Vol. 773
No. 17

Tuesday
28 June 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Tuesday 28 June 2016

2.30 pm

Prayers—read by the Lord Bishop of Chelmsford.

Court Proceedings: Written Transcripts

Question

2.37 pm

Asked by ***Baroness Berridge***

To ask Her Majesty's Government what steps they are taking to ensure that there is open justice, and in particular open access to transcripts of proceedings in open court, in the light of the availability of digital technology.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, we recognise the importance of a transparent and open justice system. Transcripts of proceedings in open court are available on request, although safeguards are in place to protect vulnerable parties. Our reforms to courts and tribunals will make much better use of digital technology to ensure a more efficient, proportionate and accessible system for all.

Baroness Berridge (Con): My Lords, I am grateful for my noble friend's Answer, but on 27 April he stated that Her Majesty's Government would make court proceedings more accessible and make it easier for the public to understand court proceedings. In April this year, I made a request via the Library for the sentencing remarks in a hearing in open court, and the cost per hour turned out to be £144 plus VAT. Will my noble friend undertake not only to use digital technology but to ensure that the Ministry of Justice gets value for money and that our courts are accessible? On investigation, it seems that numerous companies are operating to record proceedings in numerous parts of the country, so there also seems to be scope for economies of scale in this area.

Lord Faulks: I am grateful to my noble friend. She is quite right: she drew the ministry's attention to her difficulties. There are a number of contracts in existence, and some of them have been extended at various times. The ministry is currently progressing a re-procurement of all court and tribunal transcription services, and new contracts are anticipated by the end of 2016. The cost of transcripts depends on the length of the hearing. There is a difference between sentencing remarks, by which we mean the remarks accompanying the judge actually passing sentence, and the sentencing hearing, which can be very much longer and cost something like £800 or £900 per day in the Crown Court and rather more in the High Court. If you can refine your search, it tends to be very much cheaper.

Baroness Coussins (CB): My Lords, will the Minister guarantee that in cases where interpreters are required in courts, the courts will continue to rely on human beings, not the idiosyncrasies of Google Translate, which has been relied on in some cases?

Lord Faulks: The noble Baroness makes an important point, and I will take it back.

Lord Marks of Henley-on-Thames (LD): My Lords, any member of the public can walk into court to hear proceedings being conducted. That is at the heart of open justice. I have long believed that allowing proceedings to be televised is the natural extension of that principle—subject of course to safeguards, in particular for witnesses. Does the Minister agree that the limited televising of proceedings to date has been a success and should be further extended?

Lord Faulks: There has been some televising of proceedings. The Supreme Court, for example, even has its own website. I do not think it is doing very well in the ratings war, but it provides accessible opportunities to see what goes on the courts. The Court of Appeal Criminal Division is also now available to the public, and a pilot is proceeding on the Crown Court and sentencing remarks. While of course the Government are very much in favour of open justice, we have to proceed carefully in this area, perhaps because of the risk of people being diverted in the way they perform in court, whether they be witnesses or even—dare I say?—lawyers thinking about how they will be perceived.

Lord Howarth of Newport (Lab): My Lords, if *Hansard* can be made available online free to the public, why cannot court proceedings?

Lord Faulks: An accurate transcript involves expense, and expense is incurred by those who provide an accurate—and it must be absolutely accurate—transcript. A transcript is available, but it is not automatically available. It requires transcription from a recording. Depending on how quickly you need it and how much you need, it will be more expensive.

Lord Elton (Con): My Lords, does not a hard-copy record of all proceedings have to reside in the court? If that is the case, why is it so expensive to print another copy, as is done with *Hansard*?

Lord Faulks: There is not, in fact, a printed record of proceedings. There is a recording, which is then transcribed. It is the cost of transcription that we are concerned with.

Lord Beecham (Lab): My Lords, do the Government recognise that not everybody has access to digital technology? What steps are they taking to deal with that aspect of the matter? Is not the more important question that of access to justice generally, with the increasing number of unrepresented parties appearing in courts making for delays in the system and, apparently, an increasing reliance on McKenzie friends? Do the Government really think that is the way to promote access to justice?

Lord Faulks: That is rather outside the Question, but it is none the less an important point. On accessibility, if there is a transcript and, in the judge's view, it is appropriate, it can be obtained at public expense. In certain circumstances, there can even be legal aid to obtain a transcript. It is most important that judges and, more importantly, litigants are given assistance.

[LORD FAULKS]
We still have a system of legal aid. McKenzie friends are somewhat controversial, but they can, in appropriate circumstances, provide great help to litigants and the court.

Baroness McIntosh of Hudnall (Lab): My Lords, I hope the Minister will forgive me if I have misunderstood what he said, but in response to the noble Lord, Lord Elton, he said that a recording is made and then a transcript. If a transcript has to be made in any event in order for court records to be complete, surely it must be possible for copies of that transcript also to be made available, or have I failed to understand the process?

Lord Faulks: I am sure the lack of clarity was mine. There is a recording in courts of record, as defined by statue, which include Crown Courts and the High Court, but not, for example, magistrates' courts, whose proceedings are not automatically transcribed. There will not automatically be a transcript, although basic information about a case can be obtained by anybody.

Baroness Gardner of Parkes (Con): Will the Minister tell me the position when documents go missing? I am referring not only to court proceedings but to care home questionnaires and decisions where records made by practitioners are suddenly no longer available? Is there not some way of ensuring that they are kept on public record?

Lord Faulks: All care homes should keep relevant documents, and if there is a dispute involving the care home it has an obligation to disclose all relevant documents. Where the care home is run by the state, the state has such an obligation. Even it is not run by the state, I would expect all relevant documentation to be available.

Enslaved Africans: National Memorial
Question

2.45 pm

Asked by ***Lord Oates***

To ask Her Majesty's Government what plans they have to reconsider their decision to deny funding to the proposed memorial for enslaved Africans in Hyde Park.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, there is a tradition of funding new memorials through public subscription or private donation. This approach in no way diminishes the importance that the Government place on commemorating the victims of the transatlantic slave trade. We remain willing to work with Memorial 2007 to help it to maximise funding opportunities to ensure that the slave trade and slavery are remembered.

Lord Oates (LD): I am grateful to the Minister for her Answer, but she is aware that there are many memorials up and down this country that receive funds directly from the Government. I very much hope that when we have further discussions—and I am grateful to her for the discussions that we have had already—we will get a real financial commitment from the Government to this long-overdue national memorial. Is the Minister aware that £20 million, the equivalent in today's money of £16.5 billion, was spent by this Parliament on compensating slave owners, including many who were Members of this House? Will the Minister please impress upon her ministerial colleagues how utterly unacceptable it is that successive Governments have refused to provide a single penny to fund such an important national memorial, and will she please now ensure that this shameful failure is put right?

Baroness Williams of Trafford: The noble Lord is right that there are many events in our history, including probably in Parliament, that we should be deeply ashamed of. It is important to find a way in which we can move forward and remember those events and pay tribute to the people who were victims of them. We now have the Modern Slavery Act, which ensures that some of the practices that are happening now do not happen again. We met yesterday and I agreed to work with him to try to identify funding to enable the memorial to happen.

Lord Alton of Liverpool (CB): My Lords, the Minister is surely right to remind us that the 12 million people who were transported during the transatlantic slave trade were not the end of the story; the United Nations estimates that today some 30 million people are enslaved worldwide as a result of modern forms of slavery. She points rightly to the Modern Slavery Act, a showpiece Act piloted through both Houses of Parliament with all-party and cross-party support. She will be aware that on 8 July my noble friend Lady Young of Hornsey has a Private Member's Bill—it will be the first to be considered on that day—dealing with supply-chain transparency. Can the Minister promise us that the Government will look at that Bill sympathetically? That would be a way to eradicate this continuing modern curse, 200 years after William Wilberforce.

Baroness Williams of Trafford: There have been discussions about the issue that the noble Lord pinpoints; as well as the obvious forms of slavery, its supply-chain aspect is not to be dismissed. I do not think I will be involved in that Bill, but certainly the supply-chain aspect of slavery is a very important one.

Lord Tebbit (Con): My Lords, does my noble friend recollect—actually, she probably does not—that there was no memorial in London to those who fought in the Battle of Britain until I as chairman, and my good friend Maurice Djanogly as my deputy, raised the funds, which did not include any from the then Government, to erect the memorial that now stands on the Embankment? I hope it will not be thought that one memorial is more deserving of state funding than another.

Baroness Williams of Trafford: My noble friend is right that many memorials remain unerected to causes that we should remember, and I praise him for the efforts that he went to. That is precisely what I and the noble Lord, Lord Oates, will try to do together: to identify where funding can come from, both private and public, to bring this memorial forward.

Baroness Lawrence of Clarendon (Lab): My Lords, many in your Lordships' House know about the transatlantic slave trade and that many slave owners were from this country. There has been much controversy in recent months about historic memorials, including statues to controversial figures such as Cecil Rhodes. Does the Minister understand that the best way to tackle such controversy is to ensure that memorials in this country truly reflect the history of the communities in the UK, and to think again about supporting the Hyde Park memorial to enslaved Africans by providing funding? Recognition of this project is long overdue.

Baroness Williams of Trafford: I hope the noble Baroness will agree that I partly answered the question in reply to other noble Lords who made the point previously. However, she is right that this country's memorials and statues, and some of our institutions, should reflect our history whether it is palatable or not.

Baroness Benjamin (LD): My Lords, as other noble Lords have said, we recognise the importance of places such as the International Slavery Museum in Liverpool. However, does the Minister understand that it would be an affront to many if such a significant part of our history were not to be acknowledged in our capital city with a memorial to the millions of enslaved African people, including my ancestors, who helped to enrich this city? They strongly feel that 300 years of our history is being swept under the carpet. That is especially true of our young people, who need to feel that they are very much part of our rich history and should be acknowledged.

Baroness Williams of Trafford: I have been to the International Slavery Museum in Liverpool—I do not know whether the noble Baroness has been, but I recommend it; it is a very good museum indeed—and I know that we have contributed to a slavery memorial in New York. I say again that I will work with the noble Lord to try to identify funding so that this memorial might be possible.

Baroness Berridge (Con): My Lords, will my noble friend take back particularly the context of this request for a memorial in Hyde Park? Many of my friends in the British black community have brought to my attention the sensitive issue that many of the memorials and public buildings which attract people to visit the United Kingdom were built with funding that came from the profits of this trade. It is therefore particularly appropriate that a memorial should be located here in London, to provide some kind of counterbalance and recognition of that fact.

Baroness Williams of Trafford: It is a bitter irony that Liverpool was built largely on slavery—every aspect of every old building from that time reflects it—so perhaps my noble friend has a point about using an area which has significance for much wider populations. However, we must not forget modern day slavery in this context. We must move on to looking at things that are happening today but that go unseen and unheard in our society. I pay tribute to William Wilberforce, whose efforts for 27 years helped to stop this terrible trade.

Public Schools: Charitable Status

Question

2.53 pm

Asked by ***Lord Lea of Crondall***

To ask Her Majesty's Government whether they will hold a consultation on the effects of the charitable status of public schools on equality of opportunity in Britain.

Baroness Evans of Bowes Park (Con): Equality of opportunity is very much a concern of the independent sector. The Independent Schools Council census this year showed that £728 million of assistance was given by schools for fee costs. Of that, around £370 million was means tested to help lower-income families access independent school provision. Independent schools are playing their part, but we want all schools to be excellent, which is why the Government are continuing with our education reforms so that social mobility is improved across the board.

Lord Lea of Crondall (Lab): First, on a narrow legal point, although the courts have deemed that there must be more than minimal benefit to the poor for a school to get charitable status, this is not left to the public interest to decide but left to the trustees—who are probably public schoolboys—to decide. One-nation Britain is not looking its best at present, and charity begins at home. I will quote some statistics on the composition of our own House of Lords. I think that the House would like to hear the data. Some 62% of Members of this House—79% of Conservative Members, 76% of Cross-Benchers and 34% of Labour Members—went to a public school.

Noble Lords: What about Lib Dems?

Lord Lea of Crondall: I do not expect the House to want to listen. Ought we not to have an inquiry into all the evidence?

Baroness Evans of Bowes Park: As I said, 93% of pupils are in the state sector. This Government have been pursuing radical education reform to ensure that all parents have access to a good school. I am sure that the noble Lord will be delighted to hear that since 2010 1.4 million more children are now in a good or outstanding school. I am sure that he will also be delighted to know that more disadvantaged young

[Baroness Evans of Bowes Park]
people are going to university than ever before. We want to make sure that all young people have the best chance in life and that is why our reforms to the state education sector are so important.

Lord Lexden (Con): Is it not the case that independent schools disburse far more in means-tested bursaries than they receive as a result of charitable status? Is not the right way forward to concentrate on expanding partnerships between independent and maintained schools? More than 1,250 are now listed on the new Schools Together website, which I commend to the noble Lord, Lord Lea of Crondall.

Baroness Evans of Bowes Park: My noble friend is absolutely right: 87% of ISC member schools are in some form of partnership with the state sector, and that often takes more than one form. For instance, 991 partnerships focused on sport, 848 on academic subjects, 616 on music, 571 on drama and 892 on other aspects, such as the governance of state schools. We should encourage our schools to work together to deliver the best for all young people.

Lord Wallace of Saltaire (LD): My Lords, some of us have been actively encouraging partnerships between independent schools and the state sector. Does the Minister agree that best practice is excellent but that, sadly, there is a long tail of independent schools where the practice is not so good. Those schools need active encouragement to provide public benefit that justifies charitable status in terms of serving the broader local and national community.

Baroness Evans of Bowes Park: The noble Lord is right: we want to encourage partnerships. That is why the ISC's 2016 census has included an expanded set of questions about partnership. These data will be shared in aggregate and non-attributable form with the Charity Commission, which over the summer will carry out research into independent school engagement with partnerships, working across sectors, so that we can learn from best practice and see exactly what is going on.

Baroness Hayter of Kentish Town (Lab): My Lords, when we debated the Charity Bill, as a result of our amendments the Charity Commission agreed to look at this issue, because public schools have charitable status only by virtue of providing benefit to the public. Can the Minister give us an update on the Charity Commission's review, which it undertook to conduct as a result of our amendments, and let us know what its current thinking is?

Baroness Evans of Bowes Park: I will need to get back to the noble Baroness about that review if it is not the same as the research that I have just mentioned—a report that will be produced over the summer and then published. I know that the ISC and the Charity Commission have encouraged independent schools to disclose in their annual reports the nature and detail of their public benefit, working through partnerships and collaborative projects. But I will write to the noble Baroness if I have not answered her question.

Lord Hodgson of Astley Abbotts (Con): I remind the noble Lord, Lord Lea of Crondall, that the public benefit test on which the charitable status of public schools depends was introduced by the Labour Government. If he requires any further information about it, he can just pop two rows down to speak to his noble friend Lord Bassam of Brighton, who was the Minister on the Bill.

Baroness Evans of Bowes Park: As I said, at the moment there is very good partnership working between independent and state schools. For instance, staff at Oundle School teach swimming lessons to pupils from 13 local primary schools; Oakham School, along with two state schools, has opened a new sixth form in Rutland and has helped to develop its A-level courses and offer facilities; and the Stem Academy at Latymer Upper School runs sessions for year 7 and 8 pupils at local state secondary schools. A lot of good work is going on. I think that the best way to ensure that all young people have a great education is to all pull together and make sure that all parents and children have access to a good local school so that young people can achieve what they want.

Lord Campbell-Savours (Lab): My Lords, why not remove charitable status and introduce provisions in the Finance Acts for tax relief? We cannot call public schools charities: it makes a mockery of charity law.

Baroness Evans of Bowes Park: The removal of charitable status would both reduce schools' ability to help lower-income families and, indeed, remove their legal incentive to provide help—so we do not believe that that is the best course of action.

EU: British Nationals Resident Overseas

Question

3 pm

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government what advice they plan to provide for British people who are currently living and working in, or have retired to, other European Union member states.

Baroness Miller of Chilthorne Domer (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as the co-owner of a vineyard, wine business and house in France.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, as the Prime Minister has said, there will be no immediate changes in the circumstances of British citizens living in the EU, for European citizens here or in the way that our people can travel. The Government have committed to ensuring the best possible outcome for the British people now that the decision has been made to leave the EU.

Baroness Miller of Chilthorne Domer: I thank the Minister for her reply. I am sure that the 1.2 million British nationals living in the European Union will be pleased to hear that there will be no immediate change. However, two years is no time to relocate your business, take your children out of school, relocate to a different country and buy a new home. Will this country negotiate on a bilateral basis with each of the 27 member states or will they negotiate en bloc? Secondly, in the new unit to be based in Whitehall, which was also mentioned in yesterday's Statement, will there be a member of staff with special designated responsibility for this area of work?

Baroness Anelay of St Johns: My Lords, clearly, those who are negotiating the terms of our relationship with the European Union will do that work, with a very firm view about the importance of preserving the rights of British citizens wherever possible. I feel sure that whoever is the next leader of the Conservative Party and Prime Minister will put first and foremost in his or her mind the importance of bringing the country together and getting the best deal possible. Therefore, I cannot give any details in answer to the first part of the noble Baroness's question. On the unit that is being set up, the Prime Minister and my noble friend the Leader of the House made it clear yesterday that the brightest and best from across government, but also from outside government, will be brought together to ensure that ground work is done in order that, when there is a new Prime Minister and new Government, the negotiations can go ahead.

Lord Foulkes of Cumnock (Lab): My Lords, although I agree with the points made by the noble Baroness, Lady Miller, will the Minister agree that if we go ahead and withdraw from the European Union, it would be quite wrong for someone who lives, let us say, in the south of France, to continue to be a Member of this House?

Baroness Anelay of St Johns: My Lords, I do not think that this House has ever taken action against noble Lords because of the country in which they live. That introduces a new prospect, but it would be a matter for the House and not for the Government.

Lord Hamilton of Epsom (Con): My Lords, does there need to be any negotiation to protect the interests of either British people living in Europe or Europeans living in the United Kingdom? Surely they are protected by an international treaty as it stands today.

Baroness Anelay of St Johns: My Lords, although I know that my noble friend asked that question in very good spirit, I am afraid that I cannot give him the good news that he would like. There is the question of acquired rights, which is a very complex legal matter and not straightforward. We would need to rely upon negotiations to give certainty to those who do, after all, need and deserve it.

Lord Collins of Highbury (Lab): My Lords, I want to pick up on exactly that point. It is not only the markets that are extremely worried by the uncertainty. People's lives are affected; people who have lived in this country for 20 years—like my husband, who woke up on Friday morning thinking that his country had rejected him. That creates a fear, and we need to ensure that we respond to that fear. There is another point: British people who live in mainland Spain in Gibraltar are going to be even more worried. We need clear guidance to ensure that people are not anxious and can get on with their lives and work.

Baroness Anelay of St Johns: I entirely agree with the noble lord and that will be the thrust of the work to be done by the unit being set up. I feel sure it will be at the forefront of the minds of those who carry out the negotiations later this autumn.

With regard to Gibraltar, my colleagues in the Foreign Office have of course been in contact throughout with the Gibraltarian Administration, and we have given every indication of full support for their sovereignty and that we will not let them down.

Lord Hannay of Chiswick (CB): My Lords, does the Minister not recognise that the assurances given by the Prime Minister are a bit of a wasting asset, not because he will no longer be Prime Minister but because, as the negotiations go ahead, the people we are talking about will become increasingly anxious about the outcome? Will the Minister try to ensure, first, that these people are consulted when the Government are making up their position—it is not too difficult to have consultations and it will help—and secondly, that they are kept informed at each stage of the negotiations so that the rather complex arrangements they may have to make to take care of their interests are done in full knowledge of what is happening?

Baroness Anelay of St Johns: The noble lord makes an important point and anybody who carries out the negotiations will have in mind that, in bringing the country together, it will be vital to take account of the interests of those so directly affected. In the interim, as soon as the decision was known on Friday, the Foreign and Commonwealth Office ensured that there was a system whereby anybody who phoned in with concerns about these matters was able to get an answer and a reassurance at that stage.

Lord Wigley (PC): While it is relatively clear, at least as far as England and Wales are concerned, what the outcome of the referendum was and that the Government have no choice but to abide by that, what was far from clear last Thursday was the alternative that was on offer. What proposals do the Government have for bringing definitive statements to both Chambers of Parliament, and how will a decision be taken on the alternative that should then be taken forward?

Baroness Anelay of St Johns: That specific procedure will clearly be a matter for consideration by the new Government but in the meantime, as my noble friend the Leader of the House made clear yesterday, there is a system whereby parliamentarians may contribute their views. Indeed, she pointed out that there will be

[Baroness Anelay of St Johns]
ways in which we hope Members of this House will use their expertise to inform the process—beginning, I believe, next week with a debate.

Cultural Property (Armed Conflicts) Bill [HL]

Committee

3.07 pm

Clause 1 agreed.

Clause 2: "Cultural property"

Amendment 1

Moved by ***Lord Stevenson of Balmacara***

1: Clause 2, page 1, line 18, at end insert "and, consistent with this definition, "cultural property" shall be interpreted in the widest sense in order to reflect the understanding of cultural property in the modern age"

Lord Stevenson of Balmacara (Lab): My Lords, it may be helpful and to the advantage of the Committee if I explained a couple of points before I get onto the meat of the amendment before us. First, we already have said on the record this is a Bill that we support and we will do what we can to ensure its swift passage through to the other place. However, that is not to be done at the expense of proper scrutiny of the issues which are raised here. We have a Bill that deals with very serious matters. It arises from unpleasant incidents and difficult issues that occurred in previous times of war. We are all in debt to those who worked in the previous Labour Administration and the current Government to bring forward the proposals that will finally allow this country to sign up to the Hague convention of 1955.

I have expressed my wish to make sure that we move forward as quickly as possible. Noble Lords may find that at variance with the fact that we have tabled some 30 amendments. However, the rationale for that is that, given that this very important document starts so long ago in history—in fact, it starts from a convention in Paris in 1907—we think that there are points at which it may be helpful for both this House and the wider world to understand what the Government's current thinking is. The essence of the Bill is to bring into law drafting that took place some time ago. In putting down a number of amendments, covering most parts of the Bill, we are seeking not to detract from what is said in the Bill but to invite the Minister to respond in a way that will be helpful to those who have to interpret and implement the Bill when it is finally an Act and when we finally sign up to the convention.

The first amendment deals with the topic of culture, which is at the heart of much of what we do in daily life, even though it does not necessarily form much of our public discourse and debate—perhaps not as much as I would like. Nevertheless, as I mentioned, the history of the Second World War brought into sharp focus the problems that a lack of regard for culture in all its forms can have for those prosecuting, for good and persuasive reasons, the arts of war. The meat of this Bill is that it sets out a requirement on combatant countries engaged in warfare to provide, in advance of any action, a list of all the important cultural property that might be affected by that war. By implication, that implies that we in this country must do the same. We are talking here about identifying and bringing forward for consideration and use in difficult times of war the lists of very important cultural products and buildings that we think is incumbent on us and the other side to do. This is not an exercise that has been done to any great extent, although I think that most people could quite reasonably agree on a proper list for the United Kingdom, for instance.

My problem, and the reason why we wish to debate this under the first amendment today, is that the definition of "cultural property" that appears in Article 1 —in Schedule 1, which will become part of the Act, if the Bill is passed—is drafted in terms that may not be as effective in reaching out to those aspects of culture that we currently recognise. For example, the three main subheadings of Article 1 talk about "movable or immovable property", about "buildings", and about,

"centers containing a large amount of cultural property … to be known as 'centers containing monuments'".

There is nothing wrong with that, but I think that it would be helpful to allow a few moments to reflect on how things have moved on since 1955, in particular with moving image culture, in which I declare a previous interest as director of the British Film Institute. Within that, I would like to bring to the attention of the Committee the issue of film archives and recordings of television that are kept there, as well as the posters and ephemera that are collected.

Those items would not specifically be included in the lists that appear in Article 1, although most people would now regard them as cultural. Of course, every major country now has a film archive, and many of them also have television archives. They also record digital and other material—so we are not talking about a narrow issue but about an important part of our cultural life. Who could, these days, expect to understand, debate and discuss the culture of any country or time without having regard to the moving image? You have only to look at the way in which our younger generations look at YouTube and other sites to realise exactly how that world has changed.

This is not an attempt to change anything in the Bill, although I might wish to come back to the issue, in a later amendment, of how we might take this forward. It is a request to the Minister to look very carefully at Article 1 and explain to the Committee, as much as possible, how she reads it in terms of my points about the digital and cultural images which I would like to see protected.

As I said, this is not about wars in other places; we will also have to have regard to our own institutions. I might mention here not just the national film archive in Berkhamsted—where the main holdings are—and London but also regional film archives across England, the national film archives in Scotland, Wales and Ireland. These are important places in our own country which need to be protected. They need to be identified and listed and plans need to be put in place. We would

hope that any combatant with whom we were involved, who was signed up to this convention, would also have similar lists which we would respect, through the procedures in the Bill. In those circumstances, I beg to move.

3.15 pm

Lord Howarth of Newport (Lab): My Lords, I regret that I was unable to participate at Second Reading—the aeroplane I was in did not land until mid-afternoon—but I hope I may join in the proceedings today on this very important measure. I add my welcome and thanks to the Minister for introducing this Bill in your Lordships' House.

I fully sympathise with the desire of my noble friend to ensure that the provisions that we legislate are up to date and that the definition of culture is as contemporary as it can be and is, as far as possible, future-proof. However, does he feel that the term "movable property" may, with sufficient ingenuity and latitude taken by the courts, satisfy what he seeks to achieve? The subsequent list of examples given in the definition in Article 1 of the convention, to which he referred, is illustrative only. It does, of course, reflect conceptions of culture that were prevalent at that date. However, I am concerned and would be grateful if my noble friend would explain how he deals with the very practical legal objection that has been put forward by Professor Roger O'Keefe, who warns us that it is dangerous to mess about—not his words but mine—with the definition or its interpretation. He says:

"The definition is found in a treaty to which 127 states are currently parties. International law dictates that the definition be the same and be interpreted the same way by all states parties".

He is concerned that, if we now attempt to alter a definition that has been acceded to by 127 other states parties, difficulties may arise. Among those, he suggests that there could be,

"knock-on effects under international law. Not the least of these would be that the UK would be asserting forms of extraterritorial jurisdiction",

with all the sensitivities that go with that.

While I fully sympathise with the objective of my noble friend, it would help the Committee if he would explain how he would deal with that technical, but very important, objection that we have been advised of.

The Earl of Clancarty (CB): My Lords, I too am sympathetic to the aims of Amendment 1, moved by the noble Lord, Lord Stevenson, and supported by the noble Lord, Lord Collins. This should not just be about new technology, since new art and culture are being made as we speak, using traditional media as well. We should not forget that art, and much of our culture, is made by people and, indeed, people tragically die making a contribution to the culture of their country. I am thinking in particular of the confirmation this week of the tragic deaths of the five Syrian journalists at the hands of ISIS, as well as that of the Syrian journalist Khaled al-Essa.

On the amendment—although this is not to do with military conflict—I know that I, and many others, in recent times felt a considerable sense of loss after the Momart fire in 2004. Fortunately, that was a rare event, but it included the destruction of over 50 of the best major works by the artist Patrick Heron. I mention this simply to say that culture does not have to be 2,000 years old for a great loss to be felt, and newer work in new and old formats is precious as well.

The noble Lord, Lord Stevenson, mentioned film. It might be added that old cine-film and old photographs are very old indeed in terms of the development of these technologies and art forms through the 20th and 21st centuries.

Lord Inglewood (Con): On the point made by the noble Lord, Lord Howarth—and I also apologise for not having been able to be here at Second Reading—I have every sympathy with the thrust of what the noble Lord, Lord Stevenson, is saying. However, as I was listening to the discussion, it struck me that this Bill is intended to put on our domestic statute the provisions of the Hague convention, and it sits surrounded by a number of other Bills which relate to culture and crimes relating to culture. Surely the right answer is not to tamper with the interpretation of culture in the context of the Hague convention but to make sure that the definition of culture elsewhere on the statute book meets the requirements of the contemporary world.

Lord Redesdale (LD): My Lords, this issue was raised on Second Reading and, although the noble Lord, Lord Howarth, was not there, his contributions to all things archaeological were mentioned—he has been contributing for many years, as have many of us.

On Second Reading, we raised the issue that to make changes to anything in the 1954 convention would make this a difficult Bill to pass and, I believe, would be outside the Short Title of the Bill. However, an issue which will be raised again and again—I shall put it on the table now and probably not speak to some of the amendments in the future—is that, while we have not been signed up to the 1954 convention, we have been implementing the broad outlines of it in other places. Will the Minister make sure that the concerns of your Lordships' House are expressed when the outlines are set out, and repeated, for the cultural protection fund?

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe): My Lords, I thank the noble Lord, Lord Stevenson, for his welcome for the Bill, and for his constructive approach to scrutiny with a view to helping those who will have to implement and interpret it. To respond to the noble Earl, Lord Clancarty, we will certainly take account of the points that have been made by Peers in considering this Bill as we come to implement it.

There is a concern that the Bill should enable appropriate protection of all forms of cultural property and that the definition of cultural property in the convention should be interpreted in a way which makes that possible. However, I have a few concerns about the proposed amendment.

First, we consider that the noble Lord's amendment risks allowing the development of an interpretation of the definition in the United Kingdom which is not

[Baroness Neville-Rolfe]
consistent with its internationally accepted interpretation. That would be undesirable. It would create uncertainty and inconsistency in the application of the convention and its protocols and could result in the UK failing to comply with its obligations under them. None of us wants that. The definition of cultural property set out in Article 1 is already wide ranging. The phrase,

"movable or immovable property of great importance to the cultural heritage of every people",

is not limited, as has been said, to those things which are specifically mentioned. They are presented as examples of the sorts of cultural property which are protected by the convention. Other cultural property can also be protected under the convention if it is of great importance to the cultural heritage of every people. The definition is already sufficiently broad and flexible.

To answer the question from the noble Lord, Lord Stevenson, we can accommodate rare and unique films and modern forms of cultural property such as digital material in the form of physical recordings.

The noble Lord, Lord Howarth, and my noble friend Lord Inglewood—who are both welcome to our proceedings and were certainly missed at Second Reading—are right. I was interested to hear the point about the knock-on effects for the 127 countries involved.

The noble Lord, Lord Stevenson, rightly mentioned the BFI National Archive and we commend his work as a former director. The BFI could certainly be considered during our implementation process as the convention includes archives as an example of a building that could be considered to be cultural property and therefore protected under the convention. Indeed, it may even give me the opportunity to visit those splendid archives in the course of carrying our responsibilities forward.

I hope that that provides noble Lords with sufficient reassurance that the definition as drafted is necessary in order to meet our obligations under the convention but flexible enough to meet the concerns expressed about what sort of cultural property might be covered. I hope that the noble Lord will feel able to withdraw his amendment.

Lord Stevenson of Balmacara: I thank all noble Lords for contributing to this short debate. I take the points, which were well made. In response to my noble friend Lord Howarth, whose work on this Bill in its previous manifestation we acknowledge, I would point out that there are other definitions in current use in international agreements such as UNESCO agreements where the definition is markedly different, and it may be that that would be the kind of marker that we have in mind. If I gave the wrong impression I apologise, but I am certainly not going to take this amendment to the next stage and I will not raise it again. It has been tabled simply to provide a debate of the type that we have had.

My point was picked up by the Minister but perhaps I may press her a little on it. If she is saying that in respect of the British list she would certainly have consideration of the BFI National Archive and the associated archives in the UK high on her list, that is a sufficient illustration to make the point that although it could be worked into the current definitions, one has had enough experience of lawyers to know that sometimes those lists can trap you, so it is nice to have it set out in primary legislation. A statement from the Minister at this stage is very helpful, but as I hinted I have a clever plan up my sleeve which I may come back to. In the interim, however, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 2 agreed.

Clause 3: Offence of serious breach of Second Protocol

Amendment 2 not moved.

Amendment 2A

Moved by ***The Earl of Clancarty***

2A: Clause 3, page 2, line 7, after "a" insert "serious"

The Earl of Clancarty: My Lords, I thank the noble Lord, Lord Stevenson, for his support for this amendment and Roger O'Keefe, Professor of Public International Law, University College London, for his briefing. The issue here is one of clarity, consistency and accuracy. The term "violation" was adopted by the conference finalising the Second Protocol and my understanding is that this was done quite deliberately so that the terminology would be distinct from that used in the Geneva Convention: namely, the term "breach". I appreciate that the legislation to ratify this convention around the world will be in different languages. However, it does seem logical that the terminology used in English ought to follow the terminology in English of the Hague Convention itself.

There are two additional problems. One is the inconsistent use of terminology. The word "breach" is used in the heading of Clause 3, which I cannot myself alter by an amendment, yet the term "violation" occurs in the text on page 2 at line 7, so both terms are used in the same clause, which is confusing. The more serious issue is that "violation" in the text is not referred to here as "serious violation", although "serious breach" is used in the heading, which would distinguish this kind of violation in Article 15 of the Second Protocol from the so-called "other violations" in Article 21. This is important because it is a question of the order of violation referred to. It needs to be changed.

As the Minister herself said at Second Reading, the meaning of "breach" and "violation" is the same. But this is not the point. The issue here is one of consistency and accuracy of use. At the moment it is perhaps a little too sloppy. The 2008 draft Bill used the same terminology as the current Bill, so the Government have inherited it. Will the Minister look at this closely to see if these changes can be made? I beg to move.

Lord Stevenson of Balmacara: My Lords, I rise briefly to support the amendment proposed by the noble Earl, Lord Clancarty. He said that it was aimed at clarity, consistency and accuracy, and I can add no more to that. This is an issue where the Minister may

be able to help us further. The substance of the amendment is to make sure that we do not unwittingly create any uncertainty.

3.30 pm

Baroness Neville-Rolfe: My Lords, I thank the noble Earl, Lord Clancarty, for his amendments and the noble Lord, Lord Stevenson, for supporting them. I know that many noble Lords will have been in touch with Professor Peter Stone about the use of "breach" as opposed to "violation" in this clause. I had an extremely productive meeting with him only this morning and I will take this opportunity to thank him for his impressive contribution to the field of cultural protection. The nature of the offence is already established in this clause, so it does not need to be set out separately in the first line.

I recognise that there is some uncertainty, as the noble Earl explained so eloquently, and perhaps confusion, as to why we are using "breach" in the title of this part and clause when the convention and protocol refer to a "violation". The reason for the Government's approach is very straightforward: breach is a more familiar term in English law, although its meaning in this context is the same as violation. The term "violation" is used in subsection (1)(b) because it is repeating the text of the convention and the Second Protocol. The point has been raised by a number of people, including Members of this House, so I will take the matter away and consider very carefully whether we have got this right before Report. I hope that, on that basis, the noble Earl will feel able to withdraw his amendment.

The Earl of Clancarty: My Lords, I thank the noble Lord, Lord Stevenson, again for his contribution and the Minister for that encouraging reply. I beg leave to withdraw the amendment.

Amendment 2A withdrawn.

Clause 3 agreed.

Clause 4: Ancillary offences

Amendment 3

Moved by ***Lord Stevenson of Balmacara***

3: Clause 4, page 2, line 42, leave out paragraphs (a) and (b) and insert—

"(a) aiding, abetting, counselling or procuring the commission of that offence,

(b) inciting a person to commit that offence,

(c) attempting or conspiring to commit that offence, or

(d) an offence under section 4(1) or 5(1) of the Criminal Law Act 1967 (assisting an offender or concealing the commission of an offence) where the relevant offence mentioned there is an offence under section 3 of this Act."

Lord Stevenson of Balmacara: My Lords, the two amendments in this group are in the same vein as the one we have just discussed; they seek clarity, consistency and accuracy. The Bill is very specific in many areas to do with how the law is to be adapted to accommodate the convention, but curiously allows for a variation in Scotland and Northern Ireland in the criminal liabilities that occur. We have no reason to suppose that these are in any sense defective, but the Bill should be the best possible and as clear and consistent as possible, so might this be an opportunity for the Minister to respond, explaining why there is a difference or, if there is an unintended difference, how that could be remedied? I beg to move.

Baroness Berridge (Con): My Lords, I raised this matter at Second Reading. The issue of inchoate offences is very important, particularly in this context. It sends the criminal law much further down, into preparatory acts. In these situations you often have a group of people acting—passing on information to buyers, et cetera. You often need to scoop quite a large number of people, so I would be grateful for confirmation from the Minister, because the inchoate offences in this context are an incredibly important part of stamping down all activity in relation to this illegal trade.

Baroness Neville-Rolfe: My Lords, in addressing these two amendments I hope to satisfy noble Lords, but if I do not we should speak between now and Report. I appreciate that the aim of the amendments is to ensure that the Bill allows the UK to meet all our obligations under the convention and its two protocols. Clause 4, as currently drafted, already allows the UK to meet its obligations under Article 15(2) of the Second Protocol and the legislation will comply with,

"general principles of law and international law".

I will outline my main points now, although, given that this is a technical and complicated issue to explain briefly, I will reflect on what has been asked and send noble Lords a note setting out the Government's position on this amendment.

The purpose and effect of Clause 4 are to ensure that the UK has extraterritorial jurisdiction to try all ancillary offences in the same circumstances in which Clause 3 establishes such jurisdiction to try the substantive offences. It does not establish the ancillary offences, which already exist under at least five different and relevant pieces of legislation. The good news is that these apply automatically to offences under Clause 3. In respect of England and Wales and Northern Ireland, the definitions of,

"An offence ancillary to an offence under section 3",

are limited to the offences of attempting, conspiring, assisting and concealing, because it is only in relation to these offences that there might be doubt as to their extraterritorial application.

Where the existing law is clear as to extraterritorial application—which it is in relation to aiding and abetting and the offences under the Serious Crime Act 2007, which replaced the previous offence of incitement—no provision is made. However, as noble Lords will appreciate, to make such provision unnecessarily would be bad drafting practice and could create doubt as to the other situations where no such express provision is made.

The position in relation to Scottish criminal law is different and this is taken into account in the drafting of Clause 4(6). I assure noble Lords that the Scottish Government have, of course, been consulted on this provision.

[Baroness Neville-Rolfe]

I hope that brief explanation, together with the note that I am planning to send to noble Lords, will provide sufficient explanation and reassurance that we have taken the correct approach on ancillary offences, and that the noble Lord will feel able to withdraw the amendment.

Lord Stevenson of Balmacara: I thank the Minister for that response and for the offer to write to us with more detail. I hope she will be able to respond in more detail than I can in terms of endorsing the points made by the noble Baroness, Lady Berridge, which I think took a slightly deeper cut through some of these issues than did my amendment but are still very important. I am sure the Minister will want to ensure that her noble friend is properly responded to.

Baroness Neville-Rolfe: Of course, I should have said that I will ensure that we look very carefully at my noble friend's points, and the same letter will set out the detail of the proposals. Looking at these amendments and the consequential provisions, I was struck by how complex this all was. I had some of the questions that the noble Lord, Lord Stevenson, raised, so please let me set it all out and I hope everybody will be satisfied and we can move forward.

Lord Stevenson of Balmacara: Obviously, I should just keep sitting down and the noble Baroness will give us more and more. A deluge of Keeling schedule after Keeling schedule will arrive and more and more of these extraordinary areas will be explored. I am sure that we will find the right balance here. We do not wish to overload either ourselves or the civil servants, who I am sure have quite enough on their plate with other things. It would be helpful to pick out the particularity of the point made by the Minister's noble friend but not lose the way in which the original formulations of the legislation come together to create offences that will be appropriate under this legislation. I am probably asking for the impossible but I think we both agree that the measure is not entirely clear as it stands, partly because, in seeking to minimise the amount of legislation, we are not seeing the whole picture, so if that could be brought forward, that would be helpful. We will return to this point as it comes up at later stages but in the meantime I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 4 not moved.

Clause 4 agreed.

Clause 5: Responsibility of commanders and other superiors

Amendment 5

Moved by ***Lord Touhig***

5: Clause 5, page 4, line 27, at end insert—

"( ) The Secretary of State shall ensure that the military guidance in this section is reflected in the Joint Service Manual of the Law of Armed Conflict."

Lord Touhig (Lab): My Lords, Amendments 5, 6, 7, 8 and 9 in my name and that of my noble friend Lord Stevenson of Balmacara are probing. We seek a better understanding of how the legislation will operate. We hope that the Minister will enlighten us when she replies. Also listed in this group is the proposal that Clause 6 stand part of the Bill, which we oppose. My noble friend Lord Stevenson of Balmacara will speak to that.

Amendment 5 would place a duty on the Secretary of State for Defence to ensure that military guidance is updated to reflect the responsibilities that Clause 5 places on commanding officers and their superiors. We argue that this is best done by inclusion in the *Joint Service Manual of the Law of Armed Conflict*. That way there would be no ambiguity about the duties and responsibilities of commanding officers. More than that, it would also help to ensure that other ranks are aware of what is required of their commanders.

In 2004, the Chiefs of Defence Staff and the Permanent Secretary in the Ministry of Defence, in publishing the *Joint Service Manual of the Law of Armed Conflict,* said:

"Law, both domestic and international, plays an increasingly important part in Defence activities".

They said it must be clear therefore that:

"When undertaking operations, Commanders must take into account a broad and increasingly complex body of operational law".

They went on to say:

"The Law of Armed Conflict is a part of that wider body of applicable law, but it merits a manual in its own right because of its great importance to all those involved in the use of force and in wider military activities".

For that reason, we believe that the objective set out in Amendment 5 is correct.

Amendment 6 places a further duty on the Secretary of State for Defence each year to lay before Parliament,

"a list of all ranking military commanders who are responsible for a section 3 offence committed by forces under the commander's effective command".

This is at the very heart of the transparency we should expect if we are truly serious about protecting cultural property from theft or destruction. As I said, these two amendments are probing by nature, so the Minister will have the opportunity to explain in more detail how the Government see this part of the Bill working in practice.

Amendment 7 deals with the somewhat vexed question of the jurisdiction over our embedded forces. The Secretary of State for Defence has already said in a Statement that the Government will not be advising Parliament when our forces, embedded in the forces and under the command of a foreign power, enter into conflict. We on this side have raised this matter quite a few times in recent months, fearing that the use of this doctrine, which the Defence Secretary promulgated in April this year, is becoming the rule rather than the exception. Of course, we recognise—and I have stated in the past—that there will be occasions when, for reasons of national security and the safe operating of our forces, it would not be desirable to make a Statement in Parliament or seek parliamentary consent beforehand.

However, we on these Benches are not alone in worrying about the more extensive use of embedded forces. The House will consider the Armed Forces Deployment (Royal Prerogative) Bill on 8 July. Such is the concern felt by others that the noble Baroness, Lady Falkner of Margravine, on the Liberal Democrat Benches has been motivated to introduce that Bill, which will regulate how the Government can commit embedded forces and will require Parliament to be informed. Because of our concern, we have been motivated to table Amendment 7, which will make it clear that,

"a person subject to UK service jurisdiction serving under the military command of the armed forces of another country",

will be as liable for their actions under this Bill as those listed in Clause 3(4)(a) and (b).

Our Amendment 8 would ensure that this legislation applies equally to,

"private military contractors and individuals within private military contractors",

as it does to British service personnel. All too often in recent years we have seen a real growth in the number of private military contractors operating in post-conflict situations such as Iraq, and it is right, in our view, that they be subject to this legislation.

Finally, Amendment 9 places a duty on the Secretary of State for Defence to publish a report annually on how the Government have,

"introduced into military regulations the requirements of Article 7 of the Convention",

as well as detailing what steps they have taken to ensure that the Armed Forces have adopted the spirit of the convention to protect cultural property. Article 7 of the convention details the "military measures" that states taking part in a conflict should adopt. In addition, it details how the participating states must commit to establishing in peacetime,

"services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it".

Adopting this amendment would bring absolute clarity to the military measure requirements in the convention. This would ensure the clearest understanding of the duties placed on the military for protecting cultural property. I beg to move.

Baroness Northover (LD): My Lords, I, too, am sorry that I could not be here for Second Reading. I was in Angola, itself a country devastated in the recent past by conflict. However, as a former historian—in a much earlier life—at University College London, and more recently as a DfID Minister, I am delighted to see the Bill coming forward.

As we have heard, Amendment 7 applies the provisions of the Act to,

"a person subject to UK service jurisdiction serving under the military command of the armed forces of another country",

and Amendment 8 applies the Act to private military contractors. These amendments appear to show a gap in the provisions of the Bill, as the noble Lord, Lord Touhig, laid out, so I look forward to the Minister's response to the points that have just been made.

Clause 6 sets out that those "guilty of an offence" or ancillary offence under the Bill are,

"liable on conviction on indictment to imprisonment for a term not exceeding 30 years".

This is the maximum term of imprisonment. We are pleased that there is not a minimum mandatory term set out in the Bill, as we prefer the specification of maximum rather than minimum terms. Nevertheless, what range of sentences does the Minister anticipate would be employed under the Bill? What discussions have the Government had with the Sentencing Council and when do they anticipate that the council will begin consulting on the range of offences in the Bill?

3.45 pm

Lord Howarth of Newport: My Lords, I would like to follow up the important points raised by my noble friend Lord Touhig and the noble Baroness, Lady Northover, with some questions to the Minister, if I may. Can she tell us a little more about the cultural property protection unit that is already being established in the Ministry of Defence? What is its budget, and what assurances can she give us as to the future resources that will be made available to that unit? We know that there is always fierce competition for resources within the MoD budget and that periodically that budget is subject to a squeeze. Some people might see this particular function as somewhat marginal to the main purposes of the MoD—although I would assert that, for a civilised country, the purposes with which the unit is entrusted are extremely important—and the resources of that unit could be vulnerable. It would therefore be helpful if the Minister could tell us a little more about its scale, its functioning and its resources, and reassure us that it will continue to function at full strength.

Can the Minister also tell us how the lines of communication will work? How will the services and expertise of that unit be made available to people serving in the field, and not only those under the direct command of our own Armed Forces? In addition—my noble friend Lord Touhig raised this important point in the debate on two of his amendments—how will it be able to communicate to embedded forces: the people who are,

"subject to UK service jurisdiction serving under the military command of the armed forces of another country"—

and to "private military contractors" or individuals working "within private military contractors"? I have a memory that private military contractors, and perhaps Halliburton in particular, were guilty of grievous and appalling violations of cultural property in very important archaeological sites during the Iraq war, so how in practice does the Ministry of Defence expect to exercise its influence to prevent a recurrence of such disasters? This might be an unfair question to pose to the Minister personally, but if she is not yet briefed on it she may be able to write, or perhaps her noble friend Earl Howe would be good enough to write to us on these matters.

Baroness Berridge: On that discrete point, again, the resources that were available to the Metropolitan Police unit in this area were raised at Second Reading. If my noble friend is to write in relation to this matter, can she also tell your Lordships' House how the military unit is to be set up in a way to pass relevant intelligence to the Metropolitan Police unit? It may

[Baroness Berridge]
glean information from the field that is relevant to the Metropolitan Police, which is not a usual situation to have, so it might be useful in that same letter to have clarification of the appropriate form of communication between that specialist unit and the private contractors, as well as back into the Met and probably more widely into Europol and so on.

Lord Redesdale: My Lords, while I almost support the theory behind these amendments, we might have difficulty with a couple of issues. I should say first that the attitude taken by the British Armed Forces in protecting cultural objects has been exemplary, especially recently in the targeting of Libya and the specific direction not to destroy archaeological sites.

However, there is an issue in relation to our troops being directed by other forces. In 2003, I went over to Qatar to talk to CENTCOM about the bombing that was being carried out by American forces. People there thought it was a particularly good day when I talked to them because they had convinced the American air force that not dropping ordnance during sandstorms and instead waiting until they could see the ground would be a good idea. There is the issue of how, if you are involved in a joint operation and under the command of others, you influence that commander, or whether you would even be able to.

Of course, this becomes a particular issue when fighting the types of warfare that are being fought now, whereby most of the information used for targeting enemy forces comes through drones and indirect forces. That process has to be based on information. I follow the point that of course we need information and expertise within the MoD to understand what sites can be used, because the real issue of Daesh funding its operations through the sale of antiquities means that, given the MoD's primary duty of denying the enemy sustenance and funding, it needs to understand the implications of the looting of certain sites and the financial implications for the forces they are fighting.

Lord Stevenson of Balmacara: My Lords, I will speak briefly to the Clause 6 stand part debate, which is included in this group of amendments. The noble Baroness, Lady Northover, has raised a number of the points that I was going to raise, and I will not repeat them. I simply make three short points. I think this is the first time we have reached a point in the Bill where any amendment that might be put down would not interfere with our ability to sign up to the convention. This is an area where, for instance, the tariff of 30 years is not specified, so it would be at the discretion of the Government, should they wish to change that.

The points made by the noble Baroness were germane to this. We touched on this on Second Reading, and although 30 years was said to be appropriate for the maximum because it was in line with other areas, we are talking about a very narrow range of people who could be affected here: those who are under orders, or supposedly under orders, operating in a foreign territory with which we are at war. There may be circumstances that need a more considered view in the legislation, but we do not have a very strong view on this; as my noble friend Lord Touhig said, we are broadly in support of what is here, but this is an opportunity to make sure that we have the right approach as set out by the Minister when she comes to respond.

Baroness Neville-Rolfe: I thank noble Lords for tabling these important amendments and the noble Lord, Lord Touhig, for his helpful explanation. It is good to welcome the noble Baroness, Lady Northover, to our consideration. As she said, she brings her experience as a DfID Minister, with whom I was happy to serve.

I will say by way of introduction that it is absolutely right that government departments, including of course the Ministry of Defence, and the Armed Forces work closely together in bringing this Bill through to implementation to make sure that they understand the obligations that ratification of the convention will place on them. I hope we were all reassured on Second Reading when I explained that both the MoD and the Armed Forces were fully supportive of the Bill—I repeat that for those of your Lordships who missed Second Reading—and that all our Armed Forces already act as if bound by the convention and both protocols, but the legislation and its implementing provisions are extremely important.

The Joint Service Manual of the Law of Armed Conflict is already updated periodically by military lawyers, who will ensure that the necessary rules, regulations, legislation and advice regarding the Hague convention and its two protocols are fully reflected in the manual once ratification has taken place. I do not believe it is necessary to place a legal requirement, as Amendment 5 seeks to do, on the Secretary of State to ensure that this happens.

Turning to Amendment 6, command appointments within our Armed Forces change regularly, so laying a list before Parliament of all ranking military commanders who are responsible for a Section 3 offence committed by forces under their effective command would quickly require updating or become obsolete. Commanders are responsible for ensuring compliance of their forces and forces under their control with a wide range of national and international legislation. Singling out the Hague convention as the only piece of domestic or international legislation where such a list is required could set an unhelpful precedent.

I turn to Amendments 7 and 8, concerning the proposed new clauses on embedded forces and private military contractors. I think that their intended effect is already covered in the Bill and I have concerns about potential unintended consequences if we were to make the amendments. First, the Armed Forces Act 2006 provides that regular members of the Armed Forces remain subject to UK service law at all times. This includes times when they are under the command of another country. Embedded personnel would therefore still be within the definition in Clause 3 (6) of,

"person subject to UK service jurisdiction",

and the Bill would apply to them in the same way as if they remained under UK command.

The noble Lords, Lord Touhig and Lord Howarth, talked about private military contractors. Such contractors and their individual staff are also already covered by the Bill and will be criminally liable in the same way as

any other legal or natural person. For example, should an employee of a private military contractor who is a UK national or subject to UK service jurisdiction commit an act abroad of a kind described in Article 15(1)(d) or (e) of the Second Protocol, they could be criminally liable under Clause 3 on the same basis as any other person—so I think they are covered.

Lord Howarth of Newport: What is the position of British service personnel embedded in the armed services of another country that has not signed the convention? If they found that the armed forces of that other country were about to do something in violation of the convention, what would be their position and obligations, and how would they receive advice from the authorities and commanders in this country?

Baroness Neville-Rolfe: If the noble Lord will bear with me for a minute, I will see whether we can clarify that. In the meantime, I point to Clause 29, which ensures that senior management of private military contractors are personally liable for offences committed by their organisations if they consented or connived in the offence. This ensures that senior managers cannot escape the consequences of the actions of their organisations if they were personally involved in them—another reassurance.

I am also concerned that the amendment might have unintended consequences for this and other legislation. By making explicit reference to embedded forces and private military contractors in the Bill, we could risk creating doubt and confusion in the interpretation of both the Bill and other legislation. That is a general point that I have made already in relation to other amendments.

Turning to Amendment 9—forgive me for having to go through this in this degree of detail, but I think it is helpful ahead of Report—this suggests a new clause on reporting to Parliament on military measures. The joint military cultural property protection working group, which has been mentioned, is already working to review the current cultural property protection training within the UK Armed Forces. Those forces already act as if bound by the Hague convention, and respect for cultural property is upheld across the UK's Armed Forces in military law, targeting policy, training, in-battle area evaluation and assessment.

This review will ensure that we are fully compliant with all military obligations, including Article 7 under the Hague convention and its two protocols. This will be complemented once the UK becomes a high contracting party, which I think is three months after Royal Assent, with an implementation report every four years, as required by UNESCO, giving information of all the measures being taken to fulfil our obligations under the convention. Article 7 is one of a number of issues outlined by UNESCO which national authorities may wish to take into account when preparing their national reports. Having looked at this, I believe that these two reports will be sufficient to monitor our obligations under the convention and its protocols and to ensure they are fulfilled following ratification.

4 pm

We talked about the working group at some length at Second Reading. It was established to develop the concept of a unit of cultural property protection specialists in accordance with our obligations under Article 7(2) of the convention. Some preliminary work has already been completed on this unit by Army command. It is expected that it will be able to form up 12 to 18 months after formal approval.

Lord Howarth of Newport: Is the Minister able to assist the Committee with any observations about the resources that will be available to the cultural property protection unit now and in future?

Baroness Neville-Rolfe: We have made this a priority. I was going to say that my noble friend Lady Berridge made a good point about the link to the police. We have the military—the monuments men whom we heard about last time, one of them a 100 year-old woman—and the police effort. Together they need to have adequate resource, as I explained last time. Although it is an operational decision for the Met, working with the Mayor's Office for Policing and Crime, to determine the available resources, in the spending review the Government pledged strong support for the police.

On the monuments men and the monuments lady in particular, I will come back to noble Lords on exactly what our plans are. The good news is that they are well geared up and are starting to recruit specialists into the Army Reserve pending final approval of the Bill now that we have, at last, found parliamentary time.

The working group will continue to provide updates on its progress, but I do not feel that a statutory requirement on the Secretary of State to produce a report a year after the Act is passed would be appropriate at such an early stage of its development. I hope the noble Lord will feel able to withdraw his amendment.

The noble Lord, Lord Stevenson, talked about the penalties when he spoke about whether the clause should stand part. Concerns have been expressed about the 30-year term. To some degree, I sympathise. I felt that when I saw the provisions. I am pleased to say that officials have now outlined the detailed reasons behind the approach, and I agree with their reasoning. The introduction of the penalty is considered appropriate to comply with Article 15(2) of the second protocol, which obliges parties to adopt measures necessary to establish in their domestic law criminal offences as set out in Article 15(1) of the same protocol and to make them punishable by appropriate penalties. While at first sight it may seem surprising that an offence of this nature and ancillary offences, such as attempting or conspiring, attract the same maximum penalty as war crimes, this flows naturally from the seriousness with which these offences are considered in international law. It is worth noting, as the noble Lord acknowledged, that this is a maximum penalty. In practice, the penalty may be a much shorter sentence or even a fine and the maximum sentence is likely to be reserved for only the most heinous crimes against cultural property.

The noble Baroness, Lady Northover, asked whether we have consulted the Sentencing Council. We have not consulted it, but we will certainly look into this. I also thank the noble Lord for raising this point.

[Baroness Neville-Rolfe]

There are a number of important amendments in this group. The military is already very much behind this work, and we are gearing up for further work following the Bill's passage—smoothly and rapidly, I hope—through the two Houses of Parliament, if that is possible these days. I will write to noble Lords with a little more detail about the working group.

Baroness Northover: Is the Minister able to give any kind of answer to the noble Lord, Lord Howarth? He asked a very pertinent question about what happens when our military might be embedded with others. I realise that at Second Reading there was mention of the situation in Yemen, which is a case in point. If there is a response that might suddenly inspire the Minister—I think that one might have arrived—it would be helpful to have it now rather than in a letter.

Lord Howarth of Newport: May I add a gloss to the intervention that I made? We really have to think about a situation in which we are working with an ally who might have signed the convention but not both protocols.

Baroness Neville-Rolfe: I thank the noble Lord for pressing the point. I hope it will help if I say that British forces will act as if bound by the Act whether they are embedded or not. If they were involved in destruction under command, we would use our discretion on prosecution.

Lord Touhig: My Lords, I thank all noble Lords who took part in this very short debate. The noble Baroness, Lady Northover, and I certainly believe that there are gaps in the Bill, and we will study the Minister's response very carefully to see if she has managed to plug them or if we will be pressing a little further. The interventions from my noble friend Lord Howarth of Newport were very important, particularly when he talked about the cultural property protection unit. He asked four key questions about its budget, its resources and its scale of functions and how the lines of communication work. I am not sure the Minister was able to give the answers to all those questions, but doubtless she will write.

Baroness Neville-Rolfe: I thank the noble Lord for giving way. I think I acknowledged that I had not managed to answer his penetrating question. We explained a little at Second Reading about how it would be set up. He was talking about resourcing, while my noble friend Lady Berridge made a good point about the link to policing. We need to return to the "embedded" question, because although I gave the noble Lord an answer I am not sure that we were quite getting at the point that he was making, which is why I was perhaps a little nervous in answering his question. We will look at that issue. The point is that our intentions in this area are clearly positive, and we will certainly write before Report on the issues that have been raised.

Lord Touhig: What I was basically going to say is that I am sure the Minister will want to share her letters with the rest of the Committee when she does that. An important point that was well made by the noble Baroness, Lady Berridge, is that we need joined-up government in this respect. The noble Lord, Lord Redesdale, talked about the very practical issue that he discovered when he was in the Middle East. That will also bear further consideration.

The Minister told us in her reply that the various manuals are updated regularly, which is good. She believes that Amendments 7 and 8 are already covered by the Bill. Perhaps we could have a little more clarity on that when she is able to write to us; I am sure she will write on a number of issues.

We have had a useful short debate. There are issues that cause worry, particularly the question of embedded forces. As a result of the interventions from my noble friend Lord Howarth, I realise that this is an issue that I had not considered when I tabled the amendment. We will certainly want to know more about that and how we can practically respond to it. With those remarks, I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6 not moved.

Clause 5 agreed.

Amendments 7 to 9 not moved.

Clause 6 agreed.

Clause 7: Attorney General's consent to prosecutions

Amendment 10

Moved by ***Lord Stevenson of Balmacara***

10: Clause 7, page 4, line 38, at end insert—

"(c) in Scotland, only by the Lord Advocate for Scotland."

Lord Stevenson of Balmacara: My Lords, we are back in Scotland. In several parts of the Bill we find very detailed requirements placed on the authorities in England and Wales and sometimes in Northern Ireland, but Scotland appears to have eluded us. I wondered therefore if it would be helpful to put down an amendment that asked for a bit more clarity about why this is the case. I fully expect there to be a perfectly reasonable explanation, but it would be good to have it on the record.

There is a wider question regarding Clause 7, which is why in this group we also have Clause 7 stand part: why is it considered necessary in the Bill to require the Attorney-General, whether this applies just to England and Wales and Northern Ireland or also includes Scotland, to give consent to proceedings? Either these offences are grievous enough to attract substantial tariffs of up to 30 years or they are not and need leave to proceed, which is a slightly uncomfortable situation. In either case, it would be appropriate if the Minister responded. I beg to move.

Lord Hope of Craighead (CB): My Lords, I will speak briefly to Amendment 10 which, with great respect, is based on a misunderstanding of the prosecution system in Scotland. Unlike the system in England and Northern Ireland, all prosecutions in Scotland are

brought under the authority of the Lord Advocate—every prosecution in every court is under his authority—so it has never been practice in statutes for an amendment of this kind to be inserted, as the word "only" would contradict the idea that every prosecution is brought under that system. Therefore, no statutory authority is needed. I entirely sympathise with the view that it would be interesting to see more mention of Scotland and that the Scottish position has been considered, but the best way of considering the Scottish position is in fact for the amendment not to be pressed, on the understanding that it is not needed in that country.

Lord Skelmersdale (Con): My Lords, before the noble and learned Lord spoke I was about to say that I find this a very odd clause indeed. It could be read that proceedings for an offence can be brought in England and Wales, and in Northern Ireland, but not in Scotland. I am no lawyer, but is the noble and learned Lord entirely correct that we do not need some reference to Scotland within the Bill for proceedings to take place?

Lord Hope of Craighead: It is standard practice not to mention this Scottish system of prosecution. It is necessary in England and Wales to distinguish between cases that require the authority of the Attorney-General and those that do not, but it is not necessary to say that for Scotland. That Scotland is not mentioned does not mean that proceedings cannot be brought there; it is simply that they are brought under this well-established procedure, which requires no further statutory authority.

The Earl of Courtown (Con): My Lords, I thank all noble Lords who have taken part in this short debate, particularly the noble and learned Lord, Lord Hope. Clause 7 ensures that prosecutions for the offence of serious breach of the Second Protocol or for related ancillary offences may only be brought in England and Wales by or with the consent of the Attorney-General. Clause 7(b) provides that in Northern Ireland the consent of the Director of Public Prosecutions for Northern Ireland is required. We of course need to take into account the legal differences in all the constituent parts of the United Kingdom affected by this legislation. Hopefully, my response will reassure noble Lords that the Government's approach is considered and appropriate.

The position of Lord Advocate as master of the instance in relation to all prosecutions in Scotland means that no specific provision is necessary in the Bill, as the noble and learned Lord said. The difference from the other United Kingdom jurisdictions is due to the specific role of the Lord Advocate and the different position regarding private prosecutions in Scotland. This is standard drafting practice and is consistent with other legislation. In particular, the absence of a specific consent provision for Scotland in Clause 7 is consistent with the International Criminal Court (Scotland) Act 2001, which makes no such provision regarding prosecutions for war crimes in Scotland.

The noble Lord, Lord Stevenson, also spoke to Clause 7 stand part. As a whole this clause is necessary to ensure that the Bill is consistent with existing related UK legislation. As I mentioned earlier, it mirrors Section 53(3) of the International Criminal Court Act in relation to England and Wales. In relation to Northern Ireland, it mirrors Section 60(3) of that Act when read together with section 41(2) of the Justice (Northern Ireland) Act 2002. Given the similarity between some of the acts that are considered to be war crimes under the International Criminal Court Act 2001 and the offence that will be created by Clause 3 of this legislation, it seems appropriate for the same requirement to apply. The Government believe that it would be sensible to strive for consistency between these rules and avoid creating a patchwork of different approaches to such similar offences.

A consent requirement is considered appropriate in relation to a Clause 3 offence to prevent prosecutions being brought in inappropriate circumstances—in particular because cases may involve sensitive issues concerning military and international relations and because there may also otherwise be a risk of vexatious private prosecutions. For those reasons, I hope noble Lords will agree that Clause 7 should stand part of the Bill.

4.15 pm

Lord Stevenson of Balmacara: I am very grateful to my kinsman, the noble and learned Lord, Lord Hope, for reminding me that I should start at home more often and think harder about some of the issues that arise in Scotland. Being Scottish, having a Scottish title and being unaware of these issues places me in a very embarrassing situation, and I humbly crave the indulgence of your Lordships on this point. However, it was quite an interesting debate.

Like the noble Lord who spoke immediately after the noble and learned Lord, Lord Hope, I am still a bit confused about why the clause is drafted as it is. I understood from the noble and learned Earl—I am sorry, the noble Earl; he is not learned yet but I am sure that will come in the fullness of time—that we are talking here about preventing inappropriate, rather than authorising appropriate, prosecutions. We will read carefully in *Hansard* what he said and perhaps we can discuss this matter outside the Committee. I still think that there is a slight question over why this clause needs to be drafted as it is, although I now understand the intent better than I did. With that, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Clause 7 agreed.

Amendment 11

Moved by ***Lord Stevenson of Balmacara***

11: After Clause 7, insert the following new Clause—

"Conflicts not of an international character

The Secretary of State must, within one year of the passing of this Act, prepare and publish a report on the steps taken by the Government to ensure the effective implementation of Article 19 of the Convention (conflicts not of an international character)."

Lord Stevenson of Balmacara: My Lords, the situation that we are dealing with in this Bill is obviously extremely grave and very important, and it is something on which we need to move forward. However, as we

[LORD STEVENSON OF BALMACARA]
have already touched on a number of times in our debates, it deals with matters affecting officially declared wars but it does not deal with some of the conflicts that people automatically assume it should, including the conflicts that we are currently witnessing in Syria and some other places. This amendment is an attempt to suggest that, as soon as the Bill comes into force, there ought to be a move to think about how one might take forward measures that would apply to conflicts or perhaps terrorist activity which do not necessarily fulfil the criteria of a war.

I understand that this legislation is a major step forward and in no sense do I wish to suggest that the Bill should be amended in a way that would make it difficult for the Government to go forward with ratification. However, as I hinted earlier, the amendment is part of a slightly broader cunning plan. This important but limited Bill looks back to 1955 but does not look forward to conflicts that are to come. Therefore, as a response to those who have concerns in this area, I wonder whether we should consider—possibly at some future date; we do not necessarily need to set a time limit, although the amendment would do that—a third protocol. It could include measures such as ensuring that Article 19 of the convention, which concerns conflicts not of an international character, are dealt with, and how we deal with the question, which has previously been raised and discussed, of what a modern definition of culture or cultural products should be, as well as other matters that might come up either now or by the time we get to the end of the Bill.

In a sense, I have tabled this amendment in order to promote a debate about why we would be satisfied—although I am sure we are not—with limiting the impact of the Bill to wars. The aspiration, contained in the convention but not really realised, that more effort should be made to step up to the plate on issues around conflicts which do not yet have official war status should be something that we commit to in order to make this measure go forward. I beg to move.

Lord Renfrew of Kaimsthorn (Con): My Lords, this amendment has a great deal to commend it. As the noble Lord, Lord Stevenson, has indicated, its intention is not to disrupt the nature of the Bill or to introduce matters that would disrupt its passage or expand it in a way that would unilaterally broaden what it is an international convention. The amendment seems to find a middle way. It proposes an addition to the Bill that would not in any way disrupt the definitions as they apply but would meet the concern many people have that the outrages that have concerned us most in recent years—the events in Palmyra, the damage to the Winged Bull at Nineveh and the events in the museum in Mosul—are not in fact covered by the Bill, as the noble Baroness confirmed at Second Reading. It is fair to say that she did not give a very detailed analysis of the situation in response, but it is not covered by the Bill.

The nature of warfare perhaps has changed, but the point is that Daesh, or ISIL, is not recognised as a state, and that is why this is not an international phenomenon. As the situation is regarded as being an internal insurrection or civil war, it does not fall within the scope of the Bill directly. Therefore, it is a very helpful suggestion that we should acknowledge the—I will not say "defect" of the Bill, although I regard it as such—limitation of the Bill, without in any way disrupting its passage now or impinging on its application.

Everybody in the House is very keen to see this. It was originally a convention of 1954 and it is time it is passed by the House with the two recent protocols. The ingenious suggestion of a third protocol, which is not being proposed now—we are not delaying the Bill in any way but it could be an agenda for the future—is a very helpful one that should be taken very seriously.

Baroness Berridge: My Lords, as I understand the situation in relation to the matters, for instance, with Daesh, they are currently covered by other domestic legislation as a result of a Security Council resolution. Therefore, they would be offences but only within the confines of that additional legislation.

This amendment has a lot to commend it. It is the first example of us perhaps attempting to look at the wider problem of international human rights law, which was mainly drafted at a time when the main villains we were trying to deal with were states. It is a problem that goes across many treaties: when the villains are non-state or third-party actors, we find that there are very large gaps in some of the treaties. We have to start somewhere in trying to look at these situations because, more and more, there is international human rights law in treaties for which we are going to have to do something to fill the gaps. Daesh is almost certainly not the last example of a group that we might have to deal with, with Boko Haram being just one of the others.

Lord Howarth of Newport: My Lords, I would like to support what has already been said by my noble friend Lord Stevenson, the noble Lord, Lord Renfrew, and the noble Baroness, Lady Berridge.

Article 19 of the convention, drafted 60 or so years ago, simply does not contemplate today's realities. It addresses itself to situations of civil war. Of course, there is a civil war in Syria, but, although Daesh pretends to be a state, it is not a state. Not being a state, neither Daesh nor the Taliban nor Boko Haram can be covered by the provisions of the convention. So the formulation of international law is seriously defective in enabling the international community to address itself to the most appalling instances of iconoclasm and the systematic and strategic destruction of cultural heritage. That, of course, is what so many of us and so many members of the public are most intensely concerned about.

I think that they would be startled to think, as was said at Second Reading, that here we are legislating and in some sense playing an air shot; we simply are missing the ball. Of course it is right to implement the convention as it stands—nothing should disrupt that process—but I hope that when the Minister responds to this debate she will be able to tell us what the Government as a whole, the Foreign and Commonwealth Office and the Department for Culture, Media and Sport intend to do in developing international discussions and diplomacy to move towards the possible creation

of a third protocol. It could take a considerable amount of time but the very fact that there was momentum in that direction—momentum initiated by our own Government—would be an excellent thing and is really important in terms of the crisis that the world faces.

Lord Redesdale: My Lords, while I support the idea of changing international law, we have waited 60 years for this treaty to be ratified by the Government and if we had to wait for the same period of time for the convention—if it happened tomorrow—I would be about 120. So I think it is a wonderful idea to come forward, and of course the irony is not lost that we are talking about ratifying one treaty while of course most of the thoughts in this place are about another treaty.

I will ask the Minister one thing on the specific problem of the situation whereby much of the cultural heritage being targeted by non-state groups happens in areas we know are destabilised already—and of course, the formation of the cultural protection fund is a way of actually protecting some of those issues. But could the Minister say what proactive measures are put in place in the formation of the cultural protection fund to make sure that culture we know is under threat is being protected? Of course, we discussed digital archives. One wonderful way of doing it is digitally archiving all the archives around the world or helping museums to protect their archives. Of course, as in the case of the museum in Baghdad, that was a problem in itself because they wanted to loot the archive to find out what they could steal. That of course is an issue that will come forward and while we are in the position of forming the cultural protection fund, I very much hope that the Minister can give some indication that we will be taking the issue of pre-emptive knowledge very seriously, rather than trying to reconstruct what has been destroyed.

Baroness Neville-Rolfe: My Lords, I am grateful for this interesting debate and for the amendments that have been laid. I should perhaps start by responding to the broader point that the noble Lord, Lord Stevenson, made and which my noble friend Lord Renfrew and the noble Lord, Lord Howarth, endorsed about the idea of a third protocol. I venture to say that in discussing the possibility of a third protocol, we are getting a bit ahead of ourselves. I think that we had all-party support for concentrating and pushing through rapidly a Bill so that, at last, the United Kingdom could ratify the existing convention and the existing protocols. This would make us the only permanent member of the UN Security Council to have ratified the convention and both protocols, and that would put us in a strong position as regards the protection of cultural property in the event of armed conflict, particularly when you look at other provisions that I will come on to mention. It also will allow us to attend meetings of state parties where we can discuss issues relating to the implementation and operation of the convention and the protocols. But I do not think it is the day to agree to a major new initiative for a third protocol.

I do think I should say something, however, about the application of the law to Syria, which is an important issue that is underlying this idea. I was clear at Second Reading that the UK does not recognise Daesh as a state and so the Bill's application to Syria and other civil wars is limited. The dealing offence in Clause 17 does not apply to Syria because it covers only unlawfully exported cultural property from occupied territories, as we have all said.

Under international law, territory can be occupied only by another state. As, rightly, we do not recognise Daesh as a state, Syria cannot be classed as occupied territory. However, as my noble friend Lady Berridge said, this does not represent a serious gap in our provisions because sanctions already exist for cultural property removed from Syria since March 2011, and dealing in cultural property exported from Syria is prohibited under UK law.

A UK national fighting with Daesh in Syria can be prosecuted under our Bill in relation to,

"theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property",

protected under the convention. To expand or extend this application would, of course, be a serious over-implementation of the convention in UK legislation. That, of course, is not the purpose of the Bill.

4.30 pm

The noble Lord, Lord Redesdale, asked about the cultural protection fund. We have published a statement on that fund, as I am sure that he knows. It opened for applications on 27 June—so it has just opened—and one of three priority areas is cultural heritage protection. Organisations can apply to the fund to carry out projects, including those that digitalise cultural heritage. Noble Lords have already noted that the British Museum is involved in a very impressive £3 million project, which I hope that we will learn a lot from.

On the third protocol idea, I should add that no other state party has called for it. These are international matters—it is not just the UK; other countries are involved.

Perhaps I can comment on the amendment, ahead of Report. Article 19 of the convention would apply only in event of,

"an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties".

The article does not impose a one-off obligation—it is an ongoing commitment—and there may not be anything to report on if the report is to be published within one year of the passing of this Act. In the event that the UK was party to a conflict,

"not of an international character occurring within the territory",

of one of the state parties, the UK would be bound as a minimum by the obligations set out in the convention which relate to respect for cultural property.

The main obligation under Article 19 is to respect cultural property, which would mean that, during a non-international armed conflict, our Armed Forces would have to seek to avoid exposing cultural property to damage or destruction during the conflict. Our Armed Forces would also be obliged to prevent theft, pillage and vandalism of cultural property. The practice of our Armed Forces is already to take a rigorous approach to protect cultural property in this way during the course of non-international armed conflict, and ratifying the convention will not impose additional obligations.

[Baroness Neville-Rolfe]

On reporting in general, as I have already said in relation to another amendment, the convention requires that state parties report at least every four years to the director-general of UNESCO with,

"whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfilment of the present Convention and of the Regulations for its execution".

This is, of course, public information. It is right to report every four years; it provides up-to-date information about the implementation and operation of the convention, regulations and protocols in our country. I do not think that annual reports would add much to the four-yearly reporting cycle under the protocol. Obviously, in some years there will not be anything to report.

I hear what noble Lords say about wishing to have good information on this and to build up momentum for change internationally, but I urge the noble Lord to withdraw his amendment so that we can focus on the Bill and on making progress today.

Lord Stevenson of Balmacara: I am sorry that the Minister did not feel more enthused by the opportunity to do at least something in future on an international stage that will be bereft of European activities. She will surely have many gaps in her diary, since she is a doughty warrior in the European space—and here we are offering her on a gold plate a wonderful opportunity to make her name in cultural matters. I am, however, very grateful to the noble Lord, Lord Renfrew, for his support and the noble Baroness, Lady Berridge, for understanding the reasons behind the amendment. I still think that it is a good idea. My noble friend Lord Howarth agreed with it, although the noble Lord, Lord Redesdale, sees problems wherever he sees words that might be used to delay his precious involvement in the Bill. I keep assuring him that we are not out to stop the Bill, but we would like to improve it, which is what lay behind the amendment. Reading too carefully the words on the Marshalled List would reveal that we had a bit of a struggle with the clerks to get anything in the amendment, and of course the noble Lord is right that it would not do what it sets out to do, but nor was it intended to—which is rather a bad thing to say. What we are trying to get at is that there is an agenda here. If we are to do this, let us do it properly and pick up some of the points that we understand to be defective in terms of full implementation of what we all want. If there is a way to do that at some future date, we perhaps should do it. In the interim, the point has been made and I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Clause 8: The cultural emblem

Amendment 12

Moved by ***Lord Stevenson of Balmacara***

12: Clause 8, page 5, line 5, at end insert—

"( ) Where cultural property is in a digital form the cultural emblem may be displayed in a digital format."

Lord Stevenson of Balmacara: I might need to ask for a short break shortly to get my papers in order. This amendment is the pretty one. The Bill contains a diagram, which is unusual in parliamentary drafting. We do not often get to look at the symmetry and angles with which the rather crude representation of the emblem appears in Clause 3 in Part 8. If your Lordships have not seen it, I draw your attention to it, because we are now talking about culture. It helpfully has a key, which says that it is white and royal blue; it looks black to me but let us not worry too much about that. The point is that it has been used and has been found to be effective in its impact. I think the best-known example of its use was in the recent Iraq conflict, where the emblem was painted on top of the museum. That certainly saved it from being bombed but unfortunately it seemed—I am not sure whether this is true, but it is certainly a good story—to alert those people who had not perhaps known that it contained valuable artefacts to the fact that it was a storehouse of things they could loot, things which have subsequently been brought through to the international market. So it does not always work.

However, it is obviously a feature of the convention and we do not oppose it. Our amendment simply reflects on the way in which the emblem is restricted in its use—which is dealt with in the protocols and regulations. Again, a set of phrases is used that is redolent of the 1950s in terms of sticky paper, etching and watermarking, but there is no sense of how it might need to be applied in the digital age. It is a probing amendment, as all my other amendments are, to draw attention to the need to think about how we might update and improve the requirements and to give the Minister an opportunity perhaps to make a few points on how the emblem would be used in future. I beg to move.

Baroness Neville-Rolfe: I thank the noble Lord for his comments. It is indeed delightful and unusual to have a cultural emblem on the face of legislation—I think I am not meant to flash legislation in the House, but I am delighted. On a lighter note, I was also delighted to see that Professor Peter Stone had a badge showing the emblem when he came to see me today. I am slightly worried that he might not be able to continue to use the badge, which shows him as a supporter, but I hope we can ensure that is not the case, because it is totemic and important. I am also grateful for the opportunity to clarify the circumstances in which digital material could be protected, although we have touched on it already.

Relatively modern types of cultural property such as film or recorded music could indeed be covered by the definition of "cultural property". In practice, this would be in the form of physical recordings and storage, even if the film or music was digital. We would expect the emblem to be displayed on the physical object containing the recording or digital data.

The regulations to the convention provide that the emblem may be represented in any appropriate form. That gives full flexibility on how it can be displayed, which may be valuable. As has been said, this was evidenced when the blue shield was painted on the roof of the National Museum of Iraq to protect the

building from air strikes. Therefore, there is nothing to preclude the emblem being displayed in digital form; for example, on a screen or by projection.

Ensuring the authorised use of the cultural emblem is especially important given that the blue shield has been said to be the cultural equivalent of the Red Cross. I certainly see it that way. This might be a good point at which to welcome the work done by Michael Meyer, the head of international law at the British Red Cross, who is, and remains, a champion of work in this field and a strong advocate of the Bill.

On introducing a statutory requirement to publish criteria on permission for use the blue shield, this would create inflexibility when flexibility and rapid reaction are most needed. Of course, techniques change.

Any such criteria should not be prescribed by the Secretary of State alone. The relevant national authorities should determine the basis on which they will grant permission for use of the cultural emblem. Our intention is that permissions may be granted to relevant organisations to allow them to use the emblem in specific ways and in specific circumstances. Authorisation may also be given for certain educational purposes.

I do not need to say why this clause is important. The noble Lord has already accepted that it is and I hope he will feel able to withdraw his amendment.

Lord Howarth of Newport: My Lords, I fully understand the Minister's desire that the Government should not be bound by an inflexible regime legislated to prevent them making sensible decisions and using their discretion appropriately. However, there has to be a policy. It would be helpful to the Committee if the noble Baroness would give at least some indication of what she anticipates the policy will be and the criteria that will be used to identify those items of our cultural heritage and cultural property that should be designated and have the blue shield applied to them. We are talking about listed buildings, great works of art, parks, gardens, monuments, archives? How will they be selected? Will it be according to the criteria that are already applied to identify those parts of our heritage that are the most important? On a point of detail, does she know the view of Historic England as to the appropriateness of painting the blue shield on top of grade 1 listed buildings?

Baroness Neville-Rolfe: It would not be appropriate or helpful to publish criteria for the reasons I have already stated. We had some discussion at Second Reading about the process we were setting up and the areas that might be included. I shall look at this again, consult on it and perhaps have a cup of tea with the noble Lord and discuss it. It is not intended to put the criteria into the Bill. We have a process going forward and, as I explained in a previous intervention, it is important that the heritage bodies and so on should be comfortable with this, as I am sure the noble Lord agrees.

Lord Howarth of Newport: I will be very happy to pay for the cup of tea. Will the Minister also undertake to write to Members of the Committee casting light on these issues?

Baroness Neville-Rolfe: I will be happy to write to Members of the Committee setting out, first, what we have already said, and, secondly, answering any points and questions, including the points made by the noble Lord. That will be the easiest way to move this forward.

Lord Stevenson of Balmacara: My Lords, I was going to end with the point made by my noble friend Lord Howarth. This issue needs more explanation. I will be grateful to receive a letter, as the Minister suggested, and that will resolve the problems we have on this matter. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Clause 8 agreed.

Clause 9: Offence of unauthorised use

Amendment 13 not moved.

Clause 9 agreed.

Clause 10: Use authorised by appropriate national authority

Amendment 14 not moved.

Clause 10 agreed.

Clauses 11 to 13 agreed.

4.45 pm

Clause 14: Forfeiture following conviction under section 9

Amendment 15

Moved by ***Lord Stevenson of Balmacara***

15: Clause 14, page 7, line 8, at end insert—

"( ) The court may not order the destruction of an article unless expert evidence has been presented to the court giving permission to do so."

Lord Stevenson of Balmacara: My Lords, we now move away from emblematic conventions to the realpolitik of this, which is dealing with artefacts that are seized and the criminal practices that might follow. There is also the question of what happens to the artefacts themselves. Clause 14 specifies what happens if a person is convicted of an offence under Clause 9 by using a design on an article which was not authorised and was not appropriate. It moves on quickly to forfeiture, but one step away from that is the disposal or destruction of the artefact. Disposal one can probably understand, but destruction is always a slight worry. When going through the Bill we considered that we ought to raise this as an issue and ask the Minister to explain the circumstances in which she envisaged that Clause 14(3) might arise. Our suggestion is that a rider could be added that expert advice should be sought, or provision for that made in the Bill, so that full consideration of the ramifications of destruction are taken into account. We have heard already from the noble Earl, Lord Clancarty, of worries and concerns

[LORD STEVENSON OF BALMACARA]
about the destruction of valuable material and we do not want to encourage that as the process which is followed. I beg to move.

Baroness Berridge: My Lords, this also brings into view an issue raised at Second Reading. Many of these articles, when they are the subject of legal proceedings or they are seized by the police prior to forfeiture, are then stored for months if not years. It is not at all clear that the Metropolitan Police has the necessary funding or facilities barring an evidence room in which to store what obviously can be items of cultural heritage. It is important that my noble friend the Minister should outline whether under cultural protection funds an agreement will be made with the British Museum that certain of these artefacts need to be stored very carefully. This is not like storing the evidence from crime scenes and we need to be assured on this point.

We may end up in situations where, at the end of lengthy court proceedings, we discover that the cultural artefacts have been stored in conditions that have caused them to deteriorate during the course of those proceedings. There seems to be ample funding in place, so perhaps the Minister could write to the British Museum to see how it could help the Metropolitan Police to ensure that items which are not forfeited or destroyed are not left in a condition that causes them to deteriorate. Funding and a simple arrangement could be made to preserve items during court proceedings, a point which as I say was raised at Second Reading.

Lord Howarth of Newport: My Lords, the noble Baroness has raised a very important point about the resourcing of what I think is called the Arts and Antiques Unit of the Metropolitan Police. It is staffed by the most excellent people but with funding that is derisory. Perhaps the Minister will be able to tell us what the present state of affairs is, but not long ago that unit was actually obliged to raise its own money because no funding was forthcoming for it from the main budget of the Metropolitan Police, yet it is performing a crucially important role in terms of our policies to protect and to prevent the looting and violation of cultural property and ensure that the law is upheld. It is acting on behalf of the nation as a whole, so to say the least it is deeply regrettable that it has not been provided with adequate resources.

The Minister spoke vigorously about the need for good co-ordination between the MoD and the Metropolitan Police and appeared to accept the argument that the resourcing has to be adequate to enable the purposes of the policy to be fulfilled. It would be helpful if she is able to say something on this matter.

Baroness Neville-Rolfe: There are a number of amendments here and I will try to deal with them in turn and answer the questions that have been raised. The noble Lord, Lord Stevenson, questioned whether a court should be able to order the destruction of an article bearing the cultural emblem unless it had been given permission by an expert. It is probably worth saying that the circumstances for destruction that I think this is intended to address is where the emblem is on items such as cards or T-shirts—it is not about destroying original cultural property. I agree that the court should not, in any event, order the destruction of articles unless it is clear that it is necessary and appropriate to do so. The current drafting only permits the court to make such an order as appears to it to be necessary.

We do not feel that it would be appropriate for expert evidence to give permission to the court to order the destruction of an article as that would mean that expert opinion would be allowed to override the views of the court. Of course, it is for the court to determine what to do with an article which is subject to forfeiture on the basis of relevant factors and evidence, which would include consideration of what was involved. That could, of course, include expert evidence but it would be for the court to decide that. I do not believe that the court would order the destruction of any article unless it was sure that it was necessary, but we believe that it is right for the court to have this option if it is the most appropriate means of upholding the authority of the cultural emblem, thus ensuring compliance with the convention. That is the background to that provision.

It has been suggested that a court could vary an order for forfeiture of cultural property in connection with a dealing offence only where it is a response to new evidence—this relates to Amendment 19. The potential reasons for a court varying provision under this section are not necessarily related to new evidence, so it would be inappropriate to limit the court's discretion in this way. For example, the court may have made provision for the forfeited property to be retained at a specific site which was subsequently deemed to be no longer suitable for storage of that property.

On Amendment 22, which deals with compensation, it is of course right that those who, through no fault of their own, find themselves in possession of unlawfully exported cultural property should be compensated if the court orders their property to be forfeited so that it can be returned to its rightful owner. Paragraph 4 of the first protocol requires compensation to be paid by the state party whose obligation it was to prevent the unlawful export of cultural property from territory occupied by it. Which state that is will depend on the facts of each case. There is no obligation under the convention for anyone else to pay compensation, although in certain cases someone else may do so; for example, to ensure that the cultural property concerned can be forfeited before the forfeiture order lapses.

Ensuring that compensation is paid may require sensitive and potentially time-consuming negotiations between the United Kingdom and the occupying state. It would not be appropriate for the court to state who is responsible for the costs of compensation while negotiations are in progress. Indeed, that could put the success of those negotiations at risk. There is also a risk that forfeiture proceedings would become unnecessarily complicated and drawn out by arguments over who is responsible for paying compensation, with those states potentially responsible becoming involved in the proceedings. The noble Lord's amendment risks complicating both the court proceedings and efforts to ensure that the occupying state pays the compensation that is due.

On Amendment 23, the noble Lord, Lord Howarth, raised the issue of police resourcing and the noble Baroness, Lady Berridge, raised the question of storage. We would be happy to have discussions with the British Museum on this, but we do not expect the number of objects falling within the scope of the Bill to be an enormous burden for museums. However, the noble Lord has raised the point and I will consult them. I am already writing on the general issue of resourcing in relation to the Armed Forces and the police, so I will make sure that we cover the necessary ground.

On Amendment 23 and the requirement for the court to,

"make public the location and conditions of … storage",

of cultural property, I agree that information about where an item of cultural property should be stored, and the conditions under which it is to be kept, should generally be available to the public. A court order is of course a matter of public record, and can normally be obtained by members of the public upon request, so there is no need for a separate provision allowing the court to make public any particular aspects. I should add that in some circumstances it may be necessary for a court to order that the location be kept secret if, for example, the cultural property in question is under particular threat. The general power contained in Clause 22(1) would enable a court to make such an order. We are satisfied that the current drafting of these provisions gives the appropriate courts full flexibility to make appropriate provisions and orders and to take account of the relevant circumstances. I hope that in those circumstances the noble Lord feels able to withdraw the amendment.

Lord Stevenson of Balmacara: I am grateful to the Minister for that very full response although I do not think that all the questions raised by the noble Baroness, Lady Berridge, and my noble friend Lord Howarth were picked up. I was particularly struck by the sense that the Minister was only now beginning to have discussions with some of the major repositories for artefacts of this nature. Perhaps I interpreted that wrongly and I shall read *Hansard* to make sure that I have it right. I understand that we are not talking about huge volumes of material but we need to recognise the way the world is at the moment, and that this measure is moving us from a position of compliance but not statutory agreement to one whereby a statutory responsibility will be placed on a number of bodies in relation to the material being given to them through the court process, on which the noble Baroness made a good point. It could take years for some of the court systems to work through, and the subsequent storage and possible display of these materials will involve costs. I am a little unclear about where that cost element will fall. It may be small enough to fit into a normal budget but all these institutions are under pressure. There is never enough money to do all the things they want to do, and there will be an additional cost on them.

Baroness Neville-Rolfe: Of course, this is difficult for the institutions but there has been a reasonable settlement for the museums and so on. We regard this issue as extremely important, as the noble Lord knows, and we will have a look at the scale involved. However, some of the work we already have in hand on cultural artefact storage in places such as the British Museum is world leading. We should be able to accommodate the cultural protection work in this Bill, but I will of course look at *Hansard* and come back if the need arises.

Lord Stevenson of Balmacara: Yes, my Lords, but the truth is that all these institutions suffered at least a 30% reduction under the previous Government and are now grateful not to have been cut further. In fact, some of them are on reduced money because they have received cash standstill grants. Therefore, although I hear what the Minister says, I do not think the situation is quite as rosy as she depicts. However, this is not the time and place to pick up this issue. If she is willing, it would be nice to have a cup of tea—perhaps involving me as well—and of course I will offer to pay.

Baroness Neville-Rolfe: As the noble Lord knows, I am always happy to have cups of tea with him and they are usually extremely wide-ranging.

Lord Howarth of Newport: I am a little worried that we are turning into the Tea Party movement here.

Lord Stevenson of Balmacara: We live in cultural times. I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Clause 14 agreed.

Clause 15 agreed.

5 pm

Clause 16: "Unlawfully exported cultural property" etc

Amendment 16

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

16: Clause 16, page 8, line 8, at end insert—

"(7) The Secretary of State may by regulations made by statutory instrument specify what reasonable procedures must be followed in order to establish whether any object is unlawfully exported cultural property.

(8) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament."

The Earl of Kinnoull (CB): My Lords, in moving Amendment 16 I will also speak very briefly to Amendment 30A. I thank the Minister and her Bill team for their courtesy, time and efforts in these past weeks. I have been approaching this from the point of view of museums, art shippers and art insurers, thinking in particular about international art exhibitions. I declare my interests as set out in the register, in particular that for a good period of time I ran the art and private

[The Earl of Kinnoull]
client division of Hiscox, Europe's largest insurer of art, and I am currently chairman of the trust that runs the museums in Perth and Kinross, which last week announced its intention to ask the Commissioners for the Safekeeping of the Regalia to return the Stone of Scone to Perth, to a new, purpose-built, specific space, as part of a planned more than £20 million investment in our museums.

International art exhibitions that the public of so many countries enjoy so much take place only when museums will lend, shippers will ship and insurers will insure. Where any one of those three elements is missing, exhibitions either do not happen or happen with fewer objects. I have been in touch with museums, senior art shippers, insurers and insurance industry bodies to debate the Bill. In each case they very much wish this important Bill well, and these two probing amendments are designed simply to test whether some improvements could be made which would allow for clarity and proportionality of additional work for affected institutions. I hasten to add that no complaint is made about having to do some more work in helping to address the issues this admirable international convention deals with.

The amendments probe two issues. The first is: how does an ordinary front-line museum curator, art shipping manager or insurance underwriter establish that an object is not "unlawfully exported cultural property"? Secondly, how does a museum, art shipper or insurer carry out due diligence in a proportionate way and avoid having knowledge of wrongdoing imputed to their institution, which of course would be a criminal offence?

Turning to Amendment 16, Clause 16 is necessarily complex and I foresee that any compliance officer would struggle to write an easy-to-understand briefing note for his front-line colleagues. Most museums and other affected institutions do not have the luxury of a professional compliance officer and it would be left to the front-line person to establish whether they were potentially dealing with unlawfully exported cultural property. I note that in my experience, hooky material will always come with reassuring bogus evidence on these types of questions and yet, strangely, non-hooky material often comes with little or no evidence. The front-line person will ask themselves whether they should deny the loan of a piece of art or the shipment or insurance of that object when it cannot be proven when or from where an object came into a particular collection.

In fact, there is at least one major collection of the affected subject matter that I know well—a private collection in England which lends regularly to international museums—for which there is very little record of when and where the objects came into the collection. It would be most unfortunate if that wonderful collection was now marooned in the UK.

Accordingly, I felt that a "safe harbour" approach would assist. Amendment 16 simply allows the Minister to make regulations from time to time about what a proportionate safe harbour might be to help those in the international exhibition business. It may be that to start with there would be no regulations and one would simply watch the progress, but the existence of this ability would make a safe harbour available at any time if there was an unintended series of problems. The Minister would then be able to address problems rapidly and effectively within the Bill.

Turning briefly to Amendment 30A, the offence in Clause 17(1) has the mental element of knowledge or "reason to suspect". Museums, art shippers and insurers are all bodies corporate. The question, therefore, is in what circumstances such knowledge can be imputed to the body corporate. I am very grateful to the Minister and her Bill team for their excellent work on this point, and indeed their very helpful letter of yesterday afternoon, and I am now wholly happy with the Bill as it stands. Accordingly, I will not move that amendment. I beg to move Amendment 16.

Lord Redesdale: My Lords, while I quite understand the good intention in questioning this provision, I have some difficulty with the idea behind the amendment because the convention was ratified in 1954 and you cannot have retrospective legislation. This refers to artefacts brought into the country after 1954 that would be affected only if their provenance cannot be proved. That is where I have real difficulty, because one issue with illicit antiquities is that we do not know their provenance, so if they have been taken from a site—or, in the case of Syria and Iraq, looted, even—the actual context of those objects has been destroyed. While the objects themselves might be considerable works of art and were probably created as such, that does not mean they have value in their own right. They might have financial value, but there is a duty of care on museum staff or those dealing in this subject to make sure that such objects are not covered by this statute. There can be very few articles which could not have a 1954 provenance. Many museums would not accept articles which did not have a provenance going back before 1954, and while I understand the concern that has been expressed, the really big problem is making sure where these objects come from in the first place. One of the reasons Daesh is selling these objects now is that nobody is questioning where they came from.

Lord Howarth of Newport: My Lords, I am very sympathetic to the objectives of the noble Earl, Lord Kinnoull. He raises an important practical consideration: how are those operating in the marketplace, or being asked to advise on or deal in particular objects, to satisfy themselves that they are in conformity with the legislation and are doing the right thing? I imagine that the answer lies partly in the promulgation of standards by professional bodies such as the Museums Association and the British Antique Dealers' Association —and of course the Department for Culture, Media and Sport itself, which issues guidance on these matters and will no doubt wish to ensure that it is up to date. Training, methods of professional qualification and the certification of institutions and so forth all have a part to play. However, it would be helpful if the Minister gave us some idea of how the Government envisage that people who wish to act responsibly, professionally and properly can be confident they are in fact doing so.

Lord Inglewood: My Lords, I should have mentioned earlier that I am president of the British Art Market Federation, which is in my declaration of interests. The noble Lord, Lord Howarth, made the point very well: there is a real risk that we invent cleverly worded legislation which in effect inhibits the kind of thing the noble Earl talked about. What matters is actually securing convictions where serious crimes have taken place. If we try to finesse everything too much, the risk is that we will not get the convictions and there will no exhibitions of art across borders. That would be a loss, so it is important that my noble friend spell out, in simple terms that people can understand, exactly how we can devise a straightforward and clear way of dealing with the problems that have been alluded to.

The Earl of Clancarty: My Lords, I, too, am sympathetic to the concerns of the noble Earl, Lord Kinnoull, but can we compare notes with or learn from other European countries such as Germany, which has important museums and has operated the second protocol since 2004?

Lord Stevenson of Balmacara: My Lords, I am looking forward to the Minister's response to the main amendment in this group but I would like to touch on Amendment 30A. Here, we are back with our friends clarity, consistency and accuracy, and as the noble Baroness is also a Minister in the department for business, I am sure she will want to follow this one through carefully. There is some merit in trying to make sure that we replicate the position in other areas where criminal activity might follow from acts by a corporate body, and it will be interesting to hear what she has to say on that.

Baroness Neville-Rolfe: I am very grateful to the noble Earl, Lord Kinnoull, for raising this issue and giving rise to this useful debate. I know he has extensive experience of the art insurance market and am grateful that he gave up time to take us through that and to try and find a way forward, because we are obviously keen, as I keep saying, to progress the Bill. I am also grateful to the noble Lord, Lord Redesdale, for his comments.

I acknowledge the concern that the noble Earl raises that those who deal with cultural property, whether in museums, insurance companies or shipping companies, should understand what they must do in order to comply with the Bill and with the convention and its protocols. The noble Lord, Lord Howarth, also asked how people are supposed to know that they are acting properly, and I will explain some of the things that will happen.

The Collections Trust, on behalf of Arts Council England, provides extensive guidance for museums, collectors, dealers and others on compliance with the legal requirements relating to cultural property, including on conducting due diligence to establish provenance and on related moral and ethical issues. There is a section on the Collections Trust website that references the 1954 Hague convention and its obligations. A wide range of other organisations also provide advice and guidance to their members and sectors on these issues.

These organisations are best placed to provide expert advice on how to go about determining whether an object is unlawfully exported cultural property. The Bill does not require those dealing with cultural property to do anything they do not already do. Conducting due diligence and determining the provenance of cultural property is an established part, I am glad to say, of what museums, collectors, dealers, insurers and others do in this country, which is of course one of the reasons we have great museums and a buoyant art market. The questions of whether cultural property was exported before or after a particular date and whether it was exported from an occupied territory are part of the broader and more basic question of whether it was lawfully exported at all. This is the key point on which anyone dealing with cultural property will want to satisfy themselves.

What would constitute "reasonable" procedures will vary from case to case depending on the particular circumstances, and it is difficult to issue one-size-fits-all regulations. This is true in other areas too, as the noble Lord, Lord Stevenson, suggested. We will work with Arts Council England, the Collections Trust and other stakeholders to ensure that clear guidance is available and up to date, to help all those who deal with cultural property to understand and comply with the Bill. I will make sure that my department ensures that the information available in relation to the Bill including that on websites—as we have discussed, we now have to have things on websites in relation to every bit of legislation—fully reflects the requirements of the Bill.

Amendment 30A relates to Clause 29(3). Clause 29 is a standard clause which appears in numerous pieces of legislation and has been the subject of interpretation by the courts. For example, there is similar provision in the Dealing in Cultural Objects (Offences) Act 2003, and I would hesitate to amend this, for reasons of consistency. The intention of such a clause is to ensure that senior officers of a company who are personally involved in an offence can be held personally responsible and cannot escape liability by hiding behind the company.

I understand that the noble Earl, Lord Kinnoull, is concerned, as perhaps are others, as to whether "manager" might, in a large organisation, cover relatively junior employees in management roles. I am advised that this phrase has been considered by the courts, which have determined that "manager" refers only to those in a position of real authority as regards the company's affairs and not to those merely responsible for day-to-day management of part of the business. It is therefore the most senior company officers who might be held liable under this clause. In any event, the key point to note is that liability will arise only if the individual has personally consented to or connived in the offence.

5.15 pm

I will pick up two or three of the other points made. First, loaning of items is obviously important. We all like the free flow of objects around the world for galleries. The Government consider that the likelihood that cultural property owned by a reputable institution or collector might be unlawfully exported cultural property is extremely small. Museums, being what they are, already research and consider the provenance of cultural property and assess the risk that it has been

[Baroness Neville-Rolfe]
stolen and/or unlawfully exported from another state. This is covered in existing codes of practice, such as the *Code of Ethics for Museums* and its supporting guidance published by the Museums Association. We would be concerned about providing a safe harbour or carve-out from the Bill. We do not want to risk creating a loophole which could be exploited by the unscrupulous and do not think that any particular group should be given special treatment.

My noble friend Lord Inglewood, who knows so much about the art market under many different hats, had concerns about the mens rea issue. In response, I can say that my officials have met the British Art Market Federation to discuss its reservations about the drafting of the dealing offence in the Bill and the potential implications for the art market. We expect dealers to conduct thorough due diligence in line with the industry standards, which require that members undertake not to purchase, sell or offer any item of property that they know has been illegally exported. It is vital that the mens rea offence of dealing in unlawfully exported cultural property should be sufficient to encourage good practice in due diligence, rather than have the unintended effect of discouraging dealers from carrying out such inquiries. We are talking about the right motivation and decent information. I hope that my noble friend will feel that that is what is necessary, but I would of course be happy to meet to discuss the issue if he has remaining concerns, because of the importance of the art market.

I hope that I have responded to the various points raised and that the noble Earl will feel able to withdraw the amendment.

The Earl of Kinnoull: My Lords, I am grateful to the Minister, as ever. When turning up to meetings with her, it is always highly impressive that she has read every word of her brief; I wish it were always so for every Minister. I am very grateful, in reverse order, for her help with the definition of "manager", which removes one of my concerns about producing grit in the machinery of international exhibitions. Secondly, I am grateful for her undertaking to publicise how one should conduct due diligence—as it were, a soft safe harbour. I feel that that should be enough and, if it is not, we will have the opportunity to come back to do something about it. On that basis, I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Clause 16 agreed.

Clause 17: Offence of dealing in unlawfully exported cultural property

Amendment 17

Moved by ***Lord Collins of Highbury***

17: Clause 17, page 8, line 42, at end insert—

"( ) Cultural property for sale originating from war zones or areas of conflict shall require those responsible for the sale to assume that an item has been unlawfully exported and take all necessary steps accordingly."

Lord Collins of Highbury: My Lords, this follows on aptly from previous debate. The purpose of the amendment is to provoke an even stronger debate. The context of the convention is 1954, the context of post-war Europe, where we had a totalitarian state looting property, forcing works of art to be sold, forcing people to give up their property in a quasi-judicial legal way, leading to difficulties over provenance, et cetera. It was a weapon of war.

In fact, in some of the conflicts we have seen in Europe, that sort of looting has become a common feature of war. Actually, as we heard in previous debates, cultural property is not just becoming a weapon of war whereby you culturally attack and undermine people's wealth or possessions, but is now used to fund war and conflict. It has become an income stream for quasi-states. One of the reasons why we have tabled this amendment is to provoke the sort of debate that we have just had and to ask how effective these measures are. The purpose is not to criminalise art dealers or to attack people. In a sense, by the time a work of art has reached a dealer, it is too late. We are seeking to get the Government to think hard about how to stop the trade being used by the groups that we have been talking about. We have examples. In the antiques trade, it is quite common. We have been talking about endangered species and the use of ivory. We have set a very clear date when ivory cannot be traded. My problem is that if we do not address the fundamental issue of cultural property being used not only as a weapon of war but as an income stream, the issues we heard about in the previous debate about how you prove provenance become very difficult, hence the proposal for the reversal of proof.

We heard a bit about this in the previous statement. We have existing legislation and the codes of practice that have been adopted from existed legislation. There is a useful description on page 7 of the impact assessment of all the different codes of practice for the control of international trading in works of art. The Antiquities Dealers' Association's code of practice includes members agreeing to make purchases in good faith and to establish identity. All this is extremely appropriate and good, but has it been enough? Is it sufficient to stop the sort of things that we know are going on? That is the purpose of this amendment: to generate that debate and to ask the Government properly to review whether the existing arrangements and the codes that follow from the convention are sufficient. I hope the Minister will be able to take these points into consideration. I beg to move.

The Earl of Clancarty: My Lords, I shall speak to Amendment 18 in this group, and I thank the noble Lord, Lord Redesdale, and the noble Baroness, Lady Bonham-Carter, for their support for this amendment.

I am attacking the problem from the other end to the noble Lord, Lord Collins. The purpose of the amendment is to remove the long-standing culture of secrecy in the art and antiques trade in the UK, which is a hindrance to the protection of cultural property. London is the second-biggest antiquities market in the world and is perhaps the biggest for Islamic objects. Last year, UNESCO stated that looting in the Middle East is operating on an industrial scale. We know that

there is significant illegal trade in London in antiquities from the Middle East from considerable anecdotal evidence and from undercover research, such as that carried out for the excellent Channel 4 "Dispatches" programme, to which the noble Baroness, Lady Bonham-Carter, referred at Second Reading, in which Dick Ellis, the founder and former head of the Metropolitan Police art and antiques Unit, which the noble Baroness, Lady Berridge, and the noble Lord, Lord Howarth, referred to earlier, said that the current three-person team of that unit is simply not large enough to deal with the problem.

I say at the outset that the antiques trade and auction houses do an important job. I am not against the trade, which according to the British Art Market Federation's website, was worth £9 billion in 2014. Indeed, I am one of a large number of people up and down the country who have bought items at auction, of whatever value. However, the convention of maintaining the secrecy of both sellers and buyers is wrong, and runs counter to everything that art historians and archaeologists try to do, which is to build a historical record and discover the provenance of an object. It is worth saying that the major part of the meaning of cultural property lies in its provenance, often as part of that property's original environment. Where art historians, experts in ancient manuscripts and other experts try to lift the lid on history, the art and antiques trade obfuscates. Auction houses sometimes provide provenance—sometimes whole auctions will be dedicated to the sale of items owned by a particular celebrity collector, for example. However, the auction houses do this selectively when it suits them, when it is clear that it gives a sale a particular cachet; it is not the general rule.

To peg this amendment to the Bill, it is rightly framed in terms of looted property, but there are other reasons to have the amendment. There is the protection of our own cultural property to consider, whether or not it is looted, and we should not be complacent about that protection. I stand corrected by the Minister when she said at Second Reading that there had been one prosecution under the Dealing in Cultural Objects (Offences) Act 2003—just one, it has to be added, in the last 13 years. My substantive point, which was that there had been no prosecutions for looting in the Middle East—the purpose for which the Act was set up in the first place—still holds. The one prosecution, which happened in the last few weeks, is of someone who stole religious artefacts from churches in the UK. Nevertheless, this is instructive in itself, since to make this looting worth while there have to be buyers for such stolen property.

The art and antiques trade of course says that it is doing what it can to tighten up checks on provenance internally and adheres to its voluntary code of due diligence, but that is not good enough—we need transparency. We expect transparency in so many other walks of life, and we should expect it in the dealing of cultural objects. This brings me to the third good reason for this amendment, which is simply that it is an issue of consumers' rights. Thinking in particular about the possibility of introducing object passports, I do not see why, if in the instance of buying a car we have the right to know its history and previous owners, and have a logbook as proof of that, we do not grant the same rights for the purchase of an artefact above a certain market value. What is it about being a seller or a buyer that is so shameful that one cannot be revealed to the other, let alone to the rest of the public? When I have bought something at an auction, or even wanted to, what I want to hear from the auction house if I ask them for information on the item is not, "Oh, we can't tell you who the seller is, sir, we have to protect their confidentiality", but "We will absolutely provide you with as much information as possible about the object's history". Until we have a culture of openness, one that will allow the object to be tracked back from the current buyer, however that purchase is made—of course many purchases are now made online—we have an unhelpfully secretive art and antiques market that breaks the links of the historical record for the object at every transaction in its history.

Baroness Bonham-Carter of Yarnbury (LD): My Lords, I support not only the amendment but all the words of the noble Earl, Lord Clancarty. In fact, many of the things I was going to say he has already said.

The looted treasure that the likes of Daesh are acquiring is funding terrorism. As we know, the antiquities industry runs on trust, which cannot always be right. As well as the Channel 4 programme that the noble Earl and I both watched, I read a *Guardian* investigation. Every time its undercover buyer, who is actually an archaeologist of Iraqi origin,

"zones in on something that seems likely to be from an area now controlled by Isis, the dealer … grows vague about the item's origin".

Another suggests that a small statue from either Iraq or Syria,

"was bought at an auction. There is never any paperwork".

This cannot be right.

The amendment seeks to make the antiquities trade and auction houses transparent about the background to the items that they are selling, to contribute to tackling this illegal trade in combating the source of funding for those who bring terror to our shores. I echo what the noble Baroness, Lady Berridge, and the noble Lord, Lord Howarth, have been saying throughout the afternoon about the need for resources for policing. If the amendment is to be successful, there need to be more than three policemen following up on this terrible trade.

5.30 pm

Lord Howarth of Newport: My Lords, my noble friend Lord Collins of Highbury and the noble Earl, Lord Clancarty, the noble Baroness, Lady Bonham-Carter, and their co-signatories address a very important issue. While I fully understand the nature of my noble friend's concern I have some reservations about his specific proposal, which has something of the character of martial law about it. It is an important feature of our legal tradition that people are innocent until proved guilty. Only where motoring offences are concerned is there a presumption of guilt and you have to demonstrate your innocence, and I am not sure that I want to see that reversal applied in the art market. None the less, there is a very serious problem within the London art, antiques and antiquities markets.

[LORD HOWARTH OF NEWPORT]

I emphasise that the London art market is a jewel in the nation's crown. There are some magnificent businesses that do enormous credit to this country, bring it prosperity and play a leading role in its cultural distinction. However, the London market is a mixed bag and unfortunately there are some dodgy characters and spivs—and spivs in blue suits are spivs no less. It is therefore absolutely right that we should seek through this legislation to address ourselves to this kind of criminality.

We see here the interaction of two very disturbing problems. One is the funding of terrorism. As we know, ISIL is systematically engaged through what it calls its "Ministry of Antiquities" in looting the cultural heritage of the areas it occupies and selling important items of cultural heritage on the global market, and in particular the London market, to finance its continuing terrorism. It also takes a levy from others who for whatever reasons find opportunities to sell items of cultural heritage. So that is happening and it is a major concern.

There is also the whole problem of money laundering across global markets. One of the most convenient ways for people to launder money is to purchase works of art or precious antiquities and in that way bring their money into what appears to be the legitimate market. When we have that interaction of two major criminal processes, vigorous and well-thought-through action is clearly needed.

I have a great deal of sympathy for what is proposed in Amendment 18, and in particular, as the noble Earl just suggested, its emphasis on clarity of ownership so that people engaged in these markets can know who they are transacting with and the provenance of the items that they are buying. The opacity of the market is obviously very convenient for criminality and makes it difficult for people who collect or wish to deal for perfectly honourable and proper purposes to be confident that they are acting properly. Sunlight, as is often observed, is a very good disinfectant, and the thrust of Amendment 18 is right.

It would be helpful if the Minister could say how this legislation will interact with the criminal finances Bill, which we have not yet seen but which the Government have promised—presumably it will be introduced quite soon—and which will deal with the problems of corruption that were addressed by the Prime Minister and the Government as a whole in the summit they held earlier this year. Certainly, if we had information about the identity of buyers or potential buyers and sellers, that should be a contribution towards enabling the better identification and prosecution of money launderers. I would add that the legislation should require that ultimate beneficial ownership is identified, and not just the person who happens to be acting for the time being, who may well be acting on behalf of others and may be at the top of many layers of transactions and intermediary financial devices.

So that is important. But all this should be seen in the context of the need for a fully co-ordinated, energetic, purposeful drive by the Government to prosecute offences in this area, with all the departments of Whitehall working together and the police, the National Crime Agency and Her Majesty's Revenue & Customs all engaged in a fully developed strategy, working of course with the relevant business and professional associations, those in the art market and with other Governments internationally—a point I made in the debate we had on 14 January. It would be helpful if the Minister would give us an update on how the Government are seeking to address these problems coherently.

Lord Inglewood: My Lords, in her response to my intervention on the previous amendment the Minister responded to some things I wanted to touch on and raise under this amendment—so it was nice to hear from her in advance of my comments.

First, speaking as president of the British Art Market Federation, I emphasise that the federation warmly welcomes the Bill—and does so for two completely different reasons. The first is that it is inherently a good and a right thing to do. Secondly, the British art market, which is based particularly in London but not exclusively so, needs to have the reputation as a clean market. If it is not a clean market, it will not be able to benefit those who deal in it as well as it would if it were. This is as true of a stock exchange or the City of London as it is of the British art market.

The Minister told the Committee at the end of her remarks on the previous amendment what she expected of the British art market. I listened carefully and I think that I understood everything accurately. I can say that not only is that what we expect of the British art market but that she missed two things out. The first is that we expect those who break the law to be prosecuted and then convicted. Secondly—this was an important point made by the noble Lord, Lord Collins—we are not ultimately interested in prosecuting people for crimes; we want to see a world where these crimes do not take place in the first instance. If you have a market which succeeds in prosecuting criminals who operate in and around it, you will go a long way towards achieving just that.

I will touch on some comments I made at the conclusion of my contribution to the discussion on the previous clause. It seems that we need to get two important things right in the context of the criminal law here. The first is that the mens rea needs to be right—I think that my noble friend knows this. We feel that the mens rea as drafted in the Bill is a bit woolly. If you have a slightly woolly definition of what the necessary mens rea is, clever lawyers will be able to get slippery individuals off, and that is not a good thing. We believe, bearing in mind the way in which the criminal law is construed in this country, that a mens rea of knowing or suspecting will assist in bringing criminals to book. Secondly, the particularity of what is required of people should be clear, straightforward and doable. As I said earlier, this is not an exercise in writing a paper which may get you a First in your finals at university but an exercise in bringing bad lads to book.

Against that background, we have heard quite a lot of remarks about the extent of criminality in the London art market, particularly in the context of the tragic events in the Middle East. As I understand it—and I do not have a lot of first-hand knowledge—undoubtedly during the Iraq war there was a significant

amount of trade in illegal objects which derived from Iraq at that time. Since then, in the context of the Syrian conflict, my understanding is that the London art market has hardly been involved. This is partly to do with the cultural property offences Act, which we have already had reference to, and partly to do with the fact that those who are engaged in this activity, which is undoubtedly happening, are no longer using the London art market as the place from which to disseminate their ill-gotten goods. In corroboration of this, I understand that the Metropolitan Police has put it on the record that London is now a much cleaner market than it was before.

One reason for that is the expansion of proper due diligence. If you use due diligence, you do not necessarily need to have in front of you an enormous schedule of provenance. After all, these days a good provenance enhances the value of a work of art, and most people sell works of art in order to make as much money as possible. But, in the context of the kind of object that might have been looted, not having appropriate provenance gives rise to suspicion and, if there is suspicion, you will potentially be liable to prosecution. If you look at it like that, do not prescribe the rules too tightly and allow the application of principle in dealing with these matters, you will almost certainly be more successful.

Earlier, we heard a number of suggestions regarding illegal trade going on in London. I would just say: do not raise them on the Floor of the House of Lords; go to the police and get the criminals banged up. That is what is required. There have been so few prosecutions and it has been suggested to me that the reason is that there has not been the evidence to justify bringing them. I am not saying that everything is perfect—but that again goes back to the fact that, in the case of the current conflict, this is not the principal place where people wish to launder these sorts of items.

The noble Lord, Lord Howarth, is absolutely right: we must not overlook the fact that the art market, like all markets in this country, is subject to comprehensive and extensive money-laundering regulation. That, as much as anything else, ought to answer certain criticisms that have been made. The noble Lord is probably right that changing the burden of proof in the way described would be a pretty fundamental change to the way that things are done in this country. It would probably drive the bad lads underground, because you can always sell things privately. We do not know what goes on when things are sold privately but I suspect that it is a much easier way to fence stuff. So I urge the Government to look very carefully at what is proposed because I doubt that it will have the result that its proponents suggest. It could have a damaging effect on the honest market, and if you do not have an honest market there is always the temptation for a parallel dishonest market to develop.

Baroness Northover: My Lords, I support the amendment in the names of the noble Earl, Lord Clancarty, and my noble friends Lord Redesdale and Lady Bonham-Carter. I emphasise the vital importance of not only preserving the world's cultural heritage but doing our best to curtail funding for terrorist groups. People tend to think of oil or extortion as funding terrorism, but we know that people trafficking and, as the noble Lord, Lord Collins, has just said, the wildlife trade, as well as the trafficking of cultural objects, also fund terrorism. That is not what people—the consumers, to whom the noble Earl, Lord Clancarty, refers—think as they buy a beautiful or historic object, which is why these provisions are so important: transparency is absolutely vital.

Can the Minister tell me whether the funding of the Arts and Antiques Unit in the Metropolitan Police, as with other areas in which the Met is pursuing corruption overseas, counts towards our overseas development assistance—ODA—calculations? Also, given Brexit and the potential shrinking of the economy, can she say whether our commitment to 0.7% of GNI for ODA will continue—and what provisions have been made if that does not happen?

5.45 pm

Lord Renfrew of Kaimsthorn: My Lords, I warmly support the amendment in the names of the noble Earl, Lord Clancarty, and his colleagues. It makes a number of really important points. The first point, which he expressed very well, concerns transparency. It is extraordinary that at the moment there is no obligation on a seller at auction to indicate who is selling the object. That is needed at once. We talk of transparency but there are auctions of major antiquities, for instance, where the name of the vendor is not made clear.

The noble Earl is also absolutely right that if we are talking about, for example, an antiquity, it is useful to have its history over a period of time, although it may be overambitious to talk about an object passport. If it is a prehistoric object, we will not have the names and addresses of all previous owners. Perhaps we could specify all previous owners since 1970, using the date of the UNESCO convention. There are one or two places in the Bill where one could insert 1970. After all, as the Bill makes clear:

> "Subsection (1) does not apply to property imported into the United Kingdom before this section comes into force".

Therefore, we will not lose much if we insert 1970 at that point.

The principle of trying to establish the history of an object over a good number of years, preferably before 1970, is very important, and I very much like the suggestion of an object passport, although I realise that we must be careful not to introduce too much additional paperwork into the world. However, if one had an object passport, one would certainly want to have a photograph as one element of it. That would be very important, as one could certainly have the ownership history going back at least to 1970, and that would be very useful.

Although antiquity sales in this country have diminished in recent years, I have learned that Sotheby's is proposing to reintroduce its sales of antiquities in London, which previously it exported to New York following the major scandal in Sotheby's some years ago. I am not sure that that reimportation is a good thing but, if it is to be done, it should be done properly, as my noble friend Lord Inglewood said.

[Lord Renfrew of Kaimsthorn]
Therefore, a clear provenance history is essential, and we ought to ask the auction houses and dealers to introduce it. Whether it can be done through a simple amendment to this Bill, I am not sure, but the principle in the amendment is crucial. The notion that there should be information on the identity of the seller of the item and as much history of the item's ownership as possible is admirable. Although the idea of an object passport needs further thought, the suggestion that there would be a limit on the value and it would not apply to every small-value object would limit the bureaucracy involved.

I very much welcome the amendment. Although we heard about the virtues of the art market in London—I am sure that it has many virtues and is an important part of the economy; indeed, as my noble friend Lord Inglewood said, in recent years the antiquities dealers have tightened up and are applying stricter standards—the basic standard of knowing where the object comes from and who has owned it is essential and I would like to see it carried forward.

Lord Redesdale: My Lords, I rise to speak to this amendment and to say that I do not plan to move Amendment 29 because it raises this issue.

A number of us in this Chamber were responsible for pushing through the Dealing in Cultural Objects (Offences) Act. Although it is good to know that at least one prosecution has taken place under the Act, that did not stop it, at the beginning of the last Government, being put forward by the Conservative Back-Benchers as a piece of legislation that was redundant and could be got rid of because it had never been used. The problem is that such legislation gets moved in response to a specific event; in this case, it was the looting of the museum in Baghdad. The ratification of this Bill has been moved forward very much due to the cultural destruction that is taking place in Syria at the moment.

I do not believe that this Bill is the place for this amendment, even though I have put my name to it. However, it is probable that we could raise it again in any money laundering legislation that comes in front of the House in the future. As the noble Lord, Lord Renfrew, so adroitly pointed out, the real problem is that a lot of art provenance is not known, is written on dodgy pieces of paper, or is attested to collections that no longer exist in foreign countries. This is a problem.

I take on board the point made by the noble Lord, Lord Inglewood, that because there is a law, many people will not break it. However, there are many laws that people know are there and do break. The art market does not have the best of reputations from instances in the past. Therefore, if we are to clear up the art market, we need to make sure that there is some implication of having a law. That is why I put down the amendment to say that there should be a review each year. For example, we know that, in 2003, the amount of Mesopotamian artefacts on the marketplace drove down the price. We also know the source of those Mesopotamian artefacts, and, bizarrely, that trading was done very much in the areas that are next to the British Museum.

Provenance is a double-edged sword. Many of the artefacts that are now safe in the British Museum were illicitly lifted and their provenance is now based on the paperwork that proves they were filtered from the country of origin without the authorities' knowledge. One could say that many of the collections of the great museums have a slight provenance issue.

Although this amendment will probably not be agreed, it raises the issue that, although we have the law, it has not been taken as seriously as it should be because it has not had the funding that it might require. Resources are needed to deal with this. The noble Lord, Lord Inglewood, raised the issue of trying to bring forward prosecutions to the police. However, the arts and antiquities squads were so underfunded that they resorted to trying to get special constables who were recruited from staff at the British Museum. In my view, that is not a well-funded or well-thought-out prosecution system to deal with a market that runs into the millions of pounds.

Lord Inglewood: My Lords, I would like to intervene to respond to remarks made by the noble Lord, Lord Redesdale, and by my noble friend Lord Renfrew. Anybody who is selling an item owns it. They have a duty under due diligence not to handle anything that is suspicious. That way, you always have somebody you can go against if it is, in fact, wrong. Is it really the case that providing the information up front in the auction catalogue—which if it is wrong will be false—is going to solve the problem?

Lord Flight (Con): My Lords, I am curious to know what the minimum value envisaged is in the amendment from the noble Earl, Lord Clancarty. It seems to me that unless those minimums are fairly substantial—maybe a million but certainly in the hundreds of thousands—then it would make a complete shambles of the antique and flea market industry. People can know one generation of owner but they are never going to know the previous generation of owner. Therefore, a passport can operate only where it is clearly an item of substantial value and has had that value for some time.

Baroness Neville-Rolfe: My Lords, I would like to start by addressing Amendment 18. I thank the noble Earl, Lord Clancarty, for the work that he does in this House as an advocate on behalf of the creative industries. Aided by his background as an artist and a writer, he provides a voice in the House for a community that contributes an awful lot to our cultural fabric.

I believe that auctioneers and traders have an important role to play in providing information about the history and background of the items that they sell. That allows the UK's lawful—I hope—and vibrant marketplace for arts and antiquities to flourish and grow, as many have said.

I have some concerns about the amendment that the noble Earl has tabled with support from the noble Baronesses, Lady Bonham-Carter and Lady Northover, the noble Lord, Lord Redesdale, and my noble friend Lord Renfrew. Perhaps I can explain why.

First, I continue to believe that it is appropriate to allow the art and antiquities trade to regulate itself. The established trade associations possess codes of

ethics by which they expect their members to abide, and we expect the associations to strictly enforce those codes. The codes require that members undertake not to purchase, sell or offer any item of property that they know has been stolen, illegally exported or illegally excavated. Furthermore, we believe that the Dealing in Cultural Objects (Offences) Act 2003, along with the new offence that we are creating, provides a sufficient incentive for legitimate dealers to ensure that they do their due diligence and pass on relevant information concerning the provenance of an object.

The lack of prosecutions—although there has been one—does not mean that the Act has had no effect. It has had a successful deterrent effect, as was rightly noted by my noble friend Lord Inglewood.

I am determined to minimise costly bureaucracy for businesses unless there is a strong case for it being necessary. To my mind, this amendment would be disproportionate, considering that there are, and have been since 1956, very few occupied territories around the world. Thus the number of objects unlawfully exported from such territories is likely to be very low. Given the extremely limited scope of cultural objects that would be classed as unlawfully exported from occupied territory, a measure requiring the provision of detailed information with regard specifically to whether any item of cultural property for sale in the UK has been unlawfully exported from an occupied territory would not be proportionate. To have a statutory passport for items, as some have said, seems like a big burden. It could also, of course, further disadvantage London as a centre for the art and antiquities trade—that would be a perverse effect.

Secondly, I would like to touch on the human rights issue, which has not been given particular prominence. We are concerned that this amendment would infringe Article 8 of the European Convention on Human Rights because the collection and retention of the names and addresses of all previous owners would interfere with the right to respect for private and family life, home and correspondence. That cannot, in our opinion, be justified as necessary for achieving the aim of protecting cultural objects.

I turn finally to one of the amendment's more specific points, which was obliquely referred to by my noble friend Lord Flight, who joined the debate. Monetary value is not an appropriate way of determining whether an object should be covered or not. Such objects may have a significant historical or emotional value for the communities from which they were removed, but not necessarily a high monetary value. That deals with our reservations about Amendment 18.

6 pm

In his introduction to Amendment 17, the noble Lord, Lord Collins, made a point with a broader sweep. I will respond to the general point and then explain our comments on Amendment 17. On the bigger picture, as noble Lords know, we are working with international partners to prevent the illegal trading of Iraqi and Syrian antiquities—including in the UK—through the implementation of UN and EU sanctions. Our strategy is to prevent the illegal importation of such antiquities through UK customs and border controls. Border Force officers, supported by HMRC intelligence officers and investigators, enforce the sanctions legislation which is in place.

The noble Lord mentioned ivory, for example. The UK has played a leading role in galvanising international action to combat the illegal wildlife trade and is supportive of wider strategies to preserve current elephant populations and combat the illegal trade in ivory. Actually, you see more and more of the effort on ivory around the world. I was in Atlanta Airport, on my way to Mexico, and there were the results of the enforcement effort that is now going into getting rid of contraband and inappropriate ivory trade.

The noble Lord also said that enforcement is key, and my noble friend Lord Inglewood picked up this theme with, I thought, an expert and interesting contribution to our debate. I agree we must have good enforcement and I agree with my noble friend that it is important to go to the police. As I am responding to him, I might say that I did anticipate his concern—I apologise, but I had been given advance notice of it—on mens rea. I will not add to the comments that I have already made, but I look forward to discussing that issue with him before Report.

The noble Lord, Lord Collins, referred to funding streams from unlawful cultural property, which others touched on as well. I said at Second Reading that while a limited amount of funding for Daesh does come from unlawful cultural property—and, obviously, that is a concern—this is dwarfed by other funding sources. The noble Baroness, Lady Northover, referred rightly to people trafficking and to oil, and there is obviously internal taxation as well. Of course, we must do what we can to reduce this further, and I believe this Bill will help to strengthen the legal framework in respect of Syria.

Of course, this legislation is also complementary. We are implementing the convention, but we already have an existing legal framework to tackle unlawful dealing in cultural objects. As I have mentioned, that includes the Dealing in Cultural Objects (Offences) Act 2003, as well as the relevant Syria and Iraq sanctions orders. The Dealing in Cultural Objects (Offences) Act makes it a criminal offence to deal dishonestly in "tainted cultural objects", knowing or believing they are tainted, from anywhere in the world—and I am glad to be able to say that on the record. Where the 2003 Act does not apply, offences of theft or handling stolen goods under the Theft Act may apply.

The noble Baroness, Lady Bonham-Carter, talked about the importance of resourcing this enforcement effort. You cannot always do everything but, as she knows, I am passionate about enforcement in all areas, because it is often better value than new legislation. Obviously, she is right that we should continue to use all the resources that we can.

I also agree that it is important to join that up; this is something that we agree on. We have looked at that in other areas, and the obvious area of join-up is with money laundering, which the noble Lord, Lord Howarth, mentioned. The Government will take decisive measures on laundering in the criminal finances Bill, which obviously has not yet been published. My officials have already been in touch with the Treasury, and they agree that money laundering should be dealt with in

[Baroness Neville-Rolfe]
that Bill rather than piecemeal across sectors. However, as the noble Lord, Lord Redesdale, said, cultural aspects of money laundering may well come up when we get to discuss that Bill.

The noble Baroness, Lady Northover, asked about police resourcing, on which I shall write to noble Lords. However, to answer her question, the UK police resourcing does not derive from the ODA.

Turning to Amendment 17, I think it is important to explain a little bit about what it does—these amendments have been put down in good faith, so that we understand the impact of the Bill. The amendment would provide that dealers must assume that cultural property originating from war zones or areas of conflict,

"has been unlawfully exported and take all necessary steps accordingly".

As I mentioned, UK dealers in art and antiquities already follow codes of practice that require them to conduct due diligence. I therefore believe it would be disproportionate to require dealers to assume that property which originates from a country that is occupied was exported unlawfully, particularly as conflicts can be transitory in nature.

The scope of the amendment is also a little unclear. There is no definition of what would constitute a "war zone" or "area of conflict", making the amendment potentially exceptionally broad and beyond the scope of the Hague convention and its protocols. Applying these rules to cultural property from any conflict zone could be confusing and seriously restrict the legitimate trade in cultural objects. The impact on the art and antiquities industry could be high, which I know is not what is intended. The amendment also requires that, having made the assumption of unlawful export, dealers take "all necessary steps accordingly", but it is not clear what these steps might be. The Government cannot accept an amendment that places such an unclear and potentially heavy burden on the UK's art market.

Finally, I should mention Amendment 21, in the name of the noble Lord, Lord Collins, which relates to reimportation. I might just say that the term "imported" is already considered to include "reimported", so unlawfully exported cultural property from an occupied territory which was already in the United Kingdom and then sent abroad—for example, on loan for an exhibition overseas—will already be covered by this Bill if it returns to the UK after this clause comes into force.

I have spoken at length. It has been an important debate, and I have tried to give some reassurance and explain the intention of some of these amendments, which I think were exploratory in nature to some extent. I ask the noble Lord to withdraw the amendment.

Lord Renfrew of Kaimsthorn: Before the Minister sits down, will she clarify just one point? She made a very interesting remark, in that she thought that the amendment proposed by the noble Earl, Lord Clancarty, might infringe the human rights of a former owner of an antiquity or cultural object. Will she clarify a little how she thinks that might be? Would it have infringed the rights of Lord Elgin that his ownership of the Elgin Marbles was clear or the rights of the Earl of Portland that the Portland Vase had been in his ownership? I am not quite clear how that works, and it certainly seems counter to the cause of transparency—which has been emphasised by the noble Earl, Lord Clancarty, and the noble Lord, Lord Howarth—which I think is very important in the antiquities trade. Part of transparency is ownership history, so this notion that it would damage the human rights of Lord Elgin or Lord Portland seems to me to be a very disturbing one.

Baroness Neville-Rolfe: I think the noble Lord is right; it is a bit of a puzzle. Of course, Lord Elgin and co were from a long time ago, before any of this legislation existed. Anyway, that is the advice that I have had—you do get these curiosities with human rights, which in general we support but sometimes create difficulties for us. Perhaps he would like to look at *Hansard* and see what I said, and I am sure we can discuss this further, if the noble Lord would find that helpful.

Lord Collins of Highbury: My Lords, this has been an incredibly positive debate. At the beginning, I said the purpose of my amendment was to be a probing amendment to generate a debate, and that is what we have done. It may have been a bit provocative and, as my noble friend pointed out, may have gone a little too far, but the point I was trying to emphasise is that we need to look at this issue as a whole and, understanding that we have a suite of measures already in existence, our focus needs to be strongly on enforcement and that this includes making sure that these things do not even leave the country of their origin.

Transparency is an incredibly important issue. What is this trade afraid of? The motor industry is described as a bit dodgy and is said to have wide boys in it. If I am buying a car, I need to understand who owned it—and not just the previous owner, but where it started from, because it is a matter of safety. The art industry needs to reflect on the debate that we have had today, if it is to retain what has been quite effective self-regulation.

The noble Lord, Lord Inglewood, referred to how the trade operates and said that if measures were disproportionate and we imposed X, Y and Z, we would simply displace it or it would move underground. I suspect that that goes on anyway, but we have a moral obligation and duty to ensure that we do not collude with those illegal activities. However, in the light of the Minister's comments, I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Clause 17 agreed.

Amendment 18 not moved.

Clause 18: Forfeiture in connection with dealing offence

Amendment 19 not moved.

Clause 18 agreed.

Amendment 20

Moved by ***Lord Rosser***

20: After Clause 18, insert the following new Clause—

"United Kingdom Border Force: code of practice

(1) The Secretary of State shall publish, and lay before Parliament, a code of practice for Border Force employees on the handling of, and training and enforcement practices relating to, cultural property covered by this Act.

(2) At the end of the period of one year after the passing of this Act, the Secretary of State shall publish a report outlining whether and how practice at the United Kingdom Border Force has changed in response to the passing of this Act, and the code of practice."

Lord Rosser: The Bill, as we know, seeks to introduce the necessary domestic legislation to enable us to ratify the 1954 Hague convention. The Bill makes it an offence to deal in cultural property that has been unlawfully exported from occupied territory if the perpetrator knew, or had reason to respect, that the cultural property concerned had been unlawfully exported. The purpose of Amendment 20 is to try to find out a bit more from the Government about the impact that they are assuming that the Bill will have on Border Force staff, as one assumes that they will have a role to play in detecting and apprehending those who try to deal illegally in the cultural property covered by the Bill.

The impact assessment advises us that the National Crime Agency and Border Force will not face any significant costs as a result of the Bill and that any costs will be absorbed into what is described as daily business. In relation to the Border Force, whose budget was cut by more than £300 million by the previous Government in the years up to 2015 and which was widely reported by certain sections of the national press during the referendum campaign as not being capable of preventing people from Calais landing on our coast away from the major ports, it seems odd that the Government are contemplating any additional costs without undertaking to provide the required resources to match those costs. To what extent, then, does the Bill simply extend a form of activity in which Border Force staff are already engaged, and to what extent is this a new area of responsibility for Border Force staff? If it is a type of activity that Border Force staff are already engaged in, to what extent will the Bill lead to an additional workload, and will any additional staff be required whose costs will have to be absorbed into daily business? If this is a completely new area of responsibility for Border Force staff, what will be the nature of the additional workload? If any additional staff are required, what additional training and skills will be needed and what will be the cost and time span of that training, the costs of which will have to be absorbed into daily business? In saying that the Border Force will not face any significant costs, could the Government tell us the financial threshold that they used in this instance to decide that any costs that are to be absorbed into daily business should not be deemed to have reached the level of significant costs?

6.15 pm

I notice that the impact assessment says that none of the measures proposed incurs any one-off or recurring costs to business, although later the impact assessment refers to one-off familiarisation costs associated with the legislation for organisations that are not considered by the Government to be businesses in any shape or form. Could the Government confirm that it means that there will be no additional costs for checking or for administrative requirements on transport companies moving goods as a result of the Bill in relation to the carriage of cultural property covered by it?

A further amendment in this group is intended to find out what is meant to be the definition of "constable" in Clause 23, which provides for a warrant to be issued by a justice, authorising,

"a constable … to enter and search the premises … and … to seize any property found there which the constable has grounds for believing is liable to forfeiture".

Is "constable" simply meant to be a definition of a police officer with the statutory powers applicable to that position? If that is the case, would the Government expect a constable exercising a power conferred by a warrant under Clause 23, including seizure, to be an officer of at least a certain rank or an officer with any particular training in relation to the unlawful export of cultural property?

Another amendment in this group is Amendment 27. Clause 24 deals with the retention of property in the custody of a constable. There appears to be no similar clause for the retention of property in the custody of the Border Force. Amendment 27 seeks to invite the Government to say why this is the case. Perhaps the Government could say if it is intended that there could be retention of property in the custody of the Border Force or whether the reason for the admission is that the power will not actually be available to the Border Force. If it is the former, are the Government saying that that power is already provided for in other legislation—and, if so, what is the statute in question? If the power is not to be available to the Border Force, what is the thinking behind that decision?

Finally, Amendment 26 in this group seeks to bring in line the requirements when property is under the custody of the police under Clause 24 to ensure that the requirements match those when the property is seized as determined in Clause 22. I beg to move.

Lord Howarth of Newport: My Lords, my noble friend Lord Rosser has made some very important points about the Border Force and the transport industry. The Border Force is under immense pressure and public expectations of what the Border Force, with its funding at a very precarious level, should be able to do to prevent illegal immigration into our country are very high. It is not reasonable to expect that the Border Force should form part of that coherent multi-agency and multi-departmental drive to deal with the problems of the importation of illicitly derived works of art that I mentioned earlier. We need the Border Force to be in the team along with the National Crime Agency, HMRC, the police and others. Among the industries and operators who need to be properly invigilated and need to be very well aware that there is a serious chance that they would be caught out if they

[LORD HOWARTH OF NEWPORT]
were doing illegal things, and that serious consequences would ensue, must be those who knowingly carry arts and antiquities that ought not to be imported, derived from conflict zones or other illegal sources.

My noble friend has made an excellent point. Perhaps the Border Force needs a dedicated unit, as the Metropolitan Police has its own such unit. The difficulty is that, if the dedicated unit consists of only three members of staff, it will not be tremendously effective. Moreover, if there is a dedicated unit, there is a risk that other members of the Border Force might say, "Well, it's the job of the dedicated unit", so this has to be a matter for the whole culture and training of the Border Force and it must be correspondingly resourced.

My noble friend's Amendment 24 deals with the rank of the police officer who might enter premises. It would appear that we do not have many such police officers available for the purpose. I wonder what my noble friend's response would be to a real-life story touched on by the noble Lord, Lord Redesdale, in debate on an earlier amendment. What about the case of an archaeologist employed by the British Museum who is deeply knowledgeable about the issues of looting and damage to the archaeological heritage, cares very much about them and volunteers to become a special constable? He knows more than most people in the world about these issues. However, he has the most junior rank in the police as a special constable. It is important that we do not amend the legislation to preclude this individual from carrying out the work that he has volunteered to do as an archaeological expert and as a very good citizen.

The Earl of Kinnoull: My Lords, I, too, support the thinking behind Amendments 20, 26 and 27, particularly in respect of helping the police and Border Force discharge their duties. Having long experience as an insurer, I know that stolen items often spend time with the police or—certainly in one case that I can think of—Border Force, and for understandable reasons. With no intention on the part of the police but simply because they have no expertise in the handling of materials, problems arise. One example comes to mind immediately, where it was a case not so much of a policeman putting his foot in it as of his putting a foot through it—through a major canvas. Therefore, as the noble Lords, Lord Rosser and Lord Howarth, said, some guidelines would be very helpful to the policemen on the front line. The fine art and antiques squad at Scotland Yard is greatly reduced these days; it used to have inspector-level command but is now down to a sergeant. The number of people there is very few, so they cannot ring internally for help, where written help would be enormously useful in these matters.

Cultural objects of the type that we are discussing are usually exceptionally fragile and therefore much more susceptible to mishandling, either through the action of damp and water or simply through being roughly handled. I look forward to hearing what the Minister has to say.

The Earl of Clancarty (CB): My Lords, I support Amendment 20 in the names of the noble Lords, Lord Rosser and Lord Stevenson, on the basis that it is essential that the UK Border Force is properly trained and seen to be so. There are many different aspects to such training. One obvious thing to say about our borders is that looted property is not stopped. It is worth quoting on this Dick Ellis, the former director of the now much-mentioned Metropolitan Police's art and antiques unit. He said earlier this year:

> "These pieces are moving through customs, they're moving through our ports all the time. And yet not a single item is seized in this country. At a time when … these sorts of objects when they're looted in Syria, when they're looted in Iraq, are helping to fund terrorism, why on earth aren't we doing more to stop them coming on to the market?".

This is a very good question. The public have a right to know whether and when looted property is stopped and held and what it is. Those data should be published.

Part of the practice of the UK Border Force must be to work closely with other agencies—communication between agencies was referred to by the noble Baroness, Lady Berridge, and the noble Lord, Lord Howarth—as well as experts from universities and museums. That should be part of the code of practice. There should be training in the sensitive handling of objects, as referred to by the noble Earl, Lord Kinnoull, and a good understanding of what is at stake in terms of cultural property.

It is important that objects should not suffer because they have been illegally imported. We talked earlier about the possibility of destruction when objects are held. I have at the back of my mind what happened earlier this year in Miami as a result of the blanket ban that came into force last year in America on importing anything with ivory in it. British importers bringing objects to the art and antiques fair in Miami were forced to destroy antiques that were more than 200 years old because they contained small inlays of ivory. I do not know whether our Border Force destroys anything, but it needs a sophisticated understanding of the significance of cultural property if this or any other kind of conflict arises.

Baroness Neville-Rolfe: I am grateful to the noble Lord, Lord Rosser, for his amendment. It is evident that many Members of the House are, rightly, interested in the role that Border Force and other enforcement agencies can play in the context of this Bill. His involvement shows how wide-ranging is this Bill and the need for joined-up government. I thank him for his pertinent questions, which I shall try to answer.

It is appropriate to clarify once again that the drafting changes made to Part 4 are necessary to reflect the transfer of responsibility from HMRC to Border Force between initial drafting of the Bill in 2008 and now. The substance and policy behind the Bill remain the same, and the wide breadth of support for it is much appreciated.

I can confirm that we foresee no additional costs as a result of moving cultural property under the Bill due to the low volume of unlawfully exported property from occupied territories. The impact assessment was published in good time, but it was not cleared by the RPC at that stage—the RPC is looking at it. I shall bear in mind the point made about business costs, which is what it is concerned with.

Border Force already has nationally published guidance available to all officers via the Border Force intranet site on "cultural goods", and "cultural goods" are also listed in the Border Force operating mandate. Border Force will update these instructions when the new legislation comes into force to take account of the new powers and ways of working. Border Force staff are already dealing with such responsibilities through its enforcement of the 2003 Act and the Iraq and Syria sanctions.

I think that many would agree that it would be inappropriate to require the publication of guidance about Border Force's "enforcement practices". Enforcement practices relating to combating smuggling are often the same regardless of the type of goods. To place this information in the public domain has the potential to impede customs controls and even to jeopardise national security. Moreover, it is extremely difficult for Border Force officials to make a judgment as to the provenance of an object of cultural property at the border. Expert advice is likely to be required involving the Clause 17 offence, so it is unlikely that Border Force will spontaneously seize many objects as a result of this Bill. It seems more likely that its role in enforcing the Bill will be in assisting other law enforcement agencies.

Given the expertise required to identify cultural property unlawfully exported from occupied territories, we do not see Border Force playing a major role in discovering the objects, but in the rare event that an officer can clearly identify something as having been illegally exported from an occupied territory, or has been tipped off, powers of seizure under the Police and Criminal Evidence Act 1984 can be used.

This way of working to tackle illicit trade is well established in the UK and Border Force already works with partners. For example, it prevents the illegal trading of Iraqi and Syrian antiquities, including in the UK, through the implementation of UN and EU sanctions and the use of the International Council of Museums red lists, which have not been mentioned today, which classify the endangered categories of archaeological objects and works of art in the most vulnerable areas of the world.

6.30 pm

To provide officials with specific training and a code of practice only in relation to this Bill could risk them focusing on the requirements of this legislation and failing to detect other items which fall outside the scope of the Bill, such as other unlawful cultural objects. As we have already agreed in relation to the previous provision, enforcement needs to be joined up.

Amendment 27 seeks to insert a new clause after Clause 24. I appreciate the noble Lord's intention but such a provision is already addressed suitably elsewhere. If Border Force officials seize an item of cultural property for a purpose connected with the investigation or prosecution of a suspected offence under Clause 17, they are obliged to transfer the object to a constable as soon as is reasonably practicable after it ceases to be needed for that purpose. That is provided for in Clause 26.

In this amendment, only proposed new subsection (5) differs from Clause 24. It is unnecessary because where a cultural object may be liable to forfeiture under Clause 19, the Secretary of State may apply for an interim order for safekeeping under Clause 22, which can make all the necessary provisions with regard to storage and care.

We have other difficulties with Amendment 24. First, the term "constable" is a recognised legal term which is widely used in legislation to refer to the police —as I am sure the noble Lord, Lord Rosser, knows better than I do—and means any police officer of any rank. In contrast, the expression "senior police officer", which the noble Lord's amendment uses, is not currently recognised in law or used in other legislation. To use it in the Bill, we would need to define what we meant by "senior police officer".

Secondly, the amendment would create a conflict with the Police and Criminal Evidence Act 1984, which uses the word "constable". Thirdly, the amendment could place an unnecessary restriction on the police. It would mean that a police officer of a rank within the definition of senior police officer would need to attend every operation to enter and search premises and to seize property which is believed to be unlawfully exported cultural property. This would place an undesirable legal restriction on how the police execute search and seizure warrants issued under this clause. Such a restriction does not exist in any other legislation providing for search and seizure warrants and we should not introduce one into the Bill.

Clause 24 provides that a constable may apply for an order allowing him or her to retain custody of cultural property which was seized in connection with an investigation or prosecution of a suspected dealing offence but is no longer required for that purpose.

As to Amendment 26, an order granted under Clause 24 allows the police to retain custody of the property until it is forfeited, returned to its owner or otherwise disposed of. A justice may make such an order if he or she is satisfied that there are reasonable grounds for suspecting that the property may be liable to forfeiture under Clause 19. The justice who grants the order can, of course, include in it such conditions as he or she considers necessary or appropriate. However, if the property requires specialist storage or conservation, Clause 22 provides that the Secretary of State may apply for an interim order, which may include specific requirements and conditions for the location, storage and conservation of property. Paragraph (d) of the proposed new subsection in the amendment is not required. As I explained in relation to the noble Lord's amendment to Clause 22, there would be nothing to prevent a court making such an order if it were felt appropriate.

This is highly technical. Clause 25 sets out the requirements for giving notice to the owner of cultural property which has been seized or retained by the police. It is an important clause and I hope I have given enough information in relation to some of the other questions and provisions to make the noble Lord, Lord Rosser, feel able to withdraw his amendment.

Lord Rosser: I thank the Minister for that response. Certainly I shall wish to read carefully the full response in *Hansard* when I get the opportunity. I was not sure whether I was being told that there would be no

[Lord Rosser]
additional costs for transport companies or whether that was included as part of the statement that there were no additional costs on business.

I want to read carefully what the noble Baroness said because, overall, I begin to get the impression that, as far as the Bill is concerned, the role of the Border Force and the detecting and apprehending of those who may be acting illegally are to be peripheral. I got the impression that other people would find out who were acting illegally and would then invite the Border Force to stop them as appropriate, rather than the Border Force itself being engaged in detection work. If I have understood that correctly it clarifies the position, which was one of the objectives of Amendment 20.

I will read carefully in *Hansard* what the Minister has said but, in the meantime, I thank her for her reply and beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Clause 19: Property liable to forfeiture

Amendment 21 not moved.

Clause 19 agreed.

Clause 20 agreed.

Clause 21: Compensation

Amendment 22 not moved.

Clause 21 agreed.

Clause 22: Interim orders

Amendment 23 not moved.

Clause 22 agreed.

Clause 23: Search and seizure warrants

Amendment 24 not moved.

Amendment 25

Moved by ***Lord Stevenson of Balmacara***

25: Clause 23, page 11, line 2, at end insert—

"( ) For the avoidance of doubt, a warrant under this section may not be issued in respect of the Parliamentary estate."

Lord Stevenson of Balmacara: My Lords, although it is not grouped technically, perhaps I may take the Clause 28 stand part proposal with this amendment. The reason for this is that the amendment and the clause stand part Motion stem from a letter which was circulated to the Minister from the Select Committee on the Constitution. When we drafted the amendments we had not seen a response, but there has now been one. The response deals with the issues raised in Amendment 25 and Clause 28 and it may be more convenient for the Minister to deal with them together. I am getting panicked looks from the other side of the Dispatch Box so I am not sure whether it is. I am not sure whether the noble Earl, Lord Courtown, is giving a reassuring sign or a sign of defeat. However, we will continue with my plan to quickly introduce the two issues and hope that the points can be gathered and responded to together, which will save time later.

For those who are now confused about where we are on this matter, the Bill, in the sense and spirit of the convention, makes the treatment of any offence under the Act, as it will be, so serious that previous measures undertaken to protect this property, the Palace of Westminster, and the people who work here, would be vitiated. While that is right in some senses, some feel, particularly those who serve on the Select Committee on the Constitution, that it is a step too far and that further thought should be given to it.

I have now seen the response but I have not fully absorbed it because I got it only 10 minutes before the session started. The letter is from the Minister in response to the letter sent originally by the noble Lord, Lord Lang of Monkton, chair of the Select Committee on the Constitution. She seems to give positive and straightforward answers to the points raised by the Select Committee and it would be more appropriate for her to respond and give reassurance, if needed, to the Committee on this point. I beg to move.

Baroness Neville-Rolfe: I thank the noble Lord for the opportunity to discuss and make clear to the Chamber the concerns of the Constitution Committee. As he has said, I have written to the committee today and I am sorry that the need to take advice meant that the letter could not be sent earlier. The purpose of the search and seizure provision is to enable the UK to fulfil its international obligations in relation to cultural property that has been unlawfully exported from an occupied territory. In particular, it enables us to fulfil our obligation under the First Protocol to return such property to its country of origin. That obligation is absolute and does not allow for any exceptions. We therefore need to ensure that the police have the power to search for and seize unlawfully exported cultural property wherever it may be in the United Kingdom.

I consider it right in principle that the search and seizure powers in Clause 23 should apply equally to the Parliamentary Estate and this wonderful building and we consider that the drafting of the Bill allows for that. My department has been in contact with the relevant parliamentary authorities with regard to the search and seizure powers in the Bill, recognising parliamentary freedoms. Any search or seizure taking place within the Palace of Westminster would of course need to be exercised in a way that respects the privileges of our Parliament. In practice, we would expect there to be a high degree of co-operation between the police and the House authorities with regard to both the need to obtain a warrant at all and with the execution of any warrant obtained. I would also note that we expect the likelihood of any warrant being applied for to be incredibly low, based on the very small number of items of cultural property unlawfully exported from

occupied territories that we expect to be entering the UK after this Bill is enacted. In short, we are in discussions with the House authorities to ensure that the privileges are observed and the convention implemented. I hope that the noble Lord will withdraw his amendment and agree to the clause.

Lord Stevenson of Balmacara: I thank the noble Baroness for that reply and I think that the Committee will be reassured by what she has said. However, the fact that discussions are still ongoing suggests that this may be something she might wish to return to on Report.

Baroness Neville-Rolfe: I am happy to do that. The noble Lord will know that we brought the Bill forward on the day of the Queen's Speech and I am afraid that we have rushed one or two things. Fortunately we have a number of stages still to go and we are in discussions with the House authorities in the appropriate way. I hope the Committee understands that our wish was to get on and was certainly not in any way not to do the right things by the House authorities.

Lord Stevenson of Balmacara: It would not be out of place to say that I am sure the Minister would not dare go against the noble Lord, Lord Lang of Monkton, who is very severe in these matters. However, with that assurance, I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Clause 23 agreed.

Clause 24: Retention of property in custody of constable

Amendment 26 not moved.

Clause 24 agreed.

Amendment 27 not moved.

Clause 25 agreed.

Clause 26: Property in custody of others

Debate on whether Clause 26 should stand part of the Bill.

Lord Stevenson of Balmacara: We have sought a debate on whether Clause 26 should stand part, not for any reason to do with the drafting or the content but rather because this goes back to where we have been on a number of occasions during our debates. It is the question of who picks up the tab for any activities relating to cultural properties that are caught by the Bill. The question is whether there will be a running order or list of properties or institutions where it is known that good facilities are available for the storage of cultural property. Again, where will the costs be met? Are they just to be absorbed within the running costs of the buildings, given that the suggestion is that there will not be many articles and that the costs will be relatively low, or will there be some sort of appropriate funding?

The related point, which is not caught by any part of the Bill, is the question of property that is picked up by actions of Border Force, in any market involved or for other reasons. The property itself may be of estimable value and would in time be returned to a country, but for the time being that cannot be done because of the prevailing conditions there. The question then arises of whether that property would be available for display or inclusion in exhibitions so that at least its cultural worth is not hidden and taken out of circulation. It might be appropriate for the Minister, when she responds, to comment on that issue.

6.45 pm

Baroness Neville-Rolfe: I am grateful to the noble Lord for his questions. Clause 26 is necessary to cover a situation where cultural property has been seized in connection with the investigation or prosecution of an offence of dealing in unlawfully exported cultural property that is being held by someone other than a constable. This could be because the property has been transferred to a museum for safe keeping or because it was seized at a port or airport and is in the custody of Border Force. In practice this would allow for a delicate manuscript to be stored at a specialist facility such as the British Library for the duration of an investigation or prosecution, which seems a good idea.

The noble Lord asked whether there is to be a list of places where cultural property which has been seized under the provisions of the Bill can be stored. We do not propose to draw up a list because the decision on where a particular item of cultural property should be kept will be taken at the time of its seizure and with regard to the storage and conservation needs of the property and the availability of appropriate specialist facilities. We envisage that any costs will be absorbed by the organisation or institution that accepts cultural property for its safe keeping. In practice, we expect few objects to require expensive specialist conservation work and that the main costs will be for secure storage, which is something the police and our museums, galleries and archives already provide.

The noble Lord also asked whether stored cultural property will be available for display in British institutions. We consider that it would not usually be appropriate to put on public display cultural property that has been unlawfully exported. Where cultural property has been seized under the provisions of the Bill, it is because it is suspected of having been unlawfully exported from an occupied territory. Whether the property should be displayed would be a matter for the institution in question in consultation with interested parties and taking account of any relevant guidance and codes of practice. I remain a little open-minded on the point, but it would not usually be appropriate. The noble Lord kindly gave me notice of this question, and that is our view. I know the question was largely for clarification and I hope he will accept that the clause should stand part.

Clause 26 agreed.

Clauses 27 and 28 agreed.

Amendment 28

Moved by ***Lord Stevenson of Balmacara***

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

"Safeguarding cultural property

At the end of the period of one year following the passing of this Act, the Secretary of State shall prepare a report to Parliament on how the Government have safeguarded cultural property situated within the UK against the foreseeable effect of an armed conflict, in accordance with Article 3 of the Convention."

Lord Stevenson of Balmacara: My Lords, the obligations placed on Her Majesty's Government as a result of ratifying this treaty go both ways. As I have already mentioned, they apply when British forces, however controlled, take the field in interstate or state-to-state warfare, and they also apply in a situation where we should be preparing for any unfortunate exercise of war against the United Kingdom. Obviously, we hope that that is a very remote situation; nevertheless, it raises questions about the exact order of priorities for the cultural properties and artefacts which fall to our nation to preserve and hold for future generations.

Through the papers that have been prepared and the issues relating to the Bill, we have sought guidance on this, but we have not yet received very much. We had a briefing from Historic England, which has obviously been involved, in which it points out that very few other countries have fulfilled their obligations under the convention to provide lists. However, some have and interestingly, the view appears to be that you should first look to world heritage sites, to UNESCO contexts and other statements made by UNESCO, and then work gradually through to internal arrangements such as listings, and whether it is grade 1 in England or category A in Scotland and other places. Obviously, that could provide a very long list of valuable properties: this country has a large number of buildings that we want to preserve, and that list increases hugely if one thinks about the artefacts gathered over the years that we want to protect.

Some guidance should therefore be forthcoming at some point, whether now or later in the passage of the Bill. Before we finish considering the Bill, it would be helpful to have a better understanding of what approach the Government are taking, what sorts of bodies will be involved, what sorts of buildings and artefacts we are talking about, and, having identified them, whether there are sufficient plans and resources in place to make sure that these precious items have been, will be and could be looked after during any period of warfare that might arise. I beg to move.

The Earl of Clancarty: My Lords, I support Amendment 28 in the names of the noble Lords, Lord Stevenson and Lord Collins. It is worth mentioning that UNESCO requests countries to fill in an extensive questionnaire every four years explaining how they are protecting their cultural property. There is a more general aspect: protection. The last questionnaire completed by Germany can be found online and includes, for example, what has been done to protect cultural property from flooding. It is all very well to say that you have done everything in your power to protect your cultural property from the effects of armed conflict, but if it has deteriorated or been harmed for other reasons, that rather negates the whole point of the exercise. Although military conflict can be devastating, most protection of cultural property takes place in peacetime, and that protection needs to be framed within this wider context.

Baroness Neville-Rolfe: My Lords, the obligation on states party to the convention to safeguard their own cultural property against the foreseeable effects of an armed conflict is obviously an important one. I have already agreed to update the noble Lord, Lord Howarth, on some of our plans more generally, which is probably relevant to this amendment as well. I should say, however, that we have concerns because the safeguarding requirements that are the subject of this amendment seem to relate to administrative arrangements rather than those covered by the Bill. I have already referred, in response to an earlier amendment, to the UNESCO report to which the noble Earl, Lord Clancarty, referred with an interesting example of German good practice. We will be making that report every four years. The UK Government will already be reporting on the safeguarding of cultural property as a matter of good practice, in line with the reporting obligation in Article 26 of the convention, so it does not seem necessary to introduce a separate statutory obligation on this point.

We are already considering the administrative measures that will be needed to implement the convention once the Bill is passed into law and I will reflect, as I have said, on the issues raised during the passage of the Bill so far. In practice, there will be existing safeguarding measures in place for the majority of cultural property under general protection in the UK. Article 5 of the second protocol expands on the meaning of "safeguarding cultural property" by giving some examples of the kind of preparatory measures that should be taken in peacetime. These include: the preparation of inventories; the planning of emergency measures for protection against fire or structural collapse—presumably flooding would come under that broad heading—preparation for the removal of movable cultural property or provision for adequate in-situ protection of such property; and the designation of competent authorities responsible for the safeguarding of cultural property.

The early thinking is that the most appropriate body to undertake peacetime safeguarding measures is the existing owner, guardian or trustee of a cultural property. I hope that has given noble Lords some reassurance about safeguarding cultural property, both in relation to substance and process, and I ask them to withdraw their amendments.

Lord Stevenson of Balmacara: I thank the Minister for her response. I think that covers most of the issues I have raised, and I beg leave to withdraw the amendment.

Amendment 28 withdrawn.

Amendment 29 not moved.

Amendment 30

Moved by ***Lord Collins of Highbury***

30: Before Clause 29, insert the following new Clause—

"Cultural Protection Fund

At the end of the period of one year following the passing of this Act, and every two years thereafter, the Secretary of State must lay a report before both Houses of Parliament on the work of the Cultural Protection Fund in supporting the implementation of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and the Protocols to that Convention of 1954 and 1999."

Lord Collins of Highbury: My Lords, we are taking an opportunity here. The Minister will doubtless say that it is not necessarily appropriate to put this in the Bill, but it is really important that the suite of mechanisms we have to address the protection of cultural heritage should be debated at this stage. The news about the cultural heritage fund and the recent announcement of the timetable for bids is very welcome, on top of the £3 million the British Museum has and the amount now given. Of course, the bids will be in small grants and then large grants, but our purpose here is to ask about the future of this fund.

I want to raise another important element, which is the cross-departmental process. Obviously, it involves the British Council working in conjunction with DCMS, but I wear another hat as spokesperson in the Lords for international development. Critically, the fund's objective is to create opportunities for economic and social development through building capacity to foster, safeguard and promote cultural heritage. That, of course, is not necessarily specifically about items of cultural heritage and museums; it is also about education and building schools, for example. We can amplify the £300 million by ensuring that the work of the British Council is conducted in conjunction with the activities of the Department for International Development.

This is a classic case of joined-up government, hence our amendment to ask: what are the mechanisms for reporting on the fund and its future, and can we guarantee it? Of course, a lot of projects will go beyond 2020. We would like to see some commitment to the future of the fund beyond the existing amount allocated. Did I say £300 million earlier? Sorry, I have caused inflation. We want to hear about the Government's commitment in the longer term. Also, I would like the noble Baroness to focus on how this money would work in concert with the Department for International Development. I beg to move.

7 pm

Baroness Northover: My Lords, noble Lords from these Benches mentioned at Second Reading that we welcomed the introduction of the cultural protection fund. In a letter to my noble friend Lady Bonham-Carter, who is very sorry that she cannot be here at present—hence she has asked me to say this—the Minister mentioned that the Government were working with the British Council to establish a long-term strategy for the fund. We obviously welcome that.

This amendment seeks to ensure that the strategy, and the impact of the fund, is kept under annual scrutiny, as the noble Lord, Lord Collins, just said, and that it is used effectively. We argue that the strategy should have training at its core and that co-ordination is essential. There needs to be a central team based in London with credibility among the heritage community, the military, police, Customs and NGO sectors. Challenging cases will clearly include liaising with military units on standby which do not know precisely where they are going. The strategy will also need to look to the future to try to identify countries at particular risk and prepare for what might happen, especially given how cultural artefacts can be targeted, as we now see in the Middle East. It will also need to strike a balance between emergency response and long-term support. In addition, the funds should be used to leverage funds from other countries as well.

As I mentioned, the Minister wrote an incredibly helpful letter to my noble friend Lady Bonham-Carter. She would very much appreciate it if some of the comments in that letter could be put on the record. I hope very much that the Minister will do that.

Lord Howarth of Newport: My Lords, I support my noble friend's proposal that there should be a requirement for the Secretary of State to make periodic reports to Parliament on the work of the cultural protection fund in supporting the implementation of the Hague convention. I emphasise how much I applaud the Government for creating the cultural protection fund. It is an excellent initiative and greatly to their credit, particularly in this time of austerity. I particularly congratulate the Secretary of State, the right honourable John Whittingdale.

These are difficult times. All the same, we must recognise that a fund amounting to £30 million over four years is not a large amount of money. At Second Reading, the Minister explained that grants from the cultural protection fund would,

"support projects involved in cultural heritage protection; training and capacity building; and advocacy and education, primarily focused in the Middle East and north Africa".—[*Official Report*, 6/6/16; col. 584.]

That is a lot of objectives to be funded out of a fairly limited sum of money. Therefore, while praising the Government, I ask them to do everything they can to ensure that the value of the fund is maintained, because these are difficult times in terms of public spending.

How is the British Council developing its expertise in these matters as I understand that this has not been an area of particular responsibility for it in the past and it will need to build up its strength? That leads me to ask what the role of the blue shield will be and whether the Government expect there to be a blue shield unit based in London. As we have noted in the past, this is a remarkable opportunity for Britain to lead internationally in this matter. It is very important in terms of heritage, upholding the Hague convention and our soft power objectives and diplomacy. I would be grateful if the Minister would respond to those questions.

Baroness Neville-Rolfe: Noble Lords have rightly emphasised today that we need to be transparent and open about the cultural protection fund. It is absolutely right that this House has the opportunity to

understand how the fund is supporting the work of cultural heritage protection at risk of, or already damaged by, conflict.

We established the £30 million fund in response to acts of cultural destruction and damage. I am pleased to say that the fund is now live and open for applications. It is always difficult, even in normal times, to make budgetary promises but I can say that we are very committed to this area, and the noble Baroness, Lady Northover, made some important points. We also monitor and report on the fund throughout its operation to ensure that it is successfully meeting the object of protecting cultural heritage affected by damage and destruction. In line with these general objectives, the Government will publish an annual report. Alongside this, the spend will be scrutinised and published by the OECD—all the more important an institution now given the way that things are going—on a biennial basis.

If the fund has any direct relevance to today's legislation, we will make sure that that is included in the report. For example, there is an obligation in the second protocol to take measures in peacetime to safeguard cultural property. This may include activity such as the preparation of inventories which could potentially be awarded funding.

The noble Baroness, Lady Northover, asked about the central team in London and made wider points. I will pass her points on to the British Council. She was kind enough to refer to the letter that I wrote to the noble Baroness, Lady Bonham-Carter. This covered some important points on Yemen, the cultural protection fund and its future, work with the British Council and the division of work on emergency response and long-term support. Given the lateness of the hour, I think the easiest thing I can do is to circulate copies to noble Lords so that they can see it, and make sure that a copy is in the Library of the House. I am grateful to the noble Baroness for cross-referencing that and delighted that it was found to be useful.

The noble Lord, Lord Howarth, asked about the British Council and its specialist assessors. I am sure he will be glad to know that it is currently collating a wide pool of specialist assessors who will be drawn upon to advise on specific projects. As well as this, sector experts will be drawn upon at intervals to sense check and advise on the general direction of the fund.

I see this cultural protection fund as a great opportunity. I think that it complements the Bill that we are putting forward. I hope that in the circumstances the noble Lord will feel able to withdraw this amendment.

Lord Collins of Highbury: I thank the noble Baroness for that response. I did not realise that the hour was so late, but never mind. I was particularly trying to stress the amplification of the £30 million by ensuring that there is cross-departmental co-ordination and work, not just with the British Council. There is a lot of activity in conflict-affected zones which would certainly complement the work of this fund. I appreciate what the Government have done in terms of its establishment and note the noble Baroness's comments. In the light of that, I beg leave to withdraw the amendment.

Amendment 30 withdrawn.

Clause 29: Liability of company officers for offences by company

Amendment 30A not moved.

Clause 29 agreed.

Clauses 30 and 31 agreed.

Clause 32: Commencement

Amendment 31

Moved by ***Lord Stevenson of Balmacara***

31: Clause 32, page 15, line 16, at end insert—

"( ) The day or days which the Secretary of State appoints in accordance with subsection (2) shall each be one of the Common Commencement dates."

Lord Stevenson of Balmacara: I am sure that the Minister will not mind debating my favourite topic, which I know she shares. I will not in any sense apologise for the lateness of the hour because it ain't late.

When we were preparing for these debates, we obviously had regard to the substance of the Bill and the need to make sure that we lived up to the promise that we gave that there would be satisfactory scrutiny. I hope that we have done that today; I certainly feel as though we have. I am grateful to the Minister and the noble Earl, Lord Courtown, for their responses, which will be in *Hansard* and will be very important in fleshing out the wording of the Bill in relation to how it will apply to those who have to implement it and take it forward. That is a very important part of this process.

There may be one or two things that we will want to come back to on Report but I do not see them being very significant or necessarily contested. I think there will just be more clarification or perhaps a chance to exemplify or build on stuff that has already been covered today. Indeed, we have already found that much of the stuff we did today was raised also at Second Reading. So we will have had a very full canter through these issues.

We should not in any sense demean the value of the Bill in terms of how it will change and shape what British forces and others involved in the protection of cultural property will do in the future—it is a Bill that we want to see go through in its present form and we do not wish to change it—but it occurred to me that I could not let Clause 32 pass without going back to my favourite topic, which is the need to minimise the burden on business by reducing the number of dates on which regulation floods in under the agency of a Government who are supposedly trying to cut back on red tape. The Minister will argue—rightly, I am sure—that the Bill does not apply primarily to business and therefore probably escapes the prohibitions that might come from statutory instruments deriving from it being implemented randomly through the year and therefore there will be no need for compensation, but I am sure she will want to share with me two things.

First, you cannot really let a Bill get through scot free. It should have one amendment, I think. If she wants to do that, here is one. It is not a Christmas tree Bill. These are not Christmas tree presents, but it is a nice, gentle little amendment which will show that we really have exercised the authority, wisdom, history and grandeur of the House of Lords in these troubled times. Secondly, it is a good thing to restrict the number of days on which regulations come in, and I hope she will respond to that. I beg to move.

Baroness Northover: My Lords, I rise simply to express the hope that the Bill speeds through rapidly, whatever else is happening around us, and that it is commenced as soon as possible. We have waited a very long time—since 1954—for this Bill to be put in place.

Baroness Neville-Rolfe: My Lords, I feel very well scrutinised today. I thank the noble Baroness, Lady Northover, for her support in relation to the speedy passage of the Bill.

The Government recognise the importance of giving as much advance notice as possible of when new regulations and requirements will come into force, particularly where they have an effect on business, as has been said. Of course, common commencement dates are not defined in law, they are a matter of policy, and we are not aware of any precedent for referring to them in legislation. In order to refer to them in the Bill, a definition would need to be included. But our intention is to bring the provisions of the Bill into force as soon as possible after Royal Assent.

The noble Lord, Lord Stevenson, knows that I share his passion for common commencement dates, and if we can bring the Bill in on a common commencement date we will of course do so, but we have to balance that with the need to get ahead and implement the convention and the protocols. As I see it, the sooner we are able to bring the provisions of the Bill into force, the sooner we will be able to ratify the convention and its protocols and ensure that cultural property has the protection it needs, which is provided for in the Bill, and hold our head up high in international institutions that are concerned with cultural property.

Lord Stevenson of Balmacara: Well, follow that. I think these aspirations are shared on all sides of the Committee and I am privileged to have played a part in making sure that—at last—we get this piece of legislation through. It has been a good exercise on all sides of the House to scrutinise but also to support the aspirations and aims we all have for this—for making this little piece of the jigsaw puzzle, which has eluded us for so long, now finally come to pass in a picture that we hope will paint more than 1,000 words.

The issue that we will be left with is how we deal with this on Report and at later stages. We need to think through how we will want to do that to help speed the Bill on its way. But we have promises of cups of tea ringing in our ears and I am sure that those will be at least part of the process. I beg leave to withdraw the amendment.

Amendment 31 withdrawn.

Clause 32 agreed.

Clause 33 agreed.

Schedules 1 to 4 agreed.

House resumed.

Bill reported without amendment.

Renewable Energy

Question for Short Debate

7.16 pm

Asked by ***Baroness Featherstone***

To ask Her Majesty's Government what plans they have to move the United Kingdom towards an energy infrastructure that is based on renewable energy.

Baroness Featherstone (LD): My Lords, this is a most timely debate and I thank all noble Lords who will contribute this evening. With the United Kingdom cast into a maelstrom of uncertainty and turmoil, this is a moment when we look to Her Majesty's Government to stand by their commitments on climate change. Therefore, I hope and trust that, in responding to this debate, the Minister will take the opportunity to clearly reaffirm our commitments to the Paris agreement; to the EU target to reduce emissions by "at least 40%" by 2030—a target driven by the United Kingdom; to the renewable energy directive; and to our commitments in the Climate Change Act.

Moreover, will Her Majesty's Government draft a UK-only climate plan to replace the one jointly submitted with other EU nations? Will it be stronger or weaker than the EU plan? I understand that the climate change deniers in this House are already on manoeuvres. Will the Government approve the fifth carbon budget at the level that the Committee on Climate Change has recommended—57% below 1990 levels? What now happens to the EU emissions trading scheme? I am sure that the Minister can see that last week's events threw up a great deal of uncertainty and that we need clear answers.

The threat of climate change is severe. We have almost reached peak fossil fuels for electricity. Moving towards an energy infrastructure based on renewables is vital. We signed up to the Paris agreement. To meet that commitment we will need to make changes in this country to ensure that we deliver on those commitments.

I will make the Liberal Democrat position clear. We want to see net zero greenhouse gas emissions from the UK economy by 2050. Our vision is called Zero Carbon Britain and we set this out in the Liberal Democrat alternative Queen's Speech 2016. We want to see renewable energy prioritised for government investment. We want to see greater investment in electric vehicles and low-carbon technologies. We believe that the United Kingdom should continue to work with our allies, regardless of being outside the EU, to ensure that ambitious international carbon emission

[Baroness Featherstone]
reduction targets are met. For as we feel the reverberations of the insecurity created by the leave vote, we can already see clearly what uncertainty does to a country.

I trust that Her Majesty's Government also understand what uncertainty on commitments to climate change does to investor confidence in the renewables industry. This Government, by changing at a stroke the assumptions on which renewables industries based their business models, have already shaken that confidence. This Government have ended support for new onshore wind power; sharply reduced support for other renewable technologies, including solar PV and anaerobic digestion; ended the exemption of renewable energy companies from the climate change levy; reduced the incentives to purchase low-emission cars; announced plans to privatise the Green Investment Bank; scrapped the Green Deal with no replacement; weakened the zero-carbon homes standard; added community energy to the list of sectors excluded from receiving tax relief; ditched the £1 billion budget for pioneering carbon capture and storage; ended the renewables obligation early—and on and on and on. The message that this sends out has become deeply concerning not just to Liberal Democrats but to environmentalists, the renewables sector and members of the public across the United Kingdom.

No doubt the Minister will point to the trajectory of renewable energy over the past 12 months to demonstrate that everything is on track, with UK renewable investments increasing by 25% in 2015, but I say to him that that trajectory gives a falsely positive position. We are still benefiting from the good work done by the coalition to set renewables on a strong growth path, and the impact of the Conservative-only Government's decisions have yet to be felt. The total effects of the change to feed-in tariffs, for example, will not be available until the figures for the fiscal year ending in 2017 are published. While there has been a welcome surge in uptake for solar in recent months, this will also prove to be part of the false positive as it is a result of people rushing desperately to get their projects in before the subsidy is terminated. A crash in uptake will inevitably follow.

The outlook for the renewables sector is bleak, with job losses in solar alone predicted to be nearly 19,000 according to the Government's own impact assessment, no forward plan whatever and the undermining of investor confidence. Can the Minister explain how, given their recent actions, the Government intend to meet their climate change and renewables targets—both domestic and EU—and confirm that they will retain those EU targets even though we are to leave the EU?

The capacity deployed by small solar power installations has fallen by 74% compared with the same period last year—so, to avert another axe falling on small solar PV, we need the Government to help the small solar industry by continuing to exempt renewable systems below 50 kilowatts from having to pay business rates from 2017. Will the Minister confirm that this exemption will not be altered? While we may be on track to deliver on power, we are certainly struggling to get anywhere near our targets in renewable heat and renewable transport. I hope that the Minister will say when we might see the plan for meeting all those targets.

I turn to wave power. When we Liberal Democrats were in government, we began talks to create the world's first tidal lagoon energy project in Swansea Bay. Tidal power has huge potential for the UK and could eventually provide us with 8% of our energy needs. The Government have delayed the decision on the amount of subsidy to be offered to investors in the Swansea Bay tidal lagoon, again creating unnecessary uncertainty. In Scotland, the coalition proposed introducing a remote islands contract for difference as a mechanism to allow renewable generation to go ahead on the islands. This policy has since been repeated a number of times by a number of Ministers, including Energy Minister Andrea Leadsom in the House of Commons on 17 September 2015, but there was no mention of the island CfDs in the Budget. Will the Minister make it clear whether they are continuing to support the introduction of the remote island contract for difference and whether there is enough time to obtain state aid notification so that island projects can be included in the next allocation round, starting in the fourth quarter of 2016?

Scotland arguably has the most advanced wave and tidal industry in the world. But with the announcement of the second levy control framework period from 2021, it appears that there is no CfD support for any projects intending to be commissioned before April 2021. That in itself will lead to a slowdown of activity in a number of key areas, especially in the wave and tidal sectors where a number of flagship developments, including future phases of the world's largest tidal stream project—MeyGen, in the inner Pentland Firth—would be put at risk. Moreover, there is no clarity on whether and how the second levy control framework will support the wave and tidal sectors—or indeed what decision has been taken on the second auction for contracts for difference, programmed for December. I would be grateful if the Minister would address those points in his response.

Lastly, I will move on to the economics of the renewables industry. The clean energy industry is reckoned to be worth trillions over the next couple of decades. In terms of employment and economic opportunity, we want to be seen as relentlessly pro-renewables and we need to demonstrate that commitment. From a position where Britain is already a world leader in offshore wind and could become a world leader in other areas such as tidal, we are now falling away in the global race. Countries around the world are starting to increase their investment in renewables—not surprisingly, due to the global political pressure to tackle climate change and internal pressure to improve air quality. This gives us huge economic opportunities to export. I suppose that if there is any silver lining this week, it is that our exports will be cheaper.

We should be seizing the opportunity to invest more now while we have a comparative advantage, rather than giving others the chance to get ahead of us. The *Renewables 2016* report by REN21 says that about £196.5 billion was spent globally on renewable power and renewable fuels, making 2016 a record year. As a wake-up call, I have to say that the majority of that expenditure—more than £107 billion—was spent in countries such as China, India and Brazil. The speed with which the renewables sector is developing and becoming cheaper is incredible and we do not

know what is just around the corner. The level of subsidies needed is shrinking and, as soon as ways are found to store energy cheaply, there will be a radical shift. It is happening and change is coming. According to a new forecast by Bloomberg New Energy Finance, it is coming not just because coal and gas are running out but because cheaper alternatives are already arriving apace. We should be nurturing this and becoming ready for it. In fact, we should be at the cutting edge and ahead of the curve.

On interconnection, storage and demand-side response, we need to stop thinking of energy supply as needing to be centralised. We need policy framework certainty; we must know the direction of travel; we need to encourage and allow innovation. All this is not just for ourselves but for the amazing impact that this innovation could have on the lives of those in developing countries. The ability to generate and store solar power, for example, would be a total life-changer for millions in the world's poorest nations, providing huge possibilities for addressing global poverty and mass migration.

We need a Government demonstrably committed to the renewables agenda. We need a Government to come forward and state loudly and proudly their continued commitment to that agenda. As the UK departs from the EU, we need to hear loud and clarion clear that Her Majesty's Government are committed to doing equal or better on all our commitments, whenever and with whomever they were made. I therefore very much look forward to the Minister's response.

7.28 pm

Earl of Stair (CB): My Lords, I thank the noble Baroness, Lady Featherstone, for tabling this very relevant and important Question. Perhaps it is rather unfortunately timed, quite so soon after the events of last week. Much of the energy under discussion this evening originates from areas of the United Kingdom which, sadly, may no longer be part of it in a couple of years' time. I am not sure where our system of interconnection will stand after the proposed separation from Europe, although I hope the interconnector being replaced between Scotland and Northern Ireland will still be of some use.

I welcome the plans for low-carbon production of energy by 2050 and support the 15% increase in generation of electricity from renewables in the last five years, and the increase in energy from renewables to 19% of all United Kingdom electricity. Perhaps surprisingly, I also confidently support the Government's continued development of nuclear power but regret the line currently taken by the Government in Scotland. However, I would still prefer to undertake further research and development on a future use for radioactive waste, rather than simply deep-storing it.

My speech can be fairly brief tonight because I do not want to focus on the question of generation or the end use of renewable electricity but rather, the bit in between. The issue as I see it is neither the motivation nor the opportunity to produce renewable electricity. There is plenty of water in the hills for hydro-electric schemes and water in the sea for tidal power, when it is developed, and timber and other material for biomass burning, as indeed there is plenty of space for photo-voltaic panels in areas where land is available and not too intrusive. Continuous improvements in panel efficiency are opening up more and more areas for solar power.

Our current national grid system of interconnection gives us a good infrastructure for high-voltage transmission and storage of power, both nationally and internationally. The grid is designed to be broken down into distribution networks managed by smaller operators to bring the power to end users, decreasing ever more in capacity the further it goes into remoter areas. However, the end of the line is often where most of the renewable energy generation sites are located, as identified in the National Infrastructure Commission report, *Smart Power*.

These generation sites, often some distance from the grid, are now starting to require more network capacity. The Beauly to Denny line in Scotland, energised last year, and the two others still being constructed are prime examples of the requirements to increase capacity from renewable sites to wherever the energy is required or where it can be fed into the grid. As the House of Commons Energy and Climate Change Committee identified in its report, *Low Carbon Network Infrastructure*, it is the very slow investment in developing and updating these distribution networks which is going to obstruct the future development of renewable power use in UK. We are already ahead of our targets for energy from renewable sources, but how long will it be at the present rate before we have filled the capacity of existing infrastructure and further use of renewable energy is frustrated by lack of capacity?

I will cite one example, in south-west Scotland, where the necessary upgrading of power line capacity will not start until early 2020 and is not likely to be energised until at least 2023. When this question was raised with a Scottish Government Minister last year, his reply was that although renewable generation came under the Scottish Government, anything to do with the grid was strictly a matter for Westminster. Can the Minister throw some light on the progress in prioritising the upgrading of distribution networks and where in the United Kingdom they will be? How is the strategic plan being developed, beyond the three networks mentioned earlier, to enable the continued expansion of renewable energy and more renewable energy projects to be developed?

7.32 pm

Lord Teverson (LD): My Lords, I very much welcome this debate initiated by my noble friend Lady Featherstone. One of the statistics that particularly struck me when I was researching this subject was that, as we came out of recession post-2008, in 2011-12 the renewable energy industry, or green industry generally, accounted for some 30% of growth. At a time when the UK economy is under challenge because of Brexit and other issues, it is really important to debate this focus on the way forward for the green economy and the savings it can provide for the long term. Although I am not going to talk about this, I very much echo the noble Earl's focus on distribution capacity in certain regions of the United Kingdom—in Scotland but also very much in the south-west.

The area I want to concentrate on this evening is one that my noble friend has already mentioned but which is often not included in these sorts of debates: the renewable transport infrastructure. We often forget that transport accounts for some 28% of emissions in this country—not including international emissions from shipping and air—which is a major proportion. More importantly than that perhaps, as we know from Kyoto, Paris and beyond, we measure our effectiveness on emission reductions in this area against a 1990 baseline. I do not know whether noble Lords are aware of this, but despite our good performance in electricity generation, as the noble Earl mentioned, since 1990 we have reduced transport emissions by 2%—over 26 years, we have managed to reduce those emissions by a mere 2%. That means that our current target under the 2020 European agreement for greenhouse gases—a 10% reduction in transport emissions from 1990 to 2020—is very unlikely to be met on our current trajectory. Vehicle efficiency is good, but the only way we are going to significantly reduce those emissions is through the introduction of electric vehicles, whether they are driven by, I hope, renewable electricity generated through the grid or by hydrogen cell technology. The latter gives greater range—up to 300 miles—and allows recharging in as little as three minutes, which is like filling up your car with petrol or diesel at present.

I have a couple of questions for the Minister. I welcome the work being done by the Office for Low Emission Vehicles, and the number of registered plug-in vehicles has risen from some 3,500 in 2013 to 63,000 this year to date. But a lot of those vehicles are hybrids and have a range of only 20 or 30 miles. They are not mis-sold exactly, but are something of a "greenwash" effort by certain manufacturers to get subsidies and do not really meet the challenge of creating a genuinely renewable transport system in this country. Are we going to increase our research in this area, particularly into hydrogen cells? I was going to say that the Government have been bragging, which is not fair, but the national network of hydrogen stations they have been talking about will be only 12-strong by the end of the year, which is not great national coverage. How do we accelerate this? At last, we have a cultural change whereby electric vehicles are starting to be acceptable, but to go further, we need the range to be greater and refuelling to be quicker, and confidence in a network of charging points that is available to everybody. This is one of our greatest challenges in terms of emissions and meeting our renewables targets under the 2020 regime, and an area we therefore need to focus on in the future.

I am afraid I cannot declare an interest, because I do not have a plug-in vehicle myself. That may be hypocritical of me, but I am waiting for a vehicle at a sensible price that has the right range and which I can refuel quickly. I commend those people who have bought plug-in vehicles so far. I am one of many who are desperate to move on before I trade in my 10 year-old model. I hope the Minister can give me an assurance that there is a way to promote this. I have one last statistic: as I said, 63,000 plug-in vehicles have been sold up to 2016, but that is only 1.4% of total vehicle sales. We still have another 98.6% to go, and I hope the Minister can reassure me on this and encourage me in my hope that change will happen rapidly.

7.38 pm

Lord Grantchester (Lab): My Lords, I congratulate the noble Baroness, Lady Featherstone, on securing this debate today, which enables us to consider and take stock of the UK's energy policy position and direction under the new Conservative Administration, one year on from the 2015 election,. The noble Baroness is correct to highlight how important renewable energy and the low-carbon economy are to the UK. More than 11,000 businesses are engaged in the low-carbon economy, directly employing more than a quarter of a million people and indirectly a further 200,000—potentially a growing opportunity for the UK to create a high-skill, low-carbon economy.

Against the international backdrop of the Paris accord, Bloomberg New Energy Finance's *New Energy Outlook 2016* reports that renewable energy will generate 70% of Europe's power by 2040—up from 35% in 2015. In the UK, renewables technologies have been growing rapidly to reach a 25% share of all electricity in 2015. More broadly, low-carbon electricity's share of generation, including nuclear, increased to 45.5% last year.

Sadly, since the May 2015 general election, policy changes and mixed messages have created uncertainty over financial support and further new investment. Your Lordships' House debated the renewables obligation closure order, the early closure of onshore wind schemes, the huge 65% cuts to feed-in tariffs for smaller solar schemes, the ceasing of support to biomass conversion plants, the scrapping of the zero-carbon homes programme, the ending of the Green Deal scheme for home efficiency, and uncertainty regarding the future of carbon capture and storage. The noble Baroness, Lady Featherstone, was again correct to underline how this risk to energy investment has undermined investor confidence and is having an impact on household bill payers, because more risk means more cost.

The House of Commons Energy and Climate Change Committee's report, *Investor Confidence in the UK Energy Sector*, in March 2016 listed as its first factor of six that have combined to damage investor confidence:

> "Sudden and numerous policy announcements have marred the UK's reputation for stable and predictable policy development".

Predictably, Ernst & Young's attractiveness index for international investment in energy has shown a drop in the UK's ranking to 13th place, arguably jeopardising UK energy security, going against the grain of almost universal global support to bring renewables through to a support-free regime.

Let us be clear that it is recognised that the Government will, despite the votes of last week, remain committed to reaching our climate goals, to fulfil our emissions reduction targets and to decarbonise our power supply. They are to be congratulated on plans to phase out unabated coal by 2025, but they are sending out horrible mixed messages and non sequiturs. Yes, it is recognised that the cost of the levy control framework is rising from its present total of more than £5 billion to perhaps more than £10 billion in 2020, but the lack of transparency over government evidence for their argument that this amounts to overspending on renewables is undermining their credibility. On the one hand the Government are understandably aware of the cost of

energy on household bills, but on the other they are picking technologies such as shale gas and CCS, which are unproven, and new nuclear and offshore wind, which are substantially more expensive. Investors cannot understand what the Government are trying to achieve.

Furthermore, the Government's mishandling and the extent of the industry's lack of belief in the department was highlighted in your Lordships' Secondary Legislation Scrutiny Committee report on the renewables obligation closure order 2016. It reported that at two stakeholder workshops that the department undertook, respondents questioned its rationale, as no transparency was provided for the figures for the levy control framework and no evidence was provided to detail the breakdown of the LCF overspend.

The Energy and Climate Change Committee has called on the Government to set out clearly the purpose of the LCF and to explain why the capacity market is not currently included, when it is clearly an electricity policy that results in levies on consumer bills. Yes, it is right that we need to control costs, especially when the poorest households pay more for their energy as a proportion of their income than more wealthy households, but if the Government are focusing on the LCF as a determining factor in low-carbon energy technologies, it is vital that the framework becomes coherent with the utmost urgency. That the Government have not done so is of great regret. I ask the department to undertake this work immediately.

Just as technologies such as solar are standing on the cusp of becoming subsidy-free and economically competitive, the Government's slashing of subsidies is killing off thousands of jobs. Yet, shortly after capping subsidies, they announced potential subsidies to diesel generators, one of the most polluting energy forms available. The cuts to subsidies also included community schemes. Under present conditions, the sector will not be able to continue at scale. What plans does the department have to encourage the community energy scheme and the sector in future?

The change needed to decarbonise the economy does not point only to the renewables energy sector. It must also refer to low-carbon generation, and it is right that we should also take account of the wider context that includes nuclear and carbon capture and storage, among others. In his reply, will the Minister outline the latest position regarding Hinkley Point C? Is he confident that the technology remains robust and the timetable for becoming operational in 2025 is still realistic?

In a very recent publication, the Energy and Climate Change Committee also reported on the low-carbon network infrastructure. It reported that transformation of the UK's infrastructure is already occurring. The noble Earl, Lord Stair, highlighted in his remarks how those distribution changes need to occur even more quickly. Electricity generators used to be predominantly large, centralised plant connected to high-voltage, long-range transmission networks. Now, significant quantities of generation are connected to low-voltage, short-range distribution networks. These are new challenges where innovative solutions need to be developed, including a focus on battery storage and heat decarbonisation technologies.

I recognise and applaud the Government's announcement in the 2016 Budget to allocate at least £50 million to help innovation in energy storage, demand-side response and other smart technologies. Can the Minister give the House an update on when the Government expect widespread take-up of storage and how effective that will be in helping to match supply at peak demand?

Key technologies also include heat decarbonisation and carbon capture and storage. As I said earlier, the Government cancelled the planned competition to develop greater use of the CS technology. The department's estimates predicted in 2013 that:

> "By 2050, CCS could provide more than 20% of the UK's electricity and save us more than £30 billion a year in meeting our climate targets".

What future do the Government see for CCS technology, and what are their plans for the sector?

In my earlier comments, I mentioned energy efficiency and how the Government scrapped the Green Deal. While not commenting on the merits or otherwise of the scheme, the importance of energy efficiency and conservation is not to be overlooked. When do the Government expect to reply to the Energy and Climate Change Committee's report *Home Energy Efficiency and Demand Reduction*?

A recent Carbon Brief analysis showed how the department for energy has downgraded its expectations for each of the main low-carbon sources of electricity in this year's projections. The analysis lays bare the consequences of policy changes introduced since the May general election. The forecasts suggest that it will now be harder for the UK to meet its legally binding carbon budget for 2028-32, which is likely to be delayed past the deadline of the end of June. Has the Minister any news of the Government's response to the climate change committee's advice on that fifth carbon budget? I am also grateful to the noble Lord, Lord Teverson, for his remarks on the transport sector and how vital it is that it is not ignored.

In contrast to low-carbon sources of power, the department is now forecasting higher deployment of new gas-fired generation capacity, particularly into the 2030s. The expectation of 27 gigawatts of new-build gas, up from 16 gigawatts last year, could lock the UK into continued fossil fuel use into the 2030s, when gas-fired electricity is supposed to be on the way out. Can the Minister comment on the analysis that these policy changes are likely to increase the UK's emissions?

Against the context of the Paris accord, it is now imperative that the Government restore confidence in the low-carbon economy. They must position the UK as an expert partner on low-carbon delivery by supporting and encouraging the low-carbon technologies of the future and maintaining the UK's international climate leadership role. To quote the National Infrastructure Commission:

> "The UK is uniquely placed to lead the world in a smart power revolution. Failing to take advantage would be an expensive mistake".

7.50 pm

Viscount Younger of Leckie (Con): My Lords, I thank the noble Baroness, Lady Featherstone, for raising this topic in the House once again. I also thank all noble Lords who have participated in this short debate.

[Viscount Younger of Leckie]

I start by attempting to answer the questions on Europe that have understandably been raised by many noble Lords, starting with the noble Baroness, Lady Featherstone. There were a number of questions about our position in terms of energy and climate change, given the result of the EU referendum and bearing in mind that the nation is still digesting the result and its implications. I hope I can give some reassurance on certain issues.

The first thing to say is that, as we stand at the moment, there will be no immediate changes and the Government will continue to deliver on their agenda in this sector. DECC is committed to making sure that consumers have secure, affordable and clean energy now and in the future. The noble Baroness, Lady Featherstone, asked whether the UK will continue to be in the EU emissions trading scheme. We remain a member of the EU and we will continue to engage with EU business as normal and will be engaged in EU decision-making in the usual way. Once Article 50 is invoked, we will remain bound by EU law until the withdrawal agreement comes into force. The period between invocation of Article 50 and our eventual exit from the EU is two years, unless other member states agree to extend it.

On the same theme, the noble Lord, Lord Grantchester, raised Hinkley Point, and I understand why. The final investment decision is a commercial matter for EDF. However, the British Government and EDF are confident that Hinkley will go ahead. There is no change. The French Government also remain fully committed to the project, and EDF is on record as saying that Hinkley Point C will be on time and on budget. I hope that gives some reassurance. That is the position as we see it at present.

In addressing the main content of this debate, I shall begin by taking the House back to last autumn and the clear direction the Secretary of State set out for the UK's energy policy. This is based on three core priorities, which are that energy must be secure, affordable and clean. That was followed by the UK's instrumental role in securing the Paris agreement, which demonstrated the strongest possible ambition and commitment. This debate therefore gives me an opportunity to reiterate our strategy for delivering on these priorities.

First, for a secure supply we need a smooth transition to a diverse mix of low-carbon technologies. The shift from unabated coal to gas is critical: gas produces half the carbon emissions of coal when used for power generation. As we have said, we will shortly launch a consultation on when to close all unabated coal-fired power stations, but we are deliberately not rushing in. We will proceed only if we are confident that the shift to new gas can be achieved in time, so we have announced key changes to the capacity market that will send the right signals to investors and ensure that new gas plants are built. Alongside this, with a strong regulatory framework already in place, we are encouraging investment to explore our shale gas potential so that we can add new sources of home-grown supply to our well-established imports.

The Government are clear that new nuclear will be a critical part of the mix. We are working closely with industry on its proposals to develop 18 gigawatts of new nuclear power. This could deliver around 30% of the electricity we will need in the 2030s and bring an estimated £80 billion of private investment into the UK, employing around 30,000 people across the supply chain at the peak of construction.

Of course, this is not just about electricity. Heat accounts for around 45% of our energy consumption and one-third of all carbon emissions, so it is vital that we change how we produce and consume it. We need to test different approaches to understand which technologies can work at scale and keep costs down for consumers. The Government have already announced £300 million over the next five years to support district heating infrastructure, and we will say more on our wider approach later this year.

That leads on to renewables, the focal point of this debate. We should be rightly proud of the progress made since 2010. The noble Baroness, Lady Featherstone, certainly acknowledged this and the role of the coalition Government in taking us to that point. In 2015, renewables provided nearly one-quarter of the UK's electricity, outperforming coal for the first time. That puts us within shouting distance of Germany, which reached 27% just two years ago, and is pretty remarkable considering the low base we started from. This is thanks to government support securing significant investment: last year was another record year, with £13 billion invested, bringing the total to £52 billion since 2010.

That said, I turn now to the second pillar of our strategy: the review of subsidies and reducing costs. This was also alluded to by the noble Baroness, Lady Featherstone. Subsidies could not continue as they were. I am sure noble Lords on all sides of the House will agree that we should not overcompensate technologies or pay for renewables at any cost. Costs of established technologies have come down significantly, so it is right that they stand on their own two feet. The cost of domestic solar installations has fallen by two-thirds since 2010 alone. So when the Government identified a significant potential overspend on renewable support, we were right to take the necessary action, but we also took care to protect investor confidence and put the sector back on a sustainable footing.

We are looking to the future and giving industry the certainty it needs. We will hold three competitive CFD rounds this Parliament, including one this year, allocating £730 million of annual support for new renewable projects delivering from 2021-22 onwards. This will deliver value for consumers and target support at less-established technologies, giving us a real opportunity to build on our world-leading position on offshore wind. We have more than five gigawatts already installed, more than any other country, and could support another 10 gigawatts in the 2020s if costs come down.

The final pillar of our strategy is unleashing innovation to develop cost-effective, green technologies. The noble Baroness, Lady Featherstone, spoke passionately about the need to innovate in this sector, and she is correct. Looking at the domestic level, perhaps I might ask a few searching questions of us all? How many of us think about the energy saved by turning the heating down or switching appliances off standby? It is not just homes but offices, too. How many of us wonder

why all the lights, not just one, are blazing at night in an empty building? How many of us sit in our homes in shirtsleeves when we could turn the heating down and put a jersey on? I speak as a Scotsman in that respect.

On a serious note, changing the behaviour of individuals and companies is critical to our approach, so the Government are thinking about such questions as improving energy efficiency and reducing demand. It is one of the reasons why all homes will be offered a smart meter by 2020. A recent survey showed around a 3% reduction in gas and electricity consumption on average for those with smart meters. It is why we are allocating at least £50 million for innovation in smart technologies over the next five years, recognising the role that they could play to deliver our priorities cost-effectively.

In his interesting speech the noble Earl, Lord Stair, raised an important point about smart technology and renewables, which is that they benefit the grid. We are aware of the challenges that could face networks as we continue make strong progress on renewables and decarbonisation. The National Infrastructure Commission published a report on smart power earlier this year looking at some of these topics and identifying significant opportunities. The department is continuing to work closely with the National Infrastructure Commission on this point.

At national level, we recognise that solutions to the challenges we face may now be an idea on a drawing board. New technologies do not just appear out of thin air. That is why we are committed to supporting innovation, and it is why Innovate UK has developed a series of 11 world-leading catapult centres to transform the UK's capability for innovation in specific areas and help to drive future economic growth. The noble Lord, Lord Teverson, raised the importance of the development of electric vehicles and driverless technology. That brings home a point that is quite close to home for me as I live in Milton Keynes. With the driverless pod experiment leading the way, it is going to be incredibly interesting to see how this technology is going to take us forward. I am grateful to him for bringing that up.

To give some reassurance to the noble Lord, I can tell him that the Department for Transport will consult later this year on proposals to do more on transport, while DECC will publish its emissions reduction plans later this year, setting out plans for decarbonisation across different sectors. It is good to see that the Government are working closely on this.

DECC's innovation budget has more than doubled for 2016-21 to over £500 million. For example, we recognise the potential of small modular reactors to complement large-scale nuclear power, offering possible cost reduction and commercial benefits to the UK. We are investing £250 million over the next five years in an ambitious nuclear research and development programme, including a competition to identify the best-value small modular reactor design for the UK.

There were a number of questions from the noble Baroness, Lady Featherstone, which I shall attempt to answer. She asked whether the UK would undertake its own decarbonisation plan. Our working assumption is that by the end of 2016 we will publish our new emissions reduction plan, which will set out our proposals, and, as mentioned earlier, we are working with colleagues across Government to identify the necessary action to take.

The noble Baroness also raised the point about the delays in Swansea Bay, to put it succinctly. We believe that as it stands the latest proposal from TLP is too expensive for consumers to support, so more thought is going to be given to that. Perhaps it is some reassurance to the noble Baroness that an independent review will help to establish the evidence base with regard to what decisions need to be made there.

The noble Baroness and the noble Lord, Lord Grantchester, asked whether the Government would adopt the Committee on Climate Change's level for the fifth carbon budget. The committee gave its advice in November 2015, and that was to set the budget at a 57% reduction from our 1990 base. We are looking to make an announcement shortly on the level of the fifth carbon budget, so I hope that is some reassurance.

The noble Lord, Lord Grantchester, also stated that we were not as transparent as we might have been about the levy control framework. Many of the assumptions that underpin the framework forecasts are already in the public domain, but we need to take account of the commercial sensitivity that limits the release of some of the more detailed information. However, we will provide an updated set of healthier projections, as well as the assumptions underpinning the latest forecasts, as part of the consumer-funded policies report, which will be published later this year. The noble Lord also asked about carbon capture and storage. We have not closed the door on this; it has a potentially important role in the long-term decarbonisation of the UK. The costs of CCS need to come down, as the noble Lord will know, and we will continue to work with industry to support the development of the technology.

I hope that the noble Baroness can be reassured that contrary to what has been said in previous debates, though not this one, we have a clear strategy focused on a diverse technology mix, lowering costs and unleashing innovation, which will deliver the secure, affordable and clean energy we need for the future. We have made significant progress delivering on this already, and our new emissions reduction plan later in the year will complete the picture, setting out our proposals for meeting the carbon budgets and decarbonising through the 2020s across different sectors of the economy.

House adjourned at 8.04 pm.

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