board the fact that we would face a calamitously difficult negotiating position if the referendum went the wrong way. I am grateful to those noble Lords who articulated that case. The noble Lord, Lord Shipley, identified that only Patrick Minford had put any kind of case forward in economic terms for the Brexit position—and even he recognised that it would be a sacrifice for our manufacturing industry. I am grateful to all my noble friends, including my noble friend Lord McFall, who I had hoped might talk about banking again, because he does it with a luminosity and accuracy that we all value. But I respect the fact that he concentrated on Europe today.

I want to get back to what I think my noble friend Lord Haskel wanted us to cover—the fundamental position of the economy, and some of its obvious weaknesses. I heard the noble Lord, Lord Leigh, put forward a very interesting case on the progress made thus far. I think that he has to concede that we have made the slowest recovery from a recession in modern times, and we are still struggling with the consequences of our slow progress. We will all recall that the Chancellor was meant to hit his deadline in 2015 for the elimination of the deficit. He is now asking for four more years to create a surplus, and is rated by the IFS as having a 50:50 chance of doing so, so the Government's progress in these terms is pretty limited.

We have crucial issues to face—and I am grateful to the noble Lord, Lord Stoneham, who has just spoken, and to my noble friend Lord Hanworth, who emphasised the unsatisfactory response of the Government to our questions about the balance of payments. I am also grateful to my noble friend Lord Haskel, who after all opened up the debate on some of these issues. We have a critically difficult trade deficit position, and the gap is widening—and it is causing serious economists to identify that our situation is parlous. We need a strategy

[LORD DAVIES OF OLDHAM]

for improving our response to the gap in our balance of payments, and to tackle the other issue, the disastrous position of productivity. Are we prepared to accept that we are sixth out of the seven top countries for productivity and that a Frenchman produces more in four days than the British counterpart does in five? Germany is, of course, much more successful than that. Do we honestly think that the economy can recover while its productivity levels are so dismal? My noble friend Lord Haskel drew our attention to those difficulties. We have to recognise that our productivity is growing at 0.25% a year, when prior to the crisis in 2008 we were used to productivity growth of 2.5%. Productivity growth is crucial to the nation's welfare.

The Government are facing a major problem with the issue of the skills agenda and support for our enterprise and industry. Although the Government boast about the number of apprenticeships, they are pretty poor value compared with the apprenticeships of the past with their rigour, training and skilling of the nation. People who go into apprenticeships from graduate level are taking on apprenticeships that basically embrace A-level skills, while those who go in at A-level level are involved in apprenticeships that stretch them about as far as GCSEs. In other words, these are not apprenticeships that are sufficiently rigorous to really skill the nation, and it will not do for the Government just to bandy the general figures; we have to establish criteria for the levels at which apprenticeships operate. That means that, for a very significant section of our population, particularly young people, their chances are blighted by the lower level of skills that they obtain.

Furthermore—and I have said this in the past, although I have never had a response from the Dispatch Box opposite—the construction industry is poised to have enormous demands made on it. At some stage, the Government will get their act together to get an increase in housebuilding and, at some stage, they will translate promises on infrastructure into real commitment of resources—although, as my noble friend said in talking about the north-east, that area is being neglected. Only one in 13 infrastructure projects that the Government envisage is in northern England. So much for the northern powerhouse.

We need recognition from the Government of what my noble friend Lord Haskel established—that we have to increase our levels of productivity and increase the skills of our nation, ensuring that our nation is more competitive in the workplace. Instead we have the overwhelming commitment to austerity, which both the IMF and the OECD have said has been taken so far that it might have been better if the UK had pursued a growth strategy than concentrating solely on the issues of fiscal reform and the improvement in the budget. Why do the Government persist against that evidence? It is because, overwhelmingly, their commitment is not to the advance of the economy but to the realisation of their own political and ideological agenda, and it is costing the country dear.

1.16 pm

Lord Ashton of Hyde (Con): My Lords, I, too, thank the noble Lord, Lord Haskel, for leading this debate and all noble Lords on all sides who have

contributed. This is a complex area, with no easy answers. I am sorry that my noble friend Lord O'Neill could not be here—and I was even sorrier when I heard the contribution from the noble Viscount, Lord Hanworth. My noble friend is in America, working on addressing the threat of antimicrobial resistance, which is a key problem for the future that could kill 10 million people a year by 2050 if we fail to act. I am sure noble Lords will join me in wishing him well in that vital work.

Turning to the discussion today, this Government are continuing to carry out a long-term plan to strengthen the British economy. A long-term and strategic view is what many noble Lords have referred to, and I shall come back to that. The foundation remains the principle that we should not spend more than we can afford. Back in 2009-10, the Government were borrowing around £150 billion a year. That is not only unsustainable but leaves the country increasingly vulnerable to any unforeseen economic shocks. That is why we made a commitment to the British people to bring public finances under control, and we are delivering on that promise. We have brought the deficit down by almost two-thirds and we remain on course for a surplus by the end of this Parliament. The results of our action to foster long-term growth in our economy are also clear to see, as ably outlined by my noble friend Lord Leigh. Since 2010, we have been the second fastest growing economy in the G7, and in some years the fastest. Last year, our GDP was up by 2.3%, and we have seen over 2 million extra people in work since 2010. However, although our economy is now in fundamentally better shape, there is still more to do.

I shall respond to some of the issues raised in the debate and highlight some of the key steps the Government are taking in a minute, but I feel that I really have to address the EU, to which many if not most noble Lords have referred. As they noted, this is the key decision which will affect our economy in the short and medium-term future. The noble Lord, Lord McFall, mentioned, among other things, the harmful effect to the UK's economy and science base. The "rant" by the noble Baroness, Lady Armstrong, as she called it, was not a rant but was very persuasive. She talked about the impact of leaving the EU on the north-east of England, as did the noble Lord, Lord Shipley. She noted that the chairman of Hitachi said that he would prefer to remain in the EU and that the EU was helping to secure the region's future. I could go on.

The noble Lord, Lord Shipley, also referred to the benefits. We agree that remaining in the EU is the best decision for all the regions and nations of the United Kingdom. The noble Lord, Lord Lee of Trafford, made a persuasive contribution on the importance of the EU, and included the interesting fact that he shares a tailor with my noble friend Lord Leigh of Hurley, but perhaps, by the look of it, not the same shirt maker. The noble Viscount, Lord Chandos, also focused on the benefits of the EU.

I think it is important that I make the Government's position clear and outline the benefits in a way that is, I hope, positive and does not contain any wild and dramatic facts that people can disagree with. We are clear that we will be stronger, safer and better off in a reformed Europe than out on our own. We will be

better off because, as the noble Lord, Lord Haskel, and many other noble Lords reminded us, British businesses will have full access to the European free trade area of 500 million people, bringing jobs, investment, lower prices and financial security. Since we joined the EU in 1973, living standards in the UK have risen more than in the US, Canada and Australia, as well as in other EU members such as France, Germany and Italy. We will be safer because we can work closely with other countries to fight cross-border crime and terrorism, giving us strength in numbers in a dangerous world, and we will be stronger because we can play a leading role in one of the world's largest organisations from within, helping make the big decisions that affect our future. The noble Lord, Lord Haskel, reminded us that we have the presidency of the EU in 2017.

We also have a duty to point out the downside risks of leaving the EU. I do not regard this as Project Fear. I agree with my noble friend Lord Patten of Barnes that it is Project Sanity, Project Reason and Project Real World. As noble Lords are aware, on 18 April, the Treasury published analysis looking at the long-term economic impact and I think noble Lords know the results of the central scenario. Some people have derided this work, but the assumptions are clear and open and it is a genuine attempt to estimate the effects of Brexit. I do not see any comparable document from the other side. All the alternatives to membership that have significant access to the single market would require the UK to implement its rules, but the UK would no longer have a vote on those rules. No country has been able to negotiate a better deal than the alternatives considered in this analysis, and it would not be in the EU's interest to agree such a deal for the UK. What incentive would there be for it when it exports only 7% of its goods to us, whereas we export 50% of our goods to Europe?

The Treasury has also considered the short-term impact of a vote to leave the EU. Analysis published on 23 May came to a clear central conclusion: a vote to leave would represent an immediate and profound shock to our economy. Who is most affected by shocks to the economy? It is the worst off, the low paid, those with no savings, those looking for work and the young. Leaving means risk at a time of uncertainty. It is a leap in the dark.

The noble Lord, Lord Haskel, is right that despite the crucial importance of the vote on 23 June, we must also concentrate on the future and look to improve the working of the EU. In respect of the UK, the noble Lord asked why we are not listening to the IMF and the OECD and why we are not investing. Our long-term security hinges on the fact that we are significantly reducing our debt-to-GDP ratio. With a recession every eight to nine years over the past 60 years, responsible fiscal policy should allow room for these risks. We have prioritised investment over day-to-day spending, funding key infrastructure while delivering an overall budget surplus by 2019-20, all the while exceeding our commitment to invest £100 billion by 2020.

The noble Lords, Lord Davies and Lord Haskel, and other noble Lords talked about productivity. I accept that productivity growth is a long-term problem. UK productivity has lagged behind other major advanced economies for decades; this is not a recent problem.

For example, in 1990, UK productivity was 29 percentage points behind the US. In 2014, 24 years later, UK productivity was at a similar level behind the US—30 percentage points. This is a long-term problem that the Government have identified, and we set out measures to address this issue in the productivity plan last year and the Budget this year. Sustaining productivity growth is not a problem which is limited to the UK. Since the financial crisis, all developed countries have experienced sluggish productivity growth. There are even problems in the US: in Q4 2015, productivity growth fell there. That is the problem. It is a general problem internationally, so what are we doing about it? We are investing in infrastructure, we are increasing public investment, which I will come to in a minute, we have the northern powerhouse and the midlands engine for growth, and we are investing in education and apprenticeships. I shall not go into those in detail because of time, but that is what we are doing.

The noble Lord, Lord Davies, also mentioned austerity. We set out our long-term plan to repair public finances. Let us not forget that the deficit inherited in 2009-10 was 10.3% of GDP, its highest level since the post-war period. The Government were borrowing £1 in every £4 they spent. Significant progress has been made since 2010 to put the public finances on a more sustainable footing. The deficit as a share of GDP has been cut by almost two-thirds from its post-war peak, reaching 4% of GDP by the end of 2015-16. The noble Lord, Lord Stoneham, asked whether we can meet the fiscal surplus while still investing at the rate we are. We made significant progress over the past Parliament to fix the public finances, but deficit reduction needs to continue to finish repairing them. While we are reducing the deficit at a rate of 1.1% of GDP, we are still investing in key infrastructure, exceeding our previous commitment to invest £100 billion by 2020. The consolidation of day-to-day spending has been deemed appropriate by the IMF and, paired with investment in key infrastructure, will lead to a budget surplus by 2020.

I shall talk a bit more about public investment and its long-term nature. As we are taking the necessary steps to put the public finances in order, we are able to make the long-term investment which we all agree we need to build a more prosperous and productive nation. The spending review laid out the Government's key investment priorities including education and skills, science and crucial areas of economic infrastructure such as the transport network. Taken together, those plans mean that average public investment as a share of GDP is higher over this decade than under the whole period of the previous Labour Government. They include doubling the housing budget; investing £61 billion in the transport system, £20 billion more than in the previous Parliament, including the biggest investment in the nation's roads since the 1970s; and providing nearly £7 billion in science capital funding to ensure that British science remains at the cutting edge. All in all, the Government are on track to comfortably exceed our commitment to invest £100 billion in infrastructure over the Parliament. In fact, we will invest £120 billion.

The Budget in March reiterated the Government's commitment to well-calibrated long-term investment, with new funding in key areas like motorways and

[LORD ASHTON OF HYDE]

flood defences. We have brought forward £1.5 billion of public investment that was planned for later years, to ensure that the public benefit sooner. We gave the green light to Crossrail 2 and High Speed 3 between Leeds and Manchester. We are taking steps to ensure that every pound of investment is targeted to provide maximum returns for the public. That is why we are setting up the National Infrastructure Commission to determine infrastructure priorities and—crucially, as the noble Lord, Lord Davies, mentioned—hold the Government to account for delivery so that it is not just, as he said, a case of vague plans with no delivery attached.

My noble friend Lord Polak asked whether I could confirm that the Government will continue to support young entrepreneurs. Of course we will. That is why we want to invest in education, skills and apprenticeships, which will help small and medium-sized enterprises and entrepreneurs. My noble friend Lord Leigh mentioned other measures to support young entrepreneurs, such as reducing capital gains tax, which are crucial for the development of jobs and the economy.

In moving this debate, the noble Lord, Lord Haskel, asked what the single market will look like when we remain. He said that we need one rule across the digital single market in particular. The Prime Minister's renegotiations, which come into effect only following the vote to remain on 23 June, mean a much more ambitious agenda of economic reform in the EU. That will include the next stage of development of the single market over the next 15 years. These reforms are centred on four priorities: the single market for services, the digital single market, the single energy market and external trade agreements. Further action will be taken to reduce—in the digital market in particular—barriers in cloud computing, payments and postal and parcel deliveries.

My noble friend Lord Suri and the noble Baroness, Lady Armstrong, asked about infrastructure investment and building a more productive economy. I have talked about infrastructure. We think that by prioritising vital capital investment, we have provided long-term funding certainty for key areas where infrastructure is publicly funded. As I mentioned, the £100 billion for infrastructure, which will move up to £120 billion, will include £60 billion for transport up to 2020-21. That is the biggest investment in transport infrastructure in generations, increasing spending by 50% to £61 billion this Parliament. We are committed to building the high-quality infrastructure needed to build and sustain a more productive economy.

I am afraid that in the interests of time I am going to try to duck out of the spat, if you like, between my noble friend Lord O'Neill of Gatley and the noble Viscount, Lord Hanworth, on the complexities of the balance of payments and the balance of trade, mainly because all the answers I would give are exactly what my noble friend would have given. I will draw the matter to his attention, though, and I think that the two economists can deal with this better than we all can today. That may be the coward's way out but I think it is more productive.

In conclusion, we are making strong progress towards fixing our economy, as my noble friend Lord Leigh has outlined so clearly, and I thank him for his supportive

remarks. We have more jobs, rising wages, steady growth and an economy on course for a surplus. Because of that, we can spend more on our hospitals, schools, defence and security, infrastructure and skills. We are creating a lower-tax, lower-welfare and higher-wage economy, with 1.3 million taxpayers taken out of income tax in 2010 and over 1 million workers due to benefit from the national living wage. We must continue along this path to deliver the sensible reforms that we need to live within our means and make our economy fit for the future. We will be relentless in our efforts to create the conditions for growth, whether that is supporting businesses, investing in infrastructure or putting money back into the pockets of working people. We will rebalance our economy to ensure that opportunities are spread across the UK. This is an economic plan for the long term that will lay the foundations for a strong, stable and sustainable economy.

1.35 pm

Lord Haskel (Lab): I thank all noble Lords for participating in this debate, which I have found fascinating. It is interesting that most of us agreed on the benefits of remaining within the single market. People spoke of the benefits to shop prices and the cost of living; the benefits to science and to the north-east and how important that is; the benefits to our national and economic security; and its importance to financial and capital markets, and to the hospitality industry. Several noble Lords spoke about the turbulence that the referendum is causing and how that could have been avoided, and questioned whether the whole thing was really necessary anyway.

My noble friend Lord Chandos spoke about the obligations of the single market as well as its benefits, and he is quite right. A number of other noble Lords raised other issues. I agree with the noble Lord, Lord Leigh, about small companies. I myself built up a business and know exactly what he is talking about, although I do not agree with his views about small businesses and the single market.

I found the views of the noble Lord, Lord Polak, about Raspberry Pi very interesting. He and the noble Lord, Lord Stoneham, raised the whole question of the importance of technology and technological entrepreneurs, and I agree with them entirely. Have there really been 8 million Raspberry Pis? I am amazed at the number; I thought there were about 2 million or 3 million. I know that the BBC gives out a similar device; in fact, my grandchildren set theirs going using their smartphones.

I thank my noble friend Lord Hanworth for raising the effect of our continually not paying our way, and the uncertainties of the pound for our deficit. He is quite right. The noble Lord, Lord Stoneham, also told us about the importance of paying our way, and I agree with him. I thank my noble friend Lord Davies for his kind words. He is right to raise the whole question of productivity and how it affects us all, particularly our standard of living.

The Minister spoke about cutting the deficit and what our bookkeeping targets were, but we are still waiting for them to be achieved. Of course he did not tell us about the cost of all that—the social cost, the

cost in inequality and the cost of lost investment at a time when the Government could invest at virtually zero cost. The other point to which I am not sure the Minister really responded was how much it all depends on inward investment. There is of course a great cost to that. The noble Lord, Lord Leigh, said that we ought to invest our money in other countries where we get a better return. I am not sure that that is the only consideration and that we are wise now to depend so much on inward investment. There is a democratic risk there.

Several things have not been mentioned, such as climate change and other risks. Of course, the overuse of antibiotics is a risk to us all. The noble Lord, Lord O'Neill, is doing work on that and I am glad that he is getting on with it.

My time is up, so I thank all noble Lords for speaking. I am most grateful to everybody for their contributions.

Motion agreed.

Syria: Air Drops Statement

1.40 pm

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, with the leave of the House, I will repeat a Statement made in the House of Commons earlier today by my right honourable friend David Lidington.

“The Government’s objective remains a political settlement which allows Syria to become a stable, peaceful state with an inclusive Government with whom we can work to tackle Daesh and other extremists. Frankly, it is only when this happens that we will see stability return to the region and the flow of people fleeing Syria and seeking refuge in Europe stop.

To achieve that goal, we need to get political negotiations between the Syrian parties back on track. The International Syria Support Group has made it clear that, in order to create the best environment for talks to succeed, there needs to be both a comprehensive cessation of hostilities, leading to a full ceasefire, and sustained, unfettered access for humanitarian aid.

Talks have now paused because progress on both those tracks has been insufficient. That is why we are pressing hard for an end to the current violations of the cessation of hostilities, the majority of which are down to the Assad regime. It is also why we need to see an improvement in humanitarian access to besieged and hard-to-reach areas inside Syria.

Both those points were agreed by all members of the International Syria Support Group in Munich in February this year. However, in the light of the continuing dire humanitarian picture, at the most recent ISSG meeting in Vienna on 17 May the Foreign Secretary proposed humanitarian air drops by the UN World Food Programme to besieged areas in Syria if access could not be achieved by road by the beginning of June. That deadline has now of course passed. We welcome the arrival of some limited aid in Darayya and Muadhmiya over the last few days, and we note that the Syrian Government have agreed in principle to allow land access by the UN to the majority of

areas requested for the month of June. Such progress that we have seen is undoubtedly the result of international pressure, including the possibility of air drops.

We believe it is now crucial that the ISSG holds the Assad regime to account for the delivery of those commitments. UK officials are meeting their ISSG counterparts and UN officials in Geneva today to continue that work, and the UN is pressing the Assad regime to allow air drops if access by road is not permitted.

We remain clear that air drops are a last resort. Land access is more effective, more efficient and safer both for those needing the aid and for those delivering it. The UN has plans in place to begin air drops if they are needed, but it is clear that, in a complex and dangerous environment like Syria, this will not be straightforward.

We will continue to support the UN in its efforts, but if the regime is not willing to allow sufficient land access or air drops to those in such desperate need, the ISSG must consider very carefully what further steps might be taken to deliver the aid that is so desperately needed”.

1.44 pm

Lord Collins of Highbury (Lab): I thank the noble Baroness for repeating the response to this morning’s Urgent Question. I am sure we all agree that the most important thing is to focus our attention on the plight of those 582,000 people—men, women and children—who have been denied access, some since 2012. The conditions in those areas must be absolutely appalling and dreadful—it is difficult to imagine—and it is important that we keep highlighting that.

The noble Baroness said—and I heard the Minister in the other place, the right honourable David Lidington, say—that this afternoon British officials will meet their ISSG counterparts to consider the response of the Assad regime to the UN request for access. There is no doubt that the best outcome is agreed land access. That is the most effective way to get support in there. But what will happen if the Syrian Government refuse permission or impose further unnecessary delays? Will we be able to persuade others that air drops are appropriate as a last resort? And what timeframe are we considering? As each day and each week go past, the conditions in these areas will become intolerable.

I heard the right honourable David Lidington say that Russia and Iran have the power to influence the situation. Apart from the discussions in the ISSG, what efforts are the Government making to put pressure on Russia and Iran to use that influence more appropriately? What can we do about that?

There is no doubt that political progress towards a settlement is made a great deal more difficult while Assad deliberately uses the denial of humanitarian aid as a political and military weapon. I know that the noble Baroness shares my view and I hope she will confirm that there will be no hiding place for individuals who flagrantly breach international humanitarian law.

Baroness Anelay of St Johns: My Lords, I shall respond to that last point first. The noble Lord is right: I join him in saying that there should be no impunity for those who breach international humanitarian law.

[BARONESS ANELAY OF ST JOHNS]

However, it is a question of how and when one deals with that. He knows that this Government have put their resources where their mouth is and have committed money to enabling very brave people to gather, across Syria, information which we hope can be used in future judicial proceedings to hold to account those guilty of these atrocities.

It is important that we take stock of the United Nations request for land access to the four areas to which the Assad regime has so far refused the UN access. Once we see the result of that, we will know more about the timetable and about what happens next, but clearly, as land access is more secure, particularly for those receiving the aid as well as for those delivering it, that would be the best outcome. We have made it clear that the UN would then have to consider the application to Assad to deliver air drops. How it would do that and the viability of those air drops would be up to the UN to determine. Of course, we have to take into account that both Assad and the Russian Government have air defences in place in Syria, so if they were not to consent, we would enter a very dangerous process.

Therefore, the noble Lord is right to ask about the influence of Russia and Iran. They are both members of the ISSG, and Russia has played a leading part in agreeing to the cessation of hostilities and to humanitarian aid being delivered. Via our work through the ISSG and other organisations such as the UN and the Human Rights Council, we continue to impress on Russia the importance of using its influence to persuade the Assad regime to do what the whole world sees as the only right thing—to allow aid to be delivered to the areas that have been starved and bombed as a political weapon. That is a disgrace.

Baroness Smith of Newnham (LD): My Lords, the Minister referred to the importance of the ISSG holding the Assad Government to account. However, she mentioned that Russia is also part of that. How do Her Majesty's Government envisage that we can hold the Assad regime to account? In the shorter term, how can we deliver humanitarian aid if Russia and the regime are not willing to allow drops?

Baroness Anelay of St Johns: My Lords, as I outlined a moment ago, the decision-making process has to depend upon the discussions being carried on today, not just with the ISSG but with the UN. It is a matter of what is the safest and most effective way of delivering aid. However, the Assad regime should be under no illusions and neither should Russia. The allies who have united against Daesh are united against the attempt to subvert democracy in Syria as a whole. Therefore, it is important that Assad takes note of the determination of countries that are united in the ISSG, which includes the UK, to deliver humanitarian aid. I pay tribute to the organisations that stand ready to do that.

Lord Anderson of Swansea (Lab): My Lords, is there any evidence that Russia will be co-operative in the United Nations Security Council and not block an initiative? Is there any evidence that Russia is acting positively in respect of pressure on the Assad regime?

Baroness Anelay of St Johns: The noble Lord raised a very good point and I am not able to give him a very positive answer—I wish that I could. The signs so far from Russia are that it promised to step down some of its military support for the Assad regime, for example, and then did not. There was much brouhaha about President Putin's announcement over a withdrawal but the Russian drawdown of military equipment in Syria, I am advised, has been limited to some fixed-wing aircraft and personnel. The number of attack helicopters able to provide closer combat support to regime troops has increased. If that is the message that Russia is giving to the Assad regime, it is not a message that encourages Assad to do what is right, which is to allow humanitarian aid to all.

Lord Campbell of Pittenweem (LD): My Lords, the Minister has been characteristically measured in introducing this subject and in responding to questions. Does she agree that the use of air drops would essentially be a decision borne out of desperation? Must we not also consider the risks involved? First, there is a risk that the material to be delivered could fall into the wrong hands. Secondly, there may be physical risks to the citizens to whom aid is to be delivered if a drop goes awry. Thirdly—the noble Baroness hinted at this a moment ago—this is potentially a very hostile air environment and there could be risks both to aircraft and aircrew. In all the circumstances, may we take it that Her Majesty's Government's attitude at the Security Council will take full account of these risks and will accede to the notion of air drops only if they believe that there is no other possible viable alternative?

Baroness Anelay of St Johns: I agree entirely with the way in which the noble Lord has outlined the risks involved in the delivery of humanitarian aid which is so desperately needed. There are areas, for example, in the middle of Damascus that have been besieged and starved for three years. Getting access there, if Assad agreed to it, is a simple matter—he is standing in the way—but the risks internationally are great. Assad is computing those risks too. What we say to him is: the world will not stand idly by and allow you to continue bombing, starving and using chemical weapons against your people. We are six years into the conflict, and it must stop.

Lord Hannay of Chiswick (CB): My Lords, does the Minister not recognise that it may be necessary to move matters rather more forcefully at the United Nations and that a resolution authorising air drops and requiring the Assad regime to permit those air drops would compel the Russians to take a position on that, which they can probably avoid doing so long as merely diplomatic channels are being used? If they veto it, they will be vetoing the provision of supplies to starving people, and that will have a cost to them. If they do not veto it, they are supporting the use of air drops, and that has implications for their own military involvement. Would it not be better, fairly soon, to move matters in a more purposeful way in the Security Council?

Baroness Anelay of St Johns: The noble Lord, with his experience of being our representative in the United Nations in New York, has hit on one of the options

that are available. Meetings are going ahead today, and I hope that advances can be made through the ISSG and that Russia will use its undoubted influence over the Assad regime to achieve the right objective. However, clearly all countries will be considering the variety of options available.

Government and Parliament

Motion to Take Note

1.55 pm

Moved by Baroness Smith of Basildon

That this House takes note of the balance of power between the Government and Parliament; and of the case for Parliament having full details of all legislation that it is asked to consider.

Baroness Smith of Basildon (Lab): My Lords, when I was preparing my comments for the Queen's Speech, I found myself reflecting on the past Session as much as thinking about the next. When we debated the Queen's Speech, it became very clear that there were different interpretations of one particular highly significant sentence:

"My Ministers will uphold the sovereignty of Parliament and the primacy of the House of Commons".

In two excellent contributions in the debate that followed, the noble Lord, Lord Butler of Brockwell, considered that that might have been a cryptic reference to the Strathclyde review, and the noble Lord, Lord Lisvane, referred to it as a shot across the bows of your Lordships' House.

I try to take a more generous view. Surely, what we had here was a Government making it clear that Parliament, not the Executive, is sovereign, and that the House of Commons has primacy over your Lordships' House—something about which I am not aware that there was ever any doubt. So it is easy to agree with both those statements, and I warmly welcome them.

But I suspect that the concerns of the noble Lords, Lord Lisvane and Lord Butler, were not misplaced. Clearly, this Government have not welcomed challenge from your Lordships' House. In some ways, that is understandable, because this is the first Conservative Government in history not to have had an automatic majority in your Lordships' House. It is worth noting at this point that no Labour Government have ever had a majority in your Lordships' House, so we understand that this is frustrating and we understand the challenges. Perhaps, as we reflect on the past Session, we should recognise that we are all adjusting to that new and very different situation. We now have an opportunity to reflect on our role, our work and how we manage our current circumstances.

There are two easy and unsatisfactory ways of addressing this. The first is for the Opposition to always vote against the Government, come what may. I have already shown that on this side of the House, as the Official Opposition, we do not think that that is responsible or productive, or in keeping with the conventions of your Lordships' House. The other easy and unsatisfactory way is for the Government to continue to appoint more government Peers to an ever-growing House. Likewise, that is not a measure that we consider responsible, productive or in keeping

with the conventions of your Lordships' House. We are a responsible, challenging Opposition, fulfilling our constitutional role.

I want to place on record that we welcome those Ministers who have engaged constructively, who have been prepared to take on board suggested amendments and who have offered concessions. That is good government and it makes for good legislation. We also welcome the way in which the House as a whole has wanted to consider the detail of difficult legislation. Noble Lords will recall that we proposed a Select Committee to examine the most controversial clauses of the Trade Union Bill and assist in consideration of the detail. That committee ran parallel to the Bill and did not delay our normal proceedings. That was a sensible, pragmatic approach. Even noble Lords who were initially uncertain about the process now consider that that was a helpful and productive way forward.

Even on the votes on the tax credits SIs, the amendment from my noble friend Lady Hollis provided the Government with the time and space to reconsider their position—which they did, and for which this House was very appreciative.

I also want to take a deeper look at how we consider legislation coherently and constructively. That is the purpose of our Motion today. In the previous Session, we received a number of Bills that were, quite frankly, half-baked. They had inadequate detail and insufficient financial information, and far too much was left to regulation. We saw this in the Childcare Bill, the Cities and Devolution Bill and the Energy Bill, and there were a number of others. On the Trade Union Bill, we did not even have the impact assessment until after Second Reading, by which time the Bill had completed all its stages in the House of Commons. As for the Housing and Planning Bill, as the noble and learned Lord, Lord Judge, said in the debate on the Queen's Speech:

"I listened as a Bill was debated that consisted of a whole series of almost blank pages. Metaphorically speaking, there was nothing to be debated".—[*Official Report*, 24/5/16; col. 315.]

The Select Committee on the Constitution has noted a trend whereby, to quote from its report,

"delegated legislation has increasingly been used to address issues of policy and principle, rather than to manage administrative and technical changes".

Similar concerns were identified by the Delegated Powers Committee.

In the first term of a Government, it is understandable, even if it is not acceptable, that some legislation that is brought forward is not fully formed, but the trend towards not providing adequate details for Bills is continuing into this Session of Parliament. In both the Children and Social Work Bill and the Bus Services Bill, there are more provisions for the Secretary of State to use regulations than there are clauses in the Bill, including on issues that should be considered matters of significant policy. My noble friend and former Leader of the House Lord Richard summed it up in the debate on the Queen's Speech when he said:

"If the Government continue to produce skeleton Bills, they should not be too surprised about the vigour with which this House then approaches the regulations made under them".—[*Official Report*, 24/5/16; col. 310.]

Another example of this increasing trend to policy-making by regulation was in the votes on tax credits. The view that this policy change should be more

[BARONESS SMITH OF BASILDON]

appropriately tabled as primary legislation was widespread across Parliament. It was that debate that led to the review and report of the noble Lord, Lord Strathclyde, which has recommended curtailing the powers of your Lordships' House—yet all three committees of this House and the Commons committee that considered his report were chaired by members of the government party, were all critical and all declined to support the noble Lord's recommendations.

Perhaps the Government's position to seek to restrict even the limited scrutiny we have of SIs is better understood if a report in the *Financial Times* about greater government use of SIs is accurate. Written by two highly respected journalists, it quotes one political aide as saying:

"We are being told to use statutory instruments wherever possible to get legislation through".

It also quoted an unnamed senior Tory as saying:

"The House of Lords has to tread carefully ... If they don't accept this proposal, we could stop them having any say at all on secondary legislation. That's a big bazooka".

I do not know who uses that kind of language. Why would a Government seek to increase the use of SIs? Would it be to evade deeper scrutiny, or is it because policy is still being developed, so proposals are light in detail? Or is it that non-amendable regulations are easier to get through both Houses?

The Leader of the House has said that the Government need certainty in getting their legislation through. I have to say to her that certainty in politics is a luxury. Rather than examining how to curtail scrutiny to provide such certainty, perhaps a better way forward would be to ensure that legislation introduced in your Lordships' House was fit for purpose in the first place. It should be well drafted, with adequate detail from informed debate and decisions.

No Government should be able to claim that they are right all the time, every time. This House is part of the checks and balances of our political system. We have a constitutional role to fulfil to undertake that remit. I hope that Ministers will have recognised from our deliberations on legislation in the past Session that the frustrations of this House are not just about policy; they are often about lack of detail, lack of information, the quality of drafting and Ministers being unable to provide comprehensive, detailed answers on policy matters. The role of this House is important in the process of good scrutiny and challenge, but we need the tools to do the job properly.

I greatly welcome the Leader's recognition during the debate on the Queen's Speech. She said:

"Every Minister will agree that their Bill is better for the scrutiny it receives here".—[*Official Report*, 18/5/15; col. 24.]

Responsible opposition requires responsible government, and responsible government means that details of what is being debated—that is, impact assessments, financial reports and relevant information—should be available when Bills are considered, even if that detail will be voted on only when we see the regulations further down the line.

So we have given some thought to what might be a sensible and productive way forward. It would be inappropriate to accept the proposals of the noble

Lord, Lord Strathclyde, to limit your Lordships' ability to consider secondary legislation at a time when statutory instruments are growing in number and significance. A preferred way forward would be a more considered, less partisan and less defensive approach to how we as a House can best support good legislation. A number of suggestions have already been referred to and commented on by our committees that reported on Strathclyde and by noble Lords who have considered this issue.

I want to highlight three of them. The first is Ministers abiding by Cabinet Office guidance on legislation—and that includes the availability of full impact assessments prior to Second Reading debates. Secondly, we should ensure that draft regulations should in most cases be available prior to Committee and always prior to Report. Thirdly, would it not be helpful to have an assessment of the quality of draft regulations and legislation? The noble Lord, Lord Haskel, made a thoughtful and useful speech recently on the use of technology to improve drafting, which I am pleased received a very positive response from the Minister.

The Secondary Legislation Scrutiny Committee has also considered how we might improve scrutiny. After receiving evidence, it said:

"We recommend that further work should be undertaken by some appropriate form of collaborative group to consider what procedural changes in both Houses could be introduced to make parliamentary scrutiny more effective".

Obviously, we have no locus for the other place and I am not putting forward a formal proposal today, but we as a House should consider whether a Select Committee—either a new committee or one that is currently established—could examine not just how we deal with legislation but what information this House should reasonably expect from the Government to be able to fulfil its responsibilities effectively. They are two sides of the same coin.

Having reflected on the past Session, we now have an opportunity. We can bring a new rigour and focus to our deliberations. I think that we as a House can devise a more robust, intelligent approach to how we manage our business and remove the frustrations of seeking information that should be, but is not, available—which often extends the debate on the issue of process rather than on the policy that we want to debate. It would also assist Ministers—who, as we have seen, all too often struggle to provide the detail that we need—thereby delivering better legislation.

I think that these proposals are worthy of further consideration. Setting up a committee of your Lordships' House to look at this specific point should be further considered. I urge the Leader of the House to respond positively to these suggestions today. I beg to move.

2.09 pm

Baroness Smith of Newnham (LD): My Lords, I thank the noble Baroness, Lady Smith of Basildon, for bringing forward this Motion for debate and I welcome many of the comments she made. I intend to focus my remarks on the balance of power between the Executive and the legislature and between your Lordships' House and the other place, leaving the more detailed discussion of statutory instruments to those with rather more experience in your Lordships' House than I yet have.

As the noble Baroness, Lady Smith, has already noted, one issue is uncontested—the primacy of the elected Chamber. We all agree on that. It is the basis on which the Salisbury convention rests and the reason why your Lordships normally hold back on matters that were clear manifesto commitments of the governing party, even if we on these Benches have not formally subscribed to the Salisbury convention. This inevitably leads to a degree of executive dominance in a way that does not occur in the US, where the separation of powers is strictly observed, or in many European countries, where coalition Governments, consensus Governments and minority Governments often render legislatures relatively more powerful than in the United Kingdom. Coupled with the large payroll vote in the United Kingdom, there is a tendency to executive dominance, for the Government to lead the process of legislation. Parliament sometimes appears to be silent.

In its excellent briefing on the Salisbury doctrine, however, the House of Lords Library reminds us that the doctrine argued that,

“the will of the people and the views expressed by the House of Commons did not necessarily coincide, and that in consequence, the House of Lords had an obligation to reject, and hence refer back to the electorate, particularly contentious Bills, usually involving a revision of the constitutional settlement, which had been passed by the Commons”.

But what of those rare occasions, which seem to be becoming increasingly familiar, of national referendums? The Conservative Party’s manifesto pledge was clear in its intent that there should be reform, renegotiation and then a referendum on whether or not the United Kingdom should remain a member of the European Union. Hence, Members of your Lordships’ House worked in the spirit of the convention, with due care and attention, to pass the European Union Referendum Act 2015 expeditiously, even if some aspects have not worked out as we intended. I will not refer further at this stage to the Electoral Commission.

The decision to hold a referendum was intended to allow the people of the United Kingdom to decide a contentious issue that divides political parties. It goes to the core of democracy and offers one person, one vote. Can the Leader of the House confirm that in cases where the Government and Parliament have, in their wisdom, offered a referendum, the results of that referendum must stand whether or not Members of Parliament—elected or otherwise; of the other place or your Lordships’ House—like them? As the noble Baroness, Lady Smith of Basildon, noted earlier, certainty in politics is a luxury. We on these Benches want a vote to remain, but we are also clear that the views of the citizens must be respected whatever the outcome in two weeks’ time. Neither the Government nor Parliament should seek to circumvent the will of the people on this matter. Does the Leader of the House agree?

I turn to cases where manifestos are perhaps silent. Proposals came forward in the last Parliament that were not in any party’s manifesto. A case in point was the legislation introduced by my noble friend Lady Featherstone, which was given considerable support in your Lordships’ House by the noble Baroness, Lady Stowell, in a previous capacity. What arrangements could or should be in place for such initiatives coming

forward from the Executive in the absence of any manifesto pledges? Are the current arrangements fit for purpose? Perhaps they are.

Conversely, and more significantly, what provisions do we have and envisage for cases where there is a strong voice from Parliament—usually in both Chambers—that legislation is needed or may need to change but the Government do not agree with that position? In particular, I am thinking of the case in the last Session relating to genocide, particularly the genocide in Syria of the Yazidis and Christian Syrians. The other place voted unanimously for a resolution on genocide but, so far, there has not been a clear response from the Government to that resolution. This issue is the subject of a Private Member’s Bill which is to be brought forward by the noble Lord, Lord Alton of Liverpool, next Monday. The Bill reflects, in part, a concern that the United Kingdom is failing in its duties under the 1948 Convention on the Prevention of Genocide. This is not a manifesto commitment of any political party but it reflects the views of Members across all parties in both Chambers.

Will the Leader of the House comment not on the merits of that specific Bill but on the general principle of how the Government might respond in a timely and measured fashion to initiatives—not necessarily brought forward in Private Members’ Bills but in cases such as the resolution in the last Session—where there is clearly a strong will particularly in the elected Chamber and also in your Lordships’ House? Is there a way that the Government can listen and respond to widely held positions in order to re-empower Parliament and rebalance Executive/parliamentary relations?

2.15 pm

Lord Strathclyde (Con): My Lords, this is an excellent Motion to debate and I am delighted that the noble Baroness has brought it forward. It is also an excellent time to have the debate. A year on into a Conservative Government and a new Parliament, with four years to go, it is an opportunity for us to consider and reflect on how Parliament and the Executive operate and on the quality of legislation. In raising these important issues, the Leader of the Opposition has fulfilled her constitutional duty. During the course of her speech, I could not help thinking how much I agreed with her and how I could have made a similar speech from where she is sitting and from where my noble friend the Leader of the House is sitting, too, because these are universal ideals.

I do not detect a concerted or co-ordinated attempt by this Government to circumvent scrutiny by either House of Parliament and there is no evidence to say that there is. However, we should take seriously the natural instincts of all Governments to make their lives a little easier. You do not have to look back far in history to know that the Government of Tony Blair and Gordon Brown, under the guise of modernisation, brought in deferred Divisions, sofa government to avoid Cabinet government, and guillotines as a matter of course. This was all in order to make the life of the Government a little easier.

Of course we should have more thought-through policy before it comes to Parliament and we should demand better drafted and more understandable Bills.

[LORD STRATHCLYDE]

I have still not got to the bottom of why Bills drafted today are so much more complicated than they were 20 or 30 years ago.

Of course Governments can ask for—and should be given—order-making powers for all the reasons that we understand, but they should be clearly expressed and, where possible, published in draft. I would be in favour, if one were proposed, of a committee to look at the drafting of legislation and perhaps take evidence from the First Parliamentary Counsel on the department in question's resources, its drafting guidelines and so on. I hope the Government would support that.

The noble Baroness raised the issue of what happened towards the end of the last Session of Parliament. At one point, with a few weeks to go, it looked as if we were heading for a great legislative car crash. However, the reverse happened—there was wisdom. This not only requires sensible Ministers but a sensible Opposition to reach a compromise. If, however, we have to agree to disagree, we should do so and not push it any further. That is a proper constitutional role for the House of Lords which is well understood. Yet, in the last Session of Parliament the Government were defeated in more than half the votes—53%—in this House. That just sounds like too many, and I hope the noble Baroness will take her Chief Whip and Deputy Chief Whip to one side and suggest to them that that was overkill. With that sort of record it is hardly surprising that, as the noble Baroness asserts, my right honourable friend the Prime Minister is thinking of stacking our Benches with more Conservative Peers. I suggest that they focus a little more on their votes rather than the broad-brush approach which they have tried so far.

Lord Richard (Lab): I thank the noble Lord for giving way. He will remember from the position he then held and I remember from the position I then held that during the whole of the period of the Labour Government from 1997 onwards, not only did we never have a majority in this House, but for most of that time we were not even the largest single party here; his party was. The voting records of those Parliaments show that the average number of defeats of Labour Governments was somewhere between 40% and 50%, which is not very different from what he is complaining about now. I did not hear him complaining about the position then.

Lord Strathclyde: My Lords, I am sorry that the noble Lord made that last point because when he looks back at the figures, I think he will find that the average during that period when we were in opposition was around a third. No doubt the noble Baroness the Leader of the House will be able to put me right if I am wrong on that.

The other argument that is made by many is that we have been faced with a tsunami of secondary legislation, and yet the figures which have just been published demonstrate that in the last Session of Parliament we had the fewest statutory instruments since the 1996-97 Session. Last October I was invited to conduct a review. Some thought that I was reforming the whole of the House of Lords—I hasten to add that I was not. Some thought that I was recasting all secondary

legislation, but I was not. I was dealing with a small point about how we agree statutory instruments in this House, and seeing if there is a better way. Since then there have been four parliamentary committees, three in this House and one in another place, all pretty much castigating my humble suggestion but none of them coming up with an alternative. That said to me that they had misunderstood the fundamental problem we face in how to agree statutory instruments in this House, and that they had misunderstood the uncertainty of the status quo.

As practically every child knows, the House of Lords is here to revise and to scrutinise, but it does not block legislation. If it does, there are the Parliament Acts which give the House of Commons the power to overrule this House. This does not apply to statutory instruments. Why not? The first question is this: should we retain our veto? I answered no.

As far back as 1968, my noble friend Lord Carrington asserted that we should not defeat statutory instruments. In his royal commission my noble friend Lord Wakeham built on that theme, and again, I believe that he did so by giving us a little more flesh on the bones of my Motion. What I took into account were those who said that the regret Motions we now have are not enough. Far from clipping the wings of the House of Lords, my suggestion was for a new power and a new ability for this House to demand that a Minister in the House of Commons come to the Dispatch Box, explain why the House of Lords is wrong, and if the House of Commons then reaffirms the original order, we should step back. I still think that that is the right way forward.

I hope the Government will respond shortly not just to my report but to the others. There may be room for an agreement with the Leader of the Opposition, but if there cannot be an agreement, I can see that in order to clarify the situation, there will have to be legislation. I am sure that I am not alone in regretting that.

2.23 pm

Lord Cunningham of Felling (Lab): My Lords, I would normally begin by saying that it is a pleasure to follow the noble Lord, Lord Strathclyde, but I have to say that I fundamentally disagree with almost everything he said. On the other hand I warmly commend the speech of my noble friend from the Dispatch Box on this side of the House and strongly support the recommendations that she has put forward.

An effective and robust balance of power between Government and Parliament lies at the heart of good governance. It also lies at the heart of good democratic scrutiny and control of the Executive. It cannot be acceptable in those circumstances that any Government can arbitrarily decide to change the existing balance of powers or the conventions of Parliament because of a voting defeat resulting from the legitimate use of parliamentary power. Nor is it correct for the Government to assert, as they have done, that a defeat of a statutory instrument by this House is a challenge to the primacy of the House of Commons. Nothing could be further from the truth. The House of Commons does not refer statutory instruments to this House; that is done by the Government. The Government invite both Houses to express an opinion at the same time.

As the Joint Committee report on the conventions of the United Kingdom Parliament makes clear, the primacy of the House of Commons is unanimously accepted not just by the committee but by the unanimous endorsement of that report by this House and the other place. The reality is that four Select Committees, which the noble Lord has just referred to—three of your Lordships' House and one in the other place—comprehensively rejected his proposals. The House of Commons Public Administration and Constitutional Affairs Committee stated in its report:

“The Government should not produce legislative proposals aimed at implementing the Strathclyde Review's recommendations. Such legislation would be an overreaction and entirely disproportionate to the House of Lords' legitimate exercise of a power that even Lord Strathclyde has admitted is rarely used. The Government's time would be better spent in rethinking the way it relies on secondary legislation for implementing its policy objectives and in building better relations with the other groupings in the House of Lords”.

There is not much sign in that statement that the House of Commons feels that its primacy is being challenged by this place.

All four committees mention the overuse, or perhaps I should say the abuse, of secondary legislation by this and earlier Governments to make changes in policy, which is not what statutory instruments were originally intended to do. To be fair, the noble Lord, Lord Strathclyde, mentioned this in his own report. The recent report by Mr Daniel Greenberg, entitled *Dangerous Trends in Modern Legislation*, for the Centre for Policy Studies, also highlights very succinctly the problems of the overuse of secondary legislation. Like my noble friend's opening speech, that is a good starting point for the urgently needed discussion in your Lordships' House. We should take the initiative and get on with it. There is no point leaving the procedures of this House and the way it conducts its affairs simply to the Executive. We should not delay. Equally, I strongly believe that we should not delay on reforming other aspects of the work of this House.

Let us face it, this impasse began with a misjudgment by the Chancellor of the Exchequer in trying to use a statutory instrument to make fundamental changes in policy. That is where the problem began. It did not begin in your Lordships' House, it began in the Executive and the Government, and it was an error from which they are still trying to recover. I remind noble Lords opposite of Healey's first law of politics: when you are in a hole, the best thing to do is stop digging.

I have seen no evidence to suggest that it is necessary or would be appropriate for this House to make some kind of concession in the face of these government errors. Why should this House agree voluntarily to reduce its very minimal powers, which we all agree are used only exceptionally? It would be going in the wrong direction entirely. I have even heard it suggested—indeed, it was suggested by a member of the Government to one of the Select Committee hearings—that we should agree that this power should remain but should be used only once in a Parliament. Who would make that decision? That would mean that the Government were home free for the rest of the Parliament. They could do what they liked with statutory instruments and this

House could do nothing about it. It is a preposterous, ridiculous proposal, and I hope that no one will give it any credibility.

The reality is that we in our own House should challenge this problem head on: the problem of the overuse and the inadequate scrutiny of secondary legislation. After all, most of the scrutiny takes place in this House, so we should be in charge of reforming it.

2.30 pm

Lord Butler of Brockwell (CB): My Lords, at the start of her speech, the noble Baroness, the Leader of the Opposition, was kind enough to make some complimentary remarks about what I said in the Queen's Speech debate. I want to return that compliment. I very much welcomed the constructive tone of her speech today. I must say that I was a little surprised to hear the noble Lord, Lord Cunningham, say that he agreed with every word that the Leader of the Opposition said, but fundamentally disagreed with the noble Lord, Lord Strathclyde, because, for a major part of their speeches, they were both saying the same thing.

When the Leader of the Opposition put down this Motion for debate, I assumed that this would be a further debate on Strathclyde, so I went to the Printed Paper Office and drew out yet again the noble Lord's report and the reports of the three Lords Select Committees to find that yet another report had appeared—this time from the Public Administration Committee in another place. I reflected that this issue seems to be prolific in producing Select Committee reports. The only thing that it has not produced so far is a response from the Government.

Today—and I welcome this—the speech of the Leader of the Opposition went wider. She referred not only to Strathclyde and statutory instruments but to the unsatisfactory nature generally of legislation which the Executive present to Parliament. I welcome that because, although secondary legislation is an important part of what is wrong with our legislative procedures, it is not the only aspect. As somebody who spent my career in the Executive, I respectfully agree with the noble Lord, Lord Strathclyde, that what is at the root of this is not any conspiracy to simplify the legislation coming to Parliament but the desire of the Executive to make themselves an easier life. That has been going on for some 250 years. It lies at the root of the development of the party system, the whipping system, it continues to go on and it results in Bills of the sort we see now. The shelves of the Libraries since I migrated from being a bureaucrat to a law-maker are groaning with the reports of committees on which I served, which sought to draw attention to the ill results of our country's unsatisfactory law-making. As has been said, Bills are ill thought out, inadequately prepared, insufficiently consulted on and hugely added to by the Executive during their passage and finally often replaced before they are brought into operation. The noble and learned Lord, Lord Judge, who I am delighted to see is taking part in this debate, in a devastating lecture, drew attention to how appalled he has been in migrating from being a judge to a law-maker by the widespread and growing preponderance of Henry VIII clauses and secondary legislation, introducing policy changes

[LORD BUTLER OF BROCKWELL]

which should have been in the original Bill. On that I agree with the noble Lord, Lord Cunningham.

One of the committees of which I was a Member—the Leader’s Group on the House of Lords procedure in 2011, set up by the noble Lord, Lord Strathclyde—recommended that the House should establish a legislative standards committee to deal with precisely the deficiencies in legislation presented to the House which have been referred to and to answer these questions. Has the policy underlying the Bill been properly explained? Has there been consultation to establish whether the proposals are practicable? Is there enough detail to enable Parliament to scrutinise it properly?

The proposal of that Leader’s Group, on which representatives from all sides of the House served, was that, like the Delegated Powers and Regulatory Reform Committee, this new committee would consider those factual questions between introduction and Second Reading—not policy questions but the state of preparation of the Bill—and it should report to the House whether a Bill and its surrounding information were in a fit state for parliamentary scrutiny. The clerks to the House recommended that such a procedure was entirely practicable but your Lordships will be unsurprised to hear that this was yet another proposal on which the Government did not support action. Now the time may well be to return to it.

In the Queen’s Speech debate, I said that Parliament’s scrutiny of statutory instruments needed consideration by the Commons as well as by the Lords. Prompt upon its cue comes a report from the Commons Public Administration Committee which reaches similar conclusions. That committee concludes that instead of producing legislative proposals,

“aimed at implementing ... Strathclyde ... the Government’s time would be better spent in rethinking the way it relies on secondary legislation for implementing its policy objectives”.

I would add that if the Government do not do so, as has been said, fatal resolutions in this House—so rarely used over the last 60 years—are likely to become more frequent.

The Leader of the Opposition has proposed that we look at this whole question of parliamentary law-making. Why should we not do so? Committee after committee has said that there is a problem to be solved. The Government have an interest in avoiding fatal defeats on statutory instruments in the House of Lords. The Opposition have an interest in securing a procedure which they can legitimately use to defeat or amend statutory instruments in the House of Lords, while respecting the ultimate primacy of the House of Commons. I agree that in this respect the noble Lord, Lord Strathclyde’s proposals have been misunderstood and misinterpreted. He is not proposing that the House of Lords’ powers in relation to statutory instruments should be curbed. What he is proposing is to substitute a procedure which the House of Lords rarely dares to use for one that it could use much more frequently to cause the Government to reconsider or amend statutory instruments in a proper way.

I hope that in replying to this debate, the Leader will respond constructively to the Leader of the Opposition’s proposal. But let not the best be the enemy of the

good. We also need to solve our problem over statutory instruments. We do not want yet another report about which nobody does anything.

2.38 pm

Baroness Hollis of Heigham (Lab): My Lords, first, my apologies for these glasses; my proper ones are somewhere in the Adriatic sea.

We, Lords and Commons alike, are increasingly failing the public. The Commons, of course, determines legislation but in the light of Lords scrutiny—with our delegated powers and scrutiny committees, and the time we spend debating SIs—we are better placed to do so.

The reason for our failure to the public can be described in two words: skeleton Bills. A skeleton Bill endows the Secretary of State with whatever powers he deems necessary, to do whatever he deems necessary, whenever he deems it necessary to do so. Bills, therefore, are future-proofed for any future Secretary of State in a future contingency to take any further future action without any further proper parliamentary scrutiny.

To take the recent skeleton Housing and Planning Bill, we floundered our way through it. When we probed to find out some detail about how many, how much—central issues one might think—the Minister could not say. She would say, “That will be in regs”. What would those regs contain? She would reply, “We don’t yet know”. Why not? She would say, “Because they are out to consultation”. When did that consultation start? We would be told, “Recently”. When will we get its findings? The reply: “Later, after the Bill becomes law”. We would ask, “Then how can we know what this clause will do?”. We cannot because the Minister cannot—not will not, but cannot—tell us. When regs finally appear, perhaps at odds with our limited understanding of the Bill, we cannot get at them; we can only bleat.

In other words, SIs are being abused in a way that destroys the very purpose of this House: our scrutiny role. As a Chamber we are not democratic, but we are rather useful. That is our justification. How, then, without seeking to challenge the primacy of the Commons, do we ensure that, through our scrutiny, the Government remain accountable to Parliament and therefore to the public, and do not seek to use SIs as a convenient shortcut through controversy?

I suggest four steps. First, consultation should precede—not parallel, let alone follow—legislation. We need to gather the expertise out there, expose policy intent and analyse impact beyond the half-baked gesture statistics we get served in lieu of a decent impact analysis. Secondly, following consultation, policy must be fully embedded and transparent in the Bill, and open to amendment, not left to SIs for future debate. Thirdly, SIs should therefore be relegated to their proper role—the adjustment of technical detail only, as the noble Lord, Lord Lisvane, has regularly argued. Finally, those affirmative and perhaps more controversial SIs that come before us must be effectively scrutinised. How? We cannot amend them, obviously, without engaging in a ping-pong that treats them like primary legislation. To vote against destroys; to regret is to be ignored. We cannot get at them.

Instead, we must have the power to pause. Over the last 15 years we have had several major reports proposing that the Lords might wish very occasionally to delay the automatic passage of an SI carrying a heavy public policy load and ask the Commons and the Government to think again, and, when they have, of course the Lords acquiesces. The usual channels would sort out urgent matters, including security, where delay would be wrong. We need that power to press the pause button for a meaningful period, perhaps for 28 sitting days. The Government could wait it out, and the SI would become effective. But they might also—especially if Commons Back-Benchers are increasingly perturbed, as with tax credits—use that delay, in my view rightly, to change their mind.

In summary, there must be no skeleton legislation. Consultation should precede, rather than parallel or follow, parliamentary scrutiny; otherwise what is the point? Policy is to be embedded in the Bill, not carried by subsequent ungetatable SIs, which should be restricted to technical and minor detail. Draft regs or written statements of what those regs will contain should be published between Second Reading and Committee so that Bills can, if necessary, be amended accordingly. It can be done. The noble Lord, Lord Freud, worked with Committee members during the passage of the then Welfare Reform Bill in 2011-12 to do precisely that. We worked on and developed regs together. It can be done—if, of course, the Lords Minister is a player, not merely a messenger.

Finally, affirmative regulations that this House believes carry previously unexplored or controversial policy content could be paused for further reflection—I suggest for 28 sitting days—by a delay Motion, which then accepts the primacy of the Government in the Commons. This set of proposals would allow us to scrutinise public legislation, as we should. Asking the other place sometimes to think again on SIs, as we do with primary legislation, would help to justify our role as an unelected House, while ensuring that the Commons retains the last word. It would produce infinitely clearer and more transparent legislation, and those whom that legislation affects will know where they stand from day one; that is impossible with regs out there somewhere in the ether, which may be drawn down or not. Above all, it would allow us to serve the public as we should, for we have no other purpose and no other reason as a House for our existence.

2.45 pm

Lord Lang of Monkton (Con): My Lords, like others, I begin by complimenting the noble Baroness, Lady Smith of Basildon, not only on the timely arrangement of this debate, but on much that she said, with which I find myself in agreement. I believe that her specific suggestions, and those of the noble Baroness, Lady Hollis, which we have just heard, are worthy of further consideration. I hope that this debate will generate a large number of such suggestions that will be considered very carefully.

I propose a slightly more general approach in my remarks. They are triggered as a result of the unsettling mood that exists on constitutional matters at present following the words of the gracious Speech referring to the sovereignty of Parliament and the primacy of

the House of Commons. Why did it say that? What does it mean by it? Others have wrestled with this and reached different conclusions. They are both familiar concepts, but each is utterly different from the other, so the juxtaposition is strange: they are not two sides of the same coin; they do not complement each other, nor does one qualify the other. The sovereignty of Parliament is a familiar and profoundly important core principle of our constitution. It is the basis of the rule of law and of the authority of all our lawmaking. But the Parliament to which it refers is not the House of Commons, but the bicameral Parliament of two quite deliberately and desirably different Chambers, each playing its distinctive part and complementing the other. So the concept of Parliament is thus indivisible. It embraces both Houses.

The primacy of the House of Commons is a fact, but it exists *de facto* rather than *de jure*. It is built on the existence of the Parliament Acts, the unelected nature of this House and on various established practices and procedures—perhaps not so strongly nowadays on conventions, because they were broken, or certainly badly damaged, last October. That in itself raises problems that have to be addressed. Primacy, however, is not something for the Commons to claim. It is for this House to acknowledge and to volunteer, as we always do. Our restraint, when we adhere to it, is a vital component of what makes the system work. The reason it has broken, or has been crumbling for some time, is partly the loss of restraint in respect of our normal way of behaving on various occasions, but more so—this is the burden of what I want to say, even though it has already been touched on extensively by others—because of the poor quality of the legislation that has been fed into the system in recent times.

The Constitution Committee, which I have the honour to chair—although I stress that my remarks are of a personal nature—has been reviewing the draft of its seasonal report for the year 2015-16. It pains me to say that we have found a litany of bad lawmaking habits. The then Scotland Bill was probably the most egregious, for a whole complicated list of reasons from beginning to end that I will not bore the House by developing today, but it is a shaming indictment of how to make laws. I hope it is never repeated in any shape or form with any other legislation. But there is also the growing abuse of delegated legislation, as referred to by others. We reviewed too high a number of vaguely worded Bills that conferred broad and undefined delegated powers on Ministers, with few restrictions, to achieve legislative objectives.

It has been suggested that an effort is now in place in government to improve the preparation and internal consideration of new legislation before publication. I hope that it happens; we have yet to see it. But whatever happened to Green Papers and White Papers, to pre-legislative scrutiny? Instead we have had a diet of skeleton Bills, Christmas tree Bills, very urgent Bills and Henry VIII powers like a sauce added to everything, followed by a flood of slippery secondary legislation, often hoping to slip through policy changes. The trend is not new with this Government. It is true that the numbers are not very much greater than they have been at any time in the last 20 years, but

[LORD LANG OF MONKTON]

what is different is that they are longer and have more substantive contents, including the trend towards policy development.

I could go on about this but in setting up the Strathclyde review, Her Majesty's Government blew their own cover when they described its purpose as being,

“to secure their business in Parliament”.

They went on to refer to,

“the decisive role of the elected House of Commons in relation to its primacy on financial matters, and secondary legislation”.—[*Official Report*, Commons, 4/11/15; col. 25WS.]

These two quotations are, in the first case, a clear statement not about the constitutional proprietaries, where they may have had a case of some sort, but about the Executive getting their way by whatever means they could deploy; and, in the second, at best a highly polished gloss of the true position and at worst a distortion of it.

My noble friend Lord Strathclyde accused my committee of castigating him. I am bound to say we did not; we actually let him off the hook because our conclusion was that he had been asked the wrong question and therefore his answer was not really relevant to the issues before us. Our committee and two others separately reached that view. If the words I quoted explain what was meant by the cryptic reference in the gracious Speech to the sovereignty of Parliament and the primacy of the House of Commons, I suggest that the Government might be about to take the wrong kind of action.

It may be that there is a case for reforming the relative powers of the two Houses. It seems, for example, slightly bizarre that this House can amend primary legislation but has power only to reject secondary legislation. Let such matters be considered in the proper and unhurried way, but it is essential to preserve the present balance of powers between the two Houses. We may be faced with some proposals to codify in some way the damaged convention system. If that can be done in a way that maintains the delicate balance of powers between the two Houses, let us at least examine it—though I am sceptical that a way will be found that does not undermine the standing of this House.

However, if the Government come forward with changes simply to make it easier to get their business, that is quite another matter. That would provoke a strong and sustained reaction here. At the end of the day, Governments must get their business. Overall, the present balance of powers provides for that, and so does the general will of this House. The issue should not be sovereignty, the balance of power or primacy but the nature and quality of the legislation laid before Parliament by the Executive. That deserves close scrutiny. It is high time the Government did a better job.

2.52 pm

Lord Richard: My Lords, I agree with a large part of the speech that the noble Lord, Lord Lang, just delivered. It is interesting the way in which this debate is developing. There seems to be a genuinely cross-party approach to what is clearly a major problem. That is a good thing. I congratulate my noble friend the Leader

of the Opposition on bringing this subject forward at this stage. When I saw it on the Order Paper I thought it would be a rerun of what we debated on the Queen's Speech—as somebody said, *déjà vu* all over again. It could have been, but listening to the debate it has taken a different tack.

Before I turn to the Strathclyde review, I will just put some of this argument into historical context. It is interesting to look at the figures on defeats of delegated legislation. In the calendar years from 1950 to 2015 there were five government defeats on fatal Motions. The first was in 1968 against the Labour Government, there were two against the Labour Government in 2000, one in 2007 again against the Labour Government, and one in 2012 against the coalition Government. My arithmetic seems to indicate that that is 4:1. In the same period, there were 27 non-fatal Motions. There was one in 1977 and one in 1978, both against the Labour Government. One in 1983 was against the Conservatives. One in 1985, one in 1992, two in 1993 and one in 1995 were all against Conservative Governments. Then the great change happens. There was one in 1998, four in 2003, two in 2005, one in 2007, three in 2009 and three in 2010, all against Labour Governments. Again, if you add it up, there were 11 non-fatal Motions against Conservative and coalition Governments and 16 against Labour Governments. In addition there was a government defeat on a Motion moved by the noble Baroness, Lady Hanham, on 13 July 2009. Whether the Motions were fatal or non-fatal, the vast majority have come from the Conservative side of this House and not the Labour side. Almost all of them came, too, at a time when the Labour Party was in the distinct minority here in the House of Lords. Indeed, for a large part of that time, we were not even the largest single party. So let us have no more of this nonsense about the Labour Party being more rigorous or awkward in the way it approaches statutory instruments. That is not true. The facts lead precisely in the opposite direction.

Faced with that, we should put the Strathclyde proposals in a rather more severe context. I repeat what I have said in this House before—it has been repeated today—that the only justification for removing the power to defeat a statutory instrument here is that the Government then legislate in a proper way. By that, I mean that they use primary legislation for dealing with matters of policy and use statutory instruments for what they were designed for: the implementation of that policy. You cannot expect this House to remain silent in the face of legislation such as the recent housing Bill. If the Government insist on sending up skeleton legislation with enormous discretion given to Ministers as to how to put the flesh on the bones, this House cannot be expected to sit down and let that happen. That would be a clear breach of the spirit if not the terms of the Parliament Act.

Of course, that Act gives the Government the authority to disregard the views of the House of Lords in relation to primary legislation but not to secondary legislation. An attempt to use that distinction to evade the possibility of constitutional delay by this House would be a distortion of the existing constitutional arrangements between the two Houses. Nor should it be forgotten that this argument is really not about the

Commons versus the Lords; it is about the Government versus Parliament. On this issue, the views of the House of Lords really cannot be disregarded.

One thing that has emerged in this debate is that there is a consciousness here of a very real problem in the quality of legislation as it leaves the House of Commons and comes up to your Lordships' House, in the fact that it is not properly scrutinised in the House of Commons, and in that the drafting these days seems to be much less precise and cogent than it was years ago. Many years ago, in the late 1960s and early 1970s I sat on a committee. I have the same sort of memory as the noble Lord, Lord Butler. The committee was chaired by—I cannot remember his name, but it was a committee on drafting legislation. Ah, it was chaired by Lord Renton. We sat for a long time, took a great deal of evidence, heard from parliamentary draftsmen and heaven knows who else, and produced an erudite report asking for certain things to happen. Of course, none of it has taken place and that was nearly 50 years ago.

I am not optimistic that another such committee would produce more fruitful or rapid results but I am certain that such a committee ought to be set up. Given the quality of the legislation as it comes up from the House of Commons to this House, the way in which the Government now use statutory instruments rather than primary legislation, and the way in which that claim of financial privilege is used by the Government, there are issues here that deserve full consideration, and on a cross-party basis. I agree with my noble friend Lord Cunningham that there is no reason at all why this should not start up here. We do not need to wait for the House of Commons to do this. A committee of your Lordships' House considering this matter would be a very good start. I hope that when the Minister comes to reply she will deal with this. I raised it in the debate on the Queen's Speech but, notably, it was totally not dealt with. Perhaps today will be better.

2.59 pm

Lord Judge (CB): My Lords, I wonder how much longer we can go on talking about these issues. I have read report after report; they are all very clear and unequivocal. We are having another discussion today—I entirely agree with the noble Baroness, Lady Smith of Basildon—and we can have some more talking. However, the question is: when are we going to actually achieve something before our constitutional arrangements disappear into some vague unknown future?

I want to address one issue today, because there is not time to address everything else—it is one I have raised with your Lordships before, and some noble Lords, at any rate, patiently listened to me. Why on earth do we in this House agree to Henry VIII clauses? Why do we? It is our responsibility, too. You can hardly say about a Henry VIII clause, “Ah, well, this has been very carefully considered in the Commons. They have scrutinised it and come to the conclusion that this is an appropriate way to serve the public interest, and therefore we should hold back”. The whole point about Henry VIII clauses is that there is no scrutiny. They are created not for immediate effect but to allow for future effect. So there is no scrutiny of them. Why do we all agree to them?

I am quite sure it will be said—perhaps today by the Leader of the House, but certainly by somebody—“Ah, you are very new here. Don't you realise that Henry VIII clauses have been going on for years and years?”. The short answer is that I am new here and Henry VIII clauses have been going on for years and years, but they are going on more and more, and more and more rapidly. We are becoming so used to them that we are not even appreciating what they stand for. They stand for dispensing with, or suspending, an Act of Parliament by ministerial decision. That simply will not do. The function of Parliament is historically, and stemmed from, the need to control the king—now the Executive. That is one of the functions of both Houses. The Executive nowadays—I am not making a comment about this particular Executive, the last one, the one before or the one before that—hate to be told no, so the Executive say, and imply, and occasionally say enough to make it clear that this is what they think, that the function of Parliament is to do what the Executive wish it to do. But that is not our function, and never has been. If we allow this to go on, it is what it will become.

I mentioned the Childcare Act on a previous occasion. We have agreed to give power to a Minister by delegated legislation—secondary legislation—to give somebody, anybody the Minister may choose 20 years from now, the power to dispense with a statute: any statute, one that exists now or one that will exist 10 years from now. Why on earth did we do it, and to what advantage? Why was it needed for government business? It was not; it cannot have been. If the business required the Government to act now, the provision could have been clearly set out. Let us consider the wonderful Bus Services Bill. I ask noble Lords to please read it. They will find in Clause 22 a wonderful general Henry VIII power. What is that for? The Children and Social Work Bill to which the noble Baroness, Lady Smith, referred is more complex. Its provisions include that a hybrid instrument is to proceed through the legislative process as if it,

“were not a hybrid instrument”.

What on earth is that for? Guess how many Henry VIII powers it has? I tired after Clause 35, Clause 39, Clause 42 and Clause 43. They are all Henry VIII powers. It is a confetti of Henry VIII powers. Why will we enact them? Why will we agree? Incidentally, the Bill also proposes in Clause 34 that a Minister may create a criminal offence.

I find the idea that secondary legislation can dispense with, or suspend, primary legislation to be a constitutional—I must be very careful how I put this; shall we say—shambles. That is what it is. I am not asking a rhetorical question when I say: why should Parliament—both Houses—dish out powers to a future Executive of any political colour, elected by a view of the country that is taken at a particular time, to dispense with a statute? We do not know what lies ahead. We must not sit back and say, “This is England, Ireland, Scotland and Wales; we are all very civilised. We will never end up with the sort of Government who might misuse their autocratic powers”. Well, we might. Democracy works in funny ways. Austria came very close very recently. One must not ignore these things.

[LORD JUDGE]

I do not want to go on too long and will say just this. After all the discussion we have had today and have had so far, all the further inquiries, additional papers and the examination of the interests, why cannot we in this House ask this simple question: why should we ever pass Henry VIII clauses?

3.06 pm

Baroness Andrews (Lab): My Lords, it is a great pleasure to follow the noble and learned Lord, Lord Judge. I know that that very important and provocative question will be studied closely by the Delegated Powers and Regulatory Reform Committee, which is always in the front line when it comes to asking why we accept provisions.

It is a great pleasure to take part in this debate. I want to reflect on the wider issues raised by the second part of the debate's title: on the need for Parliament to have,

"full details of all legislation that it is asked to consider".

This is really the question about the relationship between knowledge and power, and is the basis on which we conduct our scrutiny effectively. I raise this question because I have had the privilege of being a member of the Delegated Powers and Regulatory Reform Committee and am now a member of the Secondary Legislation Scrutiny Committee, which is wonderfully chaired by the noble Lord, Lord Trefgarne.

I have had a curious career. I started in Parliament as a parliamentary clerk in the House of Commons and ended up as a Minister in this House, with many parliamentary pit stops in between. I have seen the erosion of parliamentary power from many different perspectives, and have been concerned for a long time while understanding the yearning of all Ministers to grab more power. However, I believe that in the lifetime of this Government we have seen a step change in the pursuit of power.

The debate on the noble Lord's report became increasingly surreal as each of the four committees wrestled with what was essentially a false premise, as the noble Lord, Lord Lang, has already said—that is, that this House exceeded its powers in relation to secondary legislation and needed to be restrained from doing so in the future. There is a predictable consistency in those four reports' demolishing of the argument. However, for me, what was equally significant was the noble Lord's advice to government that they should, "take steps to ensure that ... too much is not left for implementation by statutory instrument".

My experience is that Governments have never been very good at drafting legislation, and have certainly got worse. The law of unintended consequences never sleeps. However, there is a difference between things turning out differently because a genuine mistake has been made—Professor Anthony King's book is full of such examples—and bringing legislation before us which is simply premature, incomplete, obscure, or indifferent to evidence and impact, so much so that we cannot, however diligent we are, advise those who will be affected by it on how the law is actually going to work, let alone warn them or achieve some mitigation. We have already had the examples given several times

this evening of the Childcare Act—an egregious example of that—the Housing and Planning Act and the Cities and Local Government Devolution Act, all eclipsed to an extent by the infamous case of tax credits. In fact, on coming into office, this Government signalled their intention to break some basic rules of engagement between Government and Parliament very early on.

I so wish that the noble and learned Lord, Lord Judge, had been in this House when we were debating the then Public Bodies Bill in 2010 and the then Deregulation Bill in 2013. The notorious Public Bodies Bill, which attempted to abolish, remove and restrict arm's-length bodies entirely through Henry VIII powers, was to an extent stopped in its tracks and we were able to mitigate that. What astonished me was that, in 2013, there was a more outrageous grab for power. Clause 14 of the Deregulation Bill, which was introduced with great brio by the Minister Kenneth Clarke, would have caused legislation that was,

"no longer of practical use"—

in the terms of the Bill—to cease to have effect. He described it as,

"a quick and tidy dustbin",

and was rather bemused when it was thrown out by the pre-legislation committee.

What is it that we in this House depend on to defend the democratic process and challenge Government? It is principally our two scrutiny committees, but these committees are now routinely faced by departments—aided and abetted by the Cabinet Office—which bring forward skeleton Bills, or "mission statements", as described by the DPRRC. The Bills create a host of new powers for Ministers, as we have heard. They bring forward regulations that are far removed from technical or administrative issues, although officials persist in defending and describing them as such. They design and implement new policies by introducing new and basic definitions, such as "coasting schools", in the education legislation; new criminal offences scattered through secondary legislation; and new institutions designed to implement secondary legislation. The fact that so few regulations are ever available for the House to see does real damage, I believe, to public policy and public trust in the process.

Last year, the Government had the excuse that they did not expect to have to introduce a manifesto, and I found that unacceptable. I find it far less acceptable that, this year, we are already faced with legislation that does the same. We may not be able to do much about ministerial power per se, but we should at least be able in this House to insist on transparency, integrity and competence.

Such was the concern of the Secondary Legislation Scrutiny Committee in 2013 to strengthen the ability of the House to challenge inadequate and misleading SIs that it proposed new grounds for reporting SIs for the attention of the House because,

"the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation".

That is so fundamental. This year, 19% of the reported SIs fell into that category. We have wide frustration, which we have set out in our latest annual report, about the failure to ensure timely, considerate and effective consultation processes, some of which even

misreport findings; poor, basically inaccurate Explanatory Memorandums; and minimal or no information on impact. There is a succession of examples that I could refer to, including around the most contentious legislation, such as social security and legal aid, where we cannot form a view as to whether the regulations would operate as intended. We have invited Ministers to come and defend this failure—they all promise to do better; very few of them show that they can.

We have heard a raft of prescriptions as to what is needed. I support all that—certainly pre-legislative scrutiny—and I would suggest that no Report stage should start before we have statutory instruments to discuss. I also urge for better training and support for the Civil Service and Bill teams and an end to the cuts that have debilitated the Civil Service and the quality of advice.

There will always be those who say that nothing will improve because it was ever thus, but I do not believe it. There is a natural tension between Government and Parliament and it is precisely in that contested space that the proper balance between Government and Parliament should be held. That is where the role of this House is at its most critical and why the conversation that we need should be had between both Houses, and be had urgently.

3.14 pm

Lord Cormack (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Andrews, who brings a wealth of experience of Parliament from different aspects. I begin, as many others have, by congratulating the noble Baroness, Lady Smith of Basildon, on the calm, moderate, sensitive and sensible way in which she introduced her Motion. What has been remarkable about this debate is that there is an emerging consensus. It has not been put into specific words—I will try to make an attempt at that.

We are dealing with the implicit tension in a system where the Executive are drawn from the legislature and then expect the legislature to be their creature. This has been a tendency under Governments of all parties—the Labour Government, the present Government, the coalition Government. One sees the way in which successive Governments try to deal with this subject and the excessive payroll vote in the House of Commons by those who find themselves politically emasculated and those who are very ambitious, who are always a little reluctant to cross swords with the masters of the day. We see it specifically in the background to today's debate.

I have enormous and genuine regard and respect for my noble friend Lord Strathclyde, but his appointment was a transgression of the balance that should exist between the Executive and the legislature. It was the Executive who told my noble friend to sort out your Lordships' House. He came forward with a number of proposals based on his great knowledge and came to a conclusion with which, apart from the legislative aspect, many of us could have a degree of sympathy—namely, that our powers should certainly not be removed but perhaps, in respect of statutory instruments, should be to a degree curtailed. We also have to recognise that this comes in the wake of a specific event and, as the Commons committee put it very succinctly,

“there was in fact no constitutional crisis arising from the defeat of the Tax Credits measure”.

But the Government made one. Subsequently, the Government decided not to persist with the tax credits measure—a very sensible move, in my opinion.

We have to recognise these things and to try to come to a sensible, balanced and moderate conclusion. I respectfully suggest to your Lordships' House that we take on the implicit—and some explicit—suggestions of the noble Baroness, Lady Smith of Basildon, and set up a Burns-type committee with a strictly defined remit and timetable to look at the whole issue of secondary legislation, particularly in the light of the apposite and telling comments of the noble and learned Lord, Lord Judge. I thought that he made an exceptionally splendid speech. That committee could report back to your Lordships' House and, following that, I would myself very much like to see a proper Joint Committee of both Houses looking at the way in which secondary legislation is dealt with both in the other place and here.

The most encouraging remark this afternoon was made by the noble Baroness, Lady Smith of Newnham, when she paid a degree of respect to the Salisbury convention. We have to recognise that our recent problems—the noble Baroness, Lady Smith of Basildon, said that we have never been in this situation before with a Conservative Government—are exacerbated by the disproportionate representation of Liberal Democrat Peers. I say to them, many of whom I count among my good friends, that they recognise that too. They might even consider not putting more than 50 Members in the Division Lobby at any one time. That would go a long way to dealing with many of the problems.

Above all, we must remember that no rules have been broken. The noble Baroness, Lady Hollis, made an excellent speech today. It was her Motion that was carried and it did not transgress anything. My noble friend Lord Strathclyde mutters sotto voce, “Of course it did”. No, it did not, because if we did what he wanted we would have a power to amend statutory legislation, and she was merely saying, “Take a bit more time”. That is all she was saying and that would have been very sensible. We also have to remember that no legislation was lost in the previous Session.

In conclusion, hard cases make very bad law, as we all know. It is very wrong to consider introducing legislation to change perceived transgressions when there was no actual transgression. I think there is an emerging, calming consensus, thanks to the excellent speech of the noble Baroness, Lady Smith of Basildon. Let us look at these things in a calm, reflective light. Let us give to a committee of your Lordships' House a particular remit and timescale, and then let us get together with our colleagues in another place to try to ensure that secondary legislation, which should never include Henry VIII clauses, is properly examined in both Houses and is capable of amendment in both.

3.21 pm

Lord Haskel (Lab): My Lords, like other noble Lords, I draw your Lordships' attention to the declining quality of legislation presented to us. I raise this not only because we can do something about it—as the noble Lord, Lord Lang, suggested, we have to do

[LORD HASKEL]

something about it—but because, as standards decline, there is more opportunity to ignore or even break the rules that have been devised over time to protect the public good. I thank my noble friend for moving this Motion and for her sensible proposals.

Like my noble friend Lady Andrews, my concern arises from my past membership of the Delegated Powers Committee and my current membership of the Secondary Legislation Scrutiny Committee, chaired by the noble Lord, Lord Trefgarne. Both these committees have witnessed the decline of which I speak. When scrutinising secondary legislation, quite rightly we look not only at what it says but why it is required, how it is explained and what its impact will be—as my noble friend Lady Smith said, whether it is fit for purpose. More and more the committee has to draw your Lordships' attention to inadequacies in all these aspects.

We recently drew your Lordships' attention to an order relating to standards in the welfare of livestock. In that order, regulations were to be withdrawn in favour of a voluntary welfare code based on consultation, which the Minister said would improve welfare. But the consultation said exactly the opposite. When we pointed this out, Defra withdrew the order. Do the Government consider this a defeat or the House doing its work?

Almost one in five of the statutory instruments reported to the House in the previous Session was on the grounds of inadequate explanation. Indeed, the SI relating to tax credits which precipitated the report of the noble Lord, Lord Strathclyde, went back to the Treasury twice because of deficiencies in the Explanatory Memorandum—deficiencies in the explanation as to why it was necessary to use secondary legislation to introduce this new and significant matter.

Why is this not picked up in the other place? As has been pointed out in many reports, not least in the responses to the Strathclyde review, there are so many other pressures on Members of Parliament that they have little time to look at secondary legislation. Indeed, only selected parts of primary legislation are scrutinised, partly because virtually every major Bill is timetabled—not, I think, an invention of the Blair Government, as the noble Lord, Lord Strathclyde, suggested.

The noble Lord, Lord Strathclyde, complained about the number of government defeats. Does he not agree that these defeats are not only because of disagreements over policy but because the legislation is incomplete, not properly prepared and not thought through, as most speakers in this debate have suggested?

What can be done? As other noble Lords have said, there is a Cabinet Office *Guide to Making Legislation* and instructions that should be given to parliamentary counsel. Are these instructions carried out? There is an understanding of the need for Green Papers, White Papers, draft Bills and a proposed schedule of secondary legislation. Is the problem lack of staff? Have we lost people with the expertise, analytical skills and experience in preparing legislation? Is this the result of budget cuts in the Civil Service?

One way of making up for this loss would be to do what lots of other people are doing—turn to artificial intelligence. As my noble friend Lady Smith mentioned,

in the debate on the Queen's Speech I drew your Lordships' attention to this possibility and it created a lot of interest on social media. I made the point that the Government's Science and Technology Facilities Council at Hartree has a five-year collaboration with Watson at IBM. These two organisations are at the forefront of developments in artificial intelligence. I pointed out that we already have machines that can read, prepare and analyse clauses in loan agreements and contracts of sale. With this experience and the excellence of the two organisations, it must be possible to digitalise and code the Cabinet Office instructions on legislation to at least make sure that every element of policy explanation and consultation is present. Having developed this technology, it could be offered for sale to virtually every other legislature in the world. I hope Ministers do not think for one moment that this suggestion is the start of the slippery slope of Ministers being replaced by robots—not at all.

That is just one way of dealing with the problem. Perhaps the Government have other ideas. We have to get the preparation and procedure of legislation right because, if we do not, the low standards will provide an opportunity for poor or bad legislation which will undermine our culture of strong, fair-minded and responsible government, scrutinised by Parliament to make it fair-minded. It will undermine those rules devised to protect the public good, and we will all be the losers.

3.28 pm

Lord Trefgarne (Con): My Lords, as chairman of your Lordships' Secondary Legislation Scrutiny Committee, I thought it right to make a brief intervention in this debate. I emphasise that what I am going to say is my personal view, although I rather think that most of my views will be shared by other members of the committee.

I want particularly to deal with the matter that arose after 26 October last year when your Lordships rejected the tax credits statutory instrument. I recognise that there is room for more than one respectable view as to whether that was a breach of the convention that existed—but there is certainly a serious body of opinion that takes that view, which, frankly, is one that I share. So the question is: what do we now do about that? My noble friend Lord Strathclyde has reported. His report has not been universally acclaimed but has been widely appreciated for the detail into which it went. He has raised some important possibilities which the Government will no doubt carefully consider and to which they will respond in due course—maybe even this afternoon.

Before we, or the Government, decide upon bringing in new legislation, we should have an attempt at re-establishing the convention which some of us, at least, believed existed before October last year. I hope that that can be done. It would need the acquiescence of all the major political groupings in your Lordships' House, including of course the Opposition, as led by the noble Baroness, Lady Smith, and the Liberal Democrats under the noble and learned Lord, Lord Wallace. I believe that the Liberal Democrats take it that they are not party to the existing convention—or what was the existing convention. If they are not party to it, they will have to be party to the new one if that is

what is decided upon. So indeed will the Cross-Benchers—but how that can be achieved I am not so sure, because of course they take the view that they are not united on anything, so that is a matter on which they would have to decide. The noble and learned Lord, Lord Hope, the Convenor of the Cross Benches, would have to decide what assurances he could give as to the position of his colleagues on the Cross Benches if that were to proceed.

I hesitate to suggest that the right reverend Prelates should have to take part in all of this. Perhaps that is a step too far—but they were of course party to the proceedings in 1215, when his late Majesty King John was persuaded to sign the Magna Carta. Apparently that is not part of the proceedings nowadays. If it is not possible to reach a new agreement—

Lord Cunningham of Felling: I am grateful to the noble Lord and do not want to take up too much of his time, but since he mentioned the Lib Dems and the Cross-Benchers, they were represented on the Joint Committee on Conventions and voted unanimously for its conclusions. They supported its conclusions on the Floor of this House, so they are committed to the convention.

Lord Trefgarne: I am very glad to hear that, but I think that there will need to be a new procedure now. If he does not mind me saying so, the noble Lord's committee, to which he referred, sat a number of years ago and the procedure therefore needs to be re-established following the events of October last year. The new convention will need to set out the understanding that only in the most exceptional circumstances would your Lordships want to vote against a statutory instrument. I would wish to add that a Motion for a significant delay would be very similar to a Motion to negate a statutory instrument. I dare say that the convention would need to recognise that point.

I will make one other, more current observation. It relates to the supporting documentation for statutory instruments, which my committee considers nowadays. A number of noble Lords have already referred to this. I have to say that at least 10% of the Explanatory Memoranda and other supporting documentation which we receive is inadequate or unsatisfactory. We often have to ask for it to be rewritten or reproduced. I regret that that is the case but I hope your Lordships will understand that it is an important part of the work that we do. I would like to exempt my noble friend Lord Freud from all that. He has recently gone to great lengths to persuade his department to improve its supporting documentation and I very much appreciate what he has been able to do. I believe that my colleagues on the Select Committee appreciate that likewise.

3.34 pm

Baroness Thornton (Lab): My Lords, I speak in this debate as something of what might be called a jobbing legislator after nine years on the Back Benches, a couple of years as a Whip and a Minister and five years as a Front-Bench spokesperson. While I cannot claim the constitutional expertise of the noble Lords, Lord Norton and Lord Cormack, the noble and learned Lord, Lord Judge, or my noble friends Lord Richard

and Lady Hollis, I am now back on the Back Benches of your Lordships' House and hope that my journey might be useful in our current discussions.

I suppose the theme of this debate is that we really have to do things better. Surely it is not beyond the wit of this great Parliament and the people in it to revise, scrutinise and negotiate better legislation. If the noble Baroness the Leader of the House made a list of every one of the sensible suggestions that have been made today, that would be a very good starting point. Although I found the notes from the Library partially useful, I did not buy the overemphasis on the Strathclyde review, because the overweening power of the Executive and the battle to carry out proper and effective parliamentary scrutiny, and the tension between those two, are not new. It has to be said—I believe this and I think others may have said it—that we have too much legislation. I started to feel that this was the case during my own party's period in government and have believed it ever since. Indeed, like other noble Lords, while reflecting on what to raise in the debate I noticed in my journey through various uses of Google and the parliamentary database that a monarch in the 14th century—I think that it was one of the Edwards—was also bemoaning the amount of legislation going through Parliament, so there is nothing new in that.

During the years that my party was in government, the opposition parties regularly complained about half-baked legislation, and sometimes they were right. But we are in new territory today, where much of the legislation in front of us is not half-baked but totally uncooked. On the question of why legislation and policy are being brought forward and presented to Parliament in such an abysmal state, I wonder whether part of the answer might be the quality standards and perhaps the economies made to the parliamentary draftsmen's service.

As I scrolled around trying to think about how to express this, I remembered a year of sitting with parliamentary draftsmen and their service in the drafting of what became the Equality Act 2010 before it was presented to Parliament. I found it a remarkable and very wonderful experience, not only because they were extremely clever, considered and diligent but because they produced a Bill that we successfully navigated through this House, with cross-party support, just before the general election. Can the Minister say whether the draftsmen's office is being properly funded and supported?

I came across a poem drafted by a parliamentary draftsman in 1947, which of course is unnamed. It says:

"I'm the parliamentary draftsman
I compose the country's laws,
And of half the litigation
I'm undoubtedly the cause
I employ a kind of English
Which is hard to understand.
Though the purists do not like it,
All the lawyers think it's grand".

There is a serious question about the quality and standards of the legislation and draft legislation that we are presented with.

I have a second point, which was alluded to by my noble friend Lord Haskel. The internet has revolutionised who accesses the law and Parliament, and who watches

[BARONESS THORNTON]

us as we go about our work. Just as people are much more ready to check the advice from their GP against medical advice available online, people are also looking to what we do here in Parliament and the legislation that we produce. Whereas 20 years ago you might have needed access to lots of physical volumes to understand and access law, people can now type “data” or “human” into Google and be two clicks away from a copy of the Data Protection Act or the Human Rights Act, and the same goes for any other legislation. I believe that 2 million to 3 million unique visitors are accessing statutes through the National Archives every month. It seems to me that we need to be less obscure, and that there is a need for more clarity about how we express ourselves and how we incentivise our departments, if they need to legislate and it is too complicated, to consider how to express the legislation in a language that we, including the people watching us and how we work and who sometimes want to comment on it and access it, can all understand.

I gather that, in 2013, good law champions were created in every government department, and new web-based drafting tools were introduced, with an emphasis on partnership, including talking and listening more to users. Do these still exist? If they do, is anybody taking any notice of them?

Those are two questions, but I will also say something briefly to the noble and learned Lord, Lord Judge, about Henry VIII clauses. When I came into the House in 1998, the Government were accused of putting a Henry VIII clause in a piece of legislation. There was not quite a gasp of disapproval in your Lordships’ House, but the Government were certainly pressed very severely on such occasions, and as a result often took the issue away and rethought it, although of course my Government did not have a majority in the House at the time.

3.41 pm

Lord Norton of Louth (Con): My Lords, like other noble Lords, I welcome this timely debate initiated by the noble Baroness, Lady Smith of Basildon. There is much that needs to be done to strengthen Parliament in scrutinising the Executive and their legislation. However, before addressing what is wrong with the process, I will just say a few words about what is right with it.

Parliament is now arguably at its strongest in modern political history in scrutinising the Executive. MPs are much more independent in their voting behaviour. Both Houses are much more specialised, utilising investigative Select Committees, and better informed as well as more open. Government no longer has a stranglehold on the timetable in the Commons. The House has acquired the Backbench Business Committee and a Petitions Committee. The Whips in the Commons have lost their patronage in terms of the chairs and members of Select Committees. The prerogative power in committing forces abroad is now constrained by the need for Commons approval.

In terms of legislative scrutiny, the Commons, as Louise Thompson’s research has shown, has far more impact than is reflected in the small number of non-government amendments accepted. The Commons has introduced Public Bill Committees, and in this House

we now utilise ad hoc committees for important post-legislative scrutiny, a development that plays very much to our strengths. This House is to the fore in scrutiny of secondary legislation. The Constitution Committee does excellent work in reporting on Bills of constitutional significance.

There is thus good news. What, then, is the problem? The primary problem is the sheer volume of legislation. The growth in the volume, both of Acts and statutory instruments, dates from the 1990s, with the greatest increase taking place in the number of pages of statutory instruments—it is not numbers, it is length. There were two step changes, first in the 1990s and then from 2005 onwards. The problem is qualitative as well as quantitative: it is not just the length, but also the complexity and scope. The noble and learned Lord, Lord Judge, has called attention to the growth of Henry VIII provisions. Governments are trying to do too much and seek to manipulate the legislative process to achieve their goals.

The Constitution Committee, in its 2004 report *Parliament and the Legislative Process*, looked at the legislative process holistically. It made the case for pre-legislative scrutiny to be the norm, which fits very much with the wording of today’s Motion. There was a notable increase in the number of Bills submitted for pre-legislative scrutiny in the last Parliament, but the number has varied over time and remains reliant on the Government to determine which of their own Bills merit such scrutiny.

The committee also made other recommendations of relevance to the Motion today. It recommended that all Bills should be subject at some point to detailed examination by a parliamentary committee empowered to take evidence. Government Bills starting life in the Commons now go to evidence-taking Public Bill Committees, although Bills introduced in this House do not get sent to an evidence-taking committee, either here or in the other place. The Committee also recommended that Explanatory Notes should set out clearly the purpose of the Bill and how it should be judged in future to have achieved its purpose. That would be very good discipline on government. Linked to that, as the noble Lord, Lord Butler, has said, there is a case for a legislative standards committee to ensure that Bills brought forward by a Government meet set standards and that the check is undertaken in Parliament and not solely by government.

The problem, however, is writ large with secondary legislation. As the Hansard Society observed in its report on Parliament and delegated legislation:

“the use of delegated legislation by successive governments has increasingly drifted into areas of principle and policy rather than the regulation of administrative procedures and technical areas of operational detail”.

That is why secondary legislation is presently on the political agenda, but it is important to understand the cause of the mischief. The report of my noble friend Lord Strathclyde addressed the symptom and not the cause, and in any event was based on a false premise. Indeed, it opened by defining the convention and then proceeded to ignore it. It is not clear why this House should be penalised for the Government using secondary legislation for purposes for which it was not intended. The Government are in effect saying, “We wanted to

use secondary legislation to achieve policy goals without sustained parliamentary scrutiny, and we intend to legislate to try to restrict the House of Lords in order that we can do so in future without challenge”.

The noble Lord, Lord Cunningham, has already quoted the Public Administration and Constitutional Affairs Committee in the other place, which concluded:

“Such legislation would be an overreaction and entirely disproportionate to the House of Lords’ legitimate exercise of a power that even Lord Strathclyde has admitted is rarely used”.

The Government should be reviewing their own procedures. Can my noble friend the Leader of the House tell us what the Government are doing to ensure that departments do not misuse delegated legislation and what constraints they plan to introduce to ensure statutory instruments do not drift into areas of principle and policy? Those are the questions we should be addressing. We should not be distracted by the Government’s attempts to blame this House for their own failings.

There is a lot that we need to do. We should acknowledge what has already been achieved—we are much stronger than many realise—but we need to build on that and ensure that Parliament is truly effective in calling government to account. The bottle of parliamentary scrutiny may be filling up, but there is still an awful long way to go.

3.47 pm

Lord Woolmer of Leeds (Lab): My Lords, it is a pleasure to follow the noble Lord, Lord Norton. I agreed with an enormous number of his remarks.

The House of Lords has an important constitutional obligation to consider these matters dispassionately, in a non-partisan way. That has been the overwhelming spirit of today’s discussions. The Government of the day, of any political persuasion, will always want to get their business through as readily as possible. That cannot be the starting point from which the Houses of Parliament consider how they scrutinise legislation; it is an important element, but it cannot be the purpose of scrutiny.

The issue of secondary legislation has loomed large. As has been said by many noble Lords today, the root cause lies in primary legislation, but secondary legislation gives the Executive enormous powers, with much less scrutiny than primary legislation. Most people outside Westminster do not understand the difference between primary and secondary. A large amounts of the legislation that affects people in their everyday lives is secondary legislation. Those changes can make an enormous difference to people’s lives, and the tax credits statutory instrument is a very good example of that. So the primary legislation is the root cause, but the secondary legislation that results from it has been granted secondary legislation status by both Houses; that gives the Government of the day substantial powers, with less scrutiny than otherwise. Therefore, the role of both Houses in scrutinising secondary legislation takes on rather more importance than one would imagine. With primary legislation, the House can ultimately reject the Bill or an element of the Bill; it can then be subject to the Parliament Act, but that is a substantial and very rarely used power. This House has the power to reject secondary legislation, but has done so only five

or six times in 50 or 60 years. Nobody outside Parliament would regard that as excessive or dangerous use of the powers of this House.

The use of powers to reject is very rare indeed. It requires some care by any Government—and it could be a Government with my party in control, the current Government or some future Government. Governments will always be frustrated by that use, if it happens, but that is not the basis for wanting to change the powers. Woe betide any Government who say that they will take away the power of a House of Parliament because once in so many years it used that power. That would be an abuse of power on the part of government—and I hope that the Government think very carefully before they use one case in a long time to say that they will change the constitutional position of this House.

Briefly, I turn to secondary legislation. I had the privilege—although I did not think of it as a privilege when I was first appointed—of being on the Secondary Legislation Scrutiny Committee for three years. I have just finished, much to the delight of the postman who delivers the mail to my house in Leeds. I learned a number of things from it; I learned how important secondary legislation is, compared to what I realised before I was on the committee. I always realised it on an issue that I was interested in, but I did not realise that it was important for so many things. I also realised how important the role of this House is in scrutinising that secondary legislation. As the Public Administration Committee said in its report, it is the House of Lords to which Parliament owes a debt for scrutiny.

We scrutinise around an average of 1,000 instruments a year—80% negative and 20% affirmative. We refer only about 10% of them to the House to debate. The noble Lord, Lord Wakeham, said, incorrectly, in his speech on the Queen’s Speech that the House of Commons considered and approved secondary legislation before the House of Lords, but that is not true. Secondary legislation goes to both Houses from the Government, not to this House from the House of Commons. We have parallel duties to consider it. Indeed, 10% or 11% of secondary legislation is considered and approved by this House before the House of Commons. We do a very important job.

Finally, I return to the larger issue. The Strathclyde report suggests what I call, perhaps unkindly, the snake oil solution of letting this House reject secondary legislation once, with the House of Commons then being able to override it. My experience of the House of Commons is not large, but my colleagues who were in the House of Commons tell me that that will not work. Overwhelmingly, Governments use their majority in the House of Commons to get their business through. The idea that this House will reject once, then the House of Commons will consider carefully what was said, and that there will be substantial debates and a response from the Minister is simply hocus pocus—it is not true.

3.55 pm

Lord Campbell-Savours (Lab): My Lords, the words in the Motion,

“Parliament having full details of all legislation that it is asked to consider”,

[LORD CAMPBELL-SAVOURS]

have particular resonance for those of us who sat through 45 hours of Committee proceedings on the Housing Bill. That Bill is all I want to talk about today. It was a classic case of abuse in the production of legislation. Certainly, it is the reason for today's debate. It was a skeleton Bill, as defined in the 2005 report by the Joint Committee on Conventions, which was chaired by my noble friend Lord Cunningham of Felling. It was a Bill riddled with references to the need for secondary legislation. On my count, between the Bill and its schedules, there were, potentially, 81 statutory instruments covering more than 100 separate issues, all to be determined following Royal Assent. Almost every one of them covered an area of controversy. I have heard it said in the Commons that the reason the Government chose to introduce the Bill in this way, avoiding providing details covering the more controversial areas, was because with their small majority the Government were concerned that too much detail during Commons stages could have provoked difficulties on their own Benches and prejudiced the early passage of the Bill. I suspect that will not be the last time that happens.

An indicator of what happens when Parliament is denied full details on legislation came with an amendment to the Bill introduced in the Commons on the last day in Committee after 17 sessions of consideration. The amendment was introduced to begin the process of phasing out long-term council tenancies, which are very much a feature of tenancies outside London, and replacing them with two-year to five-year tenancies. This proposal was never in the original Bill, being too controversial, and was introduced without even an impact assessment. The approach the Government took during Commons proceedings avoided a constituency backlash on that matter from Members of the other House.

There were potentially whole sections of the Bill that we simply could not amend, leaving us with only fatal Motions, which some of us find difficult to support on principle, which I will come to later. I shall give an example. The Bill, under statutory instruments, gave councils the power to require all tenants to declare household incomes. The Explanatory Notes stated that,

"a process of verification may be needed to ensure that declarations of income are correct ... The Secretary of State must obtain the consent of HMRC before making arrangements with a private body to fulfil this function".

If you are a council tenant not in receipt of any benefit—in other words, if you are not means-tested—whatever your income, and particularly if you have a gross total household income, outside London, of more than £30,000, or of more than £40,000 in London, a private company, in the form of Capita, could access your income and potentially breach your privacy as part of the verification process without your specific consent. I believe this is an unprecedented use of regulations with little detail in the Bill, particularly on the process of verification, which we should have been able to consider during the proceedings and which we cannot amend in a statutory instrument.

I have to admit that the Ministers on the Bill, one of whom is in her place today, valiantly sought to defend the indefensible by assuring the House that the regulations

and, if necessary, guidance would be introduced following a consultation that was to take place at a later stage. Nevertheless, the truth is that the Bill was premature. Whether you agree with its provisions or not, because it was so controversial, it should not have been introduced until the consultation on its contentious provisions had been completed. In its final hours in this House, the Bill was the subject of almost unparalleled protest on the Floor, all to be found in *Hansard* on 23 March.

I return to the issue of fatal Motions on SIs, on which I have very strong views. Behind closed doors in my Labour Party group meetings, I have consistently argued against voting on fatals. To me, as a former Member of the House of Commons, it was a matter of great principle. I confess that, against my party line, I declined to vote in the tax credit regulations Division on the basis that I regarded the amendment as fatal. However, after years of arguing on principle, my experience on the housing Bill changed my mind. If the Government want to play silly games with skeleton Bills, then I am afraid the Opposition, despite being unelected, have no option but to retaliate by blocking statutory instruments. I deeply regret that.

Furthermore and finally, I do not see how we can possibly interfere in the current arrangements for handling SIs until we have established a process for determining a proper deposition of what constitutes "exceptional circumstances", as set out in the 2006 report by my noble friend, and have received a commitment from the Government to avoid the use and indeed abuse of skeleton Bills in the way that happened on the Housing and Planning Bill.

4.01 pm

Lord Wakeham (Con): My Lords, it is one of the great strengths of the House of Lords that a considerable amount of thinking seems to go on between one debate on a subject and the next time that it comes up. That is a credit to everyone, but today I think credit is due particularly to the Leader of the Opposition. A great deal of what she had to say was very sensible, and I am very glad that she said it. This goes back to what I said in the Queen's Speech debate: I wanted a proper discussion on these matters and I wanted it to be led by the Opposition. Governments have the chance to bring in legislation if they want, but Oppositions are the people who have the power and the opportunity to persuade people that we are not doing things the right way and that we ought to change them. So I am full of praise for the start of the debate. I am hesitant to say a lot of the things that I might otherwise have said, because I do not want in any way to prejudice a proper discussion of all these matters, which I think is not best done in the atmosphere of the House.

However, we are not quite as bad as some people have made out. If we look back to the debate on 24 March, we see that a lot of concerns were expressed but there were quite a lot of things on which most of the people who spoke more or less agreed. First, for example, there was a degree of unanimity that things were not satisfactory at present. Secondly, there were those of us who argued that what we were concerned with were clashes between the Lords and the Commons, while others argued that they were clashes between the Executive and Parliament. It was the noble Lord,

Lord Butler, who pointed out that they are both the same thing in practice, and that we ought not to get too uptight about that. There was also, as there has been in this debate, a general feeling that a Government with a majority are entitled to get their business through. Lastly, while no one actually ruled out legislation, at least on the government side, there was a general feeling that if we could find a way of dealing with these matters without legislation it would be a great advantage to everyone. Of course there were things on which we disagreed, and we have encountered them again today, such as statutory instruments, Henry VIII clauses and so on.

It is roughly 44 years since I came into Parliament, and I have to say that these debates have been going on for all that time and probably will for another 44 years after I have long since disappeared. The evidence is not overwhelmingly on one side, which is why the matter needs to be looked at. There are people who argue that that is not what has actually been happening. It is argued—my noble friend Lord Norton said something like this a minute ago—that the Executive are becoming more powerful than Parliament. However, quite a lot of academic research demonstrates that Parliament has much more power over the Executive than was ever the case in the past. There is a considerable amount of academic information about things that Parliament has done to Bills brought in by Governments. I would like there to be a cool discussion of these issues in finding a better way forward.

Every now and again we hear from the noble Lord, Lord Richard, on this subject. He is quite right to raise the question of financial privilege—we have not yet had an answer on that. We need to know what goes on and whether it is properly controlled. It is not that we are worried about the House of Lords having the right to vote down secondary legislation; it is the fact that under the present system there is a complete veto. That is the problem. We need to find a way of getting over it, so of course we need to have a proper discussion. An absolute veto is not acceptable in this day and age.

I very much welcome the tone of a lot of the contributions to this debate. There are ways forward that will not necessarily require legislation, but this issue will require a certain amount of good will and co-operation on all sides of the House.

Lord Woolmer of Leeds: The noble Lord mentioned an absolute veto. Is it not the case that a statutory instrument annulled by this House as a negative instrument can be brought back immediately with a change of title, and that an affirmative resolution instrument which is rejected can be brought back with minor amendments? So it is not an absolute veto. That is what happened in the case of the Rhodesian sanctions.

Lord Wakeham: Somebody who has spent as many years in business management as I have knows that there are ways around all sorts of things. However, the fact is that a statutory instrument which is rejected by this House is dead and another way has to be found of dealing with it. In my opinion, that is a nonsense. We have to find a way of giving this House more influence while recognising that, ultimately, the House of Commons has the final say.

4.07 pm

Baroness Taylor of Bolton (Lab): My Lords, I join those who have congratulated my noble friend on introducing this debate. The balance of power between government and Parliament should probably be discussed by both Houses on a regular basis, including the case for Parliament having full details of all legislation that it is asked to consider.

The noble Lord, Lord Norton, mentioned that in the Commons there have been some interesting developments that are relevant to the overall balance of power, and I think that that is the case. There have not been similar changes in this House—a matter that is also of interest. It is a fact that having full details of legislation is only one aspect of the balance of power, and for good reason colleagues have concentrated on that issue in this debate.

Perhaps I should declare an interest—or maybe a confession—in that I have been both a poacher and a gamekeeper. I have been proud and fortunate to serve as Leader of the House of Commons and as Chief Whip. I have also, over many years, been a Back-Bencher, and I am now a member of the Constitution Committee under the excellent chairmanship of the noble Lord, Lord Lang. I mention that experience because I hope that it gives me a balanced approach to the different interests. We have an unusual parliamentary system and an unusual government system, because the Executive come from the legislature, as has been mentioned. That is different from what happens in most countries and it creates tension. That tension can be constructive if it is used in the right way and if people are aware of the roles that they have and the limits on those roles.

There have been many suggestions today for improvements in how we look at legislation. Incidentally, I must mention to the noble Lord, Lord Strathclyde, that pre-legislative scrutiny was a recommendation of the Modernisation Committee in 1997, so it was not all bad, as he suggests. Mention has been made of the fact that we do not use Green Papers and White Papers and use Henry VIII clauses far too often. Although I agree with the noble and learned Lord, Lord Judge, on a great deal, as a business manager, it must be a step too far to say “never” to Henry VIII clauses. We have to consider their role. However, the fact that he says “never”, does not excuse what has been happening in recent years—on that, the noble and learned Lord, Lord Judge, is absolutely right. When he said that one Bill consisted of a whole series of blank pages, it was a wake-up call for everybody to realise just how far things have gone in that direction.

I do not think that, in government, those of us who were business managers ever went so far. However, something that I was asked, time and time again, especially when I was Chief Whip, was which MP gave me the most problems: which serious rebel was the most difficult? In fact, when I was Leader of the House and when I was Chief Whip, the greatest problems came from Ministers, who were trying to do too much—trying to introduce skeleton Bills, Christmas tree Bills and new clauses late on—and expecting the Whips and everybody else to snap their fingers and get all that business through. It was difficult. They were

[BARONESS TAYLOR OF BOLTON]

always pushed and they were encouraged by civil servants, but some departments—they know who they are—were particularly difficult.

I recall that when we were in government, we had what was called the LEG committee—the legislative committee of cabinet. Every single piece of legislation that was to be introduced had to go through that committee. Every Minister who presented a Bill had to take it to that committee and it had to pass certain tests. For example, the Treasury had to be willing to sign it off, and it had to be acceptable on human rights and environmental grounds. One of the questions that was always asked at that committee was: what are the implications in terms of delegated legislation? We had Lords business managers on that committee and they frequently reminded us of the difficulties in getting too carried away with what could be done by secondary legislation.

I have been listening to this debate carefully. I was particularly concerned with what my noble friend Lord Campbell-Savours said about what he was told about why some amendments to the housing Bill were introduced so late; it was a deliberate tactic. I was also concerned with what my noble friend quoted from the article in the *Financial Times*, where a political aide said that it was “deliberate policy” to try to use statutory instruments wherever possible. That means that it is not an accident that we have seen such a mushrooming in statutory instruments. The noble Lord, Lord Strathclyde, can make his point about the numbers, but the point made by the noble Lord, Lord Norton, about the length of SIs is important, as is the fact that we are now seeing more policy issues introduced through SIs. That is really what is causing us some difficulties. This trend is dangerous, and my noble friend Lady Andrews was right to call what we have seen in recent years a “step change”.

It is not just a question of the niceties of Parliament or how this House behaves. This is very basic in terms of democratic accountability. It is also very important for the quality of legislation and the impact of the policies on people in subsequent years. If we saw Ministers future-proofing their powers, it would be very dangerous indeed.

I am afraid that the recommendations made by the noble Lord, Lord Strathclyde, are not the way forward. It is not just for this House and another place to consider how they deal with SIs; it is fundamental that the Government themselves look at how they introduce legislation and improve preparation and that Ministers take responsibility for the policies they put forward.

4.15 pm

Lord Wallace of Tankerness (LD): My Lords, like all the other contributors to this first-class debate, I congratulate the noble Baroness, Lady Smith of Basildon, on introducing this topic and on the constructive suggestions that she—and indeed many others—put forward. The debate will repay reading in the days and weeks ahead.

As so many contributors have indicated, a delicate balance lies at the heart of our constitution: the balance of power between the Executive and Parliament. It is

important that we are always on our guard to make sure that the balance does not tip too far in one direction—in favour of the Executive and to the detriment of Parliament.

For Liberal Democrats, the distribution of political power is an issue of prime importance. The belief is in our DNA that, ultimately, sovereignty rests with the people, and that authority in a democracy derives from the people. These beliefs point to a strong democratic process with a just and representative system of government and effective parliamentary institutions, with decisions being taken at the lowest practical level possible.

A key role of Parliament in a parliamentary democracy is to hold the Government of the day to account. That applies to both Chambers. We do this by Questions, by challenging the Executive’s policies and actions and by requiring Ministers and senior officials to account publicly and in person for their decisions.

I agree with the noble Lord, Lord Norton of Louth, that there have been a number of positive developments in recent years, both here and in the House of Commons, to improve the balance between Executive and the legislature. There have been changes in the House of Commons following the recommendations of the Wright committee, the new arrangements for Select Committees and the establishment of the Backbench Business Committee. In your Lordships’ House, there has been the introduction of the ad hoc Select Committees which allow us to investigate current issues facing the country in an in-depth and timely manner, and the practice of reserving one of those committees to conduct post-legislative scrutiny, which ensures a more regularised system for evaluating how well an Act of Parliament is working. Added to that, we have topical Questions for Short Debate, for which more time has been made available and perhaps still more could be.

But there is still some distance to go on the path to reform. At the heart of the challenge before us is the capacity of Parliament effectively to scrutinise the volume of legislation that is routinely presented by the Government of the day. The noble Lord, Lord Cunningham, mentioned the paper which was circulated to a number of us by Mr Daniel Greenberg, in which he indicates that between 1960 and 1965 the average number of clauses in a new Act was 24, but between 2010 and 2015 the average number of clauses in a new Act had risen to 49. There has not been an equivalent increase in the amount of parliamentary time devoted to scrutinising them. The paper further points out that in the 1960 annual volume of Public General Acts there were 1,200 A5 pages, whereas in 2010 the same document had grown to 2,700 A4 pages. That is quite a significant increase.

The noble Baroness, Lady Smith, quoted from the recent report of the Constitution Committee, chaired by the noble Lord, Lord Lang of Monkton, which stated that,

“the nature of the instruments has also changed. Delegated powers in primary legislation have increasingly been drafted in broad and poorly-defined language that has permitted successive governments to use delegated legislation to address issues of policy and principle, rather than points of an administrative or technical nature”.

Examples have been given of Bills in the previous Session and in this Session where that has been case, and it was particularly graphically illustrated by the Housing and Planning Act, cited by both the noble Baroness, Lady Hollis, and the noble Lord, Lord Campbell-Savours.

If an increasing amount of legislation is being presented to Parliament, and more policies are being implemented by way of statutory instruments instead of primary legislation, there must be a concern as to whether Parliament has the capacity to cope and to perform its role effectively and efficiently. The result is that government can pass legislative proposals with greater ease and less scrutiny—and that problem is compounded if a Bill is inadequate. Much emphasis in the debate was placed on the importance of having impact assessments on time and on having draft regulations and codes of practice.

Another paragraph in the document from Mr Greenberg caught my eye. It is not just in secondary legislation that much detail is found. Mr Greenberg wrote:

“Another rule of law issue of concern to many is the enormous growth since around 2000 of the use of powers to make quasi-legislation in the form of guidance, codes, schemes and other instruments which have legislative effect but are not given the formality of scrutiny associated with subordinate legislation. They are not published on the National Archives legislation site, and although in principle published on the government’s central website they can be difficult or impossible to find, even if one knows of their existence”.

So there is a whole tranche of regulation or sub-regulation which Parliament barely gets an opportunity to look at.

I have mentioned before how this House has updated its procedures and practice to try to deal with the onslaught of more and more delegated legislation. It is widely agreed across your Lordships’ House that the Delegated Powers and Regulatory Reform Committee and the Secondary Legislation Scrutiny Committee provide us with an invaluable service in the work they carry out on the meaningful scrutiny of statutory instruments. This is something that the other place might wish to emulate.

The noble Lord, Lord Cunningham, was right to say that the conclusions of the Joint Committee he chaired were endorsed by the Liberal Democrats. My noble friend Lord McNally served on that committee. It concluded that the House of Lords should not regularly reject statutory instruments but that in exceptional circumstances it might be appropriate for it to do so. To roll back from that in any way would be a dilution not only of the power of your Lordships’ House but of the power of Parliament.

It is against that context that we look at the recommendations proposed by the review conducted by the noble Lord, Lord Strathclyde. It has not had a great press from the various influential committees of your Lordships’ House which have reported on it, or from the Public Administration and Constitutional Affairs Committee of the House of Commons, as has been said.

The common view was best summed up by the noble Lord, Lord Norton of Louth, who, in the *Lords of the Blog* on 23 March, said:

“Lord Strathclyde’s review is not some minor technical report—it is actually quite dangerous in seeking to constrain the capacity of Parliament to call government to account”.

The House of Commons committee, which has been referred to, said:

“The Government’s time would be better spent in rethinking the way it relies on secondary legislation for implementing its policy objectives and in building better relations with the other groupings in the House of Lords”.

We should not consider any actions that diminish the impact of Parliament’s scrutiny function of the Executive. Instead, both Houses of Parliament should examine better ways in which we can work together to achieve a more comprehensive, informed and effective scrutiny of the Government’s legislation and actions. We continue to reject the notion that any Government achieving a majority in the House of Commons should have an absolute power to prosecute their business without the proper burden of checks and balances. As the noble Baroness, Lady Smith of Basildon, said, the Government of the day are not always right about everything and at all times.

We should not confuse the primacy of the House of Commons with the primacy of the Executive—there is an important distinction to be made there. It is incumbent on Parliament, therefore, not just to fight against moves to weaken our ability to hold the Executive to account but to try to find new ways in which we can improve our procedures. There have been some good suggestions today. The pause button referred to by the noble Baroness, Lady Hollis, is worthy of examination.

My noble friend Lady Smith of Newham drew attention to the fact that the House of Commons has passed resolutions which the Government have done nothing about. We should perhaps examine that issue. The committees of the Scottish Parliament can be the sponsors of legislation. Mr Greenberg suggests that there should be an annual debate. Every Act when it is passed should have something attached to it indicating how much scrutiny it received. If the Government had to debate it annually, it might make Ministers think before they act.

The noble and learned Lord, Lord Judge, asked how long we can go on talking. There has been some worthwhile talking today but I take his point that it may be time for action. There have been many good ideas in the debate. I hope that the Leader of the House will respond in the constructive spirit in which noble Lords have contributed, because what is needed is a willingness to seize the initiative.

4.24 pm

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I will definitely pick up from where the noble and learned Lord left off and say that this has been an excellent debate. I am very grateful to the noble Baroness, Lady Smith, for the way she introduced it and for all the contributions which have been made. It has been a constructive debate and for the most part I, too, agree with much that has been said. I hope we can find lots of common ground in order to make progress towards ensuring that this House is well equipped to do its job. I will respond to some of the important points that have been raised, but perhaps

[BARONESS STOWELL OF BEESTON]

I may start by making a few points from my perspective as the person representing the Government here in this debate.

As Leader of the House I am appointed by the Prime Minister, I am a member of the Cabinet, and I am responsible for the Government's business in the House of Lords. As has been acknowledged, my party was democratically elected and has a mandate to govern in line with the commitments set out in our manifesto. But I know that to succeed in my job, I have to listen to this House; I really understand that. Moreover, I not only have to listen; sometimes, I have to deliver difficult messages to my Cabinet colleagues. They do not always like what I have to say, but I know that it is my job and something I have to do. I am getting better at it because I think they are getting a bit more used to some of the things I have to tell them. The point I would make to noble Lords is that the Prime Minister and all Ministers in the Government understand the importance of my role because they are Members of Parliament too. They understand that for people to have confidence in the laws Parliament makes, Parliament has an important role in the legislative process.

The noble Baroness acknowledged what I said in my response to the gracious Speech the other week. We also acknowledge that Parliament improves legislation; that is part of what it does. But it is also true that from my perspective in government, when I see the picture from the other end of the telescope, things sometimes look a bit different. As my noble friend Lord Norton pointed out, since the last general election the balance of power has actually shifted more towards Parliament than has been the case for nearly 20 years, because the Government have such a small majority in the Commons and the Conservative Party in this House has no majority whatever. The noble Baroness referred to the approach of the Opposition in this House. I acknowledge a lot of what she said, but it cannot be ignored, as my noble friend Lord Strathclyde said, that in the first Session of this Parliament the Government were defeated on more than half the Divisions that took place in your Lordships' House. That is significantly higher, I would say to the noble Lord, Lord Richard, than what was experienced when the Labour Party was in government.

We must recognise that the Government of the day are sustained through the confidence of the elected House, and although the Government bring forward their legislation, the legislative process itself is a conversation between the two Houses so when we talk about the balance of power, as has been acknowledged by noble Lords in the debate, we need to be mindful of the balance of power not just between the Government and Parliament but between the two Houses, and that the balance goes both ways. So while it is absolutely right that we in this House have the power and sometimes the responsibility to ask the other place to think again, we must acknowledge at the same time when to take no for an answer, mediated by the conventions that underpin our work. I feel strongly about that because that approach is what helps to protect our legitimacy as an unelected House. That point was very well made by my noble friend Lord Lang, and other noble Lords who have spoken in today's debate.

The legitimacy of Parliament and of this House also relies on the Government upholding their responsibilities in ensuring that both Houses are able to scrutinise fully our legislation. I recognise that we as a Government have a responsibility to make sure that Parliament has the opportunity to carry out its proper role in holding the Government to account and in scrutinising our legislation. I appreciate what lies behind the concerns raised by noble Lords in that respect, and I will come on to some of the more specific points on secondary legislation, and so on, in a moment.

I would also say—the noble and learned Lord, Lord Wallace, touched on this as well—that as a House, we care very deeply about how we go about our work in scrutinising legislation, and we have made quite a bit of progress over recent years with some new innovations. We now have post-legislative scrutiny committees that have been set up as part of our regime of Select Committees. We ensured that there was more pre-legislative scrutiny in the previous Parliament than in the one before, and we have new things such as topical QSDs. There is more time for Members of this House to scrutinise and hold the Government to account. Yes, Governments do not always get it right. I know that this one and previous Governments, as has been acknowledged, have not always got it right. I have heard loud and clear, both today and through other debates, that there are areas where noble Lords feel strongly that we must do better.

Let me start with skeleton Bills. Sometimes material is brought forward later than is desirable, as was the case with some material emerging after the election. Yes, I want to ensure that as Parliament proceeds, it has the information it needs to do its job. Having gone through one Session, I feel that I have learned lessons that I want to ensure are properly applied by the Government. The first Session of a Parliament is always a bit different from later Sessions because straight after an election, clearly, the Government have to get on with implementing their commitments in their manifesto. Some things require them to get on sooner rather than later, because if they have commitments that they must deliver by the end of that Parliament, they are required to bring forward legislation very early on and they need to get on.

I have learned lessons and I noted very much what the noble Baroness, Lady Taylor, said about some of her experiences when she was Chief Whip and a Minister. I sit on what we now call the Public Bill legislative committee in government. I think that my reputation as a plain speaker, as far as Ministers who bring forward their Bills to that committee are concerned, is starting to get a bit more widespread than it might have been before. I can assure noble Lords that I am taking very seriously my responsibilities to ensure that legislation is brought forward in as complete a fashion as possible.

The noble Baroness, Lady Smith, made many points with which I would agree, and I share her view that this House has to have the right information to do its job properly. I do not accept that we have not welcomed challenge because, as she was good enough to acknowledge, Ministers in this House have engaged quite constructively with Members of your Lordships'

House during the passage of Bills. Yes, a couple of Bills may not have been as well developed as I would have liked, but we did get through 23 Bills in the last Session. By and large, most of them arrived here in greater shape than they might have been—or not necessarily in the shape that some described them. We might have a difference of view on that.

Some skeleton Bills arrive in that way for a purpose. The cities Bill was designed in that way so that we could allow the Government to enter into proper agreements with local authorities. Mention has been made of the buses Bill in this second Session. Again, it has been specifically designed in that way. I do not necessarily argue that all skeleton Bills are bad because that is how they have been prepared.

I move on to the content of legislation, secondary legislation, the number of statutory instruments and the use of Henry VIII powers. The number of statutory instruments was raised by many noble Lords. I cannot let go of the fact that, in the last Session, about 750 pieces of secondary legislation were laid in Parliament. This is the lowest number for more than 20 years. It compares very dramatically with first Sessions of previous Governments over recent times.

Lord Campbell-Savours: How many pages?

Baroness Stowell of Beeston: We can move measurements if we like and start counting pages, but it is a statement of fact. I cannot go back and count all the pages of pieces of secondary legislation from 20 years ago, but I can tell noble Lords that we certainly dramatically reduced the amount of secondary legislation in the last Session.

Baroness Hollis of Heigham: My Lords, we talk about clauses, SI numbers and pages, but what matters and what the noble Baroness has so far not addressed in her constructive response is whether they are heavy-duty SIs carrying a policy load. Nobody has any objection to a number of SIs that technically adjust things such as the timing of when things will be brought in. What matters is whether they carry policy and therefore, by virtue of being SIs, put that policy beyond proper parliamentary scrutiny.

Baroness Stowell of Beeston: We can get into a debate on the detail. I have looked at the content of secondary legislation and how the Government performed in the last Session against the Governments of which the noble Baroness was a member. If she likes, I can trade a range of different examples of where previous Governments were criticised for inappropriate use of secondary legislation, but we are trying to move forward.

On the point raised on Henry VIII powers, I was pleased that the noble Baroness, Lady Taylor, disagreed with the noble and learned Lord, Lord Judge. Like her, that is not something from which I take any pleasure. She is right to point out that it would be impossible for us to do without Henry VIII clauses completely, but that does not mean Parliament should not be very watchful of the Government's use of such powers. Some are appropriate, in that they are used in

appropriate circumstances. For instance, the noble and learned Lord referred to one in the Children and Social Work Bill, which is about to receive its Second Reading in this House. That is designed for a specific purpose. Clearly, as that piece of primary legislation goes through, we will have to debate whether that power is appropriate for what it is designed to do. We can and should have a proper debate about these things but I would not necessarily argue that all of them are open to criticism just because they exist.

As the House knows, the Government have not yet responded to my noble friend Lord Strathclyde's review of secondary legislation. This was acknowledged by the noble Lord, Lord Butler. We are still considering that report and all the Select Committee reports alongside it. In looking at all these things, as my noble friend Lord Wakeham said—I think this is where we have real agreement in the House—we do not want this House to diminish its influence but we need to ensure that the elected House, the House of Commons, has the final say on all legislation, not just on primary legislation. This is a topic that I know we will continue to discuss and consider.

I note what my noble friend Lord Trefgarne and others said about the conventions that were so hotly disputed. The problem is that we still have among us a lack of agreement on where we are with those conventions. That does not mean that we cannot try to seek some clarity and agreement between us.

The noble Baroness, Lady Smith, made a number of constructive suggestions about steps that could be taken to address these matters. As I say, I think we all agree on the importance of what we are trying to achieve, which is for this House to continue its very important role of scrutinising and revising legislation, and holding the Government to account. I will reflect carefully on some of the noble Baroness's specific proposals. I note that a lot of the issues she raised—such as Cabinet Office guidance, full impact assessments prior to Secondary Reading debates and draft regulations prior to Committee—are what should happen anyway. That means there is a lot for me to take away and think about. The process is there but I need to ensure that the Government understand their responsibilities in proceeding with and fulfilling that. I will reflect as well on the noble Baroness's idea of a particular committee to look more broadly at how we prepare for legislation and our various scrutiny procedures in this House.

More than anything, I want to conclude by reinforcing to noble Lords just how much I share with them the objective of trying to make sure that this House is able to do what it exists to do. Like all noble Lords who spoke today, and many more sitting here in the Chamber, we all feel very passionately about the purpose of this House. Noble Lords have heard me say many times that I describe it in this way: this House exists to give the public confidence in the laws that ultimately Parliament makes. I want to ensure that we are always equipped to do that. I will take away the very constructive comments and contributions made today. I will carefully read *Hansard* again; as noble Lords know, often when one is sitting on the Front Bench it is hard to keep up with everything being said. I am very grateful to the noble Baroness for her introduction to this debate and for everything that she said today about my ministerial

[BARONESS STOWELL OF BEESTON]

team and their efforts to respond constructively to the scrutiny given to the Government's legislation. I thank all noble Lords for their contributions.

4.43 pm

Baroness Smith of Basildon: I thank the noble Baroness, who made some very constructive and helpful points. I also thank all noble Lords who contributed and who listened to the debate today. It has been a very impressive debate, showing this House at its best and, given its quality, perhaps showing why this House should have a greater role when scrutinising legislation.

I never intended the debate to be all about the report of the noble Lord, Lord Strathclyde. I was really trying to get a sense of the direction of thought from your Lordships' House on the kinds of measures we have been discussing and that we would like to engage in. It has been helpful to have that today. The support we have had for the proposals is very welcome.

However, I do not agree with noble Lords who think that the conventions have been broken. I do not know how many times I have to say this but I will do so again: we abide by the conventions of your Lordships' House. Even if some noble Lords think that on one day, on one vote, the conventions were stretched a bit, I do not think that in any way detracts from the observance of those conventions around the House at all times.

When we had the tax credits vote, the proposal from my noble friend Lady Hollis was intended to be helpful. Noble Lords will recall that we did not support a fatal Motion, although I think the noble Baroness said once before in response to the noble Baroness, Lady Hayman, that, had we done so, it would not have broken the conventions. The House was seeking a way to be helpful to the Government. My grandmother had a saying that no good deed goes unpunished. Given that it led to the Strathclyde review, I wish I could tell her how right she was.

I wish to pick up on a couple of points. Mention was made of how many defeats the Government had suffered or endured in the last Session, and a figure of 53% was given. However, that was around 60 votes, exactly the same as during 2001—the noble Lord need not shake his head at me; I am telling him this as a fact, but I see he wants to use percentages. Let us look at the numbers. It is around 60 votes. The reason why percentages are not valuable here is because this House, knowing the arithmetic of the House, does not vote nearly as often as it did when the noble Lord, Lord Strathclyde, was the Leader of the Opposition. Therefore, we exercise the restraint that the Government so crave, we vote less often, so if we win the same number of votes, that affects the percentage. If the noble Baroness and the noble Lord want us to go through the Division Lobbies far more often and orchestrate losing votes to get the percentage down, that can be done but that is really not the way to do things. Let us look at exactly what we are talking about and not compare apples and oranges.

The other issue around the number of votes concerns the quality of the votes. The Labour Government lost votes around national security. One of the issues on which we voted where this House took a different view

from that of the Government was to set up a Joint Committee to look at whether or not the Government's EVEL proposals—English votes for English laws—could be examined to see whether they had an impact on this House. The Government class that as a defeat. I class it as a victory of common sense for your Lordships' House. However, it would still come into the 53% figure. Indeed, the Select Committee which set up the Trade Union Bill, and which greatly assisted this House, was something which the Government opposed. Therefore, we have to look at the quality of the votes as well. I make no apology as regards those issues on which we have won votes but I also say that we have exercised restraint. We vote less than half as many times as does the Commons and we vote fewer times than Oppositions have in the past.

The noble Baroness said that there were fewer statutory instruments now. I did not raise the issue of the number of statutory instruments debated in this or the last Parliament. That was not part of the argument I was making. My concern is that in legislation now there is a greater use of delegated powers than we have had before. I am grateful to the noble Baroness for acknowledging that there seems to be a far greater use of delegated powers for policy issues and not the normal uprating issues. Tax credits were an example. They should have been contained in legislation, not a statutory instrument. The noble Lord, Lord Norton, referred to the number of pages. I have not counted them but it is the significance of the policy matters that cause this House concern. I was grateful to the noble Baroness for acknowledging—as I did—that in the first Session of any Parliament it is sometimes difficult to have legislation that is fully formed. However, we are now in the second Session of this Parliament and that scenario still applies to the buses Bill and the Children and Social Work Bill. Her comments were helpful. If she could rigorously look at those two Bills, as she has offered to do, I am sure that all of us would be very grateful and appreciate it.

The noble Lord, Lord Trefgarne, made an interesting contribution. He may not think that I am going to agree with him but, surprisingly, I am. He said that a veto, or voting against, or declining to accept a statutory instrument should be used only in very exceptional circumstances. There have been six times, I think, since 1950 where a fatal Motion has been accepted by this House, and something like 150 times where they have been rejected when they have been tabled. So it seems that they are being used only in very exceptional circumstances, and I think that it is fair that we have that.

The other point that the noble Baroness made was about ensuring that impact assessments and draft regulations are available for Committee; I suggest that she does not take the whole burden for that on herself. I greatly appreciate that she would do more with the Bills coming to this House to have that information ready. But we have even had Bills that have gone through their Commons stages and then come to this House without us having that information available. She needs to engage with her Cabinet colleagues to make sure that, at the other end of the Building, they are also ensuring that that information is available when Bills are debated in the other place.

Today's debate has been really instructive and impressive for your Lordships' House. I am grateful for the support and I shall go away and think further on some of the comments that have been made. Perhaps we need to up our game on scrutiny and to ensure that we always have the correct information. The noble and learned Lord, Lord Judge, made the point about Henry VIII powers—I think that they may have extended too far into the future on some occasions. If we can remove some of the obvious tensions that come about not because of policy issues and policy debates but because of lack of information, then our debates and discussions will be a lot more constructive and helpful, both for Ministers who sometimes struggle because they have not been given a fully formed policy and for those who are struggling to get that information.

I am grateful to your Lordships' House and to the Minister for her helpful comments, which we can build on.

Motion agreed.

Obesity: Low-fat Diet *Question for Short Debate*

4.51 pm

Asked by Baroness Jenkin of Kennington

To ask Her Majesty's Government what assessment they have made of recent new dietary advice that contradicts recommendations to eat a low-fat diet to tackle obesity.

Baroness Jenkin of Kennington (Con): My Lords, I would like to thank the noble Lords who are speaking in this debate; it is especially appreciated as the timing is not what we originally expected. Before I get to the heart of today's debate about dietary advice, let me start with the basics and the seriousness of the current situation. Obesity and its related illnesses are costing the country a fortune and it is not sustainable. Only this week Simon Stevens, chief executive of NHS England, told the Health Select Committee that we now spend more on obesity-related conditions than on our police or fire services. Figures from the US released yesterday show that 40% of women in the States are now obese—and we are not far behind. On current trends, three in four adults will be overweight or obese in twenty years' time.

If we do not wake up to the extent of this crisis, the NHS could end up bankrupt. Enormous amounts of money are already spent on treating diseases that are entirely preventable. After my Question on this topic a couple of weeks ago, a severely disabled friend told me how frustrated he felt that, because of the costs of obesity, there is much less money available for the needs of people like him who have no control over their condition. The problem is that we in the western world live in an obesogenic society—one that tends to cause obesity. For almost all of us food is readily available, most of us never feel hunger and our lives are increasingly sedentary compared to the generations before us. It is all too easy to put on weight and maintaining a healthy weight is also a challenge. If we see someone slim today, we assume them to be a person of real self-discipline.

I declare an interest: six years ago, I was 28 pounds heavier. I was fat. I disliked it, but seemed unable to do anything about it. Like millions of others, I tried every diet going, back to grapefruit and hard-boiled eggs, which I think was a 1970s fad. I remember one diet based on ration coupons—it was not a bad idea given that as a country we have never been as healthy as we were during rationing. You name it, I tried it. I finally gripped it thanks to Louise Parker, and I recommend her common-sense approach as set out in her recently published book, *Lean for Life*. If you put two or three strangers together—women, anyway—the topic is an immediate ice-breaker: how to lose it, how to keep it off, what tips do you have, what works for you? It is a source of endless fascination.

One pound of fat equates to 3,500 calories. If you consume an extra 100 calories a day—just one small glass of wine, for example—you will put on 10 pounds a year, 20 pounds in two years; it is all too easy. But it can work the other way round: cut out that daily glass of wine and, all things being equal, you will lose 10 pounds a year. While on the topic of alcohol, how is it possible that there is still no calorie labelling on alcoholic drinks?

I read recently of an experiment where two groups of people spent an evening out at the pub. One group had calories included on their drinks menu and consumed an average 380 calories each. The other did not and drank the equivalent of 764 calories—double the amount. One piña colada, for example, is 245 calories, approximately the same as a Mars bar. How many people know that, or that a pint of beer and a packet of crisps contain a similar number of calories? It is not uncommon for people to drink two or three cocktails or large glasses of wine or to have three pints on a night out, but would they necessarily eat two or three chocolate bars or packets of crisps? People want this information and it should be made transparently available.

We currently spend £1 million every hour on type 2 diabetes. If the number of people affected increases at the present rate—400 new diagnoses every day—by 2025 there will be 5 million people with diabetes in this country. Half these people have diabetic complications: heart disease, eye disease and kidney disease, and there are more than 100 amputations a week as a result of vascular disease in people with diabetes. This is unsustainable.

The good news is that it does not have to be this way. Earlier this week we heard of mounting evidence to show that losing weight is the best way to fight cancer. A daily brisk walk of just 25 minutes was shown to almost halve mortality rates for breast cancer sufferers, while a waistline larger than 35 inches increased death rates by a third. This may be an added incentive for some, assuming that doctors are aware and pass on the information. Should the messages be clearer and tougher? A friend of mine lost five stone when his doctor made it clear that he was unlikely to see his daughters grow to adulthood. Some may disagree with this approach but it worked for him.

In the interests of research for this debate, I watched a few programmes over the weekend. "Junk Food Kids: Who's to Blame?" was absolutely tragic. Those poor children have multiple teeth extractions, simply because they are drinking fizzy drinks and fruit juices

[BARONESS JENKIN OF KENNINGTON]

instead of milk or water. They have dreadful diets and take no activity. I also watched a couple of episodes of “Lose Weight for Love”, which is currently on the television, where obese couples locked into cycles of overeating which threaten their relationships as well as their health are separated from their co-dependent partners for 10 weeks to learn better habits on their own, at the same time supported by a team of experts. The issue for them is more than food, it is their psychological relationship with food.

The series has taken a holistic approach to diet change and weight management by offering psychological therapy alongside behavioural, diet and exercise interventions. This joined-up thinking does not happen in healthcare as money is siloed into different specialisms. For long-term change to occur, we need to understand why food is so often used to self-medicate. All the couples have lost substantial amounts of weight and appear to be motivated to keep it off. A year later, one couple have lost six stone each.

I think every single one of the participants admitted that before the programme they drank litres of fizzy, sugary drinks every day, which provided no nutritional value at all—empty liquid calories. I commend the Government for taxing them. But at the same time as introducing the tax they really need a publicity campaign about what sugar does to your body. It seems to me, as a lay man, quite right that sugar has become dietary enemy number one, along with processed snacks. I was fascinated by the *Guardian*'s long read “The Sugar Conspiracy”, published on 7 April, and I recommend the Sugar Smart app as an easy way of checking the amount of sugar in any product.

Yet although losing weight is simple, it is not easy. Giving up sugar is horribly difficult. I could happily go home this evening and eat a tub of ice cream and a packet of chocolate biscuits, but I will not. Once upon a time I might have but I am now motivated by concerns about my long-term health. While I appreciate that the accepted golden rules for a healthy, cancer-free life are not fool-proof, I try to live by them: no smoking, limited alcohol, healthy weight and regular exercise. Should the Government be looking at carrots—I do not mean the vegetables—for those who achieve these goals and thereby potentially save a lot for our overstretched health service?

The current dietary advice is confusing. For example, the *Eatwell Guide* recommends basing meals on potatoes, bread, rice, pasta or other starchy carbohydrates. Are we so sure that this is good advice? After all, we feed starchy crops to animals to fatten them, so why would they not have the same effect on us? For years we were told not to eat more than two eggs a week, but then research showed that cholesterol in eggs had almost no effect on blood cholesterol. The consequences of that advice were that egg producers went out of business and the population missed out on affordable, natural, nutrient-filled food as it swapped it for sugar-laden, industrially processed cereals. Recent reports have added to the confusion and muddled messages help nobody. So for the sake of our NHS, our nation and especially our poor chubby children, I urge the Government to focus on accuracy and clarity when they finally publish their obesity strategy.

5.01 pm

Baroness Miller of Chilthorne Domer (LD): My Lords, first, I must congratulate the noble Baroness, Lady Jenkin of Kennington, on securing this debate. Far more than that, I must pay tribute to her absolutely tireless efforts to raise the matters of diet, eating well and food waste. She has raised almost everything from what goes into our mouths to what does not and becomes food waste, and how to eat well and cheaply. She lives by the example—she has told us how much weight she lost—but in this House she has constantly emphasised the need for cooking skills. Nobody has done more in the last few years to raise the issue here than she has. I thoroughly agree with her. I cannot blame the public for their weariness with government food advice. There have been contradictions in that advice. There has been unclear and quite hard-to-follow advice. That is a recipe for confusion and people have just stopped listening.

The noble Baroness, Lady Jenkin, mentioned the Eatwell plate. I underline that to ask the Minister: did as much effort go into ensuring that the advice in the new *Eatwell Guide* is as sound as she would like? An awful lot of effort went into the redesign of the Eatwell plate. The knife and fork were taken away, apparently because her department thought that they did not resonate with the public. There are a lot of questions about the advice. When we talk about fats, for example, the new *Eatwell Guide* differentiates unsaturated oils, such as vegetable and olive oil and lower-fat spreads, from other foods that are high in fat, salt and sugar. That is because some fat is essential in a healthy balanced diet, but other foods high in fat, salt and sugar are really not healthy. They should be eaten much less often and in very small amounts. The size of the purple section on the Eatwell plate reflects the fact that oils and spreads are high in fat and contain lots of calories. That seems sound advice but, for all the reasons underlined by the noble Baroness, Lady Jenkin, it is still confusing.

There is an underlying message, which is quite clear, about eating within your need for calories. It is usually about eating less. I would have to declare an interest here in that I probably should eat a bit less. I have to declare a second interest as a co-chair of the All-Party Food and Health Group and a third interest as a vineyard owner. I took greatly to heart the comments the noble Baroness, Lady Jenkin, made about glasses of wine. She is quite right that they contain calories, but on the other hand the Mediterranean diet, often held up before us as a very good example, contains some red wine. My husband had red wine recommended to him by his cardiologist as an alternative way of thinning his blood following a stent operation. It is back to what my mother said, which is that a little of what you fancy does you good—underlining “little”.

I turn for a moment to a point touched on by the National Obesity Forum in its very controversial report. The way the report came out was unfortunate, because the headlines that resulted were controversial, but that does not mean that everything in the report should be dismissed. The report accuses major public health bodies of colluding with the food industry. I do not know whether that is true but the NOF and the

Public Health Collaboration have called for a “major overhaul” of current dietary guidelines. That advice is very sound.

I do not know where the line is drawn between collusion and allowing the food processing and retail industries to reformulate, including by using things that could not even be defined as food. This practice is clearly exposed in Joanna Blythman’s book, published last year, *Swallow This: Serving Up the Food Industry’s Darkest Secrets*, which shows just how important it is to debate this issue and the causes of obesity. She uncovers just how much of the seemingly more natural—but still processed—foods are clever products of the chemical industry. She has said:

“The pace of food engineering innovation means that newer, more complex manufactured food creations with ever more opaque modes of production are streaming onto the market every day”.

She explains how just about everything from your seemingly healthy option of granary farmhouse loaf or sliced egg salad sandwich has a slew of processes and ingredients for which our digestive systems just were not designed.

Just as the public learned to avoid E numbers and artificial ingredients, so the food industry has now learned to use innocuous-sounding ingredients that really belong in a chemistry lab, not a kitchen. Why does this matter? Have they been passed as safe? Given some of the research coming out now, it matters because we are paying the price with our health. For millennia, our digestive systems evolved to efficiently process vegetables, nuts, fruit, pulses, eggs and the occasional meat and dairy product. Suddenly, in the second half of the 20th century they came under assault.

The effect was explained earlier this year by Jenni Russell, writing in the *Times*, where she set out the work of the genetic epidemiologist Professor Spector of King’s College London. His work has been to do with the growing amount of evidence that the destruction of our gut bacteria by processed foods is the real enemy and could be behind the obesity crisis. In essence, précising his work, she said that something very curious happened in Britain in the mid-1980s. Obesity rates had scarcely shifted in the 20 years since records have been kept. They were more or less steady, but then rocketed overnight—not just here but around the world. Obesity almost trebled, and every age group was affected. Whether they were 16 or 60, people suddenly started getting fat.

Your Lordships could say that that was because people were sitting in front of the television much more and eating more and worse foods. I know that things such as corn syrup, which goes into so much food, are also implicated. The fact that our food is not the food that our digestive systems have learned to recognise over hundreds of years must have some bearing on this. Other work from around the world is just becoming evident. For example, Professor Chang in Berkeley, California, is exploring the connection between copper and fat metabolism. There are all sorts of things that we are just at the beginning of understanding. Although it is about eating less and taking more exercise, it is also about the fact that our current food system is fatally flawed, especially when it

comes to our health, and obesity is the symptom of this. As Professor Tim Lang, who has been working on these issues for decades, says, there is a,

“need for a complete change of mind set to tackle these”, issues,

“away from a productionist approach with its successes and subsequent problems”.

He outlines a new direction for food policy, building it around sustainable development, low-impact farming systems, diets and low energy use.

The debate about fat and obesity is incredibly important, but we must hold it in the right context. At the moment, it is a bit like seeing someone suffering from a bad cut and having a debate as to whether to put on a plaster or bandage or to sew it up. As a very short-term measure, we need to think about the plaster, but in the long term we need to be able to buy and prepare food that contributes to our health rather than undermines it. That means seasonal, local and less processed food, with more pulses—the noble Baroness will agree with that—more vegetables and more cooking skills taught in schools. What are the Government doing to ensure that all schools receive nutritional guidelines and that academies and free schools are no longer excluded—and that A-level cooking will be part of the curriculum, because I understand that it is being dropped?

5.11 pm

Lord McColl of Dulwich (Con): My Lords, I am grateful to my noble friend Lady Jenkin of Kennington for initiating this debate, which draws attention to the false and misleading advice that a low-fat diet is the way to tackle the obesity epidemic—an epidemic which is killing millions, costing billions and to which the cure is free. You just have to eat fewer calories.

I remind your Lordships that when we swallow food it goes down through the gullet into the stomach, in the upper part of the abdomen. The advice to have a low-fat diet is wrong because, when fat enters the small intestine, it meets special receptors that detect differences in the composition of food. This information is transferred to the stomach and results in delay of emptying. Fat is especially important because, when it enters the small intestine, it greatly delays the emptying of the stomach by making the upper part of the stomach relax and the lower half less active. As the stomach emptying is delayed, it gives the feeling that one has had enough to eat. Later, when the fat has been absorbed lower down, the stomach then starts to empty again.

This is a beautifully balanced mechanism, which tends to prevent us eating too much and thereby prevents obesity. Not surprisingly, the food industry does not approve of this beautifully balanced mechanism, because it has resulted in less food being eaten and lower profits. So it joined up with some rather dubious scientists to produce research that erroneously claimed to show that fat was bad and carbohydrates were good. They ignored the fact that, when carbohydrates and sugar enter the stomach, there is very little delay, and the food quickly rushes on. There is no feeling of having had a full meal; the person soon feels hungry and starts to eat again—and they continue to eat too

[LORD McCOLL OF DULWICH]

much throughout the day. This has led to obesity in a large proportion of the people in the UK and an even larger proportion of people in the United States.

Recently, there has been a lot of interest in the composition of food, especially in the fact that fat plays a valuable part in weight control. These statements are recent but not new; many of us clinicians have been teaching this for many years, because of the work of Professor Yudkin in the 1960s, and his book published in 1972. However, his message that the answer was fat, not carbohydrates, and that carbohydrates were the danger was not popular with some parts of the food industry, and his career was actually rubbished by unscrupulous scientists in cahoots with even more unscrupulous parts of the food industry. It was a disgrace. The campaign to extol the virtues of a high-carbohydrate, high-sugar diet was started largely in the United States, where it was decided by scientists and food manufacturers that the increasing amount of coronary artery disease was due to excessive fat in the diet. Fat was demonised; a high-carbohydrate, sugary diet was broadcast as the answer; and anyone who contradicted that was marginalised. It has been pointed out that a low-fat diet is not very tasty and it is thought that for this reason the food industry started putting a lot of sugar into food to compensate and make it more palatable, so boosting their sales. The food industry seems to regard money as more important than many parts of the health of the people.

In the United Kingdom, as many noble Lords know well, the Department of Health and NICE maintained for many years that the obesity epidemic was due to lack of exercise. It is a pity that some of the 500 people employed by NICE did not think to go to the gymnasium, get on a machine and exercise to see how few calories one actually burns off. One can pedal away on one of those machines for half an hour and only 200 or 300 calories will be burned up. One has to run miles to take a pound of fat off.

This whole subject has been bedevilled by all sorts of theories about the cause of the obesity epidemic: genetics, epigenetics, psychological disturbances and many other ideas. They are all very interesting, but none of them is the cause of the obesity epidemic. They may contribute to making it more difficult for some people to control their appetite, but one fact remains: it is impossible to be obese unless one is eating too many calories. Only a quarter of the calories we eat are actually expended on exercise. The remaining calories are burned up enabling the heart to beat 8 billion times in a lifetime, the kidneys to filter gallons of blood every day, and numerous chemical reactions in the liver, pancreas and so on.

We have been advised not to be judgmental and not to blame patients for being obese. We are not even allowed to call them fat nowadays, but it is not judgmental to be accurate in diagnosis. It is not for government to tell people how to run their lives, but it is the job of government to give a very clear picture of the truth. I hope that when the obesity strategy is eventually published it will have on the front cover: "Obesity is killing millions, costing billions and the cure is to eat less".

In a recent review, Dr Aseem Malhotra, a cardiologist, concluded that the current global epidemic of atherosclerosis, heart disease, diabetes and obesity is being driven by a diet high in carbohydrates and sugar, as opposed to fat.

How can we help obese people to avoid an unnecessarily early death from the effects of obesity? It would help them to have a reasonable but not excessive amount of fat, which would satisfy their hunger early on in their meals, and to avoid a diet high in carbohydrate and sugar, which would continue to make them hungry. Roughage in many forms, such as wholemeal bread, wholemeal pasta—pasta integrale—and cereals without sugar also satisfy hunger quickly. It is essential to avoid high-carbohydrate and sugar diets which will continue to make them hungry. Many will need additional help from friends, dieticians and psychiatrists—all this to avoid so many unpleasant illnesses and to avoid them falling victim to this lethal obesity epidemic, which is the worst since the flu epidemic of 1919.

5.19 pm

Baroness Wheeler (Lab): My Lords, I congratulate the noble Baroness, Lady Jenkin, on securing this debate on this important but highly confusing subject. The scale and enormity of the obesity crisis facing the UK and the rest of the world has been underlined, and it is clear that the Government's long-awaited strategy, particularly in respect of providing clarity over dietary guidance, is desperately needed. I hope that the Minister will be able not only to give us some headline information on the content and direction of travel of the strategy, which we assume must now be in an advanced stage of development, but to be much more specific about the publication date for the strategy than just the timetable of "over the summer" that we have been given so far. I hope she fully realises the urgency and seriousness of the situation and the need for the Government to get to grips with the country's obesity epidemic. The noble Baroness, Lady Jenkin, in particular graphically and thoroughly underlined the challenges we face.

The recent report from the National Obesity Forum and the Public Health Collaborative has led to even greater confusion about what we should and should not eat to help us lose weight or keep our weight in check. To quote one comment article on the report:

"If you're not confused, you've not been paying attention".

The same article, by Archie Bland in the *Guardian*, underlined the important need for clear messages on food, such as a simple five-a-day mantra, however much we place our own interpretation on it, and came to the same conclusion on the need for clear, straightforward guidance on tackling weight gain that has been supported here today—that is, eat less and move more. Regarding noble Lords' comments on the Government's advice on diet, the British Obesity Society's 11 tips for 2016 seem pretty sound and cover the full range of issues we have been discussing today.

As we have heard, the report's findings and conclusions have been fiercely challenged by key medical bodies, including the Royal College of Physicians, the Academy of Medical Royal Colleges, the Faculty of Public Health, the British Heart Foundation and of course

government public health bodies. We also now have the bizarre spectacle of half the board of the National Obesity Forum resigning over a lack of consultation, involvement and input into the report. Regrettably, instead of contributing to the debate, the dramatic statements in the report, and particularly those surrounding its launch, have served only to polarise and confuse the debate still further in a very unhelpful way. They have also detracted from the effective debate and discussion of some of the report's valuable findings and observations, as a number of contributors have pointed out. The dismissal of Public Health England's *Eatwell Guide* as a "metabolic time bomb", for example, and the description of the discouraging of eating low-fat foods as,

"perhaps the biggest mistake in modern medical history",

were over-the-top statements not backed up by evidence in the report itself.

In his response to a Question about the report from the noble Baroness, Lady Jenkins, on 26 May, the noble Lord, Lord Prior, gave assurances to the House that the Government's obesity strategy would clearly address the confusion and muddle over dietary advice. It is clarity and simple language that are needed, and that is what makes the need for the strategy ever more urgent.

There have been excellent points and questions from noble Lords to the Minister on low-fat and dietary issues, which I will not duplicate. I look forward to her response, particularly regarding this week's Spanish research, which has found that the Mediterranean diet, with high-fat content from olive oil, does not cause people to put on weight. Confusion reigns. I hope she can reassure the House that the overall strategy will provide an accurate, evidence-based estimate of the current costs of obesity services to both the NHS and social care. Simon Stevens' estimate is an alarming current cost of £9 billion a year to the NHS alone. We also want realistic forecasting on the future costs and scale of the epidemic, and on what funding is needed for the services to be able to cope.

Will the Minister acknowledge the importance of making sure that the strategy includes actions to ensure cross-departmental government planning and working, particularly for tackling childhood obesity? Recent figures show that over 28% of children aged two to 15 are obese, and thousands of children are being admitted to hospital because of their weight. We know how difficult it can be to achieve cross-government working, so can the Minister assure the House that the new strategy will address this issue? The Royal College of General Practitioners recently called for a COBRA-style workforce to be set up. Does she agree that this would be an important way of achieving the required joined-up approach that extends beyond the Department of Health?

In the time left, I want to raise two key issues on the strategy. First, looking at all the background information and briefing on obesity, the paucity of data about the extent of obesity among, and its impact on, ethnic-minority communities was particularly striking. NICE has underlined its concern that millions of people from ethnic-minority groups who may be at risk from weight-related diseases are not showing up under current tests. The body mass index test simply does not work

for some groups, and NICE has called for BMI fatness thresholds to be lowered to ensure that up to 8 million people of African, Caribbean and Asian descent in the UK are covered in order to help identify those at risk of diabetes and heart disease. Do the Government support that view, and what action are they taking to address this problem? Different ethnic groups are associated with a range of body shapes and different physiological responses to fat storage. In terms of public health action, it is particularly important for south Asian populations in the UK, for example, to be aware of the health risks associated with an increased BMI and waist circumference.

According to Public Health England information, apart from the 2004 Health Survey for England data, there are few nationally representative data on obesity prevalence in adults from ethnic-minority groups in the UK, and data for many smaller ethnic groups are scarce or non-existent. Will the Government ensure that their strategy includes actions to investigate and gather information and data on key ethnic-minority groups so that their needs can be assessed as part of the strategy?

Secondly, do the Government acknowledge and recognise the importance of ensuring that the obesity strategy addresses the key issue of obesity among people with disabilities? Again, there are very limited data on this. People with disabilities are more likely to be obese and to have lower rates of physical activity than the general population, for obvious reasons. Children who have a limiting illness are more likely to be obese or overweight, particularly if they have a learning disability. Being both overweight and underweight are issues for people with learning disabilities. Obesity is associated with the four most prevailing disabling conditions in the UK: arthritis, back pain, mental health disorders and learning disabilities.

UK obesity rates have trebled over the last 30 years; the UK has the highest level of obesity in western Europe, ahead of France, Germany, Spain and Italy; and the alarming prediction is that, on current estimates, more than half our population could be obese by 2050. The scale of the problem makes the need for an ambitious health and social care strategy to address the challenges ever more urgent. I look forward to the noble Baroness's response.

5.27 pm

Baroness Chisholm of Owlpen (Con): I thank my noble friend Lady Jenkin for initiating this important debate, and I congratulate her on having certainly lost weight—and kept it off, which is indeed an achievement. My thanks also go to the noble Baronesses, Lady Miller and Lady Wheeler, and to my noble friend Lord McColl for their valuable contributions. I will pick up on the various points as I go through my speech.

Tackling obesity is indeed an important issue, as my noble friend implied. We know that obesity is a leading cause of serious diseases such as heart disease, type 2 diabetes and some cancers. Furthermore, obesity is a complex issue to which there is no single solution. Eating a healthy diet has a key role to play in helping people lose weight, maintain a healthy weight and thereby reduce the risk of type 2 diabetes and other problems related to obesity.

[BARONESS CHISHOLM OF OWLPEN]

The noble Baronesses, Lady Miller and Lady Wheeler, suggested that messages are muddling. That is why Public Health England goes to great lengths to ensure that it advises the public clearly and consistently on what constitutes a healthy, balanced diet, basing that advice on broad, robust and objective evidence. It is also why it was so disappointing to see the opinion piece entitled *Eat Fat, Cut the Carbs and Avoid Snacking to Reverse Obesity and Type 2 Diabetes*. It claims that many of the Government's dietary recommendations are wrong. However, it fails to provide good evidence. All it has done is confuse the public, and Public Health England has called it "irresponsible".

To improve diet and reduce obesity levels, our advice remains that people should base meals on starchy carbohydrates, especially whole grains, eat at least five portions of a variety of fruit and vegetables each day, including pulses, as the noble Baroness, Lady Miller, mentioned, and cut back on food and drinks that are high in salt and sugar. That is our *Eatwell Guide*.

My noble friend Lord McColl and the noble Baroness, Lady Miller, mentioned that eating fat is a good thing. It is extremely important. Our recommendations are that 33% of energy should come from fat. As was also stated by my noble friend and the noble Baroness, the cure for obesity is to eat and drink fewer calories, and that must be remembered.

I underline that Public Health England bases its dietary guidelines on comprehensive reviews carried out by the independent experts who make up the Scientific Advisory Committee on Nutrition. The *Eatwell Guide* was put together by them and Public Health England, and they consult academia, health charities, public health professionals and representative professional bodies. They also monitor changes in the evidence base and, where sufficient new evidence emerges, will initiate a new review to ensure that the guidance remains current.

Public Health England is taking forward a range of actions to help reshape the environment, to make the healthier choice the easiest choice for people, and to tackle inequalities relating to obesity. Public Health England has a broad plan and is committed to working collaboratively, at a national and local level, to pursue and advance a series of sustained actions to tackle and prevent obesity. Public Health England's obesity plan is based on a framework that covers community engagement, monitoring progress, supporting delivery and changing the whole culture concerning obesity.

My noble friends Lord McColl and Lady Jenkin pointed out that exercise will not cause someone to lose weight. Exercise is important for lots of reasons, but there is no point going to a class or the gym and then going round the corner for a fizzy drink and a doughnut. It is this sort of culture that needs to change.

My noble friend Lady Jenkin also mentioned the problem of sugar in alcohol. The UK has secured provisions to allow voluntary calorie labelling on alcoholic drinks. This is already being used by Sainsbury's, the Co-op and Waitrose. The possibility of mandating calorie labelling on alcohol is under discussion at EU level.

Public Health England recognises that weight-management services are an integral part of the public health and health service agenda for tackling obesity. Public Health England is clear that only by taking a whole-system, joined-up approach can we hope to make a difference.

As my noble friend Lady Jenkin stated, sugar is a huge problem. The sugar intake of all population groups in the UK is above current recommendations. We are encouraging a reduction in sugar intake through Change4Life, a social marketing campaign. It provides practical tips to help families reduce their sugar intake, and the sugar app is also a very good idea.

As part of its work, Public Health England is exploring how to support councils and the health service in providing evidence-based weight-management services that work better for people. In particular, Public Health England is collaborating with the Local Government Association and the Association of Directors of Public Health to support councils in developing local, joined-up approaches to tackling obesity. The noble Baroness, Lady Wheeler, mentioned the importance of this and of remembering that those with disabilities have complex nutritional needs. Also, ethnic minorities must not be left behind. This is why Public Health England is concentrating on exploring with the Local Government Association and the Association of Directors of Public Health how to take this down to a local level to decide what is needed in different areas to help those with disabilities and ethnic minorities.

Regarding type 2 diabetes specifically, Public Health England is working with NHS England and Diabetes UK on the development and delivery of Healthier You: the NHS Diabetes Prevention Programme. This year, Healthier You will refer at least 10,000 people to an evidence-based, behaviour-change intervention, funded by NHS England, shown to reduce the risk of type 2 diabetes in those with elevated risk. By 2020, the programme will be made available to up to 100,000 people at risk of type 2 diabetes each year across England. Those referred will receive tailored behavioural support to enable improvements in diet, increases in physical activity and weight loss. Furthermore, Healthier You will link into the NHS Health Check programme, which invites adults between the ages of 40 and 74 for risk awareness assessment and management of the key risk factors leading to premature death and disability in England.

As I mentioned a few minutes ago, obesity is a complex issue. Tackling obesity, particularly in children, is one of the Government's major priorities and the Government will be launching a childhood obesity strategy next month. The strategy will look at everything that contributes to a child becoming overweight and obese. It will also set out what more can be done by all.

It is critical that we address with young people the obesity issues they face, as we know that it is much more difficult to lose weight later in life. That is why free school meals were introduced in all primary schools and why we have the School Fruit and Vegetable Scheme. I will have to write to the noble Baroness, Lady Miller, on her questions, as I am not up to date on what the Department for Education is doing in relation to cooking in schools and the curriculum.

The soft drinks industry levy announced by the Chancellor in the Budget was the first step in the process regarding sugar intake. The cross-government approach being led by the Department of Health is an exciting one. However, evidence suggests that many of those who have the potential to influence the diet and health of those with whom they come into contact, including childminders, fitness instructors, caterers and those working in care homes, currently receive little or no training in nutrition. Public Health England is working with the Association for Nutrition to devise a competence framework for use in training non-professionals in the catering, fitness and leisure industries in diet, nutrition and health. This is now being used to certify relevant courses. Moreover, the chief executive of NHS England is addressing the presence of unhealthy food and drinks on NHS properties. After all, if those looking after people are not eating healthily, it is not good for any of us. The initiative will encourage NHS staff to lead a much healthier lifestyle.

Eating a healthy, balanced diet plays a crucial role in all our work, but we have choices and we have to take responsibility for them. I thank everybody who has taken part today. If there is anything that I have left out and not mentioned, I will of course write to noble Lords.

European Union Referendum (Voter Registration) Regulations 2016

Motion to Approve

5.38 pm

Moved by Lord Bridges of Headley

That the draft Regulations laid before the House on 8 June be approved.

Instrument not yet reported by the Joint Committee on Statutory Instruments

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, let me start by repeating the Government's thanks for the broad cross-party support for this measure and to those who have worked so hard behind the scenes, in the Cabinet Office as well as in the Electoral Commission, to address the situation in which we find ourselves.

We all agree that the referendum is one of the most important moments in our democracy for over a generation, and it is therefore critical that as many people as possible have their chance to vote in it. The public's appetite to vote was clearly shown on Tuesday night, when the "Register to vote" website crashed. As I said yesterday, in the hour before it did so, 214,000 people had applied to register—three times the previous peak, which was seen just before the last general election. This dark cloud of an IT glitch has a silver lining, as it was caused by a great surge of public engagement.

From early yesterday we discussed with the Electoral Commission the best course of action to address this unprecedented issue. Given its central role in running the referendum, the Electoral Commission called on the Government to introduce legislation to extend the

deadline for registration, and this statutory instrument does that by extending the deadline to midnight tonight. The application deadline is set by legislation, so new legislation is required to allow electoral registration officers to accept applications submitted after the original deadline. This is a technical change specific to the EU referendum and therefore secondary legislation is the most appropriate mechanism.

We have acted quickly but responsibly. Working with the Electoral Commission we have carefully examined the options and have come to the most appropriate and proportionate response. The legislation we are debating now was laid before Parliament yesterday evening. We have had to proceed with some haste but have taken the time necessary to ensure that our approach is legally watertight. In its briefing to Parliament the Electoral Commission has recommended that Parliament approve these regulations.

What does this instrument achieve? Very simply, it will, as I have said, extend the deadline for registration by 48 hours to midnight tonight. This is achieved by shifting the publication of the final register to be used for the referendum to the third working day before the poll—Monday 20 June—rather than five working days as currently provided for. To ensure that all applications are still subject to proper scrutiny, the period given for objections to an application remains five days. Registration officers will still have the full five days to process applications and require applicants to provide additional information, if needed, to satisfy them that those applicants are eligible to vote in the referendum. We are making no changes to the necessary verification processes and the same standard of verification will continue to apply to applications made in this extended registration period. We are cutting no corners. We want to give those who want to register more time to do so, but in a way which ensures that applications are subject to proper scrutiny before people are added to the register.

These regulations make no change to any other deadline date associated with the referendum. The deadline for applying for a postal vote expired at 5 pm yesterday. This means that anyone who has not properly applied to register by that point and has not applied for a postal ballot will not be able to vote by post in the referendum. But anyone who registers now and does not want to vote in person at their local polling station on 23 June, or is unable to do so for whatever reason, can still apply to appoint a proxy. The deadline for a standard proxy application is unchanged by this instrument and remains 15 June.

The change to the referendum deadline will apply in England, Wales and Scotland. The issue we are seeking to fix is in relation to a failing in the online registration service. Online registration is currently available only in Great Britain. The registration system in Northern Ireland is different in a variety of ways. In particular, digital registration is not yet available there, so there is no problem to fix in Northern Ireland as no one there experienced an issue registering to vote on Tuesday night.

In light of the regrettable outage to the system on Tuesday night, since then we have worked hard to ensure that it is more robust and better able to handle large numbers of simultaneous applications. The capacity

[LORD BRIDGES OF HEADLEY]

for the “Register to vote” website was doubled yesterday. It is now four times what it was for the 2015 general election. We have also developed a system to manage any particular spikes in activity. I am pleased that people have got the message that registration for the referendum remains open and are taking the opportunity to register so that they can have their say. According to the latest figures I have, some 300,000 applications have been made since 10 pm on 7 June.

Let me end by apologising for the system having failed and the disruption that caused to members of the public applying to register. Although we have acted as quickly as possible to address this, I reiterate the Government’s clear commitment to conduct a full analysis of what went wrong so that we can learn the lessons for the future. If there are ways to better manage such problems, we will make sure that we identify them. I repeat my thanks to noble Lords for their support for this measure. I beg to move.

5.45 pm

Lord Maxton (Lab): My Lords, I will be brief, although I am tempted to go into a long diatribe about compulsory registration, which I think ought to be the case, as people would automatically be registered and would have to take themselves off the register rather than the other way round. That would be the best way of doing it.

What I am concerned about now, however, is registration for the postal vote. We ought to be extending it in the same way, to the end of tomorrow, because the original deadline to ask for a postal vote was 24 hours after closure of the registration process. Now there will be at least a full 24 hours—that is, today—when no one will be able to apply for a postal vote. I think that that is wrong and I hope that the Government will look at it again and consider whether we might have postal voting for those who apply for registration today.

Lord Trefgarne (Con): My Lords, I rise to support the Motion proposed by my noble friend. As your Lordships may be aware, although this is not set out in the Standing Orders, it is normal practice for your Lordships’ Secondary Legislation Scrutiny Committee, of which I have the honour to be chairman, to report on incidents such as this before they are considered by your Lordships. Clearly that was not possible on this occasion, but I have taken the opportunity to consult as many of the members of my committee as possible. None has raised any objection. I am therefore happy to say to my noble friend that I approve of what he proposes and that my committee has given its informal approval for that process. These are what, in other contexts, we have come to call exceptional circumstances. They clearly apply in this case, and I approve of my noble friend’s proposal.

Lord Rennard (LD): My Lords, first, I thank the Minister for his kind words yesterday about my knowledge and interest in this area. I also ask him to convey my thanks to the Minister for Constitutional Reform for his most helpful recent letter which was also copied to my fellow officers of the All-Party Parliamentary Group

on Democratic Participation. As the Minister will know, we are discussing with his colleagues our recent *Missing Millions* report, trying to tackle some of the longer-term problems which have been highlighted this week.

I want to say from these Benches how grateful we are to the Government for acting so expeditiously and properly to ensure that the problems with online registration did not result in people being disenfranchised. Today’s *Daily Express* headline suggesting that allowing people to vote is somehow “rigging the system” is at least as ridiculous as any of its conspiracy theories concerning the late Diana, Princess of Wales.

Some 242,000 people applied to register to vote yesterday, and more will do so by midnight tonight. But the problem that I raised with the Minister yesterday is that these people were not able to find out easily whether they were already registered, and many of them were. The problems of trying to get people registered at the last minute are the problems that arise from the weaknesses in the system, which have led to the general problem of under-registration. Yesterday, the Minister responded to my point that we really need an online system in which people can easily check whether or not they are already registered. He expressed concern about the creation of a national database to facilitate this. He said that,

“we must guard any solution which results in whole swathes of data unnecessarily being held centrally”.—[*Official Report*, 8/6/16; col. 751.]

But does he not have concerns that all the major political parties, including his own, already have such a database? All the political parties are entitled to copies of the electoral register in electronic format and they can either aggregate that information or work with any of the credit agencies which also legally have full access to the electoral register. So there are already national databases showing exactly who is on the electoral register.

While there may be some confusion over addresses appearing on those registers in different formats, it should not be hard, for example, for someone to supply their name, postcode, national insurance number or other identification to see whether they are already registered. I raised this issue today with the Electoral Commission. I quote briefly from its email, which is most helpful on this issue. On the question of an online register and checking whether someone is already registered, it says:

“This is a recommendation that we continue to make to Government, including in our February 2016 report, after we received feedback from Electoral Registration Officers, and from electors themselves, that this would be a helpful service. You might already be aware that similar facilities are already offered to voters in other comparable democracies, including Australia and New Zealand”.

Therefore, it seems to me that it would not be too difficult a problem for us to address. We know that in total there may be around 7 million people missing from the registers, and 4 million of them may be young people. I asked in a recent debate why we do not make the electoral registration process part of the student enrolment process. The Minister said that it had been piloted successfully in Sheffield and Cardiff. As it has been piloted successfully there, why can we not roll it out across the whole country? We could

make it a universal provision. I have also been pressing, as have many Members of the House, for us to adopt the Northern Ireland model of registering 16 and 17 year-olds as part of citizenship classes at school. The Minister told me that many electoral registration officers are already working with local schools and colleges in their area—but why not all of them? The excuse that Northern Ireland does not yet have online registration is no reason at all for not spreading successful good practice in registering young people across Great Britain.

Finally, I ask the Minister to clarify an issue in the Explanatory Memorandum to this statutory instrument. It states that,

“the Law Commission is currently undertaking a review of electoral law in the United Kingdom and expects to present its recommendations to Government in 2016”.

However, the Law Commission published its interim report on 4 February and made many sensible recommendations for tidying up and modernising our election laws. I have since then been asking for the Government’s response to what the Law Commission said, as the next stages require the Government, instructing parliamentary counsel, to draft the Bill required. The Electoral Commission, I might add, is also extremely keen that this happens. So, what is the Government response to the Law Commission’s report?

Baroness Watkins of Tavistock (CB): My Lords, I rise to support the Motion put forward by the Minister and to commend the Government and the other House on ensuring that full public engagement can take place at this time. I believe that this surge was a result of the just-in-time generation being able to do things at the last minute. We probably have a lot to learn from that. It will be interesting to look at this issue—if one is able to define the 300,000-odd people who elected to register in the last 24 hours. Without this statutory instrument we would be denying the basic human right in a democracy, such as the UK, to vote on such an important issue.

Lord Hayward (Con): My Lords, I rise to ask the Minister to clarify one or two things, and to make one or two observations, following the comments of the noble Lord, Lord Rennard. One is tempted to remind ourselves that the words “IT project, success and Government” are not often used in the same sentence. This might be yet another instance of that, although, having said that, I think that the capacity installed was pretty substantial. That takes me to the point made by the noble Lord, Lord Rennard, that, after the event, we will discover that a fair number of the people who were trying to register were already registered. Had that facility been available they would not have been overloading the system. As I said, we will not know the answer to that for several weeks, until the analysis has been done.

On my specific questions, first, are the returning officers fully okay with and accepting of the new timetables? I assume from what my noble friend Lord Bridges said that they are, but it would be appropriate, given the increased workload that they will face over a shorter period of time, to have confirmation that not only the Electoral Commission but the returning officers are satisfied that they can cope in the circumstances.

Secondly, and I do not expect an answer specifically relating to this at this point, when the specific regulations were debated in Committee I raised the opening of postal votes. I was given an assurance, although I have not checked *Hansard* precisely, that these would not be opened until the close of the poll because there were recognised implications for the markets around the world. I think that that was the assurance I was given. Rumours are going round about information emanating from the opening of postal votes already. I therefore ask the Minister to confirm with the Electoral Commission and with the returning officers that they are following due process as set out in the legislation and the regulations.

Lord Wills (Lab): My Lords, I also support this legislation. I particularly endorse what the Minister said. Whatever position anyone takes on the European referendum, I hope everyone can agree that it is vital that everyone who is eligible to vote should be able to do so on this existentially important issue and that registration is the key to this. This is necessary and important legislation. I congratulate the Government on how swiftly they realised this after the debacle of online registration on Tuesday night and how quickly they acted on the wise advice of the Electoral Commission.

I also send my congratulations to Ministers and officials, who have acted with impressive speed in bringing this statutory instrument before your Lordships’ House. We now know that at least this part of the system works. I am also grateful to the Minister for the courtesy and consideration he showed to me in talking about these issues this morning.

I do not want to hold up the passage of this statutory instrument. It is important that it passes as quickly as possible. There will be a time to hold the Government systematically to account for their stewardship of the electoral system, but now is not the time. We have already heard a number of very important contributions in this short debate. I am sure that the Minister will take them away and reflect on them, as he has pledged to do.

It is important to determine whether the Government have now recognised that, while this legislation is necessary, it is not sufficient on its own to put right the problems experienced on Tuesday night. Practical delivery now rests with the Electoral Commission, but unfortunately, in my exchanges with it over the last few days, it seems to believe that because it has been doing a good job in securing increases in registration—it has been doing a very good job—then that is good enough. But when millions and millions of British citizens who are eligible to vote still cannot because they are not registered, and when the Government have been repeatedly warned of the dangers of their approach to electoral registration and disenfranchising people in this way, then good is not good enough. If higher levels of registration had been achieved over time, as the Government and the Electoral Commission have been repeatedly urged by many people to secure, the surge in applications that led to the problems on Tuesday night might well not have happened, at least on the scale that disrupted the system so badly. In these circumstances, an attitude that good is good enough is not acceptable.

[LORD WILLS]

Yesterday, the Minister reassured your Lordships' House that he was not complacent about what happened and today we have heard that he wants to learn the lessons from it. To demonstrate that, would the Minister say what the Government have done since yesterday to persuade the Electoral Commission, providing any assurance of necessary funding, that what happened on Tuesday night created a new situation where a new communications strategy was necessary to ensure that everyone with a potential interest was told that registration is still possible until midnight tonight and how to do it? Finally, will he say what action he took, following his answer to me yesterday, to explore how social media could be used as part of such a communication strategy?

6 pm

Baroness Smith of Basildon (Lab): My Lords, I add my general welcome to the statutory instrument before us today. It is absolutely essential and I am pleased that the Government acted so quickly to remedy what was clearly a wrong. I hold no truck with those who criticise this, or even try to allege some kind of conspiracy whereby the website was crashed on purpose—that is absolutely bizarre. Clearly, it is right that as many people who have the right to vote are able to do so. That is crucial.

We do not yet know the reason why the crash happened. As the noble Baroness said, I think part of it will be down to those from the last-minute generation. It might also be that some people saw others in their household receive their polling cards and, realising they had not got one, wanted to go online. I would also like to think that the TV debate excited passions about the issue—but I suspect not. That is something to note in future.

I wish that this measure was not necessary and I appreciate that there was unprecedented demand on the night. That is generally accepted. However, it seems strange that there was no back-up. During the course of the website being down, it was still flashing across the TV and information was still going out saying, "Go on to the website and register now". That will have exacerbated the problem. There was a failure of process somewhere along the line. Now is not the time to look into that, but I would like assurances that it will be looked at in the fullness of time.

The noble Lord said that no one from Northern Ireland was unable to register on Tuesday evening. How does he know that? It seems clear that, because Northern Ireland already has a form of IER, nobody was not on the register because of the transition to IER. I am just curious: how do we know that nobody from Northern Ireland tried to register on that evening?

The noble Lord, Lord Hayward, mentioned electoral registration officers. This now puts additional pressure on them. The reason for the deadline of midnight on Tuesday was to enable EROs to process all the applications. What consultation has there been with EROs and with the Local Government Association?

The Minister would think me remiss, and that I had gone soft in my old age, if I failed to raise with him an issue I raised yesterday—it seems longer—individual

electoral registration. Against the advice of the Electoral Commission, the Government forged ahead with it. The Electoral Commission sent briefings to everyone in your Lordships' House making it clear that it could not be certain that, if everybody had not individually registered by the cut-off date specified by the Government in previous legislation, there would not be people entitled to vote who were knocked off the register. Clearly, the Electoral Commission was right and the Government should not have pressed ahead. We would not be in the position we are in now if the Government had not forged ahead against the advice of the Electoral Commission. We all recognise that that measure passed only narrowly in this House. One reason the Government gave for doing so was that the boundaries review was dependent on the cut-off date being December 2015. Can the Minister tell the House today—if not, I am happy for him to write to me—how many people have been added to the register since that cut-off date? That is quite significant and would indicate whether the Government were correct to choose that cut-off date, or acted with undue haste.

At the time, the Government basically said that the names being knocked off the register were really a matter of fraud. It may well be that it was not fraud but just people who had not responded to the, in many cases numerous, requests. I doubt that everybody who was not individually registered had the nine communications and contacts that the noble Lord spoke of, but there were numerous requests and people still failed to respond. However, that is life and people do not respond to every request they get. These things can be quite difficult.

If the noble Lord can address those points, that would be helpful. As I say, we support this measure. It is essential on an issue such as this that everybody who is entitled to vote does so. I am encouraged that the Electoral Commission is now predicting an 80% turnout on the poll on 23 June. I just hope that the Government are looking at that to make sure they are geared up for it. I remember high turnouts in 1997, when some polling stations were unable to cope and closed their doors before some people had managed to vote. I hope that can be looked at to show that once people have got over the hurdle of registering, they will be able to use their vote on the day.

Lord Bridges of Headley: My Lords, I begin where I ended and repeat my thanks for the widespread support for this measure. Obviously, none of us wish to be in this situation but, that said, we are where we are.

I shall try to address as many of the points that have been raised as I can. If I fail to address all of them, I will obviously write to noble Lords. The noble Lord, Lord Maxton, asked about extending the date for postal votes. I am told that to do so would compromise the timing of returning such votes. I am extremely grateful to my noble friend Lord Trefgarne for what he said about the scrutiny of this SI. We are obviously in an unprecedented situation and I thank him for his support.

The noble Lord, Lord Rennard, and my noble friend Lord Hayward both raised the issue of duplicates. The noble Lord, Lord Rennard, knows a great deal

about electoral matters, as does my noble friend. I do not want to get into a deep rabbit hole now but, as I said yesterday, we are considering ways in which the IER Digital Service can be enhanced. I note what the noble Lord said about these points. I am sure that we will continue to debate these matters further. The duplicates issue is one of the things this whole saga has thrown up. We need to look at it as part of the lessons learned process. I absolutely heed the points he made about the experience we have had so far. Attainers is one of these issues to which we come back again and again. I hope he will forgive me for saying that I need to get back to him on the Law Commission point. I am sorry that our minds have been somewhat distracted over the last 24 hours or so. I cannot give a full answer on that.

My noble friend Lord Hayward and the noble Baroness, Lady Smith, referred to working closely with EROs. We have been working extremely closely with EROs. As I said yesterday, we will certainly honour our commitment to cover reasonable costs. We are very grateful for their hard work. We will continue to remain in touch with them as time proceeds.

I will need to get back to my noble friend on the specific points he raised about postal votes. However, I can confirm that postal votes are opened only at the close of play of the referendum.

The noble Lord, Lord Wills, asked about promoting and communicating the decision. I thank him for the time he gave me this morning to discuss this matter. I need to remind your Lordships that obviously, the Government are prevented from publishing material that is,

“designed to encourage voting at the referendum”,

by Section 125 of the Political Parties, Elections and Referendums Act 2000. As the noble Lord knows—I mentioned it to him this morning—that provision obviously does not apply to the Electoral Commission. Since this morning, I have been in touch via my officials with the Electoral Commission, which obviously—although I put it on record again—is an independent body. I am assured that it is taking several steps today to make the public aware of the extension to the registration deadline. I have a list of things that body is doing: for example, promoting the message across social media; sharing communications and messages with regional counting officers; continuing its paid advertising promoting the EU referendum; and pointing people to the About My Vote website. The proof of the pudding will obviously be in the eating. Before I rose to speak, I looked at the number of people who are registering. That is running at about 2,000 who are online now, as far as I can see. Therefore, it is clear that the message is continuing to get out. We shall see how things progress during the evening and when the debate takes place this evening.

Baroness Smith of Basildon: I am sorry to intervene on the Minister but I want to check a point. It does not affect support for the regulations in any way, but he said that postal votes would definitely not be opened until after close of poll. In most elections there are two stages and, in local and general elections, the postal votes are opened before the close of poll for verification that they are valid but are not counted until the close

of poll. There are numerous reports of postal votes being opened as they come in, at the verification stage. If the Minister could check that point it would be helpful.

Lord Bridges of Headley: I will certainly check that point and I am sorry if I have created any confusion.

The noble Baroness said that she was surprised that there was no back-up with regard to what happened. We are very clear that lessons need to be learned regarding the technology and the legislation, and what steps might need to be put in place were this kind of thing to happen again. The noble Baroness is absolutely right.

I may have misunderstood the noble Baroness's point, but it is my understanding that people in Northern Ireland cannot register online. As regards how many people have been added to the register since October 2015, I will need to come back to her. We are not in a position to say right now, as there have been those registering in the last few days and we do not know whether those applications have been fully processed or how many duplicates there have been. She will forgive me for not going down the other rabbit hole of rehearsing all the arguments over IER and carry-forwards. I have a lot of brief that I could entertain your Lordships' House with on this, but I simply say that I disagree with her position, I am sorry to say, on that point.

The noble Baroness also raised the very valid point of whether, given the considerable—and very welcome—upsurge in public engagement in the referendum, there will be sufficient resources at polling stations on the day. The Electoral Commission's guidance for counting officers at the referendum makes it clear that:

“Voters who at 10pm are in the polling station, or in a queue outside the polling station, for the purpose of voting, may apply for a ballot paper”.

The commission's guidance also states:

“Good planning and flexible staffing should minimise the risk of there being queues at polling stations”.

The guidance advises counting officers to,

“ensure that polling station staff are monitoring turnout throughout the day and providing progress reports”

to polling. This is obviously a matter for the Electoral Commission, but my understanding is that it has taken steps to prepare for this.

I have just been alerted to the fact that postal votes are opened but not counted. I think that is the point that the noble Baroness was raising. I thank your Lordships once again for their support.

Motion agreed.

Female Genital Mutilation

Question for Short Debate

6.12 pm

Asked by Lord Berkeley of Knighton

To ask Her Majesty's Government what steps they intend to take in the light of NHS statistics showing that in 2015 over 1,000 cases of female genital mutilation were reported every three months and the lack of any successful prosecutions to date.

Lord Berkeley of Knighton (CB): My Lords, in 2003 the late Ruth Rendell, Baroness Rendell of Babergh, introduced the Bill making female genital mutilation illegal. To date, there has not been a single successful prosecution—a fact made all the more shocking, seemingly, by NHS statistics showing that, in 2015, over 1,000 cases were reported in each three-month period. Are the Government surprised by these figures and how are they reacting to them?

I say “seemingly”, because NGOs have told me that they are not surprised; it is what they have known for some time. Furthermore, the figures revealed some worrying facts: there was some evidence of girls mutilated here in the UK and GPs do not appear to have been involved with the issue as much as they might be in some areas. They could do more to advertise the dangers as, for example, they do in their surgeries about diabetes or heart disease.

The need for a national action plan is paramount. What has happened to the 2014 draft? We are behind practically every other EU country; even countries with far less widespread problems have implemented action plans, including Ireland and Scotland. The NGOs are there and they would love to work more closely with the Government. Of course, progress has been made. The mere fact that we have these NHS statistics, appalling though they are, is a huge leap forward.

There has also been a strong emphasis on education. This has to be the way to secure a change of attitude within these communities, where FGM is normally not to be questioned. This issue is almost always spoken of in terms of women but, vitally, we must target men as well for it is in their name that FGM continues. This is an area to which we could usefully devote more time and resources. Girls are told that men will not want to marry them if they cannot be seen to be pure or if they are in danger of realising sexual desire. Obviously, men need to take a lead in this area.

Of course, prosecution is important, and I will come on to this, but prevention is even more important. The UK is starting to provide a talking point for young girls who are beginning to say no. I have been deeply moved by the testimony of women who have been cut, speaking of their experience—for example, on “Woman’s Hour” and at the University of Warwick—with great dignity, telling not only of their medical and psychological wounds but of their hope and determination not to allow their daughters to go through this ordeal.

Several charities are doing sterling work in sub-Saharan Africa to get men and women talking about and questioning FGM. Here in the UK, local government, in the form of the National FGM Centre, has had considerable success in places such as Newham and Bristol in getting skilled and dedicated social workers to shift attitudes in areas where women and girls are vulnerable. The charity FORWARD is an African diaspora women’s campaign and support organisation. It has been working tirelessly to end FGM in the UK for more than 20 years. I pay tribute to it, to Men Speak Out, which works throughout Europe to engage men in the process of ending FGM, and Equality Now, which attempts to bypass the cultural barriers by framing them within the context of violence done to women and girls. So there is hope, and another

reason for securing this debate is to keep the subject aired and current. Many experts and victims believe it is crucial that the word of mouth is that FGM is no longer acceptable and that girls and mothers in this country can and should resist it. It will take time. Deep-seated cultural traditions are not changed overnight.

There are in the Chamber today distinguished members of the medical profession who can attest to the effects of FGM with far more authority than I can. But FGM is child abuse and its implementation is torturous, causing lifelong grievous bodily harm. That is reflected in sentences that the courts could hand out if they were ever to get to deal with a conviction; 14 years in prison awaits anyone convicted of carrying out FGM.

These mutilations are frequently performed by people with no medical training in unhygienic surroundings, using old razor blades or broken glass. My noble friend Lady Cox deeply regrets that she cannot be in her seat. She has witnessed examples of this terrible damage on her journeys around the world. As she says, there is no anaesthetic and the results often lead to sepsis. The actual degree of cutting varies but it can range from the attempted excision of the clitoris to deny the victim sexual pleasure or desire to the cutting off of the labia, both minor and major, and the sewing up of the skin across the vaginal opening, leaving only a tiny hole for natural functions. I apologise to noble Lords for the graphic nature of this but it is important that we never lose sight of the quite terrible pain and damage inflicted.

In the UK, 60,000 girls are thought to be at risk. I have a few more statistics: 137,000 girls and women in the United Kingdom are living with the consequences of FGM. Many of these, it must be said, were cut outside the UK before arriving here. More than 130 million girls and women worldwide have undergone FGM. It is practised in more than 29 countries.

Religious leaders all over the world and of virtually every persuasion have continually stated that there are no doctrinal reasons whatever to justify or encourage FGM. So it is worrying that an Indian Muslim sect, Dawoodi Bohra, which has several thousand followers in the UK, has been encouraged to practise its form of FGM—khatna—by its leader, Mufaddal Saifuddin. His senior representative, a Mr Vaziri, has just been sentenced to 11 months in prison by an Australian court for his part in trying to cover up acts of FGM. The mother of the girls in question has been sentenced to 11 months’ home detention for allowing her two daughters to be harmed, as has the midwife who mutilated the girls. The judge made it clear that Australia was sending a message that it simply would not tolerate this abhorrent practice. If Australia can achieve success in prosecution, why cannot we?

Will the Minister make it absolutely clear, as set out in law, that should anyone encourage others to practise FGM they would be committing a criminal offence? We need to fire this shot across the bows of groups such as Dawoodi Bohra, so that their members are in absolutely no doubt about the grievous consequences of such actions. The one recent prosecution which the CPS mounted sadly failed—or perhaps not sadly, because it was regarded by many in the legal and medical professions as flawed from the outset.

The Government have made it clear on previous occasions that they do not believe in mandatory examination as in France, where many successful prosecutions have been obtained. The Minister will probably repeat this view but, on the other hand, we simply cannot avoid the issue of prosecution while girls in this country are being cut and in danger of being cut. I have a suggestion involving limited and targeted examination, given the 2015 NHS reports of FGM, which have to be reported to the police. I would be grateful if the Minister could give us, if he knows, an indication of what steps the police have already taken as a result of these cases. Among the many thousands of referrals, there must be some leads on which they could act, so here surely is an opportunity to gain convictions. After all, if the police have reports of drug dealing, for example, they get a search warrant. They will question or observe known acquaintances and build up a case. Might not these NHS reports provide fertile ground for the Government to consider targeted mandatory examinations, where reports reveal a hotspot of activity? We know that there are such, for example in London.

I am deeply grateful to the noble Lords who are taking the trouble to speak in this debate. I believe passionately that it is our duty to keep this awful practice under scrutiny and make it clear that in this country, we will pursue with the full force of the law those who encourage or practise the mutilation of young girls, thus damaging their capacity to lead their lives as young women to the full and to hamper seriously their prospects of conceiving and giving birth to healthy children.

6.22 pm

Lord Smith of Hindhead (Con): My Lords, I am grateful to the noble Lord, Lord Berkeley of Knighton, for raising this important matter as a Question for Short Debate. I appreciate that FGM has been the subject of previous Oral Questions but this debate provides an opportunity for further consideration to be given to a matter that, for the vast majority, appears so barbaric that we cannot understand how or why it can continue to be practised. As he pointed out, it is estimated that 137,000 women and girls are living with FGM in the UK. The report *Prevalence of FGM in England and Wales: National and Local Estimates* confirmed in 2015 that every local authority in the UK has FGM occurring within its jurisdiction. In London, it is estimated that 2.5% of the female population has been subjected to FGM.

FGM has been illegal now in the UK for 31 years and in all that time there has not been a single prosecution—not one—with a parent, guardian, aunt or cutter being brought to justice. In 2014, almost 16,500 parents in England were prosecuted for failing to ensure that their children were sent to school, which is about 45 prosecutions a day in one year alone. I wonder what a young British woman who has been subject to FGM, possibly when she was much younger, would think about that statistic since clearly we care passionately about the welfare of our children. Equally clearly, there is something here that we are still not completely getting right in respect of dealing with and, importantly, preventing this offence.

We understand that due to the secretive world in which FGM exists, the victims are vulnerable and the perpetrators manipulative. It involves pressures from mothers, fathers, grandparents, aunts, uncles and so-called leaders of communities that are often closed and therefore difficult to investigate. The main problem of course is that the perpetrators of this crime are usually the victim's parents—the very people with the first duty to protect the child from harm.

Despite these rather depressing statistics, there has been success in raising awareness through national guidelines for front-line workers, the introduction of the duty to report cases of suspected FGM and the introduction of lifelong anonymity for victims, together with the criminal offence of failing to protect a girl at risk of FGM. There have also been national campaigns such as Not in Religion's Name and Not in my Name, and the Girl Summit in 2014, to name some of the positive work in this area. Yet according to the statistics from the Health and Social Care Information Centre, a case of FGM is reported in the UK every 109 minutes. Based on that estimate, one report will have occurred in the space of this debate. If we are going to be successful in stopping this practice, we have to break the cycle. For every woman we are able to protect, there is a better chance of breaking the link so that this is not inflicted on the next generation.

Will my noble and learned friend update the House as to how the measures of the Serious Crime Act 2015 aimed at strengthening the law on FGM are affecting the landscape? Specifically, how many FGM protection orders have been issued since their introduction, and does he know whether they have been successful in protecting the children involved? The lack of police referrals is often cited in reports, such as that of the House of Commons Home Affairs Committee, as a serious contributing factor to the lack of prosecutions. Can my noble and learned friend tell the House whether police referral numbers have increased since the introduction of the mandatory reporting duty last October?

Can my noble and learned friend also give some thought to including the equally barbaric and dangerous act of breast ironing into the Serious Crime Act? Again, this is child abuse, violating the most intimate areas of young girls under the thinly veiled disguise of being a religious and cultural practice. Does he also agree with me that breast ironing should be included in the ongoing work on raising awareness and educating girls about the dangers of FGM?

We know France has had some success in securing prosecutions for FGM. Up to 2014, it had had 43 prosecutions, resulting in the punishment of more than 100 parents and cutters. French prosecution success has been partly due to regular medical examinations of girls from an early age—although it is not mandatory, receipt of social security is dependent on participation. The Minister in another place has made her feelings clear about the introduction of these sorts of early examinations and does not feel it would be appropriate—nor does the House of Commons Home Affairs Committee. I of course accept their view, and understand that different levels of evidence are required for prosecutions in France, but can my noble and learned

[LORD SMITH OF HINDHEAD]

friend say whether any discussions have taken place between UK officials and their counterparts in France and other countries which have secured successful prosecutions, to see whether there is anything else we can learn from their processes?

I end by congratulating my noble and learned friend and his department on the work that has been done so far in recognising the incidents of FGM that are practised in the name of religion and tradition but which are nothing short of abuse of young British girls and women. I look forward to his thoughts in summing up.

6.28 pm

Baroness Finlay of Llandaff (CB): My Lords, I congratulate my noble friend Lord Berkeley of Knighton on having secured this debate and the timely nature of it given that we are coming up to the summer holidays, when prevention must be a critical aspect of the way that we behave towards young girls who are at risk. We know, as has already been said, that the estimates are that between 60,000 and 65,000 young girls under the age of 17 are at risk in the UK. At the outset, I give credit to two junior doctors, Dr Erna Bayar and Dr Jessica Gubbin, who are trying to investigate the level of knowledge among healthcare workers here in London. They are both junior doctors at St Mary's, and they are here to listen to the debate today.

With regard to the report from the House of Commons and the figure of 137,000 victims in the UK, which has already been alluded to, it is worrying to note that only one-third of the cases referred to the Metropolitan Police—although there were no prosecutions—came from health and education. The Serious Crime Act 2015 has already been referred to, but it is worth noting that there seems to be enormous ignorance about the Act itself and the extraterritorial offences, as well as exactly what the duty of care is—in particular, the offence of failing to protect a girl from the risk of FGM.

A study from Birmingham, conducted through members of the Royal College of Obstetricians and Gynaecologists, was the first UK-wide survey of its nature. It revealed that one-fifth of respondents were not aware of the FGM Act, although over 93% knew that it was illegal in the UK—but there is a difference between it being illegal in the UK and the extraterritorial offence created in the Serious Crime Act. Appallingly, fewer than 10% of respondents were aware of the psychiatric morbidity in the victims of FGM. There did not seem to be any difference in the knowledge scores among different grades of staff, but it was worrying to read that there were lower knowledge scores overall among those who had been in obstetrics and gynaecology for more than 15 years. In other words, the younger generation had a greater level of awareness than the older generation, although it does not seem to feature in the curricula of all medical schools, which I suggest that it should.

In 2010, the Royal College of Midwives published a report in which it found that 70% of midwives were aware of UK law and one-fifth stated that it was illegal to resuture after birth, but there was little knowledge of where to refer a victim to, and only 15% of midwives reported having any training. To date,

I have not been able to find a survey of paediatricians. There needs to be education across all levels, in medicine, nursing, midwifery, social work, physiotherapy and so on. There are some very useful educational tools out there. Health Education England has produced one, and there are e-learning modules that healthcare professionals can sign up to. But there seems to be an ignorance about how to report within a trust, whether to go to the police, and exactly where the interface is with safeguarding and domestic violence.

The worrying figure from the literature is the large number who do not even know how to ask about FGM, do not know what to look for, do not know how to document it, and certainly do not know the complexities of the law. However, we are looking at children under the age of 17, in general, as victims, and we know that over 80% come from the populations of Somalia, Eritrea, Ethiopia, Yemen, Sierra Leone, Egypt, Mali and Sudan, even though, in some of those countries, FGM is deemed to be illegal. There is good WHO guidance out there, but it is not being accessed, and it was worrying to find a study of a small number of UK victims suggesting that, of 27 victims who had been mutilated to a varying degree, the majority of them severely, for 71% it had happened in some kind of medical setting, where it had actually been performed by a doctor.

Teachers in primary schools—and in secondary schools particularly teachers of the lower age groups—have spoken about recognising girls who come back after the summer holiday who are completely different to the lively, bright and happy child who they saw before the summer holiday started. They are pretty sure that these girls have been taken away. They are never the same again. They remain inhibited, depressed and mistrustful within the class. These are girls who will have been at risk.

Much has already been said about obstetrics, and in a previous debate I have spoken about some of the obstetric disasters that can happen to these women. They are at risk of HIV and hepatitis B as well as of pelvic infections and so on. There is another pointer that is often missed, and that is where girls fail to attend GP appointments and when mothers fail to take their daughters along for routine checks, even when they are babies. This failure to engage with the NHS and the general practice system seems to be linked to later becoming victims of FGM.

It is about time that the Government changed gear on this. I know there have been a lot of campaigns to raise awareness, that there are so-called cultural sensitivities around this and that there is a fear of being branded somehow racist or discriminatory. However, these are children, and this is child abuse. It is abhorrent, and we have a duty to protect the victims. We have those who are already victims, but we have to protect the victims of the future. Have the Government considered using Section 75 of the Serious Crime Act to produce further statutory guidance before the summer holidays to go to schools to require them to engage with the parents of children who are in the at-risk population, to open up the subject and the discussion and let it be known that this is an offence here and extraterritorially? There is a duty of care that rests on teachers as well as on healthcare professionals. That must be done before

the summer holidays, otherwise we will have another cohort of girls who have been terribly damaged by this deeply abhorrent practice.

6.37 pm

The Lord Bishop of Derby: My Lords, I, too, thank the noble Lord, Lord Berkeley, for introducing this vital debate and making the point that we need to keep this subject in the public domain to raise awareness and challenge people.

I want to offer some perspectives from my experience in Derby, where I operate as a bishop at grassroots level, to try to help understand why we are in this position and how we might best tackle things. Your Lordships will know that FGM is a very ancient practice going back to at least the fifth century BC. It was mentioned by Herodotus, especially in Egypt and Ethiopia, all that time ago. I remind noble Lords that FGM was practised until the 1950s in western countries as part of dealing with what was then called “female deviancy”. Things such as hysteria, epilepsy and lesbianism were dealt with by this horrific practice as an enlightened medical approach to those conditions. We have to recognise that it is not only deeply embedded in ancient culture, but until quite recently in the west, we have been implicated in using this barbaric method for medical reasons.

The noble Baroness, Lady Finlay, and the noble Lord, Lord Berkeley, have been very clear about the physical and psychological damage that FGM causes and about the sheer scale. I think I am right in saying that even today in Egypt, 90% of girls are cut between the age of five and 14, and in Yemen 75% of girls are cut before they are two weeks old. I mention those statistics because that shows how, as people move into Europe and our country, the culture is reinforced by new recruits who inhabit it. So it is not simply a matter of having a law and fighting back; the problem comes from all over the world into our midst as we speak.

There are four “reasons” in the background why FGM is and has been prevalent. One, as we have heard, is to do with culture and faith frameworks; one is to do with the idea of a rite of passage; one is to do with concepts of purity and virginity; and one is to do with the control of female sexuality. Of course the Government must take a lead in their policy and legal framework but, as someone who was involved in the legislation against slavery, I would observe that it is very difficult to express in law something that can work effectively. With slavery, as with this issue, prosecutions are very low. Therefore, besides the Government giving out a proper signal and benchmark that this is unacceptable and barbaric, we have to work at all kinds of other levels, especially the cultural and faith ones, if we are going to really try to turn the tide.

In the work I have been involved in with colleagues in Derby, there are a number of methods of trying to enable an enlightened discussion. We have much to learn because the areas concerned—gender, the role of women and sexuality—are ones that we in the West struggle with too. We have to be careful about saying that we have all the answers and other people just need to jump to our solutions; we can have fruitful discussions

with friends and neighbours from all kinds of cultures about gender, female sexuality and the role of women in society.

From my experience, there are four issues which I invite the Government to think about in terms of their own investment and encouragement. The first is appropriate spaces for conversations, the sharing of stories and the sharing of cultural faith hinterlands. How do we create the kind of space that is safe? Secondly, there is a very challenging issue which we in politics ought to know about: pace. There is a great danger of moving on to the offensive, which will cause a defensive reaction. We need a conversation and debate that is paced so that people can get into it, be influenced by it, participate in it and be changed by it. We have to be very careful about wagging a big finger, so that people do not just think, “Well, that’s western liberal culture, and we have something precious to preserve against it”.

The third thing that we have learned is that the official agencies—the law, safeguarding and local authorities—have limited resources and are regarded by people in a limited way. Therefore, although they must do the policing and act out the standards, they need the support of the informal grass-roots sector, where friends and neighbours can have conversations, listen to each other, share stories and raise aspirations of what is possible, right and desirable. Fourthly, we had a day conference in Derby and did all sorts of informal work with other churches, faith groups and community groups. As a result, we now have 10 community champions, providing community support and signposting at grass-roots level, looking out for the opportunities for those conversations, encouraging them and getting people in the circle, so that there can be genuine change that people have signed up for and committed to, rather than jumping to an abstract law that is thundering towards them.

So my simple question to the Minister is: how might the Government take seriously that important grass-roots work, which requires a particular kind of space, pace, community champions and informality, and which will have an enormous effect in reinforcing the formal law and systems? How might the Government encourage and invest in that work, which would achieve real change and pushback? How might that be part of the action plan that, as has rightly been said, needs to be put on the table?

6.44 pm

Lord Patel (CB): My Lords, I too thank the noble Lord, Lord Berkeley, for obtaining this debate, which concerns an important issue. As everybody knows, my background is in obstetrics. Because of that, I am involved in a charity that trains doctors and nurses in parts of Africa and the Far East to treat women with fistulas. I have seen the results of this barbaric and cruel procedure, which is sometimes carried out on young children. It results in not only immediate consequences but long-term consequences during childbirth, and it is horrendous to see, even at that stage.

I can talk about the medical consequences but I shall try to look at the legal side. I do so with some trepidation as a doctor taking on a lawyer of the

[LORD PATEL]

distinction of the noble and learned Lord, Lord Keen of Elie. He is well known for his incisive dissection of the law and for trying to defend what cannot be defended.

As has already been mentioned, France is a European country that has been successful in getting the maximum number of convictions and prosecutions—to date, about 50. The reason given is that it has a policy of regularly examining children at risk and children at school. Children at risk have more regular follow-up examinations. Examination is not mandatory, as the noble Lord, Lord Smith of Hindhead, said, but refusal involves a penalty involving social security benefits. That is the key reason that France has been successful, although other countries in Europe have also achieved certain levels of prosecutions and convictions.

I looked at a study of female genital mutilation in Europe and an analysis of a sample of cases. Considering that some 500,000 women have probably gone through this procedure, Europe has not achieved the levels of prosecutions and convictions that it ought to have done. None the less, some countries have been successful. The study that I looked at developed a comparative overview of recent FGM court cases within the EU, as well as making an exploratory survey of transnational movements in relation to FGM. The legal aspects of the court cases in Europe were analysed, and evidence of transnational movement to have FGM performed was also assessed. The data included court decisions, the migration background of groups from FGM-practising countries in the host countries, the process of FGM reporting, and stakeholders' proposals and opinions regarding FGM.

The report addressed the general legal context or framework for fighting FGM in the 11 countries that were looked at, including the United Kingdom and Switzerland, although of course Switzerland is not an EU country. It analysed the impact that the embracing of the due diligence standard could have as a consequence of signing the Istanbul convention, to which the United Kingdom is a party—albeit a more recent party.

Findings of FGM are modelled by disparities of public prosecution systems in Europe. Calling on state parties to apply the Istanbul convention and, accordingly, to modify existing provisions that limit their jurisdiction over FGM cases could have an impact on such procedural disparities. I have no doubt that the noble and learned Lord, Lord Keen of Elie, will challenge what I have just said—maybe not—but I am eager to hear his views on whether this disparity is in any way related to the laws and framework that we have.

The review of existing court cases shows the legal concepts of “error of prohibition” and “neglect of care” as novel approaches for both prosecution and prevention of FGM in Europe. As a consequence, the report points out that these aspects of due diligence, neglect of care and error of prohibition, ought to be further explored in future discussions—not primarily for their potential to result in more criminal court cases resulting in conviction but because of their potential power as preventive tools.

We know from the statistics we heard from several speakers that this crime is committed on a daily basis in the United Kingdom. We also know that the number

of these cases is increasing. What we seem to be lacking is the evidence necessary to bring about prosecution, and therefore conviction. We made a mistake with the first case that we brought for prosecution and conviction, which was the wrong case of a doctor who was merely repairing the damage done at birth. In many cases, I have done that, and I am sure on occasions it was for women who have had FGM carried out on them. We need to examine whether there is an issue with our law as it operates or with the way we go about collecting the evidence, knowing, as I just said, that this crime is committed on a daily basis.

In all 11 countries, FGM is legally banned either through specific criminal provisions, as we have, or provisions in the penal code that penalise bodily injury and mutilation. Will the noble and learned Lord, Lord Keen of Elie, comment on whether our legislation complies with that? As I said, the most atypical prosecution occurred in the United Kingdom, but something similar happened in the Netherlands in the case of a father, originally from Morocco, which is not an FGM-practising country, who was accused of having performed FGM on his daughter.

The other question is whether the noble and learned Lord thinks that creating a unified European legal framework might help in detecting more cases and bringing about prosecution. The common framework is established by the Istanbul convention, which originates not from EU law but from the Council of Europe. The system of protection is, on paper, rather standardised, but the practice in different countries varies. As I said, the disparities detected in the procedure for reporting or not reporting, as well as for prosecuting or not prosecuting, would decrease if all countries adopted the Istanbul convention into legislation. Perhaps the noble and learned Lord might comment on that.

Why can we not get the evidence required? What is the nature of the evidence that is lacking and means that prosecution, and therefore conviction, is not brought about? As has been mentioned, if we could successfully prosecute a case and get a conviction, that would be the biggest deterrent to reducing further cases.

6.52 pm

Lord Rosser (Lab): The noble Lord, Lord Berkeley of Knighton, has raised a seemingly simple and straightforward issue: namely, the contrast between the number of reported cases of female genital mutilation and the lack of successful prosecutions. The reason for that cannot be a lack of legislation—although how effective it is proving may be another matter—with the Prohibition of Female Circumcision Act 1985, the Female Genital Mutilation Act 2003 and, finally, the Serious Crime Act 2015, which extended the reach of the previous Acts including through mandatory reporting and enabling authorities, in respect of future offences, to prosecute parents for failing to protect their daughters regardless of whether the daughters have named them as complicit in their FGM. We await to see whether the Government agree that there is a problem and, if so, to what they attribute that difficulty.

Others have already highlighted potential reasons for the lack of successful prosecutions, including the National FGM Centre, which is a partnership between

Barnardo's and the Local Government Association. In the past year, the centre has provided specialist social care provision in six local authorities considered to have "low prevalence" of FGM. Despite this, the centre worked on 71 cases involving 70 women and 95 girls at risk of or affected by FGM. The centre says that a significant barrier to successful prosecutions is insufficient communication between professionals, particularly those working in health and social care. Although health professionals are under a duty to record cases of FGM, the centre says that the data show that only 17 GP practices produced any records at all in the last quarter of 2015.

The National FGM Centre goes on to say that low confidence among education professionals in asking sensitive questions and assessing risk also results in limited referrals to social care from education, and that when they do happen they often contain insufficient information to be processed by social care. It goes on to say that a number of social care professionals still feel uncomfortable in assessing FGM risk or using the tools available to them such as medical checks or FGM protection orders, with this being especially the case, once again, in "low prevalence areas".

Barnardo's has set out a number of recommendations for increasing the number of successful prosecutions, including more specialist training for front-line professionals, better information systems between key agencies, compliance with recording and reporting requirements by all professionals, specialist social care provision and lesson plans on FGM in schools.

The Local Government Association has also sent a briefing, setting out its views on the issue of prosecutions raised in this debate. It says that more than 125,000 women in England and Wales are estimated to be living with the consequences of FGM, and there are 60,000 girls born in England and Wales to mothers who have undergone FGM. Another analysis has said that approximately 10,000 girls aged under 15 who have migrated to England and Wales are likely to have undergone, or are likely to undergo, FGM.

The key points made by the Local Government Association on the lack of successful prosecutions are that FGM is often carried out on young girls who may not understand what is being done to them, or if they are, may be unwilling to testify against close family members; and that, in the overwhelming majority of cases in the UK, the FGM has been carried out before the women and girls arrived in this country.

The Local Government Association says that FGM will be eradicated in the longer term only by changing practice and custom in communities where it happens. It says that through the National FGM Centre programmes are being rolled out across the country to shift attitudes and behaviour towards better prevention of FGM. As has been said, FGM is most often claimed to be carried out in accordance with religious beliefs, but it is not actually supported by any religious doctrine.

There is a rather different emphasis on the reasons for the lack of successful prosecutions between the National FGM Centre and the Local Government Association, and we wait to hear the Government's views on this issue. There is no doubt, however, that

encouraging and promoting change in practice and customs will be crucial, and it is far better to succeed in preventing the offence happening in the first place than it is to prosecute after it has happened. Equally, in the light of the law of the land, action needs to be taken that will help in the shorter term to address the issue of FGM, which is a serious crime, and the lack of successful prosecutions. The lack of successful prosecutions hardly acts as a disincentive to those who commit or aid and abet this serious crime.

The Local Government Association has referred to the work of the Bristol FGM Community Development project, which has led to the development of appropriate services in the community and to an increase in referrals to the police, with a 400% increase in potential FGM referrals from 2009 to 2014. Does the Minister have any information on the outcome of this increase in referrals to the police, based on the work done in Bristol?

In its report last year on FGM, the House of Commons Home Affairs Committee was quite blunt in its comments, saying that,

"it is still the case that there have been no successful prosecutions for FGM in the United Kingdom in the last 20 years. This record is lamentable".

Further on in the report, the committee said:

"There seems to be a chasm between the amount of reported cases and the lack of prosecutions. Someone, somewhere is not doing their job effectively. The DPP informed the Committee that she could only prosecute on the basis of evidence, the police said that they could only investigate on the basis of referral, and the health professionals told us that they could not refer cases because their members were not fully trained and aware of the procedure. While agencies played pass the parcel of responsibility, young girls are being mutilated every hour of the day. This is deplorable. We wish to see more prosecutions brought and convictions secured. This barbaric crime which is committed daily on such a huge scale across the UK cannot continue to go unpunished".

The Home Office Minister in the Commons has said that lead FGM prosecutors have been appointed for each Crown Prosecution Service area and have agreed joint FGM investigation and prosecution protocols with their local police forces. Have any of these lead FGM prosecutors yet authorised a prosecution for FGM? The same Minister also said last month that the Government accepted that tackling FGM needed a co-ordinated response from a range of professionals, including teachers, health professionals, social workers and police, and that updated multiagency guidance on FGM had been published to support compliance. The Minister also said that free FGM e-learning had been made available for all professionals; that the Department of Health's FGM prevention programme was seeking to improve the response of the NHS to FGM; and that the Department for Education was funding the Local Government Association and Barnardo's to develop a centre of excellence and outreach to support local authorities. On the face of it, that all sounds good.

However, how much co-ordination is there at government level, bearing in mind the number of different departments involved, each with their own programme or projects for their own specific areas? What is the total amount of additional money that is now being made available, and to whom, to address the incidence of FGM and the lack of successful

[LORD ROSSER]

prosecutions? As far as the police are concerned, is it ultimately a matter for a chief constable or a police and crime commissioner to decide what resources and priority will be directed to pursuing FGM referrals within their force? Do the Government agree with the recommendations of Barnardo's for increasing the number of successful prosecutions for FGM, to which I referred earlier? If so, are the Government saying that the steps they have taken already will deliver those recommendations? When do the Government anticipate seeing a reduction in the incidence of FGM? When do they expect to see successful prosecutions in the light of the legislative and other steps that have been taken? Finally, is there any hard evidence yet that the legislative changes in respect of FGM introduced under the Serious Crime Act 2015 are beginning to have an impact?

7.03 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I thank the noble Lord, Lord Berkeley, for securing today's debate on this important subject.

FGM is an extremely serious and harmful crime. Its victims deserve to receive support and legal redress. Offenders should be punished and potential perpetrators must be deterred from committing this appalling offence. A conviction for FGM would send a strong message. It would demonstrate unequivocally this country's absolute intolerance of the practice.

Before I turn to the issue of prosecution and convictions, I wish to say something about the prevalence of FGM in the United Kingdom. The collection of the statistics to which the noble Lord referred was introduced as part of the Department of Health FGM prevention programme and represents the first time these data have been collected across the NHS in England.

As the noble Lord noted, these statistics are providing important information about the prevalence of FGM which can be used to inform the commissioning of services to ensure that victims receive the support they need. The latest figures published on Tuesday show that 1,242 women with FGM were seen by the NHS between January and March of this year. In the detail we can see that the vast majority of these cases are in adults who were both born and underwent FGM overseas. This is consistent with previous reports. As noble Lords will recognise, that means that these crimes are unlikely to be eligible for prosecution under the law in England and Wales. While this may mean that the perpetrators of these acts cannot be brought to justice here, the statistics are helping to ensure that those who have undergone FGM both receive the care they deserve and are educated on the legality and health consequences of FGM.

Of course it is abhorrent that any woman or girl should undergo FGM. Any UK national or resident who carries out, facilitates or allows FGM to happen should be punished accordingly. Indeed, whether or not encouraging FGM could be a criminal offence was mentioned. Of course it could be under the Serious Crime Act. However, we must not underestimate the difficulties in obtaining a conviction. FGM is a hidden

crime that is carried out within families and where the victims are often young children. These young girls are understandably reluctant to speak out for fear of the impact that this could have on their family. Even when the crime does come to light, professionals may hesitate to make a report, fearing what the consequences may be for the patient or pupil. There may also be challenges for the police and prosecutors in ensuring sufficient evidence for a crime that may have been carried out many years ago. These are significant barriers but we must do everything we can to overcome them.

To help to do this, last year we strengthened the law through the Serious Crime Act 2015, based on learning from cases referred to the police and the Crown Prosecution Service. Last October we introduced a new mandatory reporting duty which requires regulated health and social care professionals and teachers in England and Wales who identify cases of FGM in girls aged under 18 to report these to the police. This duty gives professionals the confidence to report FGM without hesitation. It should therefore ensure that more cases reach the police so that they can be investigated and ultimately prosecuted.

Fear of reprisal can be a significant barrier, making victims extremely reluctant to engage in the legal process. This is why we have introduced lifelong anonymity for the victims of FGM. We have also widened the scope of the legislation so that extraterritorial jurisdiction extends to habitual as well as permanent UK residents. Furthermore, we have introduced a new offence of failing to protect a girl from the risk of FGM which extends the reach of the law to cover parents or guardians who do not adequately protect their children from undergoing FGM. The Government's message could not be clearer: FGM is child abuse. There is no excuse for allowing it to happen or for failure to take action when it is uncovered.

Securing prosecutions is important, but at the heart of any case brought to trial is a victim—a victim who has not been protected from harm. The Government are therefore committed to preventing this crime happening in the first place. That is why we introduced the new FGM protection orders to safeguard those at risk. A question was raised as to the number of those orders that have been secured. From their introduction in July 2015 to December 2015, 32 such protection orders were made to protect girls from harm.

It is also important that professionals know how to identify the risk, share information, and have the knowledge and confidence to take appropriate safeguarding action. We have made significant progress in helping to achieve this. Since 2014, more than 30,000 professionals across all agencies have completed the Government's free FGM e-learning that was referred to earlier. In April of this year we published new multi-agency guidance which we have placed on a statutory footing for the first time. That guidance provides information on prevention, risk and safeguarding, and sets out the expectations on statutory organisations to adequately prepare and support their staff to tackle FGM. So progress is being made.

To further support the response of health professionals, the Department of Health's £4 million FGM prevention programme is engaging with healthcare professionals

across England through roadshows, e-learning, guidance, and awareness-raising materials. As part of this, a new IT system is being introduced across the NHS to allow clinicians to note on a girl's record that she is potentially at risk of FGM. To ensure that the social care response is as effective as it can be, the Department for Education's innovation programme has provided up to £2 million of funding to Barnardo's and the local government associations for the National FGM Centre which is working to improve the social care response.

Ultimately, we will not stop FGM unless we change attitudes. To do that we have to raise awareness and share good practice. In that regard, the Home Office's FGM unit is carrying out an ongoing programme of outreach across the country. To date, the unit has spoken at more than 80 events. To dispel the myth that FGM is a religious requirement, the Department for Communities and Local Government has secured the signatures of more than 350 faith leaders to a declaration stating that FGM is not condoned by any faith.

The Government are taking this matter extremely seriously, and we are working right across government to strike at the considerable problem that exists due to ignorance, false religious belief, and so on. The Government have taken significant steps forward in our ambition to end FGM within a generation. We know that more work is needed. For example, last December, Her Majesty's Inspectorate of Constabulary found that the police response to so-called honour-based violence, including FGM, is not as good as it could be. We are working with the police, CPS and others to address this, including as part of wider work to improve the police response to vulnerable people. Progress is being made. Many more brave women are speaking out against FGM and many more professionals are taking action to safeguard and support those affected. We have seen an increase in referrals to the Crown Prosecution Service. Prior to 2010 it had received no cases but since then 22 have been referred, and we are confident that that trend will continue.

With regard to the number of referrals that may result in prosecution, I can only say that they are under consideration for the purposes of further investigation, but it would not be appropriate to cite particular numbers that are the subject of consideration for actual prosecution at this stage. While our aim is for all these changes to help secure a successful series of prosecutions, it is more essential that we prevent FGM happening in the first place, and work ultimately to end the practice altogether.

I turn to points and questions raised by noble Lords and will deal with them as relatively quickly as I can. Indeed, if there is any question that I do not address, and I am reminded of that fact, I will of course be prepared to write. The noble Lord, Lord Berkeley, asked about the steps the police had been taking with regard to reports of FGM. Indeed, the noble Lord, Lord Rosser, cited the example of Bristol. I do not have the figures in respect of Bristol but I have figures of reports for the West Midlands Police—an area where this is a particularly prevalent problem. We know that there has been an increase in the number of reports to the police in the West Midlands in the period from January to November 2014, from about 25 reports in previous years up to 118, so clearly some

progress is being made. Of course, we accept that more progress has to be made. As was noted, there is now a lead FGM prosecutor appointed to each CPS area. They have agreed protocols with local police forces, setting out the arrangements for investigation and ultimately the prosecution of FGM cases.

A reference was made to one prosecution. The noble Lord, Lord Patel, said it was the wrong case—I could not possibly comment. It resulted in a not guilty verdict but that is another matter altogether. Eventually, we are beginning to move the rock; we are beginning to get these cases into court and, of course, a successful prosecution would send an important message. However, prosecution is not an end in itself. The practice has to be rooted out, not the punishment.

Reference was made to the fact that some successful prosecutions had been made in France. My noble friend Lord Smith mentioned, I think, the figure of 43; the noble Lord, Lord Patel—I think referring to the EU report on analysis of court cases in 11 countries—gave the figure of 50. I observe that those cases go back to the 1980s and 1990s, so there is quite a history there. As far as I know, there has been only one recent successful prosecution in France of one cutter, but it involved about 18 different children and their parents. However, in response to points raised by the noble Lord, Lord Patel, France has an entirely different system of prosecution and investigation, and, indeed, entirely different systems and standards of evidence. In addition, it has a more or less mandatory system of examination. When it is said that it is not mandatory, in the event of a refusal there is a withdrawal of benefits; we would not contemplate such a mandatory system. We could not have such a wide-ranging system of mandatory examination for all girls. If we then sought to target it, we would face the issue of discrimination. We do not consider that the way forward.

The noble Lord, Lord Patel, also mentioned the Istanbul convention. We have signed the convention, but we have not yet ratified it. There are certain technical issues that we have to address before we proceed to ratification. The noble Lord, Lord Rosser, mentioned the position of Barnardo's and the local authority organisations. As I indicated, we are supporting them financially and liaising with them.

On the question of learning from other jurisdictions, the Home Office's FGM unit, set up in 2004, leads the Government's policy on FGM. That includes approaching officials in other countries to share learning and best practice. Indeed, we hosted an EU learning forum, funded by the European Union Commission earlier this year, to address the issues surrounding FGM. A process is going on in Europe to try to learn from those who are perhaps slightly ahead of us.

My noble friend Lord Smith mentioned other forms of violence against women and girls, such as breast ironing. Clearly, that is a form of child abuse. Our cross-government strategy on violence against women and girls, published on 8 March, sets out our approach to these issues. We continue to be concerned with addressing and dealing with them.

The noble Baroness, Lady Finlay, raised the question of further awareness in the approach to the summer vacation. In fact, we have recently pursued further

[LORD KEEN OF ELIE]
steps on awareness. To raise awareness, we have been carrying out an ongoing programme of outreach to local areas, professionals, and community groups. That has been made available on the GOV.UK website. Furthermore, on 1 April this year the Government published a statutory multiagency guidance on FGM, setting out the expectations on all professionals, including teachers, regarding prevention of this terrible crime.

I will not detain noble Lords further, as I keep being passed notes with “Time” on them. Time is relative, but time has come. If there are questions I have not answered, I am happy to write to noble Lords. I am obliged to your Lordships.

House adjourned at 7.19 pm.

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