

Vol. 774
No. 44



Wednesday
12 October 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Questions	
Devolution: North-east England	1881
Migrants in France: UK Contribution	1883
Israel: Children in Military Custody	1886
School Census: Pupils' Nationality.....	1888
Select Committees	
<i>Membership Motion</i>	1890
Bus Services Bill [HL]	
<i>Report (1st Day)</i>	1890
BBC Charter	
<i>Motion to Take Note</i>	1943

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

*This issue of the Official Report is also available on the Internet at
<https://hansard.parliament.uk/lords/2016-10-12>*

The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

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

© Parliamentary Copyright House of Lords 2016,
*this publication may be reproduced under the terms of the Open Parliament licence,
which is published at www.parliament.uk/site-information/copyright/.*

House of Lords

Wednesday 12 October 2016

3 pm

Prayers—read by the Lord Bishop of Norwich.

Devolution: North-east England Question

3.06 pm

Asked by **Lord Beith**

To ask Her Majesty's Government what recent discussions they have had with local authorities in the North East of England about the devolution of powers.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): On 6 September north-east leaders decided not to take forward their devolution deal. Although that deal cannot continue, we stand ready to work with those councils that share our aim to boost jobs, create opportunities and build a stronger northern powerhouse, and this guides our ongoing engagement with councils in the area.

Lord Beith (LD): My Lords, there is general agreement that the north-east needs these powers in order to deal with the region's problems but the blockages on the road seem to be the inability of the seven Labour council leaders to agree with each other and the stubborn insistence by Ministers on the elected mayor model, putting all the power in the hands of one individual. If the way is open, as the Minister said, to further discussion, will the way also be open to some new thinking about a model for this devolution which leaves room for minority as well as majority opinion, for rural as well as urban areas, and engages everybody in something that we all agree is needed?

Lord Bourne of Aberystwyth: My Lords, the noble Lord has given distinguished service to the north-east and I agree with him about the importance of the devolution deal for the north-east. As I understand it, the blockage is not about the mayor but elsewhere, but we remain very much of the view that to get the most powers you need the best accountability, and that is delivered by directly elected mayors.

Lord Beecham (Lab): My Lords, regrettable though the failure to reach a devolution deal covering the seven members of the North East Combined Authority is, do the Government realise the significance of its member councils' financial concerns? The offer of an investment of £30 million a year for 30 years between seven councils—£900 million in total—must be seen in the context of annual budget cuts amounting to some £1.5 billion a year, coupled with huge uncertainty about the working of the business rates system on which councils will have to rely as revenue support

grant ends. Is not the best way to revive the devolution concept for the Government to recognise that devolving responsibility without the power conferred by adequate funding undermines their proclaimed objectives?

Lord Bourne of Aberystwyth: My Lords, other areas—Greater Manchester, Liverpool City Region, Tees Valley—have come to an agreement and are pursuing the need for an elected mayor. It is regrettable that the north-east is not doing so, but we do not impose these things—they are to be bottom-up—but I appeal to the north-east to come together so that we can proceed with this deal, perhaps in 2018.

Baroness Hollis of Heigham (Lab): My Lords, will the Minister not consider detaching the issue of elected mayors from devolution? As we warned when the Bill was going through, the devolution proposals for Norfolk and Suffolk have fallen through, mainly because a mixture of Tory councils and Labour councils were not willing to go ahead with an elected mayor. As a result, some areas, particularly in Norfolk, which are among the poorest in the country, will not get the resources or the powers they need, particularly to provide transport connectivity, because the Government are hung up—stupidly—on the concept of an elected mayor, which may make sense for London and the great conurbations but does not make sense for large parts of the eastern region.

Lord Bourne of Aberystwyth: My Lords, whatever else has been happening in the north-east, I do not think there has been a disagreement between Conservative and Labour authorities—I wish that were the case in some ways, but this has all been disagreements among Labour authorities. I remain of the view, as do the Government, that the best way to proceed, as we are in the urban areas where we need this concentration of powers, is to have somebody accountable as a mayor, just as we have in London. We have had other agreements where there is not a mayor—for example, Cornwall—but then you do not get all the necessary powers, so that is not the way forward.

Baroness Rawlings (Con): My Lords, to what extent will the Government be encouraging the British Museum to move from Blythe House to the northern area, which was discussed this week?

Lord Bourne of Aberystwyth: My Lords, that was not part of my briefing so I will go back and ensure that my noble friend gets a detailed reply on it. I am afraid that I am blindsided on what, I am sure, is a key issue.

Lord Shipley (LD): My Lords, I am grateful to the Minister for reminding the House that budget cuts, which were referred to by the noble Lord, Lord Beecham, affect all councils in all mayoral combined authorities, yet other such authorities are going ahead. Does the Minister agree that there has been a serious failure of collective political leadership by the Labour Party in the north-east, in rejecting the opportunities that devolution presents when other parts of England are going ahead and taking them?

Lord Bourne of Aberystwyth: My Lords, as noble Lords will know, I do not wish to be partisan on this issue. Nevertheless, I encourage the councils of the north-east to come together because there is great merit in this deal. I think that there is a widely held view in the House about the importance of devolution in taking advantage of powers over investment, transport and adult education. They should put personal differences behind them and come together, so that we can proceed with a devolution deal which will be in the interests of the north-east.

Lord Grocott (Lab): Was it part of the Minister's brief to check on the legislation passed in the last Parliament, which provided for referendums in 10 cities in the United Kingdom to determine whether they wanted directly elected mayors? In nine of them, when people were consulted as they have been in other referendums, they decided clearly: no, they did not want them. That included the cities of Coventry and Birmingham. If the Government are determined to persist with directly elected mayors in our region, why on earth does the Minister not at least have the consistency to acknowledge that before they can be introduced—I am opposed to their introduction—there should be a referendum, otherwise the previous referendums might as well never have been held?

Lord Bourne of Aberystwyth: My Lords, the noble Lord will be aware that those are not combined authorities. We are not comparing like with like here. This is an issue where elected representatives, very often from Labour councils, come together to decide whether it is in the interests of their region, as they have done in Greater Manchester and Liverpool City Region, for example. We believe that, just as in London, we need that accountability of a mayor for devolution to work effectively in the interests of the region. That is why we are pursuing that policy.

Viscount Ridley (Con): My Lords, is my noble friend the Minister surprised or not that those in the Labour Party in the north-east are more interested in fighting among themselves than in representing the region as a whole?

Lord Bourne of Aberystwyth: My Lords, as I indicated, I come to this brief with a genuine belief that it is in the best interests of our great conurbations and of the north-east that this goes forward. As I said previously, I make a plea to the areas concerned to come together to proceed with this. It has to be from the grass roots up—we are not imposing this—but believe that it is very much in the interests of the people of the area.

Migrants in France: UK Contribution

Question

3.14 pm

Asked by *Baroness Sheehan*

To ask Her Majesty's Government what agreement they have made with the Government of France as to how the £17 million contribution of the United

Kingdom towards the management of the migration situation in France, announced on 3 March, is to be deployed.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the UK and France are committed to resolving the situation in northern France together. Our joint strategy, set out in the August 2015 joint declaration, includes measures to strengthen the border, move migrants away from Calais and provide protection in France for those who need it. The £17 million contribution announced on 3 March is being deployed over the financial year to drive progress against those priorities.

Baroness Sheehan: I hope to return to the question of money at a later date, as the urgent crisis in Calais at the moment is the demolition of the camp—which I have on excellent authority will take place on Monday 17 October. In the words of the police, it will be swift and it will be violent. This is a tragedy unfolding in slow motion before our very eyes and on our border. I fear for the safety not only of the people, especially the children, in the camp, but of the volunteers, the vast majority of whom are British. Will the Minister make urgent representations to the Home Secretary and the Prime Minister to urge the French to delay the destruction of the camp until people are safely accommodated elsewhere? I will make the same request of the French ambassador when I meet her later today.

Baroness Williams of Trafford: I have not had the date of the demolition of the camp confirmed as next Monday but the noble Baroness is absolutely right that it is imminent. She will also know that the Home Secretary met the French Interior Minister on Monday. They agreed that the safety and security of the children is absolutely paramount and that all the children in the camp should be moved to places of safety during the clearance operation. The French are currently drawing up plans, working closely with the UK staff in Calais, on the provision of facilities in the camp during the clearance which will be specifically for children to guarantee their safety and allow those cases to be processed.

Lord Collins of Highbury (Lab): My Lords, the Question relates to the £17 million being spent. I understand that a large proportion of that will be spent on a massive wall. We have all heard about walls being put up. What consultation has taken place with the road hauliers who have been suffering from the actions of those trying to push people into this country illegally? What consultation has taken place with them? Building this wall might simply move the problem down the road.

Baroness Williams of Trafford: The £17 million is for priority security infrastructure work, alternative accommodation outside Calais and returning people to their home countries. One of the reasons for the renewed emphasis on building the wall is to prevent people such as hauliers being attacked by people on the other side, in France, on the roads and in the camps.

Lord Roberts of Llandudno (LD): My Lords, can we send a note of gratitude to the volunteers and organisations that have manned the camps in Calais, without whom life would have been impossible for the refugees there? Can we also remember that it has taken us a long time to consider welcoming 387 child refugees? Does the Minister have confidence that by 2020 we will have accommodated 20,000 Syrian refugees, as was pledged?

Baroness Williams of Trafford: On the latter point, yes, I am confident. I also join the noble Lord in paying tribute to the volunteers who have given their time to help in a dire situation in Calais. I am sure we all pay tribute to them.

Viscount Hailsham (Con): My Lords, I hope my noble friend will say nothing to the French authorities to delay the clearance of the camps. The attacks on British subjects who are using the roads nearby are intolerable.

Baroness Williams of Trafford: My noble friend makes a valid point about these camps not being a suitable place for anybody to be. Therefore the renewed effort by the British Government and the French authorities to get people away from the camps, and either back to their countries or to reception centres where they will be safe and able to proceed with asylum claims or access other areas of support that they might need, is definitely the right approach.

Baroness Farrington of Ribbleton (Lab): My Lords, would the Minister tell me how the Government calculate what age children are when it comes to government policy for resettling them? I have heard that the Government may be limiting children to those aged eight and under, but children over the age of eight are extremely vulnerable.

Baroness Williams of Trafford: The noble Baroness is absolutely right. Children under the age of eight—in fact, I think the Home Secretary referred on Monday to children under the age of 12—are extremely vulnerable. It can be very difficult to determine what age a child is, as they may not have papers and there may be communication problems. It can be difficult, but we have to take what people, including perhaps their supporters and some of the people who are giving them care, say about exactly what age they might be.

Baroness Afshar (CB): My Lords, friends who have been working in the Calais camp who have just returned are telling me that not only is there no protection for children but there is absolutely no understanding and no appreciation of the rafts of children who disappear every day as the camps continue. They are not protected, they are not recognised and it seems that at the moment there is an argument between France and England as to which is going to be the least helpful to these children. Can we please consider the lives of these youngsters, who are being thrown every which way and who do not know where they are?

Baroness Williams of Trafford: My Lords, all the questions that have come to me in this House have been on the protection of children. The top priority, certainly of this Government and I hope of the French Government, should be to protect the vulnerable. We have put £10 million into a child refugee fund solely dedicated to separated and unaccompanied children. I pay tribute to the work of the FTDA in France, to which we have also contributed, in identifying victims of exploitation and trafficking, because that is a particularly vulnerable area at this point in time.

Lord Richard (Lab): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): We have moved on to the next Question.

Israel: Children in Military Custody *Question*

3.23 pm

Asked by Lord Hylton

To ask Her Majesty's Government whether they have discussed with the Government of Israel the implementation of the recommendations of the 2012 Foreign and Commonwealth Office report *Children in Military Custody* and of the 2013 UNICEF report *Children in Israeli Military Detention*; and, if so, what was the result of those discussions.

Baroness Goldie (Con): My Lords, we are deeply concerned about the treatment of Palestinian children detained in Israeli prisons and have made repeated representations to Israel on its treatment of Palestinian prisoners, including child detainees. We have raised both reports in these discussions, and we continue to press for full implementation of their recommendations, in particular on ending the use of single hand ties and on ensuring that Palestinian children are informed of their legal rights.

Lord Hylton (CB): My Lords, I believe that only one out of 40 of the recommendations of the British report has so far been implemented. Is the noble Baroness aware that the handcuffing and shackling that she mentioned continues even during the questioning of these children? Is she also aware that more than half of them suffer physical abuse of one form or another while in custody? Many are forced to sign declarations in Hebrew which they do not understand. Will the Government, who have a direct interest in the British report, press Israel to implement the six urgent points made in July by Military Court Watch?

Baroness Goldie: I thank the noble Lord for raising an important issue that I know is of universal concern to the entire House. I emphasise that we have pursued a course of active ministerial and diplomatic engagement. The noble Lord may be aware that the UNICEF report was followed by information from UNICEF that some positive steps had been taken towards addressing the recommendations in the 2012 report, including

[BARONESS GOLDIE]

making changes to standard operating procedures on methods of restraint. The Israeli military has also started piloting the use of summons instead of night-time arrest. The noble Lord is right to signal his concerns, which also remain the concerns of the UK Government. I can only reassure him that determined engagement and dialogue are being effected by the United Kingdom Government.

Baroness Ludford (LD): My Lords, in rightly holding Israel to the test of compliance with the highest standards of international and humanitarian law, is it not also right to note that Israel is unique in the Middle East region as a liberal democracy under the rule of law in its openness to such scrutiny? Is it not also right that since those two reports, not only have there been updates from UNICEF, such as in 2015 noting significant positive improvements, but even the UN Human Rights Committee, which is no friend of Israel, has noted such improvement?

Baroness Goldie: I thank the noble Baroness for her contribution. It is the case, as I indicated to the noble Lord, Lord Hylton, that some progress has been made. That is not to say that there do not remain profound concerns about areas where there can be, and there is a distinct need for, improvement. We have welcomed the steps taken to date but we have called for further measures, including the mandatory use of the audio-visual recording of interrogations, a reduction in the use of single hand ties and more consistently informing detainees of their legal rights.

Lord Collins of Highbury (Lab): My Lords, I appreciate the response that the Minister has given. It is the same response that Mr Tobias Ellwood gave in January, when he undertook in the Westminster Hall debate that he would raise his concerns during his visit in February. From January till now, just what progress has been made on those 40 areas of recommendation? What has happened since January and his visit in February?

Baroness Goldie: I thank the noble Lord, Lord Collins, for his question. He may be aware that the desire of the United Kingdom to send a delegation of UK lawyers to visit in February in order to assess progress was rendered impossible because of the unwillingness on the part of the Israeli Ministry for Foreign Affairs to facilitate that visit. That was disappointing, and on 18 February during a visit to Israel the Minister, Tobias Ellwood, expressed his strong disappointment with Israel's Deputy Foreign Minister at the unwillingness to host a follow-up meeting for the British lawyers. The UK has friends in Israel and among the Palestinians, but I need hardly tell this Chamber that these are deeply sensitive issues and we as a third party are doing our best to facilitate support and to encourage compliance with the two reports. We are doing our best to try to ensure that the aspects of the reports that remain unimplemented are addressed in order that the position for these Palestinian child detainees will be improved.

Baroness Hussein-Ece (LD): My Lords, how many Palestinian children are being held in Israeli prisons, and how many of them are being held without charge or trial?

Baroness Goldie: The information that I have may not be sufficiently specific to help. The most recent information—and these are figures from Israel—is that as of June this year there are 260 children in military detention in the occupied Palestinian territories, including seven in administrative detention, as well as 114 in East Jerusalem.

School Census: Pupils' Nationality

Question

3.29 pm

Asked by *The Earl of Clancarty*

To ask Her Majesty's Government for what purpose they intend to use the information ascertained from the newly introduced question in the school census on pupils' nationality.

Viscount Younger of Leckie (Con): My Lords, we will use information on pupils' nationality and country of birth to understand how we can give all pupils a better education that caters to their individual needs. If there are people whose first language is not English, we will be able to see how well they are doing and how we can help their school to contribute meaningfully to raising pupils' outcomes. These new data are solely for the DfE to use in research, statistics and analysis.

The Earl of Clancarty (CB): My Lords, is the Minister aware that parents are appalled by the introduction of these questions on nationality and place of birth, which have nothing to do with a good education? Is he further aware that a freedom of information request has revealed that the Home Office has frequently used the pupil database for immigration purposes? Does he not therefore agree that these questions are on the same level of intrusiveness as listing foreign workers, and should be removed from the census?

Viscount Younger of Leckie: My Lords, the census covers a range of things, and we should be aware that children of foreign nationals can face additional challenges upon starting school in the UK. They are not likely to speak English fluently and may not have been here for the full school choice or application round, so they are more frequently placed in schools that, ideally, they would not choose. The education system they have arrived from may be different from the English system, so they may be behind our expected standards simply because they have yet to cover elements of our curriculum. Understanding nationalities helps us to put the right policies in place to help those children, and there are safeguards in place.

Baroness Sharples (Con): Can my noble friend confirm that the number of children with English as their second language has risen from 6% to 16% in one year?

Viscount Younger of Leckie: I will need to confirm those exact figures to my noble friend in writing, but I suspect that that is the case. That lies behind the need to ensure that we look after those pupils effectively and support the teaching profession, which often has to deal with a range of nationalities in the classroom, with all the challenges that that brings.

Baroness McIntosh of Hudnall (Lab): My Lords, the noble Lord carefully said “may” in respect of these children’s potential to require special support. There is another way to look at this, which is that a lot of children of foreign nationals are extremely well able to take advantage of the education being offered to them here—for example, many of them are bilingual, which is helpful to them and their peers. Does he not agree that even an appearance of an us-and-them way of segregating different kinds of children within our schools is really unhelpful at this time? Whether or not the information is being used appropriately, it gives a most unfortunate impression.

Viscount Younger of Leckie: I have to disagree with the noble Baroness, because we believe that adding items on nationality and country of birth as well as English proficiency will be helpful and will be used better to understand how children perform, whether they are bilingual or whether they have come with English as an additional language. It is right and proper that we introduce this assessment; it better enables us to monitor immigration issues within this country.

Lord Maginnis of Drumglass (Ind UU): My Lords, as a long-time school principal, perhaps I may expand the Question a little and ask whether the Government are aware of the dangers of either the census or questionnaires. When I asked a Question about Brighton and Hove Council asking five and six year-old children’s parents what was their children’s self-perception of their sexual orientation, I thought it was pretty rubbishy information, which could have been exploited by people who were bent on conditioning purposes and otherwise. Will the Government therefore take care of all information of this nature collected in schools and ensure that it cannot be abused, as I suspect it could at the moment?

Viscount Younger of Leckie: My noble friend makes a good point. I should reassure him that the DfE has robust processes in place to ensure that the confidentiality of pupils’ details is maintained, and there are necessary checks and balances to ensure that there is no inadvertent misuse of these data. I go further to say that there is no requirement for schools to request or see documentary evidence such as a passport or birth certificate; it is purely focused on specific issues, with those safeguards.

Lord Steel of Aikwood (LD): How do the Government propose to count the growing number of children who have dual nationality?

Viscount Younger of Leckie: I believe that I have answered that question to the extent that all pupils are taken account of and the schools of course have their

own management information system to be able to monitor pupils from wherever they come—from within this country or abroad.

Lord Singh of Wimbledon (CB): My Lords—

Baroness Lister of Burtersett (Lab): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Cross Benches, and if we have time, Labour.

Lord Singh of Wimbledon: My Lords, I can understand that such information may possibly be of use educationally, but can the Minister explain why and for what purpose that same information is given to the Home Office?

Viscount Younger of Leckie: I can reassure the noble Lord that the information is not given to the Home Office. There has been some mischief in the press about this, but I reassure the House that the information is kept within the Department for Education and is not passed on to the Home Office.

Lord Harris of Haringey (Lab): My Lords, can the Minister give an absolute assurance that it is not obligatory for a school to fill in this question, and that no sanction will be applied to a school which fails to do so, or to a parent who does not answer?

Viscount Younger of Leckie: That is absolutely correct. The guidance is very clear on that. If, for example, a school wishes to send information to the DfE and parents do not agree for that particular child, it does not get sent.

Select Committees

Membership Motion

3.36 pm

Moved by The Senior Deputy Speaker

That Lord Newby take the place of Lord Wallace of Tankerness on the House of Lords Commission and Liaison Committee.

Motion agreed.

Bus Services Bill [HL]

Report (1st Day)

3.37 pm

Amendment 1

Moved by Lord Whitty

1: Before Clause 1, insert the following new Clause—

“Additional functions of local councils with respect to local bus services in areas other than passenger transport areas

After section 63 of the Transport Act 1985, insert—

“63A Additional functions of local councils with respect to local bus services in areas other than passenger transport areas

- (1) It shall be the duty of the county council in each non-metropolitan county of England to—
 - (a) consult on the needs for local bus services within the county, including by issuing a consultation document,
 - (b) give notice of the consultation mentioned in paragraph (a) in such manner as the council considers appropriate for bringing it to the attention of persons in the county to which it relates,
 - (c) following that consultation, prepare and publish an assessment of the needs for local bus services within the county,
 - (d) demonstrate that the assessment has fully considered and responded to the outcomes of that consultation, and
 - (e) secure such provision of local bus services as the county council considers reasonable and appropriate, to meet the needs identified in the assessment which would not, in its view, otherwise be met.
- (2) The Secretary of State must issue guidance concerning the preparation of an assessment under this section, and that guidance may, in particular, include guidance about the extent to which the county council must set out—
 - (a) the ways in which it has considered and responded fully to the outcomes of the consultation under subsection (1)(a), and
 - (b) how it will meet the needs for local bus services identified in the assessment.
- (3) A consultation document issued under subsection (1)(a) relating to an assessment of the needs for local bus services must include—
 - (a) a description of the existing provision of local bus services in the county,
 - (b) a description of any substantial proposed change to the provision of local bus services in the county, and
 - (c) the date by which responses to the consultation must be received.
- (4) During the consultation under subsection (1)(a), the county council must consult at least—
 - (a) all persons operating local services in the county,
 - (b) all other persons holding a Public Service Vehicle operator’s licence or a community bus permit who may, in the opinion of the county council, be affected by the assessment,
 - (c) a traffic commissioner, and
 - (d) such organisations appearing to the county council to be representative of users of local services, including where appropriate and applicable—
 - (i) parish and town councils,
 - (ii) representatives of persons who are elderly or disabled,
 - (iii) representatives of young people, and
 - (iv) organisations, or types of organisation, specified by the Secretary of State in regulations made by statutory instrument,

in accordance with criteria published by the Secretary of State.”

Lord Whitty (Lab): My Lords, I shall also speak to Amendment 113.

In Committee I tabled a similar amendment to Amendment 113 and indicated that it should perhaps come early on. I therefore had the temerity as we

approached Report to try to get at least one amendment on overall strategy before Clause 1. I have supported most of the provisions in the Bill and there is a reasonable consensus on most of it. I am very grateful to see a significant number of government amendments, not all of which I completely agree with, but nevertheless the Government have moved generally in that direction.

Two things are still missing from the Bill. One is a requirement on local authorities to ensure that services meet the social and economic needs of their area, and the other is that this needs to be put in a context of a national strategy for bus transport in the same way in which other modes of transport are subject to a national strategy.

The first of my amendments, which I submitted before Clause 1, places the responsibility on local authorities. It requires them to look at the need for transport in their area, how well their bus services are meeting that or whether such services could be reconfigured, and whether not only the scheduled routes but socially provided buses are meeting the various needs of their area. That should be right across the board, not simply for their mayoral areas or areas that decide to take advantage of some of the provisions of this Bill. In particular, this applies to rural areas. All of us who live in or occasionally visit rural areas know that the frequency of buses and effectiveness of coverage of bus routes within those areas is diminishing—the number of buses, take-up, and the level of fares for people who do not have concessionary travel. There is a real problem within many rural areas in England as to whether there is an adequate bus service meeting local needs for employment, education and other social needs.

I suspect that most noble Lords who come from rural areas will be able to cite examples of routes being cut, services diminishing or fares becoming too high for students or people with part-time jobs to undertake those journeys without concessionary fares. In many parts of the country, that hits people’s lifestyle and life prospects, because if you cannot afford to go on a bus to the interviews or training centre your ability to get a job and engage in employment is diminished. There are many parts of otherwise prosperous rural areas where young people in particular are unable to get jobs or travel from their village or small town to a larger, market town where there are better possibilities.

The proposed new clause would require all local authorities to undertake a survey and take measures to meet the needs of their area. I know that there will be objections that this is yet another burden on local authorities, but legally speaking it is not. Ever since a legal decision in the Three Rivers case, there are already requirements on local authorities to undertake such assessments and meet such needs. Therefore, it is not an additional requirement on local authorities—it is making more explicit one that already exists. I hope that, in understanding that, the House or Government will be prepared to accept if not the precise wording of this amendment then the principle of what it is driving at, and recognise that there is a very real problem in a lot of areas. In my apparently relatively prosperous part of North Dorset, on the borders of Wiltshire and Somerset, we are faced with very serious cuts in bus services, which up until a few weeks ago were being denied by the local authorities and the operators. That will hit

a number of people in those areas rather badly—and the situation is repeated up and down the country, north, south, east and west, so we should recognise it in this Bill and place the requirement on local authorities. It puts some of the other provisions on the basis of consultation on franchising or advanced partnerships and bus service provision generally back on local authorities.

The second amendment in this group relates to government responsibilities. It is important that in all forms of transport there is a national strategy and that it indicates what government support will be available to various modes of transport. There is a national strategy for railways and aviation, and an overall strategy for transport infrastructure. There is no reason why buses should be the poor relation. We need to ensure that buses have a strategy that local authorities and operators and those who depend on and work in the bus industry know about—and they should know what other forms of funding and support will be available. That would come towards the end of the Bill, but it is right that we should register that responsibility on government at this early stage of Report. I beg to move.

3.45 pm

Lord Bradshaw (LD): Like the noble Lord, Lord Whitty, I live in a rural area. I travel on the bus every day and I have noticed that, for the bus services in the county of Oxfordshire that have been cut and which the county council has decided in future not to subsidise, the people who were using the bus services concerned were mostly concessionary fare holders. I could get on a bus with 16 or 17 people yet nobody was paying a fare. But those 16 or 17 people valued that bus as a contact with civilisation. I am quite clear that these are not people who have a car; many do not have access to a car, but they formed the staple part of the bus route. The bus operator was able to extend the day somewhat in the knowledge that he would receive a subsidy and a reasonable concessionary fare for carrying the people using the bus.

I know that the Government are not likely today to spray money at the problem, but I ask them—and I have put this in Amendment 114, which we are not discussing today, because it seems to me that there is a case—to make concessionary fares weighted in favour of deep rural areas. The gearing is such that a fraction of a penny on major bus services, if targeted at deep rural services, would solve the problem without the Government having to spend any more money. There are problems, but I do not believe that they are insuperable. I know that operators have to be no better off and no worse off. That is very difficult to tell, but we can assume that if an operator has the subsidy withdrawn and its concessionary fare level is kept low, the natural result will be that it is worse off.

There will also no doubt be some obstruction from those operating bus services in urban areas, but I am talking about taking a very thin top-slice off the concessionary fares that are used in urban areas and devoting those to deep rural buses, where subsidy has been withdrawn and where this appears to be the only way of maintaining a decent bus service. Otherwise, I support what the noble Lord, Lord Whitty, has said.

I too have some doubts about whether the beleaguered local authorities will have the resources to undertake the survey, but it should be among their duties to look after not just the core of their county but the peripheries as well.

Lord Shipley (LD): My Lords, I support the comments of the noble Lord, Lord Whitty, who I thought made an excellent case for Amendments 1 and 113 in his name and, in so doing, I should say that I am the vice-president of the Local Government Association. I simply add a little for the Minister to take away, because the noble Lord, Lord Whitty, talked a great deal about the importance of bus services for employment opportunities and for training purposes.

In the consultation that is talked about—a huge amount of consultation will take place on this Bill, not just in terms of this amendment—one type of organisation that should be automatically consulted is employers' organisations. There can be huge problems for people who often are on a low income, live in remote places and have no access to a car and who, therefore, need to be able to get to employment and training opportunities, often at unsocial hours, by public transport. Therefore, it is important to consult those people. Proposed new subsection (4)(d)(iv) in Amendment 1 refers to,

“organisations, or types of organisation, specified by the Secretary of State in regulations made by statutory instrument”.

I hope very much that employers' organisations and jobcentres will be included in that list.

Lord Kennedy of Southwark (Lab): My Lords, as this is my first contribution to the discussion on Report of the Bus Services Bill, I refer noble Lords to my register of interests: I am an elected councillor in the London Borough of Lewisham and a vice-president of the Local Government Association. I should also say that, generally, we on these Benches welcome the provisions in the Bill.

Bus use in London has grown while outside it the picture has been very different. We are hopeful that when the Bill passes into law, it will help to halt the decline in bus use outside London, particularly in rural areas. The two amendments in this group are in the name of my noble friend Lord Whitty. As we have heard, Amendment 1 seeks to place a duty on county councils in non-metropolitan areas to consult on the needs for local bus services. It would require them to issue a consultation document and, following the consultation, to issue an assessment on the need for local bus services in the county and, further, to seek to secure the provision of bus services that address the needs identified that would otherwise not be met, as my noble friend outlined. The amendment is very focused and requires the Secretary of State to issue guidance to assist county councils in making sure that they have properly responded to the outcomes of the consultation. The amendment goes further in setting out what the consultation must address and who, at a minimum, must be consulted. I agree with my noble friend Lord Whitty and the noble Lord, Lord Shipley, about ensuring that employers' organisations are properly consulted. However, the amendment gives considerable scope to the Secretary of State to set out and shape the consultation to be undertaken.

[LORD KENNEDY OF SOUTHWARK]

Amendment 113, also in the name of my noble friend Lord Whitty, would place a requirement on the Government and the Secretary of State to issue a national strategy document within 12 months of the Act coming into force. Noble Lords will recall that that was discussed in Committee. As we have heard, there is no need for the bus industry to be the poor relation of other transport services. I fully support this amendment's objective of requiring a proper national strategy. As we have heard, this document will set out the objectives, targets, plans and funding mechanisms for the delivery of bus services over the next 10 years. That is a very welcome idea. We have heard and seen the decline in bus services outside London. The Bill is an attempt to halt that decline. It seems sensible for the Government to pull those things together into one document. I hope that the Minister will give a positive response.

Baroness Scott of Bybrook (Con): My Lords, as my county was mentioned by the noble Lord, Lord Whitty, for which I thank him, I thought that I should respond. I do not think this amendment is necessary. Many counties such as Wiltshire already know exactly what is happening with bus services in their areas and the importance of them to their communities. Wiltshire has just finished a review which took place over the last six months. We have had nearly 12,000 responses, which is excellent for our county. We are looking at our bus services in response to those responses. As the noble Lord, Lord Whitty, said, bus services rightly need to be provided for vulnerable people and people trying to get to work but also for people in rural communities trying to access leisure facilities. We are doing that. It is interesting to note that we will save half a million pounds this year by not retaining the bus services that are not required by the people of Wiltshire.

However, a much more important aspect of this concerns the number of buses used by public services in our local authorities. Health, for example, spends as much money in Wiltshire on supporting transport in our county as we do. Therefore, it is important that we work together with other public services to ensure that we obtain the most efficient service for moving people around our areas as we possibly can.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, I thank all noble Lords who have taken part in this short debate. I will speak to both Amendments 1 and 113 in this group.

The noble Lord, Lord Whitty, mentioned the spirit in which discussions on the Bill have taken place, and I support his sentiment. From the Government's perspective there has been a willingness to listen and to take on board comments that have been received, as well as to provide explanations when they feel that provisions already cover various aspects of amendments.

Amendment 1 in the name of the noble Lord, Lord Whitty, would require all non-metropolitan county councils to assess and consult on the needs of local bus passengers, with an associated duty to subsequently secure the provision of such bus services as the authority considers "reasonable and appropriate". I appreciate

what this amendment seeks to achieve, particularly in ensuring that local authorities consider the benefits that good bus services bring and undertake a proper assessment of local transport needs. However, as noble Lords may well know, the Transport Act 2000—as amended by the Local Transport Act 2008—already obliges local authorities to produce local transport plans. Authorities are obliged to develop policies for the promotion and encouragement of safe, integrated, efficient and economic transport. This ensures that transport needs are looked at collectively rather than on a mode-by-mode basis. Local transport authorities are then required to prepare a local transport plan which must, among other things, contain such policies.

Under the original provisions of the Transport Act 2000, each local authority was also obliged to produce a bus strategy. These bus strategies contained authorities' general policies on how best to secure services that met passenger needs. Again, the Transport Act 2000 provisions had a similar focus to the amendment tabled today by the noble Lord, Lord Whitty. The requirement to produce separate bus strategies was removed by the Local Transport Act 2008. The rationale for this was to allow bus measures to be integrated more effectively into the core local transport plan and to remove the burden of producing two different but related strategies from local transport authorities. The Government's view is that this remains the correct approach.

The Bill also already requires any local transport authority that plans to go down the enhanced partnership route to produce an enhanced partnership plan that will set out policies and objectives relating to bus services. The authority must also consult on such a plan. In effect, it would require the local authority to undertake an assessment addressing very similar issues to those which would be addressed in the assessment required by the amendment moved by the noble Lord, Lord Whitty. I would not want to impose additional burdens on authorities that choose to pursue an enhanced partnership.

On the new duty included in this amendment, which requires county councils in non-metropolitan areas to secure the provision of local bus services, again I recognise the noble Lord's intention, but the amendment would not make a practical difference. As my noble friend Lady Scott has already pointed out, local authorities are very much aware and indeed practiced in implementing sound policies. This is because there is already a very similar duty on non-metropolitan county councils, which local authorities are aware of, under Section 63 of the Transport Act 1985. I therefore hope that the noble Lord understands why I cannot support the amendment and as such will feel able to withdraw it.

Amendment 113, also tabled in the noble Lord's name, would require the Secretary of State to produce a national strategy for bus services. As I have said at previous stages of debate on the Bill, devolution is an important theme that has informed the development of the Bill. Indeed, the essence of and the intent behind the Bus Services Bill reflect the Government's own perspective on how bus services should be progressed and taken forward. This Bill is all about providing authorities with new tools to enable them to improve their local bus services in the way that best suits their areas. It is not about imposing particular models.

Central government of course has a valuable role to play in setting the wider agenda through policy initiatives such as the low-emission bus scheme and our Total Transport pilots, but centrally determined strategies for local bus services would not help authorities to address particular issues relevant to them and to their area. As such, it does not seem sensible for central government to set a national strategy when local authorities and bus operators working together will be designing services and setting standards locally.

Additionally, as I have previously explained, the Department for Transport helps to support local bus services outside London by paying some £250 million per year through the bus service operators grant. We are already reviewing the BSOG system, with the aim of ensuring that funding is targeted where it is most needed in line with local authority objectives. Through that work we should establish and set out central government's priorities and objectives for the funding that is provided.

I hope that my explanation has given the noble Lord, Lord Whitty, sufficient reassurance to enable him to withdraw his amendment.

4 pm

Lord Whitty: My Lords, I am a bit disappointed with a less than promising start to this part of the Bill, but I am sure it will get better.

On Amendment 113, I think that the Minister misunderstands me. It is designed not to introduce top-down instructions and targeted interventions by the Department for Transport but to ensure that local authorities, operators and those who are dependent on bus services understand the overall framework of support, or otherwise, for buses. It is odd that the form of public transport most used by the poorer elements in our society both in towns and in the countryside does not seem to merit a national strategy and a national framework. I am not talking about instructions coming down from Whitehall to county level; I am talking about every county, and indeed every local authority, understanding how the Government see the development of buses. I appreciate that some of the things that the Minister referred to are clear—particularly about improving the environmental effect of buses and so forth—but we need a comprehensive view of how the bus industry is to develop. Therefore, I am sorry that the noble Lord is not prepared to accept Amendment 113.

On Amendment 1, the argument is little more subtle. The Minister is clearly right that the Transport Act 2000 laid down some of these provisions, but the reality—which is not due just to the amendment in 2008—is that a number of local authorities have not observed that requirement. Indeed, there have been a number of cases—at least two, to my knowledge—where local authorities have been found in court not to have carried out that duty. This is an attempt to codify the duty more clearly and to put the new possibilities provided for in the Bill in the context of that responsibility, which lies with all local authorities, not just metropolitan ones.

A lot of rural authorities have carried out consultations but, frankly, some of them have been better than others. A number have been found wanting. Cambridgeshire

is one case that the noble Lord is perhaps familiar with, and I would also mention the Three Rivers case. Clearly, the present requirements are not working and I would like to strengthen them.

I was interested in what the noble Baroness, Lady Scott, said about the Wiltshire exercise—I live across the border so I am not one of her constituents in this regard—but I do not believe that that consultation exercise, or certainly its final outcome, is seen as adequate by a number of groups in Wiltshire. On the other hand, I totally agree with her that we need to look at the totality of services and not simply at scheduled bus services. It is important that we optimise the use of resources and of the available forms of transport, whether they are scheduled bus routes, quasi-taxi services, on-demand services, health service providers, education providers or social services providers. All that needs to be taken into account, and in a sense that is partly what the amendment is about. We need a comprehensive approach, and we need to put an obligation on local authorities to take all that into account and to consult widely—and, I hope, wisely—and to come up with a solution.

At the moment, I do not believe that the law is fully working. In view of the Minister's greater confidence in this regard, I therefore assume that he and his department are trying to ensure that local authorities take this more seriously and that perhaps at least the spirit of the amendment might be achieved by administrative means as well as by the example of a number of legal cases. I therefore do not wish to press the exact wording of this amendment today.

I hope, however, that between now and the final stages of the Bill, the Minister will indicate that some moves have been made by the department, along with the LGA. I apologise that I failed to acknowledge my interest as a vice-president of the LGA, as are two or three other contributors to the debate, but I do not speak for the LGA in this regard because I think that local government needs to take a bigger responsibility here. It would be useful if the Minister could assure us all, before we finish with the Bill and before it goes through the Commons, that he is taking steps to ensure that what is already an obligation is actually delivered by local authorities. In the meantime, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 1: Advanced quality partnership schemes

Amendment 2

Moved by Lord Ahmad of Wimbledon

2: Clause 1, page 2, line 33, at end insert—

“() An advanced quality partnership scheme must include a description of the authority's or authorities' plans for consulting such organisations appearing to the authority or authorities to be representative of users of local services as they think fit in order to seek their views on how well the scheme is working.”

Lord Ahmad of Wimbledon: My Lords, I turn, if I may, to the amendments tabled by the Government, beginning with Amendment 2, tabled in my name. A number of noble Lords tabled amendments in Committee

[LORD AHMAD OF WIMBLEDON]

on the theme of passenger representation. Those amendments aimed to involve passengers in the ongoing monitoring and review of franchising and partnership schemes. In Committee, I expressed my sympathy with the aims of the amendments and promised to consider how best the Bill could be amended to help achieve those objectives. I am now tabling a number of amendments that aim to incorporate ongoing passenger consultation as a core component of franchising schemes and partnership plans and schemes.

The amendments require authorities to set out, as part of their plan or scheme, arrangements for consulting organisations that are representative of users of local services. As I said in my opening remarks on the previous amendment, one of the core principles of this Bill is local devolution, and it should be for individual authorities to determine exactly what form that consultation should take. It could be that one authority chooses to set up a dedicated board and consult with it regularly, while another may choose a more light-touch approach, more in line with the scale of the proposals they are considering. I trust noble Lords will agree that these amendments are useful and will help ensure that authorities implementing partnerships or franchising thoroughly consider how best to capture the views of passengers throughout the life of their scheme.

I turn now to Amendments 9, 30, 40 and 68 in this group. These amendments, tabled by the noble Baroness, Lady Randerson, would explicitly name bus users as statutory consultees when franchising or partnership schemes are proposed. I would certainly encourage authorities to consult bus passengers when major changes are proposed to the local bus network. However, creating a statutory obligation to consult bus users would, in my view, create practical difficulties for local authorities. It would be impossible for authorities to identify who falls within that category of people to ensure that they comply with any such obligation.

I appreciate the importance of engaging with bus users and propose to address the issue specifically in guidance. For this reason, the Government have included organisations appearing to the authority to represent bus users as statutory consultees when a franchising or partnership scheme is being made. I hope that the noble Baroness, Lady Randerson, is reassured by my explanation and feels able not to press her amendments. I beg to move Amendment 2.

Baroness Randerson (LD): My Lords, I rise to speak to the amendments in my name in this group. I believe that the Bill is improved by the numerous amendments that the Government have put down. I want to make it clear that, on these Benches, we appreciate the fact that the Minister has responded to concerns on a range of issues. It is indeed a much better Bill than it was. It is no longer, as I described it at one point, the buses Bill that does not refer to passengers. We have gone beyond that point.

The purpose of my amendment is to ensure that bus users are consulted at every stage in a variety of ways, and to bring a more consistent approach in the Bill to consultation generally, because there were huge inconsistencies and variabilities between the

way consultation was referred to on enhanced quality partnerships, for example, versus franchising. No matter what the arrangement on buses, bus users deserve to be consulted.

Amendment 68, supported by the noble Lord, Lord Whitty, refers to not just bus users but the organisations that represent them. I wanted to be clear that consultation should be routinely undertaken at both levels: organisations representing users, both large and small, local and national, and local consultation of individual users—the old-fashioned notices on the bus stop when the service will change.

I appreciate very much that the Minister has brought forward amendments that take on board amendments we put forward in Committee. We now have a much clearer view of the guidance and what it will contain. Because of that, I will not push these amendments to the vote, but I would like the Minister to give us some further information when he sums up. Passengers need to be at the heart of the whole thing. Therefore, the guidance needs to ensure that local publicity to passengers is good enough and comprehensive. It is no good advertising in some London-based newspaper; it has to be at an appropriate level.

I draw the noble Lord's attention to the comments from Transport Focus. In its guise as the passengers' council—that being its official, statutory name—it has emphasised that passengers need to be consulted in the design of the service, and that there needs to be a clear statement of promises for passengers and continuous assessment and feedback from passengers via, for example, research or feedback about cleanliness, punctuality and so on. It must be both qualitative and quantitative research. Transport Focus says that there is no substitute for asking passengers themselves. Those are very wise words. It also emphasises that changes to the service, whether it is timetables, fares or ticketing, and an effective complaints process are essential if you are to get proper consultation.

Please can the Minister reassure us that the guidance, when it is completed, will address those issues?

Lord Judd (Lab): My Lords, the Minister is to be commended on having introduced these amendments. The points that have just been put forward by the noble Baroness, Lady Randerson, are very important and should be considered seriously.

We still dare to talk about bus services as services. I do not understand how you can run an effective service if you are not making very specific arrangements for consulting the people for whom it is supposed to be a service on how they see and experience it, and on how it could be enhanced or changed as appropriate.

4.15 pm

If I have one doubt about the amendments, and I hate to have it, it is that experience too often demonstrates that these things can become a pretty hollow formality; they have to be done by officials but they do not really put their heart into them. In supporting the Minister, we should do our best—I am not sure how much effect it will have—to bring home that this is a serious provision: you are providing a service, and it is absolutely

essential that the people for whom you are claiming to provide that service have a real say in what they are experiencing and what should be done.

Lord Kennedy of Southwark: My Lords, these amendments concern mainly the consultation process and we support them. It is clear that the noble Lord, Lord Ahmad of Wimbledon, and his colleagues have listened to points raised by noble Lords at earlier stages of the Bill and we are grateful to them.

Amendments 9, 30, 40 and 68, proposed by the noble Baroness, Lady Randerson, and the noble Lord, Lord Bradshaw, would improve on the Government's proposal, in that they would put "bus users" into the Bill. The Minister said that he was not prepared to accept the amendments, but I do not agree with him. The noble Baroness, Lady Randerson, correctly talked about the need for consistency in the proposed consultation and for bus users to be at the heart of it. I am sure that the Minister will explain further why he is not prepared to accept the amendments, but it would be quite simple to consult people—you could have adverts on the tops of buses, inside the buses and on the website, asking them to get back to you. That is how you consult bus users in addition to statutory organisations, and it would not be that difficult. Having bus users explicitly involved in the consultation process would be very welcome. I hope the Minister will set out further why he cannot accept the noble Lords' amendments.

Having said that, I do not intend to delay the House further. We are genuinely grateful for the other amendments the Government have brought forward today.

Lord Ahmad of Wimbledon: My Lords, I thank all noble Lords and in particular the noble Baroness for their amendments and contributions, and for their broad support for the government amendments. I assure noble Lords that the intent behind the government amendments, together with the guidance, is to put the customer, the passenger, at the heart of this Bill. We want that sentiment to be reflected in respect of all modes of transport. To provide perhaps further reassurance to noble Lords, I have made a note of the noble Baroness's suggestions and will make sure that they are reflected in the further detailed guidance. The noble Lord, Lord Whitty, spoke of good practice on the part of some local authorities whereas others are perhaps not quite up to the mark. I hope that the Bill and the strengthened guidance, taking on board the comments I have heard during today's short debate, will together ensure that passengers are truly at the heart of local bus services.

Amendment 2 agreed.

Amendment 3

Moved by Lord Bradshaw

3: Clause 1, page 2, line 40, at end insert—

"(11) Where a local transport authority or authorities make an advanced quality partnership scheme, the Secretary of State may by order make provision to confer upon that authority or authorities the functions to enforce traffic offences.

(12) The Secretary of State may make an order under subsection (11) only if a proposal for the making of the order in relation to the local transport authority or authorities has been made to the Secretary of State by the appropriate authority or authorities."

Lord Bradshaw: It will not come as a surprise to any of your Lordships to know that the bus industry is in quite deep crisis. The number of passengers is falling, bus speeds are declining, and the quality of service that buses offer is getting worse. Considering that we want more people to use buses, the causes of the congestion afflicting the bus industry need to be addressed.

In a letter to me on 8 August, the Minister said that mayoral combined authorities will have the ability to seek additional functions or equivalent legislative provisions to enforce moving traffic offences if they wish. The enforcement of moving traffic offences is an extremely important power. Provisions were made in the Traffic Management Act 2004 for that power to be granted to local authorities but London and recently Cardiff—which is outside the scope of our discussions this afternoon—are the only two places to adopt this ability to tackle the points of traffic congestion that really hold up buses.

Oddly, the Minister's letter makes no reference to authorities that seek not franchises but advanced quality partnerships. If the Government are willing to grant those powers to franchising authorities, they should be willing to grant them to authorities that decide instead to go for advanced quality partnerships. My amendment would give effect to this so that, if a local authority wanted, it might apply to the Secretary of State for permission to adopt the provisions in the Traffic Management Act.

This amendment is very important to the bus industry which, as I said, suffers severely from traffic congestion. That, among other things, is leading to services being withdrawn because they cannot be operated profitably. More buses are needed to maintain the service, the buses go slower and carry fewer people, and they become less profitable. I beg to move.

Baroness Randerson: My Lords, there is a bit of a conundrum at the heart of the Government's attitude to this. They offer franchising powers to local authorities and, according to the Minister's letter to my noble friend Lord Bradshaw, they offer additional powers to ensure that such franchising works well. That is logical but surely the most effective and efficient way forward is to ensure that those local authorities that do not want to go for franchising—it will be difficult and complex anyway—are enabled to make their bus service as efficient as possible to avoid the necessity for franchising. If you take that situation together with the views of the Competition and Markets Authority that franchising should be gone for only in very extreme situations—we will return to that later today—there is a bit of a contradiction. I cannot see why the Government are so unwilling to use statutory powers that already exist to implement the provisions of the 2004 Act.

It is not as if we do not have evidence that those powers work. They work in London and I can give noble Lords an assurance that they are beginning to

[BARONESS RANDEKSON]

work well in Cardiff. Those powers were given to Cardiff because it was part of the devolution settlement that Cardiff could ask for them. I was actually the Minister in the Wales Office who took that through this House in order to ensure that Cardiff had those powers. Noble Lords will probably be aware that I live in Cardiff so I have personal experience of the way in which the system is working.

Clearly, these powers are having an impact. You can measure that impact in the number of people who are fined for contravening the local road traffic regulations. It is clear that motorists started off with a brazen disregard for bus lanes, yellow boxes, right turns that they should be not making and so on, but that they learned pretty quickly. We know that because the fines start off very high but fall off pretty quickly. By the way, the council also learned because it started moving the cameras round. When it moves the cameras, the amount taken in fines goes up; then, after a while, people have learned and it goes down again. We want a very low level of fines because we want people to obey the rules. This is having an impact. All we are asking is that the Government use existing legislation to give local authorities the tools to do the job, whether they are going for franchising or any other partnership arrangement.

The evidence right across the country, as my noble friend has said, is of increased traffic congestion slowing down bus travel. The impact on passengers and bus companies is considerable. I draw noble Lords' attention to a discussion I had with an operator in Bristol which said that it had had to put on well over 30 additional buses to maintain existing timetables because of congestion, and that much of that congestion is avoidable—if people do not park in bus lanes or drive along them, and so on. Of course, the financial impact on bus companies of having to put on additional buses is passed on to the passengers. The combination of higher fares and slower journeys deters people from using the buses. To my mind, it is only sensible to use the powers that exist.

Lord Snape (Lab): My Lords, I support this amendment. Obviously, if we are to tempt people out of their motor cars and on to public transport, that public transport has to be reliable. Its reliability, it is readily acknowledged, is affected, particularly in our towns and cities, by traffic congestion and by careless and indiscriminate parking by private motorists.

I worked for some years in the bus industry. The problem seems to be the lack of support from local newspapers for proper bus lane enforcement measures against motorists who transgress and park at bus stops or in bus lanes or drive in bus lanes. By and large, journalists do not travel on buses and the editorial policies of most local newspapers appear to be against bus priority measures as a whole. It is a sad fact that a Labour mayor in Liverpool has already taken out bus lanes in that city. A Labour-controlled council in Coventry is considering doing the same there as well.

When it comes to the bad publicity that bus lanes receive, all too often the local newspaper will pick a particular camera and say, "That camera has raised X millions of pounds in fines", as though it has been deliberately placed in a bus lane to penalise motorists.

It is placed there to try to ease congestion and to see that bus lanes are used for their proper purpose. The noble Baroness, Lady Randerson, mentioned that franchising is, quite rightly, seen as a last resort. If we are to avoid that last resort, proper enforcement of bus priority measures is essential. I hope that the Minister will give a sympathetic response to this amendment.

4.30 pm

Lord Kennedy of Southwark: My Lords, Amendment 3, moved by the noble Lord, Lord Bradshaw, has considerable merit and we on these Benches will support him if he wishes to test the opinion of the House. As we have heard in this short debate, the amendment seeks to enable the Secretary of State by order to confer powers upon a transport authority to enforce traffic offences where it has applied for them. The powers will enable authorities to deal more effectively with moving traffic offences, which in turn will help with reliability and punctuality issues for buses, as we have heard. It is not an automatic right: a case will have to be made for why the powers would be desirable in a particular area.

The Government should not in any way be concerned by this proposal as the power to grant, or not to grant, rests with the Secretary of State. The Local Government Association also has indicated its support for the amendment, although, as it points out, the Government already have the power to enable local authorities to enforce moving traffic offences. Ministers could announce from the Dispatch Box today that they will enable that power, which was referred to earlier. I will not detain the House any further on this but, for the benefit of the House, I state clearly again that if the noble Lord wishes to test the opinion of the House, we on these Benches will be with him in the Content Lobby.

Lord Ahmad of Wimbledon: My Lords, I thank all noble Lords who have taken part in this debate on Amendment 3. In moving his amendment, the noble Lord, Lord Bradshaw, reiterated that it would give all areas where an advanced quality partnership scheme is in place the powers to enforce moving traffic offences. I agree with him that congestion can have a major impact on local bus services, as other noble Lords have said, but I would also stress that local authorities have many options to address it, from infrastructure measures and technological solutions to the enforcement of moving traffic offences in bus lanes.

For instance, local authorities can designate bus lanes to provide dedicated road space for buses, enabling them to bypass traffic queues. Buses can also be exempted from restrictions such as no-entry signs. This can allow buses to benefit from a shorter, more convenient route than other traffic, sometimes by bypassing locations where there are known congestion issues. These are exactly the sorts of measures that local authorities can bring to an advanced quality partnership as their side of the bargain. I also confirm that English local authorities outside London that can enforce parking violations already have the powers to enforce bus lane contraventions, including moving traffic violations in bus lanes. This means that over 90% of the 293 English local authorities outside London can already enforce bus lanes.

I recognise that the noble Lord's amendment would broaden these powers further and allow the enforcement of moving traffic contraventions, such as at yellow box junctions. There are already provisions available, as noble Lords know, in Part 6 of the Traffic Management Act 2004 to permit enforcement of other moving traffic violations by English local authorities outside London. Although the Government have made no current decisions on whether to bring these powers forward, we discuss them regularly with the Local Government Association and other key organisations—as I am sure noble Lords recognise, since we have many a vice-chair of the LGA here. Given the existing powers available to local authorities and the existence of Part 6 of the Traffic Management Act, additional legislation in this context, particularly where it relates solely to the narrowest type of partnership, is not necessary.

A question was asked about why only franchised areas or mayoral combined authorities can get this power. First, the devolution orders for mayoral combined authorities provide a legal mechanism to grant these powers to enforce moving traffic offences to those authorities. The mechanism does not exist for all types of authority. I assure noble Lords that we will continue to consider the case to grant these powers to all local authorities. However, for the time being, I cannot accept this amendment. I hope my explanation and the reassurance I have provided will allow the noble Lord to withdraw his amendment.

Lord Bradshaw: I am very sorry to disappoint the Minister. When local authorities, such as Reading, for example, have powers to enforce bus lanes, they still have great problems enforcing things such as yellow box junctions and right turns. This legislation passed on to the statute book 12 years ago and it is time that it was brought into effect. I wish to test the opinion of the House.

4.35 pm

Division on Amendment 3

Contents 216; Not-Contents 175.

Amendment 3 agreed.

Division No. 1

CONTENTS

Adams of Craigielea, B.	Bonham-Carter of Yarnbury, B.
Addington, L.	Boothroyd, B.
Ahmed, L.	Bowles of Berkhamsted, B.
Alton of Liverpool, L.	Bradley, L.
Andrews, B.	Bradshaw, L.
Armstrong of Hill Top, B.	Bragg, L.
Bakewell, B.	Brinton, B.
Bakewell of Hardington Mandeville, B. [Teller]	Brooke of Alverthorpe, L.
Barker, B.	Brookman, L.
Bassam of Brighton, L.	Bruce of Bennachie, L.
Beecham, L.	Burt of Solihull, B.
Beith, L.	Campbell of Pittenweem, L.
Benjamin, B.	Campbell-Savours, L.
Berkeley, L.	Carlile of Berriew, L.
Bhattacharyya, L.	Cashman, L.
Blackstone, B.	Chandos, V.
Blunkett, L.	Chidgey, L.
Boateng, L.	Clancarty, E.
	Clark of Windermere, L.

Clarke of Hampstead, L.	Liddell of Coatdyke, B.
Clement-Jones, L.	Liddle, L.
Collins of Highbury, L.	Lipsey, L.
Corston, B.	Lister of Burterset, B.
Cotter, L.	Ludford, B.
Crawley, B.	McAvoy, L.
Davies of Oldham, L.	McDonagh, B.
Dean of Thornton-le-Fylde, B.	Macdonald of Tradeston, L.
Donaghy, B.	McIntosh of Hudnall, B.
Donoughue, L.	McKenzie of Luton, L.
Doocey, B.	MacLennan of Rogart, L.
Drake, B.	Maddock, B.
Dubs, L.	Marks of Henley-on-Thames, L.
Eames, L.	Masham of Ilton, B.
Elder, L.	Maxton, L.
Elis-Thomas, L.	Monks, L.
Elystan-Morgan, L.	Morgan, L.
Falkland, V.	Morgan of Huyton, B.
Falkner of Margravine, B.	Morris of Aberavon, L.
Farrington of Ribbleton, B.	Morris of Handsworth, L.
Faulkner of Worcester, L.	Morris of Yardley, B.
Finlay of Llandaff, B.	Murphy of Torfaen, L.
Foster of Bath, L.	Newby, L.
Foster of Bishop Auckland, L.	Northover, B.
Gale, B.	Nye, B.
Garden of Frogna, B.	Oates, L.
German, L.	Paddick, L.
Giddens, L.	Parekh, L.
Glasgow, E.	Parminster, B.
Goddard of Stockport, L.	Patel of Bradford, L.
Golding, B.	Pendry, L.
Gordon of Strathblane, L.	Pitkeathley, B.
Goudie, B.	Plant of Highfield, L.
Gould of Potternewton, B.	Ponsonby of Shulbrede, L.
Grantchester, L.	Prescott, L.
Greender, B.	Primarolo, B.
Griffiths of Burry Port, L.	Prosser, B.
Grocott, L.	Quin, B.
Hain, L.	Ramsay of Cartvale, B.
Hameed, L.	Randerson, B.
Hamwee, B.	Rebuck, B.
Hanworth, V.	Redesdale, L.
Harris of Haringey, L.	Reid of Cardowan, L.
Harris of Richmond, B.	Rennard, L.
Harrison, L.	Richard, L.
Haworth, L.	Roberts of Llandudno, L.
Hayter of Kentish Town, B.	Rooker, L.
Healy of Primrose Hill, B.	Rosser, L.
Hollick, L.	Rowlands, L.
Hollis of Heigham, B.	Royall of Blaisdon, B.
Howarth of Newport, L.	Sawyer, L.
Howells of St Davids, B.	Scott of Needham Market, B.
Howie of Troon, L.	Sharkey, L.
Hughes of Woodside, L.	Sherlock, B.
Humphreys, B. [Teller]	Shipley, L.
Hunt of Chesterton, L.	Shutt of Greetland, L.
Hunt of Kings Heath, L.	Simon, V.
Hussain, L.	Singh of Wimbledon, L.
Hussein-Ece, B.	Smith of Basildon, B.
Janke, B.	Smith of Clifton, L.
Jolly, B.	Smith of Leigh, L.
Jones, L.	Snape, L.
Jones of Cheltenham, L.	Soley, L.
Jones of Whitchurch, B.	Steel of Aikwood, L.
Jowell, B.	Stephen, L.
Judd, L.	Stevenson of Balmacara, L.
Kennedy of Cradley, B.	Stone of Blackheath, L.
Kennedy of Southwark, L.	Stoneham of Droxford, L.
Kinnock, L.	Storey, L.
Kinnock of Holyhead, B.	Strasburger, L.
Kirkwood of Kirkhope, L.	Suttie, B.
Knight of Weymouth, L.	Taverne, L.
Kramer, B.	Taylor of Blackburn, L.
Laming, L.	Taylor of Bolton, B.
Lawrence of Clarendon, B.	Temple-Morris, L.
Lea of Crondall, L.	Thomas of Gresford, L.
Lennie, L.	Thomas of Winchester, B.

Thurso, V.
Tomlinson, L.
Tonge, B.
Tope, L.
Touhig, L.
Truscott, L.
Tunncliffe, L.
Tyler of Enfield, B.
Verjee, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warner, L.

Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watts, L.
Wheeler, B.
Whitty, L.
Wigley, L.
Williams of Baglan, L.
Willis of Knaresborough, L.
Woolmer of Leeds, L.
Young of Hornsey, B.
Young of Norwood Green, L.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Arbuthnot of Edrom, L.
Armstrong of Ilminster, L.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Bates, L.
Berridge, B.
Bew, L.
Bilimoria, L.
Black of Brentwood, L.
Bloomfield of Hinton
Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Byford, B.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Chadlington, L.
Chisholm of Owlpen, B.
Colwyn, L.
Cormack, L.
Courtown, E. [Teller]
Couttie, B.
Cox, B.
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Crickhowell, L.
Crisp, L.
Cumberlege, B.
Dannatt, L.
De Mauley, L.
Dixon-Smith, L.
Dunlop, L.
Dykes, L.
Eccles, V.
Elton, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Fellowes of West Stafford, L.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gadhia, L.
Gardiner of Kimble, L.

Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Glendonbrook, L.
Glentoran, L.
Goodlad, L.
Grade of Yarmouth, L.
Griffiths of Fforestfach, L.
Hailsham, V.
Hanham, B.
Hay of Ballyore, L.
Helic, B.
Higgins, L.
Hodgson of Abinger, B.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Lothian, M.
Lupton, L.
Lyell, L.
McCull of Dulwich, L.
MacGregor of Pulham
Market, L.
MacGregor-Smith, B.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
Magan of Castletown, L.
Mancroft, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Mawhinney, L.
Mobarik, B.
Mone, B.
Moynihan, L.
Neville-Jones, B.
Neville-Rolfe, B.
Nicholson of Winterbourne,
B.

Noakes, B.
Northbrook, L.
Norton of Louth, L.
O’Cathain, B.
O’Shaughnessy, L.
Patten, L.
Patten of Barnes, L.
Pidding, B.
Prior of Brampton, L.
Rawlings, B.
Redfern, B.
Risby, L.
Robathan, L.
Ryder of Wensum, L.
Scott of Bybrook, B.
Seccombe, B.
Selsdon, L.
Sharples, B.
Sheikh, L.
Shepherd of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shrewsbury, E.
Skelmersdale, L.
Slim, V.
Smith of Hindhead, L.
Spicer, L.
Stedman-Scott, B.

Stirrup, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Sutherland of Houndwood, L.
Swinfen, L.
Taylor of Holbeach, L.
[Teller]
Trefgarne, L.
Trenchard, V.
True, L.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Waverley, V.
Wei, L.
Wellington, D.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willets, L.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

4.49 pm

Amendment 4

Moved by Lord Ahmad of Wimbledon

4: Clause 1, page 3, line 45, after “meet,” insert “including requirements about emissions or types of fuel or power;”

Lord Ahmad of Wimbledon: My Lords, I shall now speak to Amendments 4 to 6, 15, 19, 21, 63, 64 and 66 in this group, which all deal with emissions from buses.

As I recognised during our debates in Committee, buses have a huge part to play in solving some of the country’s air quality problems and challenges and combating global warming. I share the desire of many noble Lords for low-emission buses to be adopted more widely, and I thank those noble Lords with whom I have had the opportunity to discuss the issue in more detail. I undertook in Committee to consider how the Bill could best achieve this outcome.

Amendments 4, 15 and 64 in my name make it explicit that emission standards can be specified as standards in partnership schemes or included in local service contracts in the context of franchising. Emission standards can be included in the schemes, thus giving local transport authorities flexibility to determine an approach that best suits their area.

I also wish to ensure—as the noble Baroness, Lady Randerson, urged me to do in Committee—that all local transport authorities that use the new powers properly consider the potential to achieve better environmental outcomes. The draft guidance, which was circulated last week, achieves this and provides important information about how the tools in the Bill link up with other government initiatives in this area.

I turn to the other amendments in the group. The noble Baroness, Lady Randerson, tabled Amendments 5, 21 and 63, which have a similar effect to my amendments. I therefore hope that, on reflecting on the government amendments, she will be minded not to press hers.

Amendments 6, 19 and 66, tabled by the noble Lord, Lord Kennedy, would require all advanced quality partnership, franchising and enhanced partnership schemes to prescribe specifications previously used for the department's low-emission bus scheme. These amendments sit somewhat uneasily with the devolutionary nature of the Bill. They would in part tie the hands of authorities looking to implement franchising, advanced quality partnerships or enhanced partnerships, requiring them to specify higher standards for vehicles than in other parts of the country—whether they have an air quality issue to address or not.

It is our view that this centralist approach would bring unnecessary additional costs that could make the difference between schemes being economically viable or not. The likely consequence is that many local transport authorities will simply not pursue the schemes at all.

I believe that this is an important issue—I know that that sentiment is shared across the House—but the Bill needs to strike the right balance between giving authorities the right tools for the job and not being overly prescriptive about how improvements are to be achieved. That is the objective of Amendments 4, 15 and 64, and I beg to move.

Baroness Randerson: My Lords, we are pleased that the Minister has responded to our concerns and that the Bill now steers both local authorities and bus companies in the direction of less-polluting buses. That is very much to be welcomed, because we must bear in mind that technology is moving very swiftly. Electric buses are developing very fast. For example, I recently travelled on London's first double-decker all-electric bus. There are biofuels—methane and so on. All sorts of opportunities are opening up very fast.

We must also bear in mind that this will become an Act that will probably last for decades—the previous one has lasted for more than 30 years—so we need to look to the future. It is essential that we make sure that new buses are non-polluting and encompass the best of technology at the time. Of course, as the noble Lord implies, there will be a cascading down of old buses but there are other ways in which local authorities and bus companies can manage to provide a less-polluting service. For local authorities, low-emission and ultra-low-emission zones must surely become more popular and common in the future.

I am sorry to disappoint the noble Lord that, as a devolutionary party, we on the Liberal Democrat Benches are also an environmental party. Therefore, there are times when we have to balance one principle against another and say that for the sake of the environment, which I remind noble Lords means for the sake of the health of our children as well as the natural world, we have to go with the best possible option. I believe that the Labour amendment has more detail because it refers to a very specific scheme so it is seriously worth supporting. We will not push our amendments to the vote but we will support the Labour Party on this occasion.

Baroness Jones of Whitchurch (Lab): My Lords, I wish to speak to Amendments 6, 19 and 66 in this group, which will require all new buses commissioned

under franchising advanced partnerships or enhanced partnerships to meet the low-emission requirements set out by the government-sponsored Office for Low Emission Vehicles. As has been acknowledged, they go further than the amendments proposed by the Minister and the noble Baroness, Lady Randerson, whose amendments are permissive and simply allow local authorities to specify reduced emissions in their scheme rather than requiring them to do so.

Although we welcome those amendments as far as they go, with the greatest respect, we do not feel that they go far enough. We face huge challenges in tackling climate change and moving to a low-carbon economy. We need to play our part in contributing to the global strategy agreed at the Paris declaration. However, to be successful, government departments right across the board, including transport, have to be prepared to set clear, achievable objectives at national and local level. There is some urgency to this. The UK Committee on Climate Change in its recent report to Parliament raised concerns about the lack of progress in tackling carbon emissions in the transport sector—for example, with increased car use and the demand for travel offsetting improved vehicle efficiency.

There is so much more that the department could do to promote green technology in transport. As part of this approach, public transport has an important role to play. We need to encourage people out of private-use vehicles and into low-carbon trains and buses. We believe that low-carbon buses have a crucial role to play in meeting our 2% reduction in carbon as well as boosting public health and improving air quality in urban areas.

The low-emission bus scheme created by the Government's Office for Low Emission Vehicles provides a blueprint for a transition to low-carbon vehicles, so we feel that this is the right way forward. It has been working with manufacturers and there are already 3,500 low-carbon buses on our roads. As the Government's draft guidance note acknowledges, these represent only 9% of buses in service in England. Of course we welcome the Government's grant of £30 million to help local authorities and bus operators purchase more low and ultra-low emission buses, so at least we are on the same page on that.

However, we need to go further by making low-emission standards a requirement for all buses purchased by transport operators and local authorities in the future. This is why we propose that all new buses purchased after 1 April 2019 should meet these new environmental standards. That deadline gives people time to prepare and time for manufacturers to create low-emission buses as a standard offer. There is no reason why we should not do this; the technology already exists to make this a reality, and it presents a real opportunity for UK bus manufacturers to become market leaders in this sector.

5 pm

When the issue was discussed in Committee, the Minister expressed some sympathy for the proposal but stressed that the Bill was about devolution and emphasised the need for local areas to improve local services in the way that suits them. I know that he has

[BARONESS JONES OF WHITCHURCH] echoed that response this afternoon. But there is a clear trade-off between devolution of decision-making and national government priorities when it comes to delivering our Paris commitments. It is not good enough to say that these decisions should be taken at a local level when the consequence might be that we miss our international obligations on this matter. We believe that our amendment would harness our technological advances, create a level playing field for bus manufacturers and bring enormous public benefits to people who live in diesel-choked urban areas. Therefore, I urge noble Lords to support the amendment.

I have listened to what the Minister has had to say on this matter so far. There are higher priorities than simply the issue of devolution and, unless he can give further commitments on the matter, I would like to test the opinion of the House.

Lord Judd: My Lords, this is a very important amendment. Either we take our commitments on climate change seriously, or we do not. As we go into a new phase with the administration of bus services, it seems almost unthinkable that this is not taken for granted—that this is not in the front line and a practical issue on which we can make a positive contribution. But it is not only on the great issues of climate change that we should consider this; it is also in terms of local health. I have no doubt whatever that in some of our conurbations the burdens on the health service are increased by pollution in our local cities. We are only adding to the problems and the cost of the health service if we do not make provisions of this kind. The buses are there—it is not as if they are not—so it is a very sensible and important amendment, and I hope that it is acceptable to the Minister.

Earl Attlee (Con): My Lords, all noble Lords understand the importance of emissions controls, but when the noble Baroness, Lady Jones, decides what she is going to do with her amendment could she tell the House what she thinks is more important—fuel efficiency, related to carbon emissions, or pollutant emissions such as PM10 or PM5 or nitrous oxides? Does the Office for Low Emission Vehicles determine which is the priority, fuel efficiency or pollutant emissions, or do the Government tell the office which is the priority?

Lord Ahmad of Wimbledon: My Lords, I once again thank noble Lords who have taken part in this debate. I am a tad disappointed in the response that I am hearing. The Government have taken a balanced view in line with their intent, reflected across the Chamber, to tackle the issue of emissions. I fear that what the Opposition propose or support in the amendments in the names of the noble Baronesses, Lady Jones and Lady Randerson, and the noble Lord, Lord Kennedy, will in certain areas where there is no issue put a prescriptive obligation on local authorities. The other question, which we have discussed outside the Chamber with both noble Baronesses, is that of the smaller operators, which will be more challenged by the setting of such particular prescriptive limits. When we look at legislation we must look at its application in a national context—notwithstanding the fact that some operators

provide essential services, which will be disadvantaged by this proposal—and in other areas where these prescriptive obligations are set, where there is not the same issue prevailing.

I fully accept—as the noble Lord, Lord Judd, mentioned—that there are now, in terms of manufacturing of course, vehicles being produced. May I suggest, perhaps as I have previously on this Bill, a small olive branch? I think that we are on the same page here; we all want to tackle this important issue. We can look to see how, within the guidance that will accompany the Bill, the issue raised by noble Lords about OLEV can be reflected.

I feel, and I emphasise again, that the amendments presented by the Government are not just about devolution. They are also about, as I said in my opening comments, economic viability and ensuring that we get the level of take-up on some of the issues. I fear that other amendments, as they currently stand, would disadvantage passengers and perhaps even end up stopping partnership and franchising schemes happening in certain areas. I think that the Government's amendments strike the right balance but, as I said, in the spirit in which this Bill has been discussed, we can certainly ensure that the issue of OLEV is better reflected and specified in the guidance.

Amendment 4 agreed.

Amendment 5 not moved.

Amendment 6

Moved by Baroness Jones of Whitchurch

6: Clause 1, page 4, line 26, at end insert—

“(10) Each advanced quality partnership scheme must, as a standard of service, require that new vehicles delivering local services meet the specifications of the low emission bus scheme as set out by the Office for Low Emission Vehicles in its 2015 document “Low Emission Bus Scheme: Guidance for participants” if the vehicle comes into service after 1st April 2019.”

Baroness Jones of Whitchurch: My Lords, I just respond very briefly regarding the olive branch that the Minister has just referred to. I have to say that it would require quite a substantial rewriting of the guidance, because the whole emphasis of that guidance is based on a devolutionary approach, which, as I have made clear, I do not feel is appropriate on this occasion.

On the issue about whether it should be targeted in particular areas where there is a problem of air quality, all I will say is that our Paris commitment is a 2% reduction in carbon emissions overall, not just in urban areas. It is a national and international issue. The challenge for us is not just to pinpoint particular areas where there is particular pollution, it is to move overall and UK-wide to a low-carbon economy. This is where we have a difference in approach on this matter. Without wishing to take up any more time, I wish to test the opinion of the House on this matter.

5.08 pm

Division on Amendment 6

Contents 219; Not-Contents 178.

Amendment 6 agreed.

Division No. 2

CONTENTS

Addington, L.
 Ahmed, L.
 Allan of Hallam, L.
 Alli, L.
 Alton of Liverpool, L.
 Andrews, B.
 Armstrong of Hill Top, B.
 Bakewell, B.
 Bakewell of Hardington
 Mandeville, B.
 Barker, B.
 Bassam of Brighton, L.
 [Teller]
 Beecham, L.
 Beith, L.
 Benjamin, B.
 Berkeley, L.
 Blackstone, B.
 Blunkett, L.
 Boateng, L.
 Bonham-Carter of Yarnbury,
 B.
 Bowles of Berkhamsted, B.
 Bradley, L.
 Bradshaw, L.
 Bragg, L.
 Brinton, B.
 Brooke of Alverthorpe, L.
 Brookman, L.
 Burt of Solihull, B.
 Campbell of Pittenweem, L.
 Campbell-Savours, L.
 Carlile of Berriew, L.
 Carter of Coles, L.
 Cashman, L.
 Chakrabarti, B.
 Chandos, V.
 Chidgey, L.
 Clancarty, E.
 Clarke of Hampstead, L.
 Clement-Jones, L.
 Collins of Highbury, L.
 Corston, B.
 Cotter, L.
 Cox, B.
 Craigavon, V.
 Crawley, B.
 Davies of Oldham, L.
 Dean of Thornton-le-Fylde,
 B.
 Desai, L.
 Donaghy, B.
 Doocey, B.
 Drake, B.
 Dubs, L.
 Dykes, L.
 Elder, L.
 Elis-Thomas, L.
 Elystan-Morgan, L.
 Falkland, V.
 Falkner of Margravine, B.
 Farrington of Ribbleton, B.
 Faulkner of Worcester, L.
 Finlay of Llandaff, B.
 Foster of Bath, L.

Gale, B.
 Garden of Frogna, B.
 German, L.
 Giddens, L.
 Glasgow, E.
 Goddard of Stockport, L.
 Golding, B.
 Gordon of Strathblane, L.
 Goudie, B.
 Gould of Potternewton, B.
 Grantchester, L.
 Grender, B.
 Griffiths of Burry Port, L.
 Grocott, L.
 Hamwee, B.
 Hanworth, V.
 Harris of Haringey, L.
 Harris of Richmond, B.
 Harrison, L.
 Haworth, L.
 Hayter of Kentish Town, B.
 Healy of Primrose Hill, B.
 Hollick, L.
 Hollis of Heigham, B.
 Howarth of Newport, L.
 Howells of St Davids, B.
 Howie of Troon, L.
 Hughes of Woodside, L.
 Humphreys, B.
 Hunt of Chesterton, L.
 Hunt of Kings Heath, L.
 Hussain, L.
 Hussein-Ece, B.
 Janke, B.
 Jolly, B.
 Jones, L.
 Jones of Cheltenham, L.
 Jones of Whitchurch, B.
 Jowell, B.
 Judd, L.
 Kennedy of Cradley, B.
 Kennedy of Southwark, L.
 Kinnock, L.
 Kinnock of Holyhead, B.
 Kirkhill, L.
 Kirkwood of Kirkhope, L.
 Knight of Weymouth, L.
 Kramer, B.
 Lawrence of Clarendon, B.
 Lea of Crondall, L.
 Lee of Trafford, L.
 Lennie, L.
 Liddell of Coatdyke, B.
 Liddle, L.
 Lipsey, L.
 Lister of Burterset, B.
 Loomba, L.
 Ludford, B.
 McAvoy, L.
 McDonagh, B.
 Macdonald of Tradeston, L.
 McIntosh of Hudnall, B.
 McKenzie of Luton, L.
 MacLennan of Rogart, L.
 Maddock, B.

Marks of Henley-on-Thames,
 L.
 Masham of Ilton, B.
 Maxton, L.
 Meacher, B.
 Monks, L.
 Morgan, L.
 Morgan of Huyton, B.
 Morris of Aberavon, L.
 Morris of Handsworth, L.
 Morris of Yardley, B.
 Murphy of Torfaen, L.
 Newby, L.
 Northover, B.
 Nye, B.
 Oates, L.
 Paddick, L.
 Parminter, B.
 Patel of Bradford, L.
 Pendry, L.
 Pitkeathley, B.
 Plant of Highfield, L.
 Prescott, L.
 Primarolo, B.
 Prosser, B.
 Quin, B.
 Ramsay of Cartvale, B.
 Randerson, B.
 Rebuck, B.
 Redesdale, L.
 Reid of Cardowan, L.
 Rennard, L.
 Richard, L.
 Roberts of Llandudno, L.
 Robertson of Port Ellen, L.
 Rooker, L.
 Rosser, L.
 Royall of Blaisdon, B.
 Sandwich, E.
 Sawyer, L.
 Scott of Needham Market, B.
 Sharkey, L.
 Sherlock, B.
 Shipley, L.
 Shutt of Greetland, L.
 Simon, V.
 Smith of Basildon, B.

Smith of Clifton, L.
 Smith of Leigh, L.
 Snape, L.
 Soley, L.
 Steel of Aikwood, L.
 Stephen, L.
 Stevenson of Balmacara, L.
 Stoddart of Swindon, L.
 Stone of Blackheath, L.
 Stoneham of Droxford, L.
 Storey, L.
 Strasburger, L.
 Suttie, B.
 Taverne, L.
 Taylor of Blackburn, L.
 Taylor of Bolton, B.
 Temple-Morris, L.
 Thomas of Gresford, L.
 Thomas of Winchester, B.
 Thornhill, B.
 Thornton, B.
 Thurso, V.
 Tomlinson, L.
 Tonge, B.
 Tope, L.
 Tordoff, L.
 Touhig, L.
 Truscott, L.
 Tunncliffe, L. [Teller]
 Tyler of Enfield, B.
 Verjee, L.
 Wallace of Saltaire, L.
 Wallace of Tankerness, L.
 Walmsley, B.
 Warner, L.
 Warwick of Undercliffe, B.
 Watkins of Tavistock, B.
 Watson of Invergowrie, L.
 Watts, L.
 Wheeler, B.
 Whitaker, B.
 Whitty, L.
 Wigley, L.
 Willis of Knaresborough, L.
 Woolmer of Leeds, L.
 Young of Hornsey, B.
 Young of Norwood Green, L.

NOT CONTENTS

Aberdare, L.
 Ahmad of Wimbledon, L.
 Arbuthnot of Edrom, L.
 Armstrong of Ilminster, L.
 Arran, E.
 Ashton of Hyde, L.
 Astor of Hever, L.
 Attlee, E.
 Baker of Dorking, L.
 Bates, L.
 Berridge, B.
 Bew, L.
 Black of Brentwood, L.
 Bloomfield of Hinton
 Waldrist, B.
 Borwick, L.
 Bourne of Aberystwyth, L.
 Brabazon of Tara, L.
 Brady, B.
 Bridgeman, V.
 Brougham and Vaux, L.
 Browne of Belmont, L.
 Browning, B.
 Butler-Sloss, B.
 Byford, B.
 Caithness, E.
 Callanan, L.
 Carrington of Fulham, L.

Cathcart, E.
 Chadlington, L.
 Chisholm of Owlpen, B.
 Colwyn, L.
 Cormack, L.
 Courtown, E. [Teller]
 Couttie, B.
 Craig of Radley, L.
 Crathorne, L.
 Crickhowell, L.
 Crisp, L.
 Cumberlege, B.
 Curry of Kirkharle, L.
 De Mauley, L.
 Dear, L.
 Dixon-Smith, L.
 Dobbs, L.
 Dunlop, L.
 Eames, L.
 Eccles, V.
 Elton, L.
 Evans of Bowes Park, B.
 Fairfax of Cameron, L.
 Fall, B.
 Farmer, L.
 Faulks, L.
 Fellowes of West Stafford, L.
 Fookes, B.

Forsyth of Drumlean, L.
 Framlingham, L.
 Freeman, L.
 Freud, L.
 Gadhia, L.
 Gardiner of Kimble, L.
 Garel-Jones, L.
 Geddes, L.
 Gilbert of Panteg, L.
 Glenarthur, L.
 Glendonbrook, L.
 Glentoran, L.
 Goodlad, L.
 Goschen, V.
 Grade of Yarmouth, L.
 Griffiths of Fforestfach, L.
 Hailsham, V.
 Harding of Winscombe, B.
 Hay of Ballyore, L.
 Helic, B.
 Higgins, L.
 Hodgson of Abinger, B.
 Holmes of Richmond, L.
 Home, E.
 Hooper, B.
 Hope of Craighead, L.
 Horam, L.
 Howard of Rising, L.
 Howe, E.
 Howell of Guildford, L.
 Hunt of Wirral, L.
 Inglewood, L.
 James of Blackheath, L.
 Jay of Ewelme, L.
 Jenkin of Kennington, B.
 Jopling, L.
 Keen of Elie, L.
 King of Bridgwater, L.
 Kirkham, L.
 Lamont of Lerwick, L.
 Lang of Monkton, L.
 Lexden, L.
 Lindsay, E.
 Lingfield, L.
 Liverpool, E.
 Lupton, L.
 Lyell, L.
 MacGregor of Pulham
 Market, L.
 McGregor-Smith, B.
 McIntosh of Pickering, B.
 Mackay of Clashfern, L.
 Magan of Castletown, L.
 Maginnis of Drumglass, L.
 Mancroft, L.
 Manzoor, B.
 Marland, L.
 Marlesford, L.
 Mawhinney, L.
 Mobarik, B.
 Mone, B.
 Moynihan, L.
 Naseby, L.

Neville-Rolfe, B.
 Newlove, B.
 Nicholson of Winterbourne,
 B.
 Noakes, B.
 Northbrook, L.
 Norton of Louth, L.
 O’Cathain, B.
 O’Shaughnessy, L.
 Patten, L.
 Patten of Barnes, L.
 Pidding, B.
 Prior of Brampton, L.
 Rawlings, B.
 Redfern, B.
 Risby, L.
 Robathan, L.
 Rock, B.
 Rowe-Beddoe, L.
 Ryder of Wensum, L.
 Scott of Bybrook, B.
 Seccombe, B.
 Selborne, E.
 Selkirk of Douglas, L.
 Selsdon, L.
 Sharples, B.
 Sheikh, L.
 Shephard of Northwold, B.
 Sherbourne of Didsbury, L.
 Shields, B.
 Shinkwin, L.
 Shrewsbury, E.
 Skelmersdale, L.
 Smith of Hindhead, L.
 Spicer, L.
 Stedman-Scott, B.
 Stirrup, L.
 Stowell of Beeston, B.
 Strathclyde, L.
 Stroud, B.
 Sugg, B.
 Suri, L.
 Sutherland of Houndwood, L.
 Taylor of Holbeach, L.
 [Teller]
 Trefgarne, L.
 Trenchard, V.
 Trimble, L.
 True, L.
 Ullswater, V.
 Vere of Norbiton, B.
 Verma, B.
 Vinson, L.
 Wakeham, L.
 Waverley, V.
 Wei, L.
 Wheatcroft, B.
 Whitby, L.
 Wilcox, B.
 Willetts, L.
 Williams of Trafford, B.
 Young of Cookham, L.
 Younger of Leckie, V.

Baroness Randerson: My Lords, I will also speak to Amendment 16, which is in my name.

The purpose behind these amendments is to right an unjust anomaly. The law now requires young people to stay in education or training until they are 18, but their entitlement to concessionary or free fares lasts only until they are 16. Of course, at the time this legislation was enacted the two dates matched, but we now expect very much more of young people. They are not getting a fair deal from this Government. The statistics show—and the Government know it—that they are getting a much less generous financial deal than older people are. The Government choose to ignore that situation at their peril. They may be confident that young people will not express their views in large numbers through the ballot box, but they need to think about them as they mature in the future.

Young people and their future prospects have already been very hard hit by the Brexit vote. I do not blame the Minister for that, but I think that the least the Government and we as a society can now do is to help those young people—whose future prospects are less rosy than they were three months ago—on the road to a better education and greater skills so that they are able to prosper in Britain in the future. In order to do that, they have to be able to get to school or college.

An NUS survey showed that many young people spend well over £20 a week on getting to a place of education or training, or indeed to part-time employment. Young people are hardest hit in rural areas because of the long journeys that many of them have to undertake. They may have to transfer from one bus company to another, each one having separate rules—where any rules exist—on concessionary fares, which are not transferrable from one company to another. Of course, it is true that many local authorities and some bus companies offer concessions, and I would say that it is the wise bus companies that do so because, quite rightly, they see young people as their customers of the future. However, there is no consistency and we need more of it.

The result is that we have young people in college sitting side by side on the same course but paying totally different amounts to get there because they happen to come from different areas. The distance they travel might be the same, but the bus companies that they use charge different amounts.

Free bus passes for older people have been hugely successful. They are an important social and health engine, and they have a huge impact on our society. However, when drafting our amendments, we did bear in mind that we have to be careful to refer to “concessionary” fares. For all sorts of legal reasons, it would be easier to implement a scheme of reduced fares rather than free fares. I understand that the Government would have huge reservations about free fares, but we believe that we have taken a wise and moderate approach by talking about concessionary fares. We have also tried not to be prescriptive. Although we would like a nationally consistent scheme, we are dealing with this issue in the way it is possible to in this Bill.

To those who say that it is not practical, let me give some information about the scheme that exists in Wales. The mytravelpass scheme offers a one-third

5.20 pm

Amendment 7

Moved by **Baroness Randerson**

7: Clause 1, page 4, line 26, at end insert—

“(10) Each advanced quality partnership must specify, as a standard of service, that a reduced fare concessionary scheme is put in place for young people ages 16 to 19.”

discount on all journeys for young people aged 16, 17 and 18. It is a free pass that young people can get hold of easily, online or via the post.

It is important we send a message to young people in Britain that, wherever they live, they are valued and we want them to make the most of their education and training opportunities. This is one way of ensuring that they are able to do that, and with the greatest good will, so that they go into school or college not resenting it as something that is costing them money, is a nuisance and is unfair, but in a frame of mind to make the most of it. We on these Benches feel very strongly about these issues and will seek to test the view of the House.

Baroness Bakewell of Hardington Mandeville (LD):

My Lords, I support the comments made by my colleague and noble friend Lady Randerson. As she has said, young people between the ages of 16 and 19 are required to be in training or education, and there are a great deal of inequalities across the country around the provisions that they receive—in many cases none—to help with transport.

In deep rural areas, such as where I live, there is no transport at all. Therefore, unless young people have parents or friends to take them to their college or training provider, they are stuck. From my village to the FE college it is walk of five miles, down a road that is simply not safe for people to walk on because it goes through a sandstone cutting and there is no refuge. There needs to be provision of transport in rural areas and reduced concessionary fares for young people.

As my colleague already said, these huge inequalities result in people sitting next to each other on training and FE courses who, having travelled different routes, have been charged different rates. I cannot add anything to what my colleague said, except to say that many young people could choose not to further their education because of the cost of transport. That would be a great shame. Young people need to have every opportunity to advance their futures and this is a small way of helping them to do that.

5.30 pm

Lord Ahmad of Wimbledon: My Lords, I thank the noble Baroness for tabling the amendments. We return to an issue that I know we have discussed before. As the noble Baroness is fully aware, I have sympathy with the intention behind Amendments 7 and 16. I accept that affordable, accessible local transport is important for many young people's lives—to ensure greater social integration, for education and for those young people embarking on careers.

As noble Lords will recognise, many local councils already have their own schemes and use their existing legal powers to provide discounted fares for those living in the area. Bus companies also know that helping young people to use bus services by offering concessions of their own may make them customers for years to come. I would certainly encourage councils and operators to continue to build upon the offers they have already put in place. Let me assure noble Lords—I am sure that all those who have participated thus far realise this—that the Bill provides exactly

those new opportunities to do so, not least through the ability to standardise eligibility for concessions across operators through an enhanced partnership scheme.

However, the Government do not support a mandatory youth concession being a requirement relating to either advanced partnership schemes or franchising schemes, which is what these amendments seek to achieve. It may be that a local authority would seek to deliver a youth scheme through either a partnership or a franchising scheme. Such a concession would be costly to both the local authority and bus operators. Therefore it is right that any such decision to implement a youth concession for a particular area should be taken locally. That, after all, is what the Bill is about: enabling local authorities to work with bus operators to improve their bus services in ways that address local needs.

I have already said that if you build a relationship with young people, as many local authorities and bus operators do through such concessionary schemes, they will become customers for the long term. However, we do not wish to tie the hands of local authorities when it comes to taking decisions about concessionary youth fares. There are good reasons for this. If we look across the country, only a handful of local authorities have no council co-operator youth concession schemes. If we were to impose a national scheme there would be winners, but there would be losers as well. The precise cost of such a scheme will vary. Depending on its nature, it could run into hundreds of millions of pounds.

Therefore, while the noble Baroness knows that I sympathise and empathise with the need to encourage greater participation of young people using our buses, we feel—I believe it is the right way forward—that it is for councils and local bus operators to take that decision locally in the best interests of their communities.

Baroness Randerson: My Lords, I am disappointed that the Minister is not more enthusiastic about this. I argue that the Bill as amended by the Government gives some opportunities, but we feel that local authorities need to be nudged a lot more firmly in the right direction on this issue. We are respecting devolution with this because the amendment simply specifies reduced fares, not the level of reduction. It gives flexibility to local authorities, within an obligation, to deliver in the way they wish. It allows them a great deal of freedom in how they do this, but it would ensure that young people receive a message that they are welcome in our society and that they should be enthusiastic about their education and training. I therefore wish to test the opinion of the House.

5.33 pm

Division on Amendment 7

Contents 80; Not-Contents 174.

Amendment 7 disagreed.

Division No. 3

CONTENTS

Aberdare, L.	Bakewell of Hardington
Addington, L.	Mandeville, B. [Teller]
Ahmed, L.	Barker, B.
Allan of Hallam, L.	Beith, L.

Benjamin, B.
 Berkeley, L.
 Bew, L.
 Bonham-Carter of Yarnbury, B.
 Bowles of Berkhamsted, B.
 Bradshaw, L.
 Brinton, B.
 Burt of Solihull, B.
 Campbell of Pittenweem, L.
 Carlile of Berriew, L.
 Chidgey, L.
 Clancarty, E.
 Clement-Jones, L.
 Cotter, L.
 Dholakia, L.
 Doocey, B.
 Falkland, V.
 Falkner of Margravine, B.
 Finlay of Llandaff, B.
 Foster of Bath, L.
 Garden of Frogal, B.
 German, L.
 Glasgow, E.
 Goddard of Stockport, L.
 Grender, B.
 Harris of Richmond, B.
 Humphreys, B. [Teller]
 Hussein-Ece, B.
 Janke, B.
 Jolly, B.
 Jones of Cheltenham, L.
 Judd, L.
 Kirkwood of Kirkhope, L.
 Kramer, B.
 Lee of Trafford, L.
 Loomba, L.
 MacLennan of Rogart, L.

Maddock, B.
 Marks of Henley-on-Thames, L.
 Masham of Ilton, B.
 Newby, L.
 Northover, B.
 Oates, L.
 Parminter, B.
 Purvis of Tweed, L.
 Randerson, B.
 Redesdale, L.
 Roberts of Llandudno, L.
 Scott of Needham Market, B.
 Sharkey, L.
 Shiple, L.
 Shutt of Greetland, L.
 Smith of Clifton, L.
 Steel of Aikwood, L.
 Stephen, L.
 Stoneham of Droxford, L.
 Storey, L.
 Strasburger, L.
 Suttie, B.
 Taverne, L.
 Thomas of Gresford, L.
 Thomas of Winchester, B.
 Thornhill, B.
 Thurso, V.
 Tope, L.
 Tyler of Enfield, B.
 Wallace of Saltaire, L.
 Wallace of Tankerness, L.
 Walmsley, B.
 Warner, L.
 Watkins of Tavistock, B.
 Whitty, L.
 Wigley, L.

Higgins, L.
 Hodgson of Abinger, B.
 Holmes of Richmond, L.
 Home, E.
 Hooper, B.
 Hope of Craighead, L.
 Horam, L.
 Howard of Rising, L.
 Howe, E.
 Howell of Guildford, L.
 Hunt of Wirral, L.
 Inglewood, L.
 James of Blackheath, L.
 Jay of Ewelme, L.
 Jenkin of Kennington, B.
 Jopling, L.
 Keen of Elie, L.
 King of Bridgwater, L.
 Kirkham, L.
 Lamont of Lerwick, L.
 Lang of Monkton, L.
 Lexden, L.
 Lindsay, E.
 Lingfield, L.
 Liverpool, E.
 Lothian, M.
 Lupton, L.
 Lyell, L.
 MacGregor of Pulham Market, L.
 McGregor-Smith, B.
 McIntosh of Pickering, B.
 Mackay of Clashfern, L.
 Magan of Castletown, L.
 Maginnis of Drumglass, L.
 Mancroft, L.
 Manzoor, B.
 Marland, L.
 Marlesford, L.
 Mobarik, B.
 Mone, B.
 Moynihan, L.
 Naseby, L.
 Neville-Jones, B.
 Neville-Rolfe, B.
 Newlove, B.
 Nicholson of Winterbourne, B.
 Noakes, B.
 Northbrook, L.
 Norton of Louth, L.
 O’Cathain, B.

O’Shaughnessy, L.
 Patten, L.
 Patten of Barnes, L.
 Pidding, B.
 Prior of Brampton, L.
 Rawlings, B.
 Redfern, B.
 Risby, L.
 Robathan, L.
 Rock, B.
 Rowe-Beddoe, L.
 Ryder of Wensum, L.
 Scott of Bybrook, B.
 Seccombe, B.
 Selkirk of Douglas, L.
 Selsdon, L.
 Sharples, B.
 Sheikh, L.
 Shephard of Northwold, B.
 Sherbourne of Didsbury, L.
 Shields, B.
 Shinkwin, L.
 Shrewsbury, E.
 Skelmersdale, L.
 Smith of Hindhead, L.
 Spicer, L.
 Stedman-Scott, B.
 Stirrup, L.
 Stowell of Beeston, B.
 Strathclyde, L.
 Stroud, B.
 Sugg, B.
 Suri, L.
 Taylor of Holbeach, L.
 [Teller]
 Trefgarne, L.
 Trenchard, V.
 True, L.
 Truscott, L.
 Ullswater, V.
 Vere of Norbiton, B.
 Verma, B.
 Wakeham, L.
 Waverley, V.
 Wei, L.
 Wheatcroft, B.
 Whitby, L.
 Wilcox, B.
 Willetts, L.
 Williams of Trafford, B.
 Young of Cookham, L.
 Younger of Leckie, V.

NOT CONTENTS

Ahmad of Wimbledon, L.
 Arbuthnot of Edrom, L.
 Armstrong of Ilminster, L.
 Arran, E.
 Ashton of Hyde, L.
 Astor of Hever, L.
 Attlee, E.
 Baker of Dorking, L.
 Bates, L.
 Berridge, B.
 Black of Brentwood, L.
 Bloomfield of Hinton Waldrist, B.
 Borwick, L.
 Bourne of Aberystwyth, L.
 Brabazon of Tara, L.
 Brady, B.
 Bridgeman, V.
 Brougham and Vaux, L.
 Browne of Belmont, L.
 Browning, B.
 Butler of Brockwell, L.
 Byford, B.
 Caithness, E.
 Callanan, L.
 Carrington of Fulham, L.
 Cathcart, E.
 Chadlington, L.
 Chisholm of Owlpen, B.
 Colville of Culross, V.
 Colwyn, L.
 Cormack, L.
 Courtown, E. [Teller]
 Couttie, B.
 Craigavon, V.
 Crathorne, L.
 Crickhowell, L.

Cumberlege, B.
 De Mauley, L.
 Dear, L.
 Dixon-Smith, L.
 Dobbs, L.
 Dunlop, L.
 Eames, L.
 Eccles, V.
 Elton, L.
 Erroll, E.
 Evans of Bowes Park, B.
 Fairfax of Cameron, L.
 Fall, B.
 Farmer, L.
 Faulks, L.
 Fookes, B.
 Forsyth of Drumlean, L.
 Framlingham, L.
 Freeman, L.
 Freud, L.
 Gadhia, L.
 Gardiner of Kimble, L.
 Gardner of Parkes, B.
 Garel-Jones, L.
 Geddes, L.
 Gilbert of Panteg, L.
 Glenarthur, L.
 Glendonbrook, L.
 Glentoran, L.
 Goodlad, L.
 Goschen, V.
 Grade of Yarmouth, L.
 Griffiths of Fforestfach, L.
 Hailsham, V.
 Harding of Winscombe, B.
 Hay of Ballyore, L.
 Helic, B.

5.45 pm

Amendment 8

Moved by **Lord Ahmad of Wimbledon**

8: Clause 1, page 5, line 20, at end insert—

“() the plans described in the scheme for consulting in order to seek views on how well the scheme is working.”

Amendment 8 agreed.

Amendment 9 not moved.

Amendment 9A

Moved by **Lord Whitty**

9A: Clause 1, page 5, line 30, at end insert—

“(ca) appropriate representatives of any affected employees.”

Lord Whitty: My Lords, in moving Amendment 9A, I will speak also to Amendments 10, 32 and 35. First, I apologise to the House and the Minister in particular that we have a manuscript amendment here. I thought I had submitted these amendments previously, and it was due to a mix-up between myself and the office. However, the wording is exactly the same as the wording later on which relates to franchising, and it concerns the consultation of employees' representatives in both the advanced partnership and franchising contexts.

There are some very welcome government amendments relating to consultation with a range of bodies, some of which I spoke about in Committee, particularly representatives of passengers and consumers. Indeed, there is a reference to the Passengers' Council, which is the proper name for Transport Focus. I welcome the general approach of the Minister in recognising that there were some omissions or a lack of clarity about who was to be consulted on both the advanced partnerships and franchising.

Indeed, in relation to franchising, the Minister has tabled Amendment 29, which, as far as it goes, is very positive. It refers to,

“such persons as appear to the authority or authorities to represent employees of persons falling within paragraph (a)”;

that is, the operators. The Minister has recognised, as he undertook to do in Committee, that there is a need to consult with the representatives of employees in this industry. I would say that that applies to not only franchising but the introduction of advanced partnership schemes, where the employees of existing operators and others affected also need to be taken into account, but, slightly strangely, the Minister has not tabled an amendment in that respect.

I hope to try to reach an accommodation with the Minister in this area but there is an additional issue. My amendments in Committee referred specifically to recognised trade unions. This is a highly unionised sector in many parts of the country. It has had relatively stable industrial relations for many years, and a relatively high proportion of employees in the industry are represented through recognised trade unions. However, there have been one or two instances where other organisations have attempted to represent the workers, legitimately or otherwise, and there have been one or two inter-union disputes over recognition. Therefore, when you refer to a consultation with representatives of employees, where there are recognised trade unions, you should say so. That stops any confusion, whether between unions or other methods of recognition.

Therefore, I have added in both the franchising and advanced partnership contexts an explanatory note which says “appropriate representatives” are either recognised trade unions or representatives who have been properly elected or appointed by the employees so affected. That seems to cover a pretty wide range of recognition, as well as possible alternatives to the trade unions. It is therefore not a direct attempt to enforce trade unionism on people who do not want it but a recognition that trade unions exist and operate very effectively, frequently in very close co-ordination with management and the authorities in these areas. Therefore, the list of consultees needs to include reference to representatives of employees. I am quite happy to

accept the Minister's wording, or something like it, in relation to franchising, but it then needs to go on to say that where there is a recognised trade union, that means a recognised trade union. I therefore have two detailed points of contention but not, I think, two points of dispute.

If the Minister is of a mind to discuss this further between now and the final stages of the Bill, or to accept my amendments, I am sure that we could reach an accommodation. However, it is important to recognise in both contexts within the Bill that it is likely to improve the chances of the new situation—the new schemes in franchising and the new advanced partnerships—operating smoothly and effectively, with the engagement and consent of the employees involved. That seems to me common sense. The Minister has conceded the principle with his own amendments but I would like him to be prepared to go a stage or two further. I beg to move.

Baroness Randerson: My Lords, I very much welcome the fact that the Minister has taken on board the need for consultation with employees as well as with the passengers we referred to earlier. However, as the noble Lord, Lord Whitty, has just pointed out, the Bill is uneven from one part of it to another, and something taken for granted in one section is neglected in another. As I said in an earlier debate, it is as if the Bill had been written by several different people who had not got together to make sure that the same terminology was used from one part to another. We in our party—not a party run by the trade unions; far from it—believe in the trade unions. They are an important part of a stable industrial relations picture and it is important that they are referred to, where appropriate, in the Bill.

Lord Kennedy of Southwark: This group contains some very helpful government amendments following our deliberations in Committee and we are grateful to the Minister for putting them before us today. The Government have clearly listened to noble Lords on many of the points they made. I am particularly pleased with Amendments 11 and 36, where the Government responded to the eloquent points on national parks made by my noble friend Lord Judd in Committee. However, I support my noble friend Lord Whitty when he carefully set out the importance of a proper consultation with representative employees and trade unions and I am pleased that he has tabled his amendment today.

I was also pleased to see that the Passengers' Council is included in the amendments before us. There are other important amendments here but when the noble Lord, Lord Ahmad, makes his contribution I would like him to explain how the government amendments cover the points made by my noble friend Lord Whitty in respect of his Amendment 35 and my Amendment 38 regarding consultation. I am, though, generally content with the thrust of the amendments that have come from the Government.

Lord Ahmad of Wimbledon: My Lords, I thank all noble Lords who have participated in this short debate thus far. As they have acknowledged, in our constructive debates in Committee I talked of the importance of

[LORD AHMAD OF WIMBLEDON]

going back to look at consultation as far as franchising and partnership proposals are concerned. Noble Lords have already alluded to the amendments in my name which add the Passengers' Council, the national parks authorities—on which I know the noble Lord, Lord Judd, was particularly focused—and the Broads Authority as statutory consultees in relation to partnership plan schemes and franchising schemes. It is also appropriate that representatives of employees of operators of local services in the area, or areas, to which the proposals relate should be consulted by the local authority on its franchising proposals.

The Passengers' Council, which is the legal entity better known as Transport Focus, as noble Lords have said, has a duty to keep local bus services under review and to investigate such services if referred by passengers, passenger representative bodies or the Secretary of State. Adding them as a statutory consultee in relation to franchising and partnership consultation provisions in the Bill provides further demonstration of the Government's commitment to ensuring the importance of consultation with passenger groups. I hope these amendments also address the concerns of the noble Lord, Lord Whitty, and that he will feel able not to press his Amendment 31.

On Second Reading and in Committee the noble Lord, Lord Judd, spoke passionately about the importance and value of our national parks. I appreciate the time that he took to come to see me with representatives to ensure that this important issue was also reflected in the amendments. I want to ensure that authorities that are considering implementing any of the new plans or schemes in the Bill will consult the relevant national park authority, or the Broads Authority, if they think that its area is to be affected. I also thank him for his Amendment 23, which would make national park authorities relevant authorities in proposed new Section 123B. This section deals with the business case and concerns primarily the authorities that will make a franchising scheme. As I said, although I take the role of the national parks seriously, I feel that it would not be appropriate to include them in this section. I hope that the noble Lord, Lord Judd, feels reassured by my earlier amendments and the amendments tabled by the Government and will not move his amendment.

I turn to Amendment 29. In response to the helpful words of the noble Lord, Lord Whitty, in Committee, I recognised that franchising proposals could have a material impact on employees in changes to service patterns and, potentially, operators of services. This amendment seeks to ensure that employees who may be affected in this way are consulted appropriately. It is similar in many ways to Amendments 32 and 35, tabled by the noble Lord, Lord Whitty, and to part of Amendment 38, tabled by the noble Lord, Lord Kennedy. I recognise that my approach perhaps does not go as far as Amendments 35 or 38 in defining exactly which employee groups an authority should consult—a point made by both noble Lords. I will tell them the reason why. We think that the franchising authority is best placed to determine precisely which organisations to consult, as is the case elsewhere in the Bill. I hope that that wider definition will allow them to reflect on this and that they will not press their amendments.

As we are debating consultation with employee representatives I should say that I see mandating this as a wholly appropriate measure under a franchising scenario that has significant impacts on employees. The Government do not believe that it is necessary when forming a partnership. I am therefore not in a position to support Amendments 9A and 10A, tabled by the noble Lord, Lord Whitty. Only in a very particular set of circumstances will an enhanced partnership lead to changes for employees that are similar to those arising from franchising, so it does not seem appropriate to mandate consultation, as the amendment tabled by the noble Lord, Lord Kennedy, would do.

Let me also briefly touch upon Amendments 57 and 59. They clarify which local authorities should be consulted when advanced ticketing schemes are made. At the same time, they add the national park authorities and the Broads Authority as statutory consultees. As I said earlier, consultation is important. As the Bill supports devolution principles, I believe that local authorities are best placed to set out how consultations should be conducted. They will know how long such a consultation should last to ensure that all those consulted have the ability to respond and what the best formats are for it in their area, addressing any specific needs which arise. Best practice guidance already exists for consultation and I encourage local authorities to take notice of it. I hope that the noble Lord, Lord Kennedy, will agree that Amendments 38 and 72 are therefore not necessary.

6 pm

Lord Whitty: My Lords, I am rather disappointed in the Minister. We are not that far apart: he recognises that the employees of bus companies are an important part of making these schemes operate, whether under advanced partnerships or franchising. I do not really understand the distinction between the two. It may well be that there are less drastic changes in the method of working and the coverage of companies within the advanced partnership. Nevertheless, there are potential changes. It is extraordinary that the Minister's advice concludes that in the list of consultees under advanced partnerships, which is almost the same in all other respects as the list of consultees under franchising, the one element missing is representatives of employees who are affected by those changes. I do not think that that is logical. If the Minister thinks about it, it is not logical. The two lists of consultees should be pretty much the same. It may be that one group of consultees in one context has less leverage or less effect than the other, but they need to be consulted in both contexts.

I would be prepared to go along with the Minister's substantive amendment, Amendment 29, in relation to franchising if he also accepted the qualification to that in my Amendment 35, or something very like it, which indicates that where there is a recognised trade union—we are not asking the franchising authority to impose a form of industrial relations on a company that has not already recognised trade unions—it should be consulted and, in other respects, there should be proper representation of workers outside the trade union. That is the best way forward for stable industrial relations. It is the best way forward for having constructive

engagement with the workforce in the beneficial changes that we all hope this Bill will deliver. The Minister's argument is a bit illogical in excluding that from advanced partnership and in not being prepared to go the extra mile in defining what he means in relation to franchising. I shall put in a final plea to the Minister to consider this again, come back to us and have some discussions between now and the final stage, because this is an important matter. I will offer an olive branch in that direction to see whether he is prepared to move a little bit and consult further.

Lord Ahmad of Wimbledon: That is an open invitation. I am open between now and any stage to meet any noble Lords, but I have outlined the Government's position at this time. I assure noble Lords that in reflecting on the contributions in Committee, the Government have carefully considered all elements. I agree with the noble Lord in that I do not think that there is that much difference between us, but I have outlined where we currently stand, and it is for the noble Lord to consider where he stands on the basis of the discussions we have had.

Lord Whitty: My Lords, I am afraid "currently" does not quite do it for me. With genuine reluctance, because I do not think there is a principle between us here, I want this on the record either way, and therefore, with reluctance, I wish to put this to the House.

6.03 pm

Division on Amendment 9A

Contents 189; Not-Contents 164.

Amendment 9A agreed.

Division No. 4

CONTENTS

Adams of Craigielea, B.	Campbell of Pittenweem, L.
Addington, L.	Campbell-Savours, L.
Allan of Hallam, L.	Carlile of Berriew, L.
Alli, L.	Cashman, L.
Andrews, B.	Chakrabarti, B.
Armstrong of Hill Top, B.	Chandos, V.
Bakewell of Hardington Mandeville, B.	Clarke of Hampstead, L.
Barker, B.	Clement-Jones, L.
Bassam of Brighton, L.	Collins of Highbury, L.
[Teller]	Corston, B.
Beecham, L.	Cotter, L.
Beith, L.	Crawley, B.
Benjamin, B.	Davies of Oldham, L.
Berkeley, L.	Dean of Thornton-le-Fylde, B.
Berkeley of Knighton, L.	Desai, L.
Blackstone, B.	Dholakia, L.
Bonham-Carter of Yarnbury, B.	Donaghy, B.
Bowles of Berkhamsted, B.	Doocey, B.
Bradley, L.	Dubs, L.
Bradshaw, L.	Elder, L.
Bragg, L.	Elystan-Morgan, L.
Brinton, B.	Erroll, E.
Brooke of Alverthorpe, L.	Falkland, V.
Brookman, L.	Farrington of Ribbleton, B.
Burnett, L.	Faulkner of Worcester, L.
Burt of Solihull, B.	Finlay of Llandaff, B.
	Foster of Bath, L.

Gale, B.	Newby, L.
German, L.	Northover, B.
Goddard of Stockport, L.	Nye, B.
Golding, B.	Oates, L.
Goudie, B.	O'Neill of Bengarve, B.
Gould of Potternewton, B.	Parminster, B.
Grantchester, L.	Patel of Bradford, L.
Greaves, L.	Pendry, L.
Griffiths of Burry Port, L.	Pitkeathley, B.
Grocott, L.	Plant of Highfield, L.
Hanworth, V.	Ponsonby of Shulbrede, L.
Harris of Haringey, L.	Primarolo, B.
Harris of Richmond, B.	Prosser, B.
Harrison, L.	Purvis of Tweed, L.
Haworth, L.	Quin, B.
Healy of Primrose Hill, B.	Ramsay of Cartvale, B.
Hollick, L.	Randerson, B.
Hollis of Heigham, B.	Rea, L.
Howarth of Newport, L.	Rebuck, B.
Howe of Idlicote, B.	Redesdale, L.
Howells of St Davids, B.	Reid of Cardowan, L.
Howie of Troon, L.	Richard, L.
Hughes of Woodside, L.	Roberts of Llandudno, L.
Humphreys, B.	Rooker, L.
Hunt of Chesterton, L.	Rosser, L.
Hunt of Kings Heath, L.	Rowe-Beddoe, L.
Hussain, L.	Royall of Blaisdon, B.
Janke, B.	Sawyer, L.
Jolly, B.	Scott of Needham Market, B.
Jones, L.	Sharkey, L.
Jones of Cheltenham, L.	Sherlock, B.
Jones of Whitchurch, B.	Shipley, L.
Jowell, B.	Shutt of Greetland, L.
Judd, L.	Simon, V.
Kennedy of Cradley, B.	Smith of Basildon, B.
Kennedy of Southwark, L.	Snape, L.
Kingsmill, B.	Soley, L.
Kinnock, L.	Steel of Aikwood, L.
Kinnock of Holyhead, B.	Stephen, L.
Kirkhill, L.	Stevenson of Balmacara, L.
Kirkwood of Kirkhope, L.	Stoddart of Swindon, L.
Knight of Weymouth, L.	Stone of Blackheath, L.
Kramer, B.	Storey, L.
Lawrence of Clarendon, B.	Strasburger, L.
Layard, L.	Suttie, B.
Lea of Crondall, L.	Taylor of Blackburn, L.
Lennie, L.	Taylor of Bolton, B.
Liddell of Coatdyke, B.	Temple-Morris, L.
Liddle, L.	Thomas of Gresford, L.
Lipsey, L.	Thomas of Winchester, B.
Lister of Burterset, B.	Thornton, B.
Loomba, L.	Thurso, V.
McAvoy, L.	Tomlinson, L.
McDonagh, B.	Touhig, L.
Macdonald of Tradeston, L.	Truscott, L.
McIntosh of Hudnall, B.	Tunncliffe, L. [Teller]
Mackenzie of Framwellgate, L.	Tyler of Enfield, B.
McKenzie of Luton, L.	Wallace of Saltaire, L.
Maclennan of Rogart, L.	Walmsley, B.
Maddock, B.	Warner, L.
Maxton, L.	Warwick of Undercliffe, B.
Meacher, B.	Watson of Invergowrie, L.
Monks, L.	Watts, L.
Morgan, L.	Wheeler, B.
Morris of Aberavon, L.	Whitty, L.
Morris of Handsworth, L.	Wigley, L.
Morris of Yardley, B.	Woolmer of Leeds, L.
Murphy of Torfaen, L.	Wrigglesworth, L.
	Young of Norwood Green, L.

NOT CONTENTS

Adebowale, L.	Astor of Hever, L.
Ahmad of Wimbledon, L.	Attlee, E.
Arbuthnot of Edrom, L.	Baker of Dorking, L.
Armstrong of Ilminster, L.	Bates, L.
Arran, E.	Berridge, B.
Ashton of Hyde, L.	Bew, L.

Black of Brentwood, L.
 Bloomfield of Hinton
 Waldrist, B.
 Borwick, L.
 Bourne of Aberystwyth, L.
 Brabazon of Tara, L.
 Brady, B.
 Bridgeman, V.
 Brougham and Vaux, L.
 Browne of Belmont, L.
 Browning, B.
 Byford, B.
 Callanan, L.
 Carrington of Fulham, L.
 Cathcart, E.
 Chisholm of Owlpen, B.
 Colville of Culross, V.
 Colwyn, L.
 Cormack, L.
 Courtown, E. [Teller]
 Couttie, B.
 Craigavon, V.
 Crickhowell, L.
 Cumberlege, B.
 De Mauley, L.
 Dear, L.
 Dixon-Smith, L.
 Dobbs, L.
 Dunlop, L.
 Eames, L.
 Eccles, V.
 Elton, L.
 Evans of Bowes Park, B.
 Fairfax of Cameron, L.
 Fall, B.
 Farmer, L.
 Faulks, L.
 Fookes, B.
 Forsyth of Drumlean, L.
 Framlingham, L.
 Freeman, L.
 Freud, L.
 Gadhia, L.
 Gardiner of Kimble, L.
 Gardner of Parkes, B.
 Garel-Jones, L.
 Geddes, L.
 Gilbert of Panteg, L.
 Glenarthur, L.
 Glendonbrook, L.
 Glentoran, L.
 Goodlad, L.
 Goschen, V.
 Grade of Yarmouth, L.
 Griffiths of Fforestfach, L.
 Hailsham, V.
 Harding of Winscombe, B.
 Hay of Ballyore, L.
 Helic, B.
 Higgins, L.
 Hodgson of Abinger, B.
 Holmes of Richmond, L.
 Home, E.
 Hooper, B.
 Horam, L.
 Howard of Rising, L.
 Howe, E.
 Howell of Guildford, L.
 Hunt of Wirral, L.
 Inglewood, L.
 James of Blackheath, L.
 Jenkin of Kennington, B.
 Jopling, L.
 Keen of Elie, L.
 King of Bridgwater, L.
 Kirkham, L.
 Lamont of Lerwick, L.
 Lang of Monkton, L.

Lexden, L.
 Lindsay, E.
 Lingfield, L.
 Liverpool, E.
 Lupton, L.
 Lyell, L.
 MacGregor of Pulham
 Market, L.
 McGregor-Smith, B.
 McIntosh of Pickering, B.
 Mackay of Clashfern, L.
 Magan of Castletown, L.
 Maginnis of Drumglass, L.
 Mancroft, L.
 Manzoor, B.
 Marland, L.
 Marlesford, L.
 Mobarik, B.
 Moynihan, L.
 Naseby, L.
 Neville-Jones, B.
 Neville-Rolfe, B.
 Newlove, B.
 Nicholson of Winterbourne,
 B.
 Noakes, B.
 Northbrook, L.
 Norton of Louth, L.
 O’Cathain, B.
 O’Shaughnessy, L.
 Patten of Barnes, L.
 Pidding, B.
 Popat, L.
 Prior of Brampton, L.
 Rawlings, B.
 Redfern, B.
 Risby, L.
 Robathan, L.
 Rock, B.
 Ryder of Wensum, L.
 Scott of Bybrook, B.
 Seccombe, B.
 Selkirk of Douglas, L.
 Selsdon, L.
 Shephard of Northwold, B.
 Sherbourne of Didsbury, L.
 Shields, B.
 Shinkwin, L.
 Shrewsbury, E.
 Skelmersdale, L.
 Smith of Hindhead, L.
 Spicer, L.
 Stedman-Scott, B.
 Stirrup, L.
 Stowell of Beeston, B.
 Strathclyde, L.
 Stroud, B.
 Sugg, B.
 Suri, L.
 Taylor of Holbeach, L.
 [Teller]
 Taylor of Warwick, L.
 Trefgarne, L.
 Trenchard, V.
 True, L.
 Ullswater, V.
 Vere of Norbiton, B.
 Verma, B.
 Wakeham, L.
 Waverley, V.
 Wei, L.
 Wellington, D.
 Wheatcroft, B.
 Whitby, L.
 Willetts, L.
 Williams of Trafford, B.
 Young of Cookham, L.
 Younger of Leckie, V.

6.15 pm

Amendment 10

Moved by Lord Ahmad of Wimbledon

10: Clause 1, page 5, line 33, at end insert—
 “() the Passengers’ Council,”

Amendment 10 agreed.

Amendment 10A

Moved by Lord Whitty

10A: Clause 1, page 5, line 35, at end insert—
 “(3A) In subsection (3)(ca) “appropriate representatives of any affected employees” means—
 (a) representatives of a recognised trade union, if an independent trade union is recognised by existing operators in the area of the proposed advanced quality partnership scheme;
 (b) in any other case, employee representatives appointed or elected by the affected employees who have authority from those employees to receive information and be consulted on their behalf.”

Amendment 10A agreed.

Amendment 11

Moved by Lord Ahmad of Wimbledon

11: Clause 1, page 5, line 39, at end insert—
 “() National Park authorities,
 () the Broads Authority,”

Amendment 11 agreed.

Schedule 1: Further amendments: advanced quality partnership schemes

Amendment 12

Moved by Lord Bradshaw

12: Schedule 1, page 76, line 39, at end insert—
 “() In paragraph 5 (investigations of CMA), at the beginning insert “Subject to paragraph 5A.””

Lord Bradshaw: I hope the Minister may be able to agree with me on this occasion, which will make a slight change to the proceedings. The Competition and Markets Authority has adopted a very strange response to the letting of railway franchises and has created, in the case of the northern franchise and Arriva buses, a situation which has cost the taxpayer and the companies millions of pounds in looking at the overlap between Northern’s rail services and those of Arriva buses. The northern train franchise had gone out to consultation some time before. The Competition and Markets Authority had sight of that, and after some extremely complicated negotiations, the franchise was let. Immediately, the Competition and Markets Authority started to nitpick over the

franchise, saying there was a bit of overlap here and a bit of overlap there. In none of the cases was it a significant issue.

In the Bill, the Competition and Markets Authority is nominated as a consultee in some cases. The purpose of this amendment is to say that if there is a consultation over a franchise, or for that matter over an advanced quality partnership or a railway franchise, there should be some restriction on the ability of the Competition and Markets Authority, having been a consultee, to reopen the matter. It wastes a huge amount of time setting up a franchise if the authority comes back again to raise points that are small or trivial in contrast to the large scale of the businesses concerned. I have not said it should not get involved, but I have tried to lay down in this amendment some conditions or limitations on when it should become involved, and I believe it should have to have received significant complaints. I do not think it received any in the course of its intervention between Arriva trains and Arriva buses. Secondly, there would need to have consequently been a significantly adverse effect on competition.

It is important that we have a Competition and Markets Authority, but it should concern itself with real matters of competition in or between industries that restrict competition between large-scale participants. I do not think the law was ever meant to deal with very small-scale altercations between bus companies and train companies. In any event, Arriva gave undertakings that it would not alter fares in a way which diminished competition—not that in most cases any real competition existed. I hope the Minister may give us a reasoned answer to this, because what we have in mind is a lot of unnecessary and expensive bureaucracy that is likely to surround the franchising services. Provided that they have had the opportunity to be involved beforehand, it is quite wrong that after the event, they should be able to come back again and raise what are virtually trivial points. I beg to move.

Earl Attlee: My Lords, I am grateful to the noble Lord, Lord Bradshaw, for introducing his amendment. I find it quite interesting and I look forward to what counsel the Minister gives us. I understand why the noble Lord has put the tests in new subsections 5A(a) and (b), but I am worried that subsection 5A(a), “unless ... it has received complaints about the operation of the franchise”, could be used as part of a spoiling process by an aggrieved third party. On subsection 5A(b), “unless ... there has consequently been a significant adverse effect on competition”—admittedly, it talks about an adverse effect—the problem I have is that it is bound to have an effect on competition because it eliminates competition. So I have a lot of sympathy with the noble Lord’s amendment, subject to what the Minister says, but if we are going to go down that route the tests might need better drafting. It will be very interesting to see how the Minister advises the House.

Baroness Randerson: My Lords, the noble Earl is raising a legitimate concern but, as much of the Bill is in a skeleton form with guidance to follow, I would have expected the spoiling process that he is warning about to be addressed in those guidance notes.

I remain seriously concerned about the tone and content of the CMA letter about the Bill to the Department for Transport, to which I drew noble Lords’ attention in Committee. It sets what I regard as an impossibly high bar: franchising should be allowed only if it is the only way to improve services. That is effectively impossible to prove. It is reasonable to ask local authorities to demonstrate that franchising is designed to improve services or that services need improvement. However, it is not possible for them to prove that there is nothing else they could possibly do, other than franchising, that would provide that improvement.

The Department for Transport has responded to the CMA, saying that it accepts the recommendations of the CMA letter in full. I am anxious to hear from the Minister in some detail about what impact accepting the recommendations will have on the Bill and its subsequent guidance. The CMA view seems to run counter to the thrust of the core aspects of the Bill, rendering it in practice likely to become yet another overcomplex piece of legislation on buses—sadly, along with the two attempts made by the previous Labour Governments—to reverse the impact of deregulation. We support the Government’s intentions with the Bill and we think they are working very strongly on the right lines, but we are concerned that inadvertently, as a result of the CMA’s response, their approach might be undermined.

Our concern, expressed in these amendments, is that the CMA could be seen to be overpowerful in this context. Given that it is clearly at odds with the thinking of the Department for Transport in some respects, it is important that the CMA is not allowed to become judge and jury in these cases. If it is consulted beforehand, it should not be allowed to come back after decisions are made unless there are genuine causes for concern as to how the franchise is working.

Lord Kennedy of Southwark My Lords, Amendments 12 and 13 bring back to your Lordships’ House an important issue that the noble Baroness, Lady Randerson, raised in Committee. I recall her bringing to the attention of the Committee a statement made by the CMA in July. Concern was expressed that, after being consulted, the CMA could come back again and again, which would deter a local authority from seeking arrangements, partnerships or franchises since it would view the arrangements as impossible hurdles to overcome.

The two amendments seek to set out some parameters for a CMA investigation in less than two years, and they arrive at a series of complaints or an adverse effect on competition. I think that is sensible, and I hope the Minister can address the issues raised by the amendments as it is important that we get the balance right here, rather than again making little progress, despite the Bill’s good intentions, due to other factors such as those highlighted in this short debate.

Lord Ahmad of Wimbledon My Lords, I thank noble Lords for their contributions in this regard. The noble Lord, Lord Bradshaw, has proposed a number of amendments that aim to restrict the ability of the

CMA to investigate franchising schemes for a period of two years unless it has received a complaint or it becomes aware of a significant adverse effect on competition. As noble Lords have already stated and will be aware, the CMA issued a letter on the Bill on 29 June that contained nine recommendations. Our response to those recommendations was issued on 10 October and is on the GOV.UK website. One of the recommendations was for the CMA to be listed as a statutory consultee in relation to consulting on franchising proposals. The Government have accepted that recommendation, so I am pleased to support Amendment 34.

I agreed that it would also be helpful for franchising authorities to work with the CMA as they develop their proposals. I am sure we are agreed that that should help to ensure that the CMA is made aware of the potential effects on competition and the benefits or impacts it could have on bus operators and local people. The CMA is responsible for conducting market studies and investigations in markets where there may be competition and consumer problems, and for investigating instances where there may be anti-competitive agreements or abuses of a dominant position. If an authority has consulted the CMA on its franchising proposals and taken account of any recommendations made by it, I do not believe that the CMA is likely to have further concerns.

I turn to a technical issue. Schedule 10 of the Transport Act 2000 does not give the CMA the power to investigate franchising schemes. If the authority had any concerns about the impact of the introduction of a franchising scheme, it would make its views known as part of the consultation and would have to consider whether it had any powers available to it under general competition law. Any restriction of powers available to the CMA would send the wrong message about the important role that it plays in protecting consumers.

The noble Baroness, Lady Randerson, raised the issue of the Government's acceptance of the CMA's recommendations, particularly regarding whether the LTA should assess or test partnerships before moving to franchising. I shall provide further detail at this juncture, if I may. Under the new Clause 123B of the Transport Act 2000 inserted by the Bill, authorities are already required to compare a franchising scheme to other options. These other options are highly likely to include partnerships and a do-nothing scenario, whatever the CMA has recommended. We have been clear in our response to the CMA's recommendation that there will be circumstances where partnerships or the deregulated market simply cannot achieve the outcomes that elected politicians are working towards. A single fare structure across a wide geographical area and transport modes, as in London, is a good example of such an outcome. So we are not creating an overly high or impossible hurdle for franchising authorities or setting a particularly high bar.

I hope the assurances I have given have persuaded the noble Lord, Lord Bradshaw, that the CMA has an important role to play, as we all accept, and that local authorities should work with it as proposals are developed to ensure that local bus passengers get the best possible service. With those assurances, I hope the noble Lord is minded to withdraw his amendment.

6.30 pm

Lord Bradshaw: I am sorry, but those assurances do not satisfy me at all. The fact is that the Competition and Markets Authority defines markets very narrowly. It takes a town—Morpeth, for example—and looks in minute detail at what is going on. Of course you can find anomalies, but that does not mean that they are prejudicing choice or competition.

This whole matter requires much further study. I have not seen the letter of 10 October to which the Minister referred, and I will of course study it. He has not given me the assurances I want. He has not referred to the almost disputatious relationship that the department has with the CMA over the northern franchise.

Lord Ahmad of Wimbledon: I thank the noble Lord for giving way. When he has read the letter, I am very willing to meet him between now and Third Reading to see how we can address his further concerns, if he is not satisfied with the Government's response. I assure him that our intention in accepting Amendment 34 is that the statutory consultation happens in advance, as we have said in relation to other consultees.

Lord Bradshaw: I thank the Minister for that. It would be sensible for me to accept his suggestion of a meeting, but I have serious reservations about the role of the Competition and Markets Authority, particularly as it affects the transport industry. Perhaps, in preparation for the meeting, he will find out how many inquiries the Competition and Markets Authority has made into the local transport market, as opposed to large-scale industries such as steel or cement. He will find that a totally disproportionate amount of its time has been spent investigating the transport sector, often in minute detail.

With that offer of a meeting, I will beg leave to withdraw the amendment, but reserve the right to return to this matter at Third Reading.

Amendment 12 withdrawn.

Amendment 13 not moved.

Clause 4: Franchising schemes

Amendment 14

Moved by Lord Kennedy of Southwark

14: Clause 4, page 14, leave out lines 36 and 37

Lord Kennedy of Southwark: My Lords, Amendment 14, in my name and that of my noble friend Lady Jones of Whitchurch, returns to a key part of the Bill raised both at Second Reading and in Committee. Under the Bill, only mayoral combined authorities can automatically opt for a franchise scheme if they believe that that is right for their area. All other categories of authority have to seek the permission of the Secretary of State to go down that route; that in turn would need to be approved by the affirmative procedure.

Our amendment, and Amendment 25 in the names of the noble Baroness, Lady Randerson, and the noble Lord, Lord Bradshaw, would put the whole question of franchising on a level playing field. We support the Bill in general, as I have said, and there are many good measures in it which we believe would improve bus services outside London. We have evidence that franchising works here in London and, where an authority thinks that that is the right model for it, we want it to be able to take it up, improving the number of passenger journeys and driving up standards.

With the change of government, I hope that there has been and continues to be a period of reflection on the whole question of mayors and the exclusivity of powers under the Bill that can come only when having a mayor. If an area wants a mayor, that is fine; if it does not, that is fine too. I hope that we can move away from effectively forcing authorities down a certain path if they want to have certain powers to a much more consensual approach, where it can be determined locally what is the best model for a locality and the full suite of powers be available, no matter what model is chosen.

Amendments 24, 26 and 27, also in my name in this group, are complementary, although in my opinion Amendment 25, in the name of the noble Baroness, Lady Randerson, works better. I beg to move.

Lord Shipley: I support this group of amendments. The issue is whether a distinction should be drawn between the powers of a mayoral combined authority and an ordinary combined authority, the difference between which is only whether an elected mayor chairs the authority's meetings. A second issue is whether a distinction should be drawn between a mayoral combined authority and a county council or an integrated transport authority.

It is very difficult to see why the Government are drawing the distinction they are. It is also very difficult to see why other bodies with transport responsibilities are being excluded from an automatic right to propose a franchising scheme without the Secretary of State's agreement. Devolution of power implies devolving that power and devolving responsibilities associated with it. I would be content with the right to propose franchises to be extended to authorities other than mayoral combined authorities.

My concern relates in part to a later amendment, Amendment 28, about the independence of the audit function. If we have a robust audit system in place to examine proposed franchising schemes, it is much easier to allow other authorities, beyond mayoral combined authorities, to propose the franchising route. If a local transport body feels that franchising is right for it, and if it is subject to that rigorous independent scrutiny, it should be allowed to proceed.

There is an issue about the future of elected mayors where some combined authorities have turned into mayoral combined authorities and others have not. There could well be a change of heart within the Government anyway about the application of elected mayors—whether they will be compulsory in areas with substantial devolved powers. We are writing now into legislation that the extra powers that go with the

right to franchise can go only to mayoral combined authorities, when not all combined authorities may end up being mayoral.

I hope that the Minister will look carefully at this because there is a very strong case to extend the power to franchise to authorities other than just mayoral combined authorities.

Lord Horam (Con): My Lords, I am a very strong supporter of the Bill and, like the previous speaker, I do not see why its benefits should be confined to mayoral combined authorities—why other authorities such as county councils cannot automatically invoke a franchise in the same way as mayoral combined authorities. That argument, which was stated at some length in Committee, has only been added to in the intervening time. First, we have Brexit, which means that there is far more for the Government to do than was ever envisaged when the Bill was first thought of; and, secondly, there has been a change of government, which means that there is perhaps less drive for the mayoral combined authorities, as opposed to other authorities, then under the previous regime. For both those reasons, we should think again about this proposal and widen it as far as possible so that everyone has the opportunity to be franchise. After all, we all want bus services to be better, and this is a way to do it.

I hope that the Government will think again, either here or in another place, about taking a more relaxed attitude to the clause.

Lord Snape: My Lords, it is a pleasure to follow the noble Lord. I was around in the 1970s, when he was a Transport Minister in a Labour Government. I do not remember him being quite as radical in those days, although he has been around the political spectrum quite a bit since. It is a change to hear him advocating greater participation for local authorities, which, as far as I remember, was not at the top of his list when he was a junior Transport Minister in the 1970s. That is a change, although I have to concede that I have changed myself. I have never been in favour of franchising and I have made it quite plain in the debates in your Lordships' House. Because of the time factor I will not repeat anything that I have said before, but in some ways I must congratulate my noble friend on the Front Bench. If this amendment becomes law he will have, in effect, repealed the Transport Act 1985. I am not sure what the noble Lord opposite will feel about that. We moved from a regulated system to deregulation, and presumably through this amendment we will be moving back to a more regulated system.

When the Bill was first published, combined authorities with a mayor were the only ones with the right to apply for franchise. Since then, at least under this amendment, that has been widened enormously. To quote my noble friend, or misquoting him perhaps, it seems to me that every local authority that feels that franchising would be suitable is entitled to so apply. All God's children, presumably, can have a franchise if that is what they want. All I can say to him is that if he talks to the industry at large, it will say that such a widening of the existing proposals would mean a drying-up of investment in the bus industry and certainly a massive recruitment campaign in local government.

A franchise operation cannot be run on the basis of one director. He or she will need a complete department. There will need to be bus and crew rosters. Obviously the existing ones are not satisfactory, otherwise the local authority would not be seeking a franchise in the first place. It is a great job-creation scheme but at the same time it will have the impact of drying up investment in buses. Again, without repeating anything I said earlier, it would be difficult to persuade a finance director of a private company—that is what we are talking about as far as buses are concerned—to invest millions of pounds in a bus fleet if some local authority or town hall throughout the country is going to say how much to charge and where to run those buses. Life is not like that.

I have yet to hear from either side of your Lordships' House the passenger view on the future of the industry. When Passenger Focus carried out such a survey couple of years ago, more than 80% of bus passengers expressed their satisfaction with the system as it was at present. It is possibly apparent that I have been around a long time—as a Member of this House and the other place, and a bus company director and chairman—and I have yet to hear a passenger say, "This service is so bad I want the town hall to run it". That has never happened in my experience, although perhaps my noble friend on the Front Bench knows differently.

If this amendment is carried and becomes law, it will be bad for the industry and I do not see any great benefit for passengers. For that reason I am afraid that I cannot support it.

Baroness Randerson: My Lords, I speak to Amendment 25 in my name and that of my noble friend Lord Bradshaw. We support Labour's Amendment 14, which fits together with Amendment 25. Neither is complete on its own. To be consistent the two need to go together. If the Labour Party decides to press this to a vote and in the event that there might be a government defeat, accepting Amendment 25 might be considered as part of the package.

I should say briefly that arguing about mayoral authorities could seem irrelevant in a couple of months' time because all the signs are that the Government are abandoning the idea. There is a lot of support across the House for abandoning that idea, as well as the preconditions for giving local authorities more power. If the Government do not go ahead with creating more mayoral authorities, the right to franchising is likely in effect to be restricted to a handful—three local authorities. Franchising will not be an easy step for local authorities to undertake. My view is that probably very few would wish to do so. There are lots of checks and balances already in the Bill ensuring that local authorities do it only in a thorough and highly professional manner. It will not be done in any sort of off-the-cuff way by any local authority. Therefore, what is the reason for trying to restrict it to mayoral authorities? I invite the Minister to give that consideration at this stage in the debate.

6.45 pm

Earl Attlee: My Lords, I have to say that I remain unconvinced by the arguments advanced by noble Lords in support of the amendments and, once again, I urge my noble friend the Minister to resist them.

As I said in Committee, combined authorities with elected mayors or any other local authority with an elected mayor are very different beasts from local authorities which have not gone down the route of an elected mayor. These authorities have thrashed out a devolution deal with the Government and are fully accountable to their citizens, so will be granted the powers to introduce local bus franchising. Even the mere suggestion that a local authority is thinking about franchising will cause uncertainty for industry. Of course that uncertainty could go on for years, indefinitely perhaps—a point well made by the noble Lord, Lord Snape.

There are few things that serve to stifle innovation and investment more than uncertainty. All the while, bus operators would have no incentive to adapt their services to meet the needs of their passengers. Who would blame them, given that they could be out of business should the local authority actually make a decision and use the powers? Services would inevitably deteriorate and passengers would be the losers.

Local bus franchising, and indeed the whole concept of devolution, are not steps that can be taken lightly. There needs to be due process and proper scrutiny. Those areas with agreed devolution deals have taken that brave political step. It is absolutely right that there be a separate process for areas that have not secured a devolution agreement, and a process that will require the affirmative procedure giving Parliament the final say is, in my view, exactly what we need. I really cannot support these amendments and my noble friend will have my full support in resisting them should they be pressed to a Division.

Lord Berkeley (Lab): My Lords, listening to my noble friend Lord Snape and the noble Earl, Lord Attlee, makes me think that some of the reasons they are putting forward are really to do with the fact that they do not like the idea of franchises at all. I can accept that view. I think that franchises could be a very useful contribution to better bus services in many areas. However, I do not understand why a mayoral authority, but nobody else, is allowed to do this without the permission of the Secretary of State. Maybe the Minister can explain it. I mentioned Cornwall, which is one of the few authorities that, as far as I can gather, will be allowed to do it. If one thinks that all mayoral authorities are the epitome of perfection and all the other schemes in proposed new Sections 123B to 123F in the clause need a great deal of supervision from the Department for Transport, one could look at the "Rotten Boroughs" column in *Private Eye* every fortnight and count up which ones are mentioned most often for having allegations of sleaze, fiddle or something else. I fully support this amendment and I look forward to the Minister's answers.

Earl Attlee: In response to the question posed by the noble Lord to me and the noble Lord, Lord Snape, I say that we oppose extending the right to franchising without the authority of the Secretary of State to provide certainty for the operators unless the local authority can get permission from the Secretary of State.

Lord Ahmad of Wimbledon: My Lords, I must admit that we are getting to this juncture slightly later than I anticipated. Nevertheless, we have again had a robust discussion—and this is one of those areas of the Bill that has caused a great deal of discussion. The noble Lord, Lord Kennedy, has proposed a series of amendments, which would enable all authorities listed at Section 123A(4), rather than just mayoral combined authorities, to access franchising powers without the need for regulations to be made or for the Secretary of State's consent to be given. I want to focus on that first element—on regulations to be made. There would be a further opportunity for Parliament to discuss other authorities that fall within and wish to embark on a franchising route. That is a positive, because it allows Parliament to debate this important issue of franchising further; that should not be forgotten. The amendment in the name of the noble Baroness, Lady Randerson, also seeks to remove the Secretary of State's consent from the process of accessing franchising powers.

I have had time to reflect on the various contributions and have met with various noble Lords outside the Chamber post-Committee, but it remains the Government's position that the decision and model we are pursuing is the right one. The noble Lord, Lord Snape, mentioned passengers; we believe that it is the right one for passengers, British businesses and employees in this important sector. Bus companies invest in their staff, buses, new services and improvements for passengers because they expect to achieve long-term benefits. If a local transport authority automatically has the power to pursue bus franchising at any point, the period of investment certainty is reduced. Operators in that area will think twice about these investment decisions. Let us be clear that we are not excluding anyone; we believe that the mayoral authorities have the key differential of having strategic transport as part of their direct responsibilities. When other local authorities see benefits for passengers in bus franchising, the risk of seeking access to franchising will have to be weighed up by the local authority, and their decision may be that the risk is worth taking. Similarly, where a mayoral combined authority has automatic access to franchising powers, there will be a single, elected individual with a fixed term of office with whom the decision on whether to pursue franchising rests. I would be surprised if most mayoral candidates did not set out their position on this issue at hustings or in their electoral manifestos. That remains to be seen.

For the risks that I have outlined to be present in relation to every local transport authority area, whether the authority is interested in franchising or not, is, however, another thing altogether. That is particularly true for investment in buses, where the ability of larger operators to assume they could get a return on their investment by moving a vehicle from one part of the country to another could be compromised. My issue with the amendments is not to do with protecting bus companies or anything to do with a principle of giving franchising powers automatically only to elected mayors. Rather, it is about the period of uncertainty there would be for operators, as my noble friend Lord Attlee said, if all local transport authorities had access to franchising powers as a matter of course. This would have real impacts on bus passengers, British bus manufacturing jobs and employees in the sector.

During our previous debates, noble Lords wanted to understand the kind of criteria that the Secretary of State would be considering as part of giving his consent to franchising. I am sure that noble Lords have received them; we provided them in the draft guidance and policy statement document that was issued to Peers last week—but it is important to summarise those criteria at this juncture. Noble Lords have referred to the issue of the Secretary of State and the powers that the Secretary of State would have. Let me be clear how that decision on franchising would be made.

First, an authority would need to articulate why and how franchising would deliver better bus services and improve the day-to-day experience of passengers. That puts passengers at the heart of that decision. It should also explain why the same outcomes could not be achieved in other ways.

Secondly, a local authority should have the powers to make franchising a success. Controlling local roads and parking policy, as well as having planning responsibilities, are key to being able to manage many of the factors that affect bus usage. If an authority does not have all those levers, it should explain how it will work with other authorities to do so.

That brings me to the third aspect: any decision to implement bus franchising needs to be transparent and accountable. An authority seeking to take up franchising powers should demonstrate clearly how this will be achieved. A named individual, such as a council leader, might be an appropriate approach.

Fourthly, an authority would need to illustrate why the geographical area that it proposes is appropriate. This should take into account travel patterns and consider the potential impact on other local authority areas.

Finally, it is vital that the authority has the capability and resources to deliver franchising. Those that can demonstrate a successful track record in delivering complex projects, a real commitment to improving public transport and explain how they will resource a franchising system would be best placed to apply for consent.

Those are the criteria that the Secretary of State will apply in any decision. I do not think that anyone in this Chamber or beyond would challenge them, because they are the right checks and balances to have in place to make an important long-term investment decision on the provision of local bus services.

We have talked about the differentiation with mayoral combined authorities. I am sure that many noble Lords would acknowledge that they already meet the vast majority of these criteria and have a genuine interest in bus franchising. So it is pragmatic to give them those powers in the Bill. It has been suggested that we are denying other local authorities the model, but that is not the case. We heard from the noble Lord, Lord Berkeley, about Cornwall. As part of devolution discussions, when those criteria can be met, clearly there is a case for other authority structures to be given exactly those powers—but there is a process to be followed. There will be secondary legislation and an affirmative instrument introduced on the type of authority; then it is right that a local authority on a case-by-case basis should show to the Secretary of State that the criteria that I have just illustrated,

which are important criteria in making franchising decisions, can be fully met. That is why the Bill requires the Secretary of State's consent to be sought, following regulations that make the class of authority a franchising authority.

These are important issues that can be considered on a case-by-case basis. It is about long-term investment in the passengers' interests. Under the criteria that I have outlined, franchising will be an option when it makes sense for passengers, it is clear that the authority can deliver on its promises and the authority concerned is clear how it will reach transparent and accountable decisions.

The prior requirement for regulations to enable other categories of authorities to become franchising authorities also serves an important purpose. It ensures that all of us here and in the other place—all of us in Parliament—are able to scrutinise the appropriateness of such a category of authorities before becoming a franchising authority. The existence of this step on the route to accessing franchising powers provides for that clarity and certainty of investment for bus operators serving types of authority that do not have automatic access to franchising powers.

The removal of such a parliamentary process, and the removal of the need for the Secretary of State's consent, would reduce the period of certainty in the bus market with the potential for reduced investment and less—

Lord Woolmer of Leeds (Lab): The Minister spoke of categories of authorities, which are referred to in the Bill. In the case of non-mayoral combined authorities, for example, would an individual non-mayoral combined authority be able to apply under these regulations separately from the others or would the Minister seek to judge whether any such non-mayoral combined authority would qualify? If it were the latter, an individual non-mayoral combined authority could very well be placed under the criteria that the Minister has set out, but other non-mayoral authorities may not be. Can the Minister explain whether these regulations in the first part of the Bill relate to categories of authorities or individual authorities?

7 pm

Lord Ahmad of Wimbledon: That is an important question. Parliamentary approval would be for the category, then it would subsequently be for the individual authority to apply to the Secretary of State and to ensure that it meets the criteria that I have illustrated. The noble Lord sought an important clarification and I trust that it is now clear.

I hope that in my detailed contribution, I have demonstrated to noble Lords that the Government's approach to accessing franchising powers is sensible and practical, and that it ensures long-term investment decisions, putting passengers at the heart of those decisions and ensuring that they reflect the needs of passengers locally. It is, I believe, in the best interests of bus passengers, business, and employees in the sector.

I hope that noble Lords, including the noble Lord and noble Baroness who tabled these amendments, have been reassured by what I have outlined. I hope that what I promised in Committee about the criteria

upon which the Secretary of State would make that decision and the sharing of that criteria has provided further reassurance.

I raise a final technicality: the noble Baroness, Lady Randerson, talked about grouping and treating these amendments as a package, but that is not how the Government view them. I hope, through the reassurances, clarity and extra information that I have provided between Committee stage and now—I am really pleased that the Bus Services Bill is attracting your Lordships' interest and attention—that the noble Lord will be minded to withdraw his amendments.

Lord Kennedy of Southwark: My Lords, I thank the noble Lord for his response and all noble Lords who have spoken in this debate, which has gone on for a bit longer than I envisaged as well. I have to say that I am disappointed with the noble Lord's response. He has been very accommodating through the whole passage of this Bill up to now; he and I have worked very well together, but I am disappointed.

I agree with many of the comments made around the House, particularly those of the noble Lord, Lord Horam. With all the doom and gloom about franchising, you would think that if it were that bad, the Government would be seeking to end it. This is more about an obsession with mayors. I hope that the Government will reflect on that and that some other point will deal with it. It is certainly wise to give powers to a wider group of authorities and I wish to test the opinion of the House.

7.02 pm

Division on Amendment 14

Contents 167; Not-Contents 150.

Amendment 14 agreed.

Division No. 5

CONTENTS

Adams of Craigielea, B.	Campbell-Savours, L.
Addington, L.	Cashman, L.
Ahmed, L.	Chakrabarti, B.
Allan of Hallam, L.	Clarke of Hampstead, L.
Alli, L.	Clement-Jones, L.
Andrews, B.	Collins of Highbury, L.
Armstrong of Hill Top, B.	Colville of Culross, V.
Bakewell of Hardington Mandeville, B.	Crawley, B.
Barker, B.	Davies of Oldham, L.
Bassam of Brighton, L. [Teller]	Dean of Thornton-le-Fylde, B.
Beecham, L.	Desai, L.
Beith, L.	Donaghy, B.
Benjamin, B.	Doocey, B.
Berkeley, L.	Drake, B.
Berkeley of Knighton, L.	Dubs, L.
Billingham, B.	Eames, L.
Blackstone, B.	Elder, L.
Blunkett, L.	Elystan-Morgan, L.
Bonham-Carter of Yarnbury, B.	Falkland, V.
Bowles of Berkhamsted, B.	Farrington of Ribbleson, B.
Bradley, L.	Faulkner of Worcester, L.
Bradshaw, L.	Finlay of Llandaff, B.
Bragg, L.	Foster of Bath, L.
Brookman, L.	Gale, B.
Burnett, L.	German, L.
Burt of Solihull, B.	Goddard of Stockport, L.
Campbell of Pittenweem, L.	Golding, B.
	Goudie, B.
	Gould of Potternewton, B.

Greaves, L.
Hamwee, B.
Harris of Richmond, B.
Haworth, L.
Healy of Primrose Hill, B.
Hollick, L.
Hollis of Heigham, B.
Howarth of Newport, L.
Howe of Idlicote, B.
Howells of St Davids, B.
Howie of Troon, L.
Hughes of Woodside, L.
Humphreys, B.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones, L.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Jowell, B.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
King of Bow, B.
Kingsmill, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkhill, L.
Kirkwood of Kirkhope, L.
Knight of Weymouth, L.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Leitch, L.
Lennie, L.
Lester of Herne Hill, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtsett, B.
Loomba, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McDonagh, B.
Macdonald of Tradeston, L.
McIntosh of Hudnall, B.
Mackenzie of Framwellgate, L.
McKenzie of Luton, L.
Maclennan of Rogart, L.
McNally, L.
Maddock, B.
Masham of Ilton, B.
Maxton, L.
Morgan, L.
Morris of Handsworth, L.

Murphy of Torfaen, L.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
Parminter, B.
Patel of Bradford, L.
Pendry, L.
Ponsonby of Shulbrede, L.
Prosser, B.
Purvis of Tweed, L.
Quin, B.
Ramsay of Cartvale, B.
Randerson, B.
Rea, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Roberts of Llandudno, L.
Rosser, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Basildon, B.
Soley, L.
Stephen, L.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Storey, L.
Strasburger, L.
Suttie, B.
Taylor of Bolton, B.
Temple-Morris, L.
Thomas of Gresford, L.
Thornton, B.
Thurso, V.
Tomlinson, L.
Tope, L.
Touhig, L.
Tunncliffe, L. [Teller]
Tyler of Enfield, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Wheeler, B.
Whitty, L.
Williams of Baglan, L.
Woolmer of Leeds, L.
Wrigglesworth, L.
Young of Norwood Green, L.

Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gadhia, L.
Gardiner of Kimble, L.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glendonbrook, L.
Glentoran, L.
Goodlad, L.
Goschen, V.
Grade of Yarmouth, L.
Hailsham, V.
Harding of Winscombe, B.
Helic, B.
Higgins, L.
Hodgson of Abinger, B.
Hogg, B.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lexden, L.
Lingfield, L.
Lupton, L.
Lyell, L.
MacGregor of Pulham Market, L.
MacGregor-Smith, B.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
Magan of Castletown, L.
Maginnis of Drumglass, L.
Mancroft, L.
Manzoor, B.
Marlesford, L.
Mawson, L.
Mobarik, B.

Moynihan, L.
Naseby, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O' Cathain, B.
O'Neill of Bengarve, B.
O'Shaughnessy, L.
Patten of Barnes, L.
Pidding, B.
Popat, L.
Prior of Brampton, L.
Rawlings, B.
Redfern, B.
Risby, L.
Robathan, L.
Rock, B.
Rowe-Beddoe, L.
Ryder of Wensum, L.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sheikh, L.
Shepherd of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Smith of Hindhead, L.
Spicer, L.
Stedman-Scott, B.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
[Teller]
Taylor of Warwick, L.
Trefgarne, L.
Trenchard, V.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Waverley, V.
Wellington, D.
Whitby, L.
Willets, L.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

NOT CONTENTS

Ahmad of Wimbledon, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Baker of Dorking, L.
Bates, L.
Berridge, B.
Black of Brentwood, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Brabazon of Tara, L.
Brady, B.
Brougham and Vaux, L.
Browning, B.

Byford, B.
Callanan, L.
Carrington of Fulham, L.
Cathcart, E.
Chisholm of Owlpen, B.
Colwyn, L.
Cormack, L.
Courtown, E. [Teller]
Couttie, B.
Craigavon, V.
Cumberlege, B.
De Mauley, L.
Dear, L.
Dixon-Smith, L.
Dobbs, L.
Dunlop, L.
Eccles, V.
Elton, L.

7.12 pm

Amendment 15

Moved by Lord Ahmad of Wimbledon

15: Clause 4, page 15, line 3, at end insert—

“() The terms as to standard of service that may be specified include terms about requirements which vehicles being used to provide the service must meet, including requirements about emissions or types of fuel or power.”

Amendment 15 agreed.

Amendment 16 not moved.

*Amendment 17**Moved by Lord Ahmad of Wimbledon*

17: Clause 4, page 15, line 9, at end insert—

“() A franchising scheme must include a description of the franchising authority’s or authorities’ plans for consulting such organisations appearing to the authority or authorities to be representative of users of local services as they think fit in order to seek their views on how well the scheme is working.”

Amendment 17 agreed.

7.13 pm

*Consideration on Report adjourned.***BBC Charter***Motion to Take Note*

7.14 pm

Asked by Lord Ashton of Hyde

That this House takes note of the drafts of the BBC’s new charter and the agreement between the Secretary of State for Culture, Media and Sport and the Corporation.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, this debate marks the conclusion of the BBC charter review.

Over the last two years, this Government have listened very carefully to the views of industry and the public, including reading more than 190,000 consultation responses. Committees of both Houses gathered evidence and issued reports. Sir David Clementi chaired a review of the BBC’s governance and regulation for the Government, and David Perry QC conducted an independent review of the sanctions appropriate for TV licensing offences. The devolved Administrations and Parliaments also contributed in a number of ways. At this stage of the review I would like to place on record my and the Government’s gratitude to all those noble Lords who made time to talk to me, officials and other Ministers in recent weeks.

To sum up, this has been a remarkable process, achieved in a limited time. I am informed that there have been 17 official bits of business on the charter review just in the Chamber of this House since last June.

It comes as little surprise that the BBC should engender the largest consultation in government history, nor that at times the debate has got rather heated, because the BBC means a great deal to a great number of people. But the Government and the BBC agree that this extraordinary public debate has allowed us to get a good outcome. The noble Lord, Lord Hall, following the publication of the draft charter, remarked:

“There has been a passionate debate over the BBC’s future. Overall, we have the right outcome for the BBC and its role as a creative power for Britain. It lays the foundation for more great programmes and journalism”.

We agree with this, and that is what we wanted to achieve. The BBC is an extraordinary national treasure, loved by audiences across the UK and around the world. The Government are absolutely clear, and the charter and agreement illustrate this, that we fully support and endorse the BBC’s scale and scope and remit, which have served the BBC well and made it into what it is today. We now have a charter and agreement that will support a BBC which continues to make world-class content that UK audiences love, which remains an impartial provider of high-quality news, is independent, transparent and accountable, and benefits the rest of the UK creative sector.

I am also very pleased by similar views voiced in the recent debates in the devolved legislatures, held for the first time as part of this charter review. Most of that feedback has been very positive and by and large concludes that the charter strengthens the BBC and delivers for the devolved nations.

Since we set out our policy proposals in a White Paper in May, we have had collaborative discussions and negotiations with the BBC and Ofcom. Indeed, we continue to work closely with both to deal with minor and technical drafting matters and on the transitional arrangements. We now have a draft charter and framework agreement which provide details of those policy proposals and have the agreement of both the BBC and Ofcom.

Time is limited, and I know that noble Lords have plenty of helpful comments to make, so let me briefly set out a few of the key policies, in particular those where we have made significant progress since the White Paper in May. I start with independence, rightly a key concern of this House. The BBC will now appoint nine members of its new unitary board, compared with five appointed by the Government, with all BBC appointments following a robust and transparent process in line with public appointments best practice. We agree with the BBC that it should appoint the majority of board members overall, as well as an equal number of non-executive board members as those appointed by the Government. I am pleased that the BBC and the Government have been able to resolve this issue. The noble Lord, Lord Hall, has remarked that he is “glad” the Government “have reconsidered”.

I also recognise that there has been a lot of concern in this House about the mid-term review. The Government have listened carefully to this. Members of this House have been concerned that this could become a sword of Damocles hanging over the BBC and that it could become another charter review. We were always clear that we wanted the health check to be sensibly constrained to certain areas, so Article 57 of the charter makes it clear that the BBC’s scale and scope will not be in the scope of the mid-term review. Nor will the BBC’s next funding settlement coincide with the mid-term review, a concern which I know that the noble Lord, Lord Alli, and others have brought up on a number of occasions.

I turn now to regulation. The charter, and the agreement in particular, set out Ofcom’s new role as the BBC’s regulator. Ofcom will monitor and review how well the BBC is meeting its mission and public purposes, regulate editorial standards, hold the BBC

to account over market impacts and public value and consider appeals from the industry after it has complained to the BBC. All this presents significant change. Clearly, Ofcom will need to fill in a lot more detail on how it will do this. It is right that this should be done in consultation with the industry. It will therefore consult on its new operating framework for the BBC next year.

The noble Lord, Lord Hall, said that he wanted the BBC's feet held to the fire regarding its distinctiveness. Ofcom will be doing this in future. I know that there has been considerable concern about how exactly this would be done, and whether it would be a vehicle for government interference. It will be no such thing. As Schedule 2 of the agreement makes clear, Ofcom will need to set regulatory requirements for the BBC in this respect, and it goes on to list a number of ways in which Ofcom could do this; for example, around genre, quality and audiences served. But ultimately, these are decisions for Ofcom to take. However, let me be clear—and this has been the crux of the debate so far: the agreement is clear in Schedule 2 that the BBC's output and services, taken as a whole, need to be distinctive. This is not a way for the Government or anyone else, be it the regulator or industry, to pass judgment or complain about the distinctiveness of individual programmes. I hope that this important point will give noble Lords some reassurance.

We also set out that more can be done to make the BBC more transparent and accountable, given the considerable public funding that it receives. We have therefore listened to the Culture, Media and Sport Committee's recommendation to lower the threshold above which the salaries of individuals have to be published. The new charter sets it at £150,000, which is close to the Prime Minister's salary and in line with the wider public sector. We have discussed the role of the National Audit Office further with the BBC. We are assured that the NAO has the right experience in acting in specialised organisations such as the security services as well as highly commercial environments such as Network Rail, and we will therefore extend its remit to conduct value-for-money studies to the BBC's commercial subsidiaries, which generate vital funding for the BBC public service television budget.

Another major theme has been the concern that the BBC should better reflect and represent each of the home nations. We agree. At a high level, among other requirements, the charter provides for a strengthened public purpose, emphasising the role the BBC plays in the creative economy across the UK's nations and regions. There is also a new requirement to fully reflect the diverse nature of the UK and strengthened requirements around minority language provision. Further, appointments of nations' members on the unitary board will now need the agreement of the devolved government Minister and of the Secretary of State for the England member. The charter also obliges the BBC to appear before committees and lay their annual reports and accounts in the devolved legislatures for the first time.

As I have said, we have come to the right outcome after a good process. The Government now look forward to hearing the views of both Houses before the charter is considered by the Privy Council and then given Royal Assent. These changes will secure the future of

the BBC, strengthen it, and give it an unprecedented degree of independence. The world's finest broadcaster deserves nothing less. I beg to move.

7.24 pm

Lord Alli (Lab): My Lords, I draw the House's attention to my media interests as listed in the *Register of Lords' Interests*.

There has been much debate about the future of the BBC, the White Paper and the charter renewal. On 2 June I wrote to the then Minister, the noble Baroness, Lady Neville-Rolfe, setting out 15 questions on a range of concerns I had that were based on three core tests that the noble Lords, Lord Lester of Herne Hill and Lord Fowler, and I had set for the White Paper. Those tests centred around the BBC's core mission, its independence and its licence fee. I thank the noble Baroness, Lady Neville-Rolfe, for the courtesy and the care she showed towards my concerns, and I wish her the best in her new post. I also thank her for arranging for me to meet officials on 29 June and put on record my thanks to both officials for the way in which they approached that meeting and for the hard work they have put into the White Paper, the charter renewal and the draft agreement between the Secretary of State and the BBC. Finally, while I am in a thanking mood, I belatedly welcome the Minister to his new post, thank him for meeting me on Monday, and wish him the best at his department.

Many of the issues covered in those 15 questions have been resolved in a way which safeguards the public interest and allows the BBC to conduct its business free from state control. I am glad the Government have listened to many in this House and the countless organisations that contributed towards the consultation process. The framework document is stronger as a result of that.

I am left with only a couple of issues for which I would be grateful if the Minister could confirm from the Dispatch Box the Government's intentions so as to leave commercial competitors and Ofcom in no doubt that this agreement is not designed to make the BBC less competitive or less successful. In a global media market we should want the opposite: a more competitive and a more successful BBC. The threat to the BBC is not from ITV or Sky but from global media giants. Therefore, can the Minister confirm—which I think he has already done—that in the BBC's core mission to be distinctive, the agreement will not enable competitors of the BBC to undermine or hobble it by referring pointless complaints to Ofcom on the basis of distinctiveness?

My fear is that if I were running ITV or Sky, I would point at a successful programme and say that the BBC was not delivering distinctiveness. For example, I would say that "The Voice" is not distinctive from "The X Factor", or that "The Graham Norton Show" is not distinctive from "Alan Carr: Chatty Man"; after all, they are both chat shows. I would say that "Countryfile" is not distinctive from "Countrywise", or that "EastEnders" is not distinctive from "Coronation Street". The point is that distinctiveness is subjective and risks being used as a way of stopping the BBC making popular programmes.

[LORD ALLI]

I have particular concern when it comes to paragraph 1 of Schedule 2. I noted in an interview with Sharon White, Ofcom's chief executive, in yesterday's *Financial Times* that she said Ofcom was still working out the details on how to measure the BBC's distinctiveness. I fear that it will be overzealous in its application of the distinctiveness rule. I also look forward to hearing what the noble Lord, Lord Lester of Herne Hill, has to say on Ofcom—that is a trailer, in TV talk—and I want to help clarify the test for Ofcom. I believe, and I want to put it clearly on record, that it is the view of this House and the other place—having consulted my honourable friend the shadow Secretary of State for Culture, Media and Sport—and the view of the Government, from what the Minister said from the Dispatch Box, that the distinctiveness test should be over the totality of the BBC services and not individual channels, genres or programmes. Ofcom needs to take particular note of that. I hope that the Minister will reconfirm that from the Government's perspective from the Dispatch Box.

The second area of concern is scheduling. The White Paper makes it clear that the BBC can affect competitors through its scheduling. Can the Minister confirm that by being popular and maximising its ratings the BBC will not be breaching its framework and licensing obligations? The primary yardstick of measuring success of programming on the mainstream channels has to be ratings. I do not want ratings to become a dirty word for the BBC, as the more people that watch the BBC, the better value it is for licence fee payers. I would certainly pay more just to watch my right honourable friend the former shadow Chancellor perform on "Strictly". If the charter gets renewed, this area of scheduling is particularly important.

Once again, I thank the Minister and his department for the work they have done on the appointments process, which I think is a satisfactory outcome. Returning the policy decision on free licence fees for the over-75s to the BBC is also a good decision, and the assurances on the health check are particularly welcome—in particular, the aspects not affecting the licence fee. All those issues are to be welcomed. If the Minister can give me reassurances on distinctiveness in scheduling, I think that the agreement will be in a good place, and I certainly welcome it.

7.30 pm

Baroness Bonham-Carter of Yarnbury (LD): My Lords, we on these Benches welcome this debate and the words of the new Secretary of State when introducing the draft BBC charter—that she wants a strong, distinctive, independent BBC. We all do. As the Minister mentioned, the consultation process leading up to the BBC White Paper confirmed that that is what the British public also overwhelmingly want. So, despite the huffing and puffing of the last Secretary of State and the threats that he was going to blow the house down, it did not happen. Indeed, this draft charter further underpins that great institution, the BBC, and we on these Benches are grateful to the Government for listening and responding to some, if not all, of our concerns. I give personal thanks, too, to the Minister for arranging to meet me and my colleagues.

We welcome the decoupling of the charter review process from the election cycle. We welcome that the mid-term review will now come after the next licence fee settlement, and we also welcome the new unitary board, with Ofcom as regulator. However, although the appointments procedure is a considerable improvement, we on these Benches believe that all non-executives to the board should be independently appointed and that none should be government appointees. As a government statement published in March made clear, in the case of such appointments Ministers will,

"make the final decision on merit and must of course be free to reject advice from the panel on the merit of candidates".

We do not think that that is appropriate for a body which will oversee the BBC's day-to-day editorial and strategic decisions, including issues around political programming.

We welcome the fact that there will be no top-slicing of BBC revenue, and that index-linking of the licence fee will stay and will cover people using catch-up on iPlayer. However, we are still concerned about the process by which the funding settlement is negotiated. The covert way in which, last time, the Chancellor ensured that the BBC took on the costs of funding free TV licences for the over-75s was not appropriate. The licence fee is not public money but the public's money. Will the Minister agree that there must be no more raids? Does he not also agree with the House of Lords Communications Committee report that:

"A new process must be established to set the level of the licence fee in a transparent way",

and that there should be a requirement for public involvement and scrutiny?

We very much welcome the inclusion in the draft charter of a new public purpose to,

"reflect, represent and serve the diverse communities of all of the UK's nations and regions".

I know that my noble friend Lady Benjamin will be talking more about that. I take the opportunity here to express the gratitude of these Benches for the work that Ed Vaizey did in this area when he was Culture Minister.

Last week was one of mixed messages in this area. The diverse talent on show in the London Film Festival's opening film, "A United Kingdom", was cause for celebration. However, the BFI's survey revealing that nearly 60% of the British films made over the previous decade had no black actors was clearly not. While representation on and off screen is not just the responsibility of the BBC, its reach and size means that it is key, so it must hit its own target of achieving, "a workforce at least as diverse, if not more so, than any other in the industry",

by 2020, because—as I am sure the Minister agrees—it is achievements that we need, not simply ambitions. So we welcome that Ofcom has indicated that its approach in monitoring this area will have a "harder edge".

We would like to see Ofcom apply the same harder edge to the BBC's training obligations, given its vital contribution to the development of talent and skills across the UK's creative media industries and in journalism. Does the Minister not agree that talent and skills in the creative industries are an area we cannot afford to ignore? Their development is crucial

and the BBC is a crucial part, and we believe that training and skills should be made one of its core public purposes.

Although we welcome the National Audit Office's involvement in auditing the BBC, we are concerned that this will extend to commercial subsidiaries such as BBC Worldwide, which do not receive public funding. Why, when the NAO's own website states:

"Profit making companies will remain responsible for the appointment of their auditors",

is this part of the draft framework agreement?

Then there is the matter of the BBC's independence as programme maker. While paragraph 55(7) clearly states that editorial and creative judgments should not be part of the value-for-money examination, this is seriously undermined by paragraph 55(8), which allows the comptroller to determine what this exemption means in practice. Can the Minister assure the House that he will review this anomaly, which seems to challenge the BBC's editorial independence?

Then there is the thorny matter of distinctiveness. My noble friend Lord Clement-Jones will be going into detail on our concerns in this area, so I will confine my comments to the obvious: the BBC must be allowed the creative freedom to inform, educate and make popular entertainment programmes. "Distinct" is a weasel word—too distinct appeals to too few.

I found myself agreeing with the Foreign Secretary, Boris Johnson, who in his conference speech described the BBC as the,

"single greatest and most effective ambassador for our culture and our values",

and as a crucial contributor to Britain's role as a "soft power superpower".

We have come a long way since the beginning of the year, when rumours of the demise of the BBC, as we know it, swirled through certain editorials and opinion pieces, and when, as Armando Iannucci put it, we seemed to be,

"in some artificially-concocted zone of outrage".

It was clear what the public wanted and the Government have to a large degree responded, for which, as I said earlier, we are grateful. But this of course is a draft charter and a draft agreement, and I end by asking the Minister to continue listening. The BBC, as Sir David Attenborough says, is one of the most precious things we have.

7.37 pm

Lord Birt (CB): My Lords, I welcome the long-overdue reform of the BBC's governance set out in this draft charter and agreement, although I will suggest that the text could, with benefit, be clarified and sharpened in places.

But I begin, I am afraid, on a somewhat more critical note than that of noble Lords who have spoken thus far. I used to believe that a royal charter was an apt symbol of the BBC's proper independence from Government and Parliament, but I know better now. Twice during the present charter we have seen Government mount raids on the BBC with far-reaching consequences, and absent any public consultation or parliamentary scrutiny whatever.

The current 2006 charter and agreement contained this clause:

"The BBC may use sums paid to it to ... fund any activities properly carried on by the BBC except ... those carried on for the purposes of the World Service"—

in other words, you cannot use the licence fee to fund the World Service. But in 2010 the coalition Government shamelessly ignored that clause and, indeed, required the BBC to fund the World Service from the licence fee, alongside a number of other services that had also previously been financed by Government. In a second raid, in 2015, the Government transferred to the BBC the obligation to pay for free licences for the over-75s. We all remember that.

At a time when the migration to the internet is gradually undermining the finances of UK commercial broadcasters, and when, as a consequence, we are witnessing the long-term and tragic decline of UK production, the impact of these two raids will be—over the span of a decade—to take almost exactly 25% out of the real resources available to the BBC for its core services. A massive reduction in programming is therefore simply unavoidable.

So how was such far-reaching action possible in defiance of the 2006 charter? After the World Service ambush, an amendment was quietly made by an Order in Council simply deleting the clause that I read out, which had expressly forbidden such action. Royal charters and the Privy Council emanate from Norman times and were used by tyrannical kings to bypass Parliament. They should have no place in modern times. I accept, of course, that a royal charter is a done deal on this occasion, but let us all agree that the BBC needs the protection of statute next time round. As we discuss the draft this evening, let us recognise that, at any point in the next 11 years, the charter and agreement can be changed again without reference back to Parliament. Let us recognise specifically that these clauses contain nothing to inhibit a third raid. But it is of course not too late: let us even now consider amending the charter to put an open and proper process around any such interventions during its term.

To be more positive, I wholeheartedly welcome the emphasis that the Government have placed on distinctiveness—I do not have the reservations that others have expressed so far. The root justification for a publicly funded BBC is to offer, in the round, programming that the market does not provide or underprovides; it is to stretch all of the nation's best creative, entertainment and journalistic talents, and thereby to engage, extend and delight every kind of licence payer. However, the drafting of the charter places too much emphasis on reviewing the BBC's services. It is as important to bring a distinctive approach to every genre, and to serve every section of the audience, as it is to consider the distinctiveness of individual networks and services. The drafting could, with benefit, underline that.

The BBC has creativity deep in its soul, but history—and I do mean history—tells us first that the BBC, like any institution, can slip off the rails, falter in specific genres, and fail to follow how society is changing and thus to meet new and emerging audience need. Secondly, history tells us that the BBC, an unusually large and very complex organisation indeed, has not always

[LORD BIRT]

been well managed as an institution. This new regulatory and governance framework should reduce risk in both respects, but only if the key players rise to the challenge.

It is vital that Ofcom avoids box-ticking regulation—there is a bit of box ticking in the draft. The old IBA should be its exemplar. Someone has to do what generations of trustees and governors, often captured by the institution, have rarely done; that is, to call a spade a spade and identify boldly and confidently where the BBC is succeeding and where it is falling short, and to require the BBC to do something about it. For the avoidance of doubt, there were of course areas of programme weakness in my time, as there always will be. I suggest that the majesty of Ofcom's responsibility to make judgments about the BBC's programme performance could be more emphatic in the text.

As for the management of the institution itself, it plainly is the victim of much dialogue and compromise. A 14-person board is too large and unwieldy. It will lack intimacy and risks being ineffective. That said, the appointments to that board will now be critical. Given the intermittent failure of the BBC over the sweep of its history to manage itself well as an organisation—to be alert and strategic; to be efficient; to deal with underperformance, and so on—the board does not need another lottery selection of the great and the good but robust non-executives of wide, worldly and heavyweight institutional experience. Such individuals have emerged in the past, thankfully, but—and I say this from personal experience—only rarely.

It is good news that the chair will be involved in all appointments as it is vital to start with an overview of the required mix and not just make one incremental appointment at a time—a Whitehall failing. However, it is an odd feature of the draft, and not good practice in my experience, for the chief executive—here, the director-general—to be on the nomination committee responsible for appointing independent directors. Executives should not choose who will mark their homework.

Finally, I think that the new requirement placed on the BBC to reveal the compensation of top talent is low politics. The BBC is in the market in important ways: it must buy its electricity, recruit support workers and hire top technologists. It must do all this with prudence and care, and the board must be certain that it does. But requiring the BBC to reveal Gary Lineker's compensation is just mischief-making. It will invade the privacy of people who are not determining how to spend the public's money; it will frighten away talent; and it will sow unnecessary dissension. I ask the Government simply to drop this requirement.

Overall, I welcome the new framework—it is an improvement. If it is implemented well by Ofcom, and if we end up with a new, muscular BBC board, the world's most outstanding broadcaster and the UK's most important cultural institution will emerge even better and stronger still.

7.47 pm

The Lord Bishop of Norwich: My Lords, I have been pondering what interest to declare in this debate. I have never been employed by the BBC, but have

received very modest remuneration for occasional broadcasts; I listen to Radio 4 more than any other channel; I fall asleep when watching “Newsnight”, despite my best intentions; and I belong to a generation for whom, in our childhood and early life, television and radio were the BBC—in my native Cornwall in the late 1950s, there was no ITV. I say all this because I realise that the BBC is so much part of the fabric of my life that I can be an incurable romantic about it.

In some ways, the BBC is rather like the Church of England: it is both national and local, and everyone in the BBC, as in the Church of England, imagines that power is being exercised somewhere but they always believe that it is somewhere else and that they do not have any. That is true even for the people in charge—just ask the Archbishop of Canterbury, or perhaps the chair of the BBC Trust. People demand the unreasonable of both institutions while being quietly fond of them. But we are often most critical of those we love—constructively, one hopes.

The draft charter and agreement are much better than I had feared in the wake of the unseemly licence fee settlement. To make the licence fee a means of funding a particular government policy still seems to me to be inappropriate. That is especially so when the accountability of the BBC to the actual licence fee payers is rather unclear in these new arrangements. The new board's independent remit does not really make it the voice of licence fee payers, nor can that be the role of Ofcom. It would be good to have some clarity from the Minister on where the voice of those who pay the licence fee is really heard.

We have already heard from the noble Lord, Lord Alli, that there is a word that has a high profile in the draft charter that was, I believe, entirely missing from the last BBC charter. It is, of course, “distinctiveness”, to which he referred. An information sheet from the DCMS tells us that the BBC has recognised it should become more distinctive and that the Government want to create more structures within the BBC,

“to provide audiences with world class distinctive content”.

Nowhere, though, are we told what distinctiveness is and how we would recognise it. It seems to be assumed that it is obvious. Yet, of course, as we know and as we have heard, Ofcom is to regulate this widely agreed yet ill-defined concept. I hope the Minister will comment on this.

The BBC's first public purpose is to provide impartial news and information to help the people of this country understand and engage with the world around them. I believe we are generally extremely well served, although I have always believed there is one area where the BBC is insufficiently distinctive. It was mentioned in the consultation. It is in relation to religion. Less effort is put into interpreting a religious world than a political one, even though the world population is much more religious than it is political. Sport has a galaxy of professional pundits and commentators; religious affairs has one correspondent and not even a religion editor—partly, I suspect, because it is assumed that news and current affairs more generally can deal with religion as a minority genre. Or, perhaps, it is just too difficult to interpret an intensely religious world to what is assumed to be a secular Britain.

While there is a need for a distinctive service, the BBC has not invested sufficient resources, not least in its own religion and ethics department. I do not believe the BBC has any sort of evangelistic task, but it has an educational one, and our increasing religious illiteracy as a nation does us no favours in our understanding of and relationships with the wider world, especially the world beyond Europe.

It is peculiar what now rates in this area as a news story. I was surprised last week by the scant reference in the BBC to the most reverend Primate the Archbishop of Canterbury's visit to Rome. Perhaps it is because Archbishops of Canterbury have been trotting to Rome so often in recent years. But for the Pope and the most reverend Primate to commission 19 pairs of Anglican and Roman Catholic bishops to engage in joint mission together, some from parts of the world where religious division is deeply rooted, was surely worthy of more attention. Or have we become so cloth-eared or cynical that we do not see an imaginative, distinctive and creative religious act for what it is? The public purposes of the BBC cover news and impartiality, education and learning, creativity and diversity. There is no mention of religion anywhere in the BBC's public purposes. Perhaps the Minister will enlighten us on where it actually fits.

Back in June, the most reverend Primate the Archbishop of Canterbury drew attention in a speech to the need for true diversity to pay proper attention to religion. The most reverend Primate quoted the historian Simon Schama, who said:

"My generation grew up thinking that religion was completely marginal to British life, which, as for the rest of the world, has been proved more and more wrong".

Distortions of religious beliefs and sacred texts are becoming more common in our world and are being used as political weapons. But if we are unfamiliar with the tenets and beliefs of the world faiths, we will not be able to interpret or assess them, or sort out good religion from bad.

A commitment to religious literacy among its journalists and the promotion of a more religiously literate nation would be a major and distinctive public service that the BBC could offer our country. There is a huge amount of resource around on religious literacy itself. In an age when so much of our public and political discourse is bedevilled by a rejection of complexity, this is an area where the recognition of complexity is very badly needed.

7.54 pm

Lord Patten of Barnes (Con): In what I suspect some would not regard as the happiest days in our island story, a couple of things we can take comfort from are, first, that we have world-class universities in this country—some of the greatest universities in the world—and secondly that we have almost certainly the best television and radio companies, with the BBC at their heart. I declare an interest straight away: that I was chairman of the BBC Trust for two years. It was not the most comfortable or happiest job I have ever done, for reasons to which I might return, but it was always an honour to be associated with the BBC, which is such a central part of our national conversation, an enormous part of the civic life of this country and admired around the world as a very great broadcaster.

I note in passing that even at the height of the awful events surrounding Jimmy Savile's activities, the BBC was still regarded as the fourth institution in the country in which people took the greatest pride, just after Her Majesty, the Army and the National Health Service. It regularly scores on public trust so much more than any of its overwrought critics in the written media as to be embarrassing—which is, I suspect, one reason why they never report it.

At the heart of the new draft charter, which is a great improvement on what we were led to expect we might get from the previous Secretary of State—I congratulate the new Secretary of State on the progress she has made—is the laying to rest of the BBC Trust. Perhaps I can say a word without being too defensive about that. Until 2007 the BBC's independence was defended and protected pretty well over the years by a chairman and board. If noble Lords look at the history, they were a pretty good cross-section of the British establishment in all its exotic tribalism. But it worked and they defended the independence of the institution.

Then, in the years before 2007, the BBC made a mistake. It got wrong in the run-up to the Iraq war pretty well the only thing the Government at the time got right. It was punished for it by a change in the governance at the BBC. The old board was scrapped and in its place was established the BBC Trust as a regulator, which it had from time to time to cheer, when it was allowed. When I became chairman of the BBC Trust I was told that I could call myself the chairman, but that I was not really the chairman. Indeed, the director-general was allowed to establish a board himself, which acted in parallel with the board of the BBC Trust.

The trust did a lot of good work on distinctiveness, quality of programming and commercial issues, but we sometimes made the mistake of drilling down too deep. On the other side, the executive regularly hid behind the skirts of the trust when things went wrong. We could have made the whole thing work, perhaps with the present director-general, who has done such a very good job, but there was a real problem. Very often we were dealing with issues and problems that had been created under the old board. We regularly found it difficult to find out whoever was responsible when things went wrong. There was a sort of Macavity principle: Macavity was never actually there. It was probably inevitable that we should see this change in governance. I wish the new system well and those who run it the very best of luck, working, as I said, with a great broadcasting institution.

I have one or two points briefly to make about the charter. First, I agree with what the noble Lord, Lord Birt, said about the licence fee settlement—not just the finance on the table but the way it was done. It was a scandal to do it like that and I hope that in future, the licence fee can be settled after a process of public consultation, not least consultation with the House of Commons and the House of Lords. The Select Committee here said that the present system was "unacceptable". So it is, and it really must be changed in the future.

The balance of the board is a great improvement on what we had before. Perhaps it would make some sense if the senior independent directors were elected by the board on its own, without the Government getting involved in the process.

[LORD PATTEN OF BARNES]

I have reservations about allowing the NAO and the Comptroller and Auditor-General to determine in looking at BBC expenditure what is creative, what is editorial and what is not. I think there is a tendency on the part of individuals in that institution to ambulance-chase. They should not be allowed to determine what is an editorial matter or a creative matter if the BBC itself disagrees. There should be some arbitral process along the lines that exists for the Bank of England.

I agree with the noble Lord that it is ludicrous to talk about transparency regarding what “Strictly Come Dancing” presenters are paid when there is no transparency regarding how the licence fee settlement is established in the first place. There is no public interest whatever in knowing what Gary Lineker is paid. It is merely a rather unpleasant, populist gesture towards some of our tabloids and will probably lead to pushing up talent pay rather than the opposite.

While I am grateful to the Secretary of State for improving the arrangements for the BBC in the future and while I wish it the greatest good fortune—I am sure that it will not be obliged to publish lists of all the people born in other EU countries who work for it; I am sure that that will be put on one side, even though we live in these days in which we are open for business but closed to foreigners. The new arrangements are an improvement, but I think the BBC is very often a great deal better than we deserve.

8.02 pm

Lord Bragg (Lab): My Lords, I declare an interest: I work for the BBC as an independent contributor. Another interest is that at different times in my life I have been educated, entertained and informed by the BBC in a way that I believe is not available in any other way in any other country. As has already been said, it would puzzle an outsider to unravel why there are any doubts about the value and the greatness of the BBC. It has failings, but if you do not fail sometimes, you do not succeed at any time. Try. Fail. “Try again ... Fail better”, as Samuel Beckett wrote.

If one puts aside the inherent weaknesses of large and complex organisations that the noble Lord, Lord Birt, spoke about, and some of the individuals within such organisations, what emerges is still a broadcasting phenomenon that is almost 100 years old and arguably in better shape than it has ever been. The broadcasters that I know around the world look at it with awe, as the noble Lord, Lord Patten, indicated, as do ever more listeners around the world who receive its programmes in the increasingly powerful tides of progressive globalisation which the BBC rides so successfully.

Much of weight and value has been said. I want to ground my thinking in the BBC’s briefing notes. It reaches 97% of the UK population every week, with an average of around eight-and-a-half hours of TV and more than 10 hours of radio per head. There are nine television channels, 10 national radio channels, 39 local radio stations and all the online and mobile services, including BBC3, iPlayer and bbc.co.uk, all at 40p a day.

In the BBC briefing note which all your Lordships have received there is an omission that I would like to treat as an opportunity, because, for me, the BBC is

the sum of its programmes. There are comprehensive details in the note of channel after channel and station after station, but there is nothing about Radio 4. I am sure that no one is to blame; it is just WIA, or maybe it is a deliberate error. Still, for some, Radio 4 is the BBC’s pole star. It reaches almost 12 million listeners a week, about a quarter of whom are young, “future generation” listeners. There are 2.5 million podcast downloads a week, 600 hours of drama a year—it is far and away the biggest drama commissioner in the UK—1,000 documentaries or features and much more, as I am sure many of your Lordships know.

I hope your Lordships will excuse what I am about to do, but if you do not, it will not take too long. As my mentor, the late Huw Wheldon, said, you ignore the obvious at your peril. Let me mention just some of the programmes on one channel on one day—tomorrow, Thursday 13 October, 2016 on Radio 4. At midnight, there is a comprehensive news bulletin. There is the “Shipping Forecast” at 5.20 am, rightly chosen by Judi Dench as one of her desert island discs, celebrated in a fine poem by Seamus Heaney and the best way to wake up to the idea of our island’s history—as well as the crunching of all those wonderful coastline consonants. There is the state of our land on “Farming Today”, and then with a trumpet of Tweets comes the “Today” programme, with an unparalleled team, on for three hours to deliver the state of this and other nations with high-end news, features, politics and sport. We know that it is so important that if John Humphrys stops talking for more than 17.3 seconds, the PM presses the button to send our hydrogen bomb wherever it has been programmed to go.

Then three leading academics will talk about plasma, and on to the age-defying, septuagenarian “Woman’s Hour”. We have the authoritative “From Our Own Correspondent”, “You and Yours” analysing through conversation our daily life, and then another cracking news bulletin at 1 pm with Martha Kearney. We move on to drama and literature with Mariella Frostrup’s “Open Book”, and films, Eddie Mair and “Front Row”, with Ritula Shah at 10 pm. And at 11.30 pm, there is the climax and crown of the schedule, “Today in Parliament”. And did I mention “The Archers”? Billy Connolly once suggested that its title music should be our national anthem. And this excludes the comedies, quizzes and quiddities which notch up our days as surely as Big Ben. The energy and spectrum of this channel is like nothing else anywhere in the world. Nothing comes even close. It is so good that we take it for granted. I have worked out that, given the number of television, radio and other channels that the BBC delivers, Radio 4 costs us less than one penny a day.

I congratulate the BBC on arriving at such a good overall result in this charter negotiation—and, fair play, the Government have acknowledged much of the BBC’s case, worked it through and improved on it. It has changed the composition of the unitary board completely—now it will consist of nine BBC appointees and five from government. The DG will have editorial control, and the mid-term review will not consider the public purposes of the BBC nor licence fee funding. They are told that they will make distinctive programmes. I agree with my noble friend Lord Alli on this: what does “distinctive” mean? Who in Ofcom will define it?

How is it better than the producers, the writers and the TV executives at defining such a thing as distinctiveness? It will be a very interesting philosophical debate. I am still rather apprehensive about what happens when the notorious Osborne/Whittingdale factor—that is, £700 million of licence fee payers' money to be spent on social engineering for old-age pensioners—unravels in 2021. Could the BBC walk away from it? That would be very difficult, so what will be the real consequences? And there are worries about the BBC within the BBC. As *Private Eye* points out this morning, the world news budget is being slashed at a time when more than ever we need to state our new case to the world. Caversham, the gold standard monitoring service fatally wounded by the Cameron Government's withdrawal of funds, will dwindle away—another loss of a world leader. We have only so much family silver.

Overall, this is a positive result for the BBC. We can see its unequalled spectrum of programmes moving to its second century with its cylinders intact and the licence fee still delivering. It is a positive result, too, for those of us who watch and listen to programmes. The noble Lord, Lord Hall, and his troops have done well and deserve our congratulations, as do the Government. He has marched them up to the top of the hill and long may they stay there. And long may they get the support they deserve and already widely enjoy from the British public. I welcome the agreement.

8.09 pm

Lord Lester of Herne Hill (LD): My Lords, I am grateful to the Minister and the Secretary of State for offering to meet me before this debate. I was prevented from doing so by illness that rendered me speechless. I am also grateful to the Minister for his explanations, adding to the library of documents we now have. I shall try not to repeat what we have already heard, much of which I completely agree with. I hope that the Government will be open minded and reflect on what Members of this House and the other place say in these debates. Surely that should be the value of consulting Parliament at this stage.

The central problem with the Government's proposals—as raised across the House by, for example: the noble Lords, Lord Fowler and Lord Inglewood, as senior Conservatives and former chairs of the Communications Committee; the noble Lords, Lord Stevenson of Balmacara and Lord Puttnam, from the Labour Opposition; the noble Lords, Lord Birt, and Lord Pannick, the noble Viscount, Lord Colville, and the noble Baroness, Lady Deech, from the Cross Benches; and my noble friends Lady Bonham-Carter and Lord Foster of Bath—is that there are no statutory criteria or requirements that must be met in the charter or the agreement between the Secretary of State and the BBC.

That it is why I introduced a short BBC Royal Charter Bill, which should have its Second Reading next month where I hope it will have wide support. In resisting legislation, Ministers rely on the fact that for some 90 years the BBC has been governed by charter without any statutory underpinning. That is true, but now the Government's proposals change the BBC's governance radically by creating a powerful unitary executive board and by giving Ofcom extensive powers

to regulate the BBC. What has also changed is that Parliament set a perhaps unfortunate precedent in giving effect to the Leveson report by creating statutory underpinning for a charter to create a regulator of print media. That showed that it is possible to have both a charter and statutory underpinning.

Ministers resist any attempt by Parliament to regulate their prerogative powers but it is in the public interest for Parliament to lay down fundamental principles to protect the independence and viability of the BBC, free from political interference. As a first step, building on the powerful speech by the noble Lord, Lord Patten of Barnes, I would welcome an assurance that the Government will ensure that there is proper public consultation and parliamentary scrutiny before any BBC funding settlement is agreed by adding that commitment to Clause 43 of the charter.

The drafts do not put the Government under any duty to ensure that the BBC is and remains independent. They contain no obligation to ensure that the BBC is properly funded to enable it to perform its public functions. There is no commitment to avoid further top-slicing of the licence fee. There is no suggestion that the Government will reconsider the adverse impact that the unseemly transfer of the cost of free licence fees for the elderly over 75 will have on the BBC's funding and programming—the net result being a 20% to 25% cut in licence-fee funding.

Clause 67(4) of the draft agreement says:

“The Secretary of State may give the BBC a direction in writing that the BBC must not broadcast or otherwise distribute any matter, or class of matter, specified in the direction, whether at a time or times so specified or at any time”.

There used to be a similarly broad power of state censorship contained in an Act of Parliament. It was used to ban broadcasting by Irish terrorist organisations of any matter, including gardening programmes. The noble Lord, Lord Pannick, and I failed to persuade the Law Lords in 1991, in *R (Brind and others) v Secretary of State for the Home Department*, to test the compatibility of the use of that power with the free speech guarantee in Article 10 of the European convention. However, that was before the Human Rights Act 1998, which requires legislation to be read and given effect in a way compatible with the convention rights. The problem is that the power of ministerial censorship is not in legislation but in this draft agreement. What are the legally binding safeguards ensuring that the Clause 67(4) power is exercised only where necessary and proportionate to meet a pressing need, as required by Article 10 of the convention?

The Government propose to give Ofcom the power to regulate the BBC but there are no safeguards limiting Ofcom's ability to interfere with the BBC's editorial independence. That is quite wrong and it is not a matter for Ofcom to decide; it is not for the regulator to decide the limits of its power. That matter should be in these documents and decided by Parliament. There are also no safeguards against the watering down of the BBC's public service commitments, for example as regards children's programming—a subject dear to my noble friend Lady Benjamin.

These proposals enable the BBC and Ministers to appoint the members of the new unitary executive board. However, the chair and other members should

[LORD LESTER OF HERNE HILL]

be appointed by an independent process free from cronyism and political bias or nepotism. That should be addressed before the charter is approved. Furthermore—other noble Lords made this point—the proposals enable Ministers to determine what “distinctive” means. That is an elusive, weasel word. The Minister did not explain its meaning and I share the concerns expressed. There is no protection of the BBC against much richer competitors challenging current and future BBC programming.

I am sorry to cast a bit of a cloud over some of this but I make these points. I hope that the Minister, his Secretary of State and their advisers will reflect on them and those made by colleagues, and will make changes to the drafts prior to placing the charter before the Privy Council. I suggest that it would be for the convenience of the House if he wrote to those taking part in the debate replying to these points, so that we see they have been considered and know what the Government will do about them.

8.17 pm

Baroness Kidron (CB): I, too, declare an interest in having an unhealthy attachment to Radio 4, as a member of the House of Lords Communications Committee, and as a filmmaker who has worked for and in partnership with the BBC periodically over the last 35 years.

So many reports, so much briefing and lobbying, so many threats and U-turns, so many column inches, and we still have a draft charter that fails to settle many of the concerns raised by various stakeholders. In *Reith Not Revolution*, the report of the committee ably chaired by my noble friend Lord Best, we set out these concerns in some detail, and I believe he will address them later. Yet above all other considerations we heard that the BBC must be independent: independent financially, independent editorially and independent of government influence, answerable only to the licence fee payers who are both its investors and its audience.

I, too, have some anxiety about this word “distinctive”. Is it, at best, a badly drafted attempt to keep the BBC honest or, at worst, a Trojan horse to undermine its independence, delivering to its commercial rivals and successive Ministers an endless opportunity to challenge its programming as not being distinctive? Is the “Today” programme distinctive because John Humphrys insists on the binary opposite of whatever his interviewee just said; is it distinctive because it offers an unfettered opportunity for politicians to trail their speeches before a word has been uttered in public; or, in the age of rolling news and Twitter stream, is it simply another news source and not distinctive at all? Is “The Great British Bake Off” distinctive or merely popular? The BBC has provided hundreds of hours of food-related programming—historical, practical, political and scientific—and what is distinctive is not the part but the whole. A show in a tent that measures human endeavour in the shape of a chocolate profiterole is just one small part of its remit to educate, inform and entertain.

In his opening remarks, the Minister offered that the detail was to be determined by Ofcom, but, much as I admire Ofcom under the leadership of Sharon White, it is simply not equipped—nor should be asked—to judge.

Indeed, I noticed with great admiration the reticence of Ms White when asked what programmes she would consider distinctive. The Secretary of State has a well-publicised view. The BBC’s commercial competitors have a view. But the regulator to which this vague and impossible task now falls quite sensibly does not. We need sight of that detail before this word is enshrined in the charter.

Like others, I was not a fan of the muddled duties of the BBC Trust and welcome the new board. But like my noble friend Lord Birt, I believe we need more discussion about who as well as how. The board needs programme-makers, digital expertise, those who have presided over organisations’ transformation, representation from the workforce and, most importantly, representatives of the licence fee payers. The unedifying horse-trading we have seen about who appoints whom is actually not the point. All these appointments should be skills-based and entirely free from government. However excellent any single government appointment might be, the perception will be that they are under the influence of those who appointed them, with the consequent loss of public trust.

The draft charter does accept that the licence fee settlement should be an open and transparent process involving some sort of public consultation but offers no detail or substance as to how it will be conducted. Almost without exception, those who came before the committee, whatever their other differences, agreed that a licence fee deal done in a back room, agreed by a handshake between Secretary of State and director-general, was unacceptable. The current Secretary of State could now distinguish herself from her predecessors by putting in place a transparent process that is clearly defined and separates funding from political favour.

The Reithian vision of an independent British broadcaster able to,

“educate, inform and entertain the whole nation, free from political interference and commercial pressure”,

did not anticipate a world where the commercial competitors would demand protection from the BBC. The charter determines that Ofcom keep “market impact” in mind when reviewing new and changed services. Market impact is as subjective as distinctive programming, and the provisions lack clarity, opening the BBC up to anti-competitive challenges that threaten its programme-making, schedule and future services.

The broadcast sector is vibrant and thriving and the commercial players have many admirable successes of their own. It is a mixed economy in which the BBC must be free to compete. The broadcast ecosystem allows for invention and experimentation in the public broadcast sector, with its duties to support new talent, be diverse, provide specialist programming, work in the nations and regions, and train the next generation in front of and behind the camera. Many in the creative industries cut their teeth at the BBC and end up at its competitors. If we hamper the BBC’s editorial freedom or conspire to punish its successes, ultimately we will diminish the whole sector.

Finally, we must remember that the terms of the charter and agreement were determined before the European referendum. Now more than ever we need a strong and vibrant—independent—BBC,

“to bring the world to the UK and the UK to the world”.

The Minister introduced the debate by saying that this process is at its conclusion. Listening to colleagues, I hope he will reconsider that position.

8.24 pm

Lord Sherbourne of Didsbury (Con): My Lords, it is worth saying at the outset that the dire and wild predictions made by some about what the Government had in store for the BBC have turned out to be very wide of the mark. It is also worth repeating what almost all noble Lords have said about the huge importance and value of the BBC to our national life and, as the noble Lord, Lord Bragg, said, to people's everyday lives.

The draft agreement between the Government and the BBC and the draft royal charter take us to 2027, 11 years away. If we look back at the past 10 years, we have seen an amazing transformation in the media, broadcasting, subscription television, streaming and so on. There will be even greater changes in the coming decade, some of which may yet be no more than a gleam in the eye.

When I was at school, a speaker at our speech day said something I have never forgotten. He told us that we would need something much more important than GCEs, qualifications and degrees—adaptability—because the world was going to change in ways that we could not begin to imagine. The same is true for the BBC. It will need to be adaptable. So we have to look at the agreement and charter in the certain knowledge that the world in which the BBC operates will see great changes over the lifetime of this charter.

This brings me to the new constitution and the new BBC board. Its overall responsibility will be, as the draft charter says, to set,

“the strategic direction for the BBC within the framework set by this Charter and the Framework Agreement”.

But we also want the BBC to think outside the box as the world changes around it. I am sure that the current director-general can do that. I very much hope that the new board will let him.

It is also vital that the BBC does not get bogged down in bureaucracy. Under the draft agreement, the BBC has to operate under a list of specified public purposes. But please can we avoid the nightmare of a mountain of public purposes, remits, priorities, values and targets, all of them overlapping—the horror unearthed by those of us who sit on your Lordships' Communications Committee? I remember going into my local town hall many years ago and seeing posters boasting of and listing, “Our 200 promises to you”. Of course, no employee could remember even one of them.

As the noble Lord, Lord Birt, said, the BBC is going to need a chairman and directors who are tough and robust. It is not easy being a non-exec. You have to rely on the executives to supply you with the information you need and, even more importantly, not the pile of papers that you do not need. So my advice to any potential BBC director is to ask, “How will the board be served? What information will I get? What information will I ask for?”; otherwise, the board could become the creature of the BBC executive.

I apologise to my noble friend the Minister for having another go at this but I would prefer members of the board to be given one term only; otherwise, there is a risk that they will, consciously or unconsciously, seek to curry favour in the hope of being reappointed. I say this because there are times when board directors have to dig their heels in with their chief executive, in this case a highly respected director-general. At that point, directors should not be thinking about their reappointment or even have it at the back of their minds. If the Government really want a truly independent BBC board, as they say they do, this is what they should do.

Turning to the new role being given to Ofcom, I think we all understand how unsatisfactory it has been for the current BBC Trust to act as both cheerleader and regulator and why therefore the job of regulator has been given to Ofcom, which has a wealth of experience and expertise in the regulation of the communications industry. Nothing I am about to say should be seen as a criticism of Ofcom but, rather, as my reflections on the job Ofcom is being asked to undertake.

I have no major concerns about Ofcom's role in looking at the impact of the BBC on the competitive marketplace. It is well placed to do this, but we do not want Ofcom to decide how the BBC should be doing its job; nor, I think, does Ofcom. But let me give your Lordships one example from the draft agreement, under the heading “News and current affairs”. I quote it directly, so I have not tried to correct the rather peculiar grammar. It says:

“Ofcom must impose on the BBC the requirements they consider appropriate for securing ... the programmes included in the UK Public Television Services include news programmes and current affairs programmes at what appears to them to be an appropriate level”.

It is impossible to deduce from this what will appear appropriate to Ofcom. I suspect that even Ofcom will not know for some time, so how will the BBC know whether it is likely to fall foul of Ofcom?

Let me give another example, which other noble Lords have talked about: the definition of distinctive. The definition with which Ofcom will have to grapple includes “taken as a whole” and “overall”. This gives huge discretion to Ofcom to decide what is or is not distinctive. Does Ofcom know how to interpret, assess and evaluate this? Probably not. So Ofcom will have to feel its way, building up judgments on a kind of case law basis, with the BBC again not really knowing what will fall foul of Ofcom. These are matters of subjective judgment. They cannot be easily measured and are not quantifiable.

Many years ago, a wise Treasury Minister said that the trouble with the Treasury and its equations is that it cannot quantify common sense. The same is true here. Of course somebody has to regulate the BBC. If it cannot be the BBC itself, and it cannot, then we have either to establish a brand-new regulator, which would be a huge exercise, or give it to Ofcom, which is well established. I am sure that Ofcom is well aware of the challenges it faces, but the Government may well want to look at how the new regulatory framework is working well before 2027. The mid-term review would allow the Government to do just that.

8.32 pm

Lord Cashman (Lab): My Lords, I refer your Lordships to my interests in the register and declare my interests as a rights-holder and ex-employee of the BBC, and as a recent resident of Albert Square. I, too, welcome the Minister to the Dispatch Box and look forward to his reply at the end of the debate.

I am extremely pleased to take part in this debate and, like other noble Lords, I welcome the changes in the proposed new charter and agreement, which I believe build on public concern and the concerns of those who cherish high-quality public service broadcasting. My noble friend Lord Bragg spoke quite rightly and eloquently of the programming on a single day on Radio 4. I want to give special mention to the staff of the BBC, who pursue its values tirelessly.

The lobbying in advance of this debate has been intense, not least from the commercial broadcasting sector, which seems to believe that the BBC is a threat and would like to see its strength, dominance and success reined back even further. These are objectives I do not share, even though they are offered under the guise of greater openness and transparency. On transparency, and particularly on the subject of talent pay, I point out that the BBC is already incredibly transparent on what it pays. Any transparency should be industry-wide and not confined to the BBC, where it may restrict access to and the retention of talent. Indeed, I believe that such an approach would drive talent away. As the noble Lord, Lord Patten, alluded to, it is nothing short of pandering to governance by tabloids. We should be better than that.

I am grateful to the House of Lords Library for its extensive briefings and for the copy of the proposed charter and agreement, which I have read with interest. Although, as I said, I welcome most of the proposals, I remain deeply concerned about the following matters. The involvement of the Secretary of State and Ministers for Scotland, Wales and Northern Ireland in appointments to the board of non-executive members is unacceptable and should be rejected, even at this late stage. The independence of the BBC should be maintained at all times and never undermined by perceived political interference, benign or otherwise. The BBC is a public service broadcaster, not a state broadcaster.

The mission statement refers to public interest, yet there is no definition within the document of such public interest. Equally, article 11 of the draft charter discusses the BBC's "Market impact" and bizarrely states:

"The BBC must have particular regard to the effects of its activities on competition in the United Kingdom".

Yes, I smile but perhaps the Minister could tell me why it should have such regard and in what instances this would apply. Furthermore, paragraph (2) of article 11 states that the BBC must,

"seek to avoid adverse impact on competition which are not necessary for the effective fulfilment of the Mission and ... the Public Purposes".

Can the Minister clarify what is meant by an adverse impact on competition? I take note of his earlier references to Ofcom's responsibility but I would welcome greater clarity.

I welcome that the BBC must promote technological innovation, as in article 15, but wonder why it must share its research and development knowledge and technologies. Surely, this seems to put the BBC at a commercial disadvantage.

Like other noble Lords, I reiterate my concerns expressed in previous debates about distinctiveness. There is little clarity offered within the definitions provided, and there is a real danger that the BBC could become a low market provider delivering that which is unavailable, and largely unwanted. Furthermore, the role of Ofcom in monitoring this obligation to provide distinctive output and services could easily prevent the BBC running popular programmes, as was said earlier, or developing new online services that its competitors would frown upon. With regard to its online content, we have heard complaints in this House that the BBC raises the quality threshold too high. Long may it do so, and not just in its online journalistic content.

It would be remiss of me if I did not express the concerns of the Save Our BBC campaign, which calls for a clear statement in the new charter for the BBC to remain accountable to licence fee payers. I look forward to the Minister's response to that statement.

I believe that it is lamentable that the BBC has become an arm of social security in its financing of the licence fee for the over-75s, with all the attendant consequences.

As other noble Lords have said, we should all be rightly proud of the BBC for setting standards of excellence worldwide in journalism, reportage, news, drama and wider entertainment, including sport. That it does so for a cost of £2.80 a week should be a matter of national pride and—dare I say?—prudence. We know what the BBC costs but above all else we know its value, and we should defend it.

Therefore, let me give a further example of the BBC's excellence. Across the 15 major UK festivals in 2016, 875 of the 2,051 performances were by artists who uploaded their music via BBC Introducing. Radio 1 broadcasts just over an hour of news on each of the three days sampled, three times as much as Capital and six times the amount broadcast by Kiss. There was more news during Radio 1's breakfast show than on Kiss across the whole day, with half-hourly Radio 1 bulletins between 6.30 am and 8.30 am. I could go on, but I think the BBC eloquently speaks for itself.

8.39 pm

Baroness Benjamin (LD): My Lords, I rise to speak in this important debate on the issues of diversity and children's contestable funding, and I declare an interest as per the register.

I shall first concentrate on the children's contestable fund proposal. I am most encouraged by conversations with DCMS advisers on this issue, as they have carried out in-depth discussions with organisations, such as PACT, and individuals about how the contestable fund of £20 million per year over a three-year period will be used for at-risk genres. However, there are major concerns about how the Government propose to ensure that this funding is channelled into content rather than the administration of the fund.

Some have argued that the fund should be administered by the BBC or that it should be set up as a development fund to which a commissioned project could apply for finance to ensure that the project gets to screen. However, we all know that most commercial broadcasters are not commissioning UK children's productions, so which screen will productions end up on? Will it be the BBC, or are the Government going to compel commercial broadcasters to show children's programmes?

More worryingly, what will happen after the three years? Will funds then be obtained by top-slicing the BBC's overall budgets or, even more frighteningly, will they be obtained from the BBC children's budget itself? BBC children's programming is thriving and nothing should be done to endanger it. This is why any future measures must be designed not to harm this valued and much-loved asset. Will the Minister give some sort of clarification and indication of what the Government propose to do with regard to contestable funding and of when a firm decision will be made on how and when it will be operational?

I now turn to diversity. The new draft charter and agreement mark an unprecedented turning point for diversity and equal opportunities in broadcasting which should be celebrated. However, there are some concerns that the Government have not issued a helpful information sheet for this area, as they have done for all the other issues. Why not diversity? I hope the Minister can reassure the House that this omission will be rectified as soon as possible to allay anxieties.

The draft charter states:

"The BBC must ensure it reflects the diverse communities of the whole of the United Kingdom in the content of its output ... (including where its activities are carried out and by whom) and in the organisation and management of the BBC",

and that it must provide,

"a duly accurate and authentic portrayal and representation of the diverse communities of the whole of the United Kingdom",

and that it must,

"ensure that it assesses and meets the needs of the diverse communities".

That is clear, unambiguous, comprehensive and, most of all, very welcome. I hope the Minister can confirm that this diversity requirement applies to on-screen and off-screen employment from all suppliers, both internal and independent.

The agreement also provides us with the details on how the requirements in the charter will actually work, and says steps must be taken to make sure that people are aware of the BBC's arrangements to achieve them and, furthermore, to review the arrangements and publish a report once a year on their effectiveness. This is so important because the Government's ambitions for improving diversity and social inclusion will never be realised if we do not have clear evidence on what works and what does not work. I stress that this is not just in the BBC but across the whole of the public sector, because far too often institutions boast of good practice but then we find that "good practice" does not amount to effective action to drive diversity.

The charter and the agreement now give us what we need to make lasting change and a lasting difference. But the extent to which the diversity ambitions are realised will depend on how Ofcom applies and enforces,

with full authority, the provisions. Therefore, it is essential that Ofcom confirms that it will require the BBC to publish full data in relation to all elements of diversity and equal opportunities and ensure that diversity is not pushed to the margins. It should also provide evaluation of the data.

It might also be sensible for Ofcom to set and publish minimum standards for diversity, setting the clear expectation that the BBC will make significant progress on improving diversity. If there is no progress, Ofcom can require the BBC to take further positive action in accordance with the guidance on what could be done published by the Equality and Human Rights Commission and Ofcom in August 2015.

As a member of the BBC diversity advisory panel, I am aware of the ambitious on-air and off-air diversity targets that will be set by the BBC to deliver change and lead the way by 2020. But we need to ensure these policies are sustainable and embedded in the BBC's DNA—and that includes radio. Many people have worked, largely in vain, myself included, for over 40 years trying to advance diversity in broadcasting. Now, at last, we are on the brink of real progress, so we must not miss this opportunity to make lasting change.

I conclude by paying tribute to Ed Vaizey, the former Culture Minister, who has done so much to bring us to where we are today. Three years ago, he seemed a lone trailblazer in government for diversity; today diversity and social inclusion are at the top of the Government's agenda. Ed Vaizey's crucial contribution should not be forgotten.

I look forward with great optimism and joy in my heart after this epic 40-year diversity odyssey. I hope the Minister will not only celebrate this moment with me but also give the House the reassurance that diversity and the decision on children's contestable funding will be at the top of the Government's list of priorities.

8.47 pm

Lord Williams of Baglan (CB): My Lords, I welcome this debate, although I rise with some apprehension, as the register notes my membership of that endangered—nay, condemned—species, the BBC Trust. I acknowledge, too, a previous speaker in the debate, the noble Lord, Lord Patten of Barnes, who led the BBC Trust for several years with that considerable élan for which he is renowned and which was demonstrated again here this evening.

Perhaps I should also acknowledge that, earlier in my career, I worked for the BBC World Service in its then iconic home, Bush House. In many ways, those were the happiest days of my career—there was a real international atmosphere and purpose, which prepared me well for a later career in the United Nations. The strength of the World Service, much respected in this House, stems in large part from its membership of the wider BBC family.

Over the past few months, there have been many meetings between the BBC Trust and officials of the Department for Culture, Media and Sport, including the Secretary of State, Karen Bradley, about the new charter. When it was published on 15 September, the chair of the trust, Rona Fairhead, welcomed it.

[LORD WILLIAMS OF BAGLAN]

She noted a more transparent process for setting the licence fee, but added that the Government should go further and that future funding proposals should be subject to external scrutiny. We cannot have repeats of past settlements, much commented on in this debate, that were negotiated behind the closed steel doors of the Treasury.

The BBC cannot and should not be subject to the intense political pressure it was in 2015 when forced to take responsibility for free licences for the over-75s, a measure introduced by the previous Labour Government. If the subsequent Government disliked that measure then they should have had the political courage to repeal it, rather than the Chancellor issuing a diktat that challenged the very independence of the BBC and resulted in a 20% cut in licence fee funding. Welfare reforms cannot and should not be dumped on the BBC; it is not an arm of government, and any similar force majeure would be a serious assault on its independence. I would welcome the Minister's recognition of that.

The draft charter is a step forward, as it recognises that the Government must consult the BBC in advance. In my view, future charters should be published no later than eight weeks in advance before a final determination is made. However, the consultation must be broader than at present, and I firmly believe that Parliament and the public should be consulted widely in future.

I return to my concerns about the World Service. That oft-stated critical purpose,

“Bringing the UK to the world and the world to the UK”,

is surely more critical now than perhaps at any time in our modern history. We are a truly international people, having made a huge contribution to the wider world, but that very engagement has also been a two-way process and the BBC should reflect that, not only in the World Service but in its domestic services, given our increasingly diverse population.

With regard to the World Service, will the Minister clarify the situation regarding the future BBC Korean service? I do not expect him to answer now, but I would be grateful if he would be so good as to write to me at some future date. There can be no doubt in this House that there is a need for a BBC Korean service in one of the most closed societies in the world. Here I acknowledge the championing by our colleague the noble Lord, Lord Alton, of human rights and the establishment of a Korean service. Now is not the time to back away from a much-needed service.

As we as a country take the now ineluctable step of leaving the EU, we must do everything we can to demonstrate that this is not a country in retreat, which might be easily deduced by many, but one that still has noble international ambitions and some of the finest institutions in the world. That is surely what the BBC is, and no European broadcaster, or for that matter North American broadcaster, would contest that statement. We must also note that the BBC is one of the few public institutions these days capable of uniting people across the UK. As a nation, we can ill afford to put that at risk.

8.53 pm

Lord Pendry (Lab): My Lords, I begin by stating categorically that I am an unashamed admirer of the BBC in most of its works but not necessarily in all its pomp. In my view, there are a number of areas that are open to question. One of them is the lack of transparency and the need for more public scrutiny. I have no intention of taking issue with the level of salaries taken by senior staff in the corporation for, as a trade unionist, I believe that if this is the rate for the job, so be it. However, I was sorely tempted to do so on reading of a certain senior post given last week to an individual together with a substantial salary, but I resisted that temptation as it might be thought that I had a particular personal interest in so doing.

My support for the BBC is not total, however. As I have already stated, over the years I have been critical of this lack of transparency and the need for greater public scrutiny. I have attempted to raise a number of issues both in this House and in the other place, and almost always have been rebuffed by successive Governments on the grounds that the BBC's charter is independent of the Government and there is no provision for the Government to interfere in the day-to-day operation of the BBC. That obvious statement was also made to me last year by the former Secretary of State for Culture, Media and Sport, Mr Whittingdale. In one case, he referred me to the BBC Trust, and of course I received the same response from it as I had from the Secretary of State. Of course the Government should not interfere in the day-to-day programming of the BBC, but surely, in cases where they are not interfering but merely asking for more clarification, openness and transparency from the corporation, it should be forthcoming.

My concern relates in part to a BBC programme entitled “Wanted Down Under”. This programme provides travel and accommodation to families of four or five people to allow them to spend time—generally about a week—in Australia or New Zealand to see whether they would like to settle in one or other of those countries. As I understand it, the families who are selected to make this visit to one of those countries are chosen after researching their desirability to emigrate there, the object being that if they wish to stay after finding suitable work, they can, but the BBC licence holder will pick up the tab for the total costs of their stay. Again, we do not know the cost of the programme, because we do not have that transparency, so we do not know how much the licence holder is having to cough up for the programme.

My point is clear: if that is the desire of those chosen, they ought to pay, like others who have had the same desire over the years and paid their way without the assistance of the BBC or anyone else. If those families wish to go to Australia or New Zealand, the Governments of those countries or their tourist boards should foot the bill.

Following the change of direction by the Government away from the Osborne austerity programme into an expansionist approach for our economy, I should have thought that any further exodus, however small, of our talent and skills would not be welcomed. The Prime Minister talked about more apprenticeship schemes

to assist in a productivity drive, which is laudable but, as Philip Hammond said in his speech to the Tory party conference in Birmingham, “long-term growth requires us to raise our national productivity”, which, he pointed out, is lower than the US, France, Germany and Italy. He went on to state that that has to change if we are to build an economy that will work for Britain.

What I am suggesting may on the face of it be considered small fry, but the message is clear: the BBC should not be encouraging its viewers with an advertisement paid for by its licence holders to go to their promised land. One could argue that such an exercise is minuscule, but it is in effect blatant advertising which could have a detrimental effect on our aim to increase our productivity. I am sure that Australia and New Zealand need electricians, plumbers, engineers, mechanics and so on, but so do we, to meet the needs rightly outlined by both the Prime Minister and the Chancellor. Because of the uncertainties of Brexit, this example could be followed by other personnel in vital services such as the National Health Service, who do not need to be encouraged to do so by one of our treasured institutions.

In short, there should be no move to discourage people from going to those splendid Commonwealth countries if that is their desire. My objection is that they should not be encouraged to do so by the BBC picking up the tab for those who wish it.

I hope that the new charter will take account not just of that particular case but the overall case for more transparency and closer scrutiny by the public of what is going on in their name.

9 pm

Lord Clement-Jones (LD): My Lords, my noble friend Lady Bonham-Carter has eloquently set out our general view on these Benches, both positive and less positive, of the draft charter and framework agreement. Other of my noble friends have put their finger on a number of other particularly important points

I want to explore two specific aspects of the framework agreement in detail—one of commission and one potentially of omission. I listened very carefully to what the Minister said but I agree with the noble Lord, Lord Alli, my noble friend Lord Lester and the noble Baroness, Lady Kidron, that the way in which the new requirement for distinctiveness is framed is a potentially serious weapon in the hands of commercial competitors to the BBC.

Paragraph 1 of schedule 2 defines distinctive as, “substantially different to other comparable providers across each and every UK Public Service both in peak time and overall”. There are five separate criteria set out in paragraph 1(2), each of which must satisfy this test of substantial difference. This is a much bigger hurdle than the BBC has been asked to negotiate before, and it comes close to saying that the BBC should be doing only what its commercial competitors cannot or do not want to do.

Paragraph 2(1) states that, as well as keeping all current requirements, for the first operating licence Ofcom must,

“consider the case for increasing”,

them to further distinctiveness, and that it must consider the case for new requirements.

Paragraph 2(2) then sets out in further detail what Ofcom should “have particular regard to” in increasing or setting new requirements, and specifies,

“(i) music, arts, religion and other specialist factual; (ii) comedy; and (iii) children’s programming”.

This is prescription of a kind that was abolished for commercial PSBs back in the Communications Act 2003. Moreover, it refers to those genres in terms of whether they are “underprovided or in decline” across PSB as a whole. So Ofcom, while presiding over a decline in these areas on commercial PSBs, could impose compensating obligations on the BBC. A classic example is children’s programming; expenditure has fallen drastically on the non-BBC PSBs. Is the BBC therefore to become the victim of Ofcom’s leniency as regulator of these PSBs?

We on these Benches are particularly concerned about the combination of the provisions of schedule 2 and paragraph 57 of the framework agreement, which means that competitors can complain about breaches of the onerous and highly specific schedule 2 distinctiveness requirements and force a review. It seems that a complaint can be prompted at any time by a commercial competitor. Given the wording of the framework agreement, does the Minister seriously believe that commercial competitors will not take advantage of these provisions and chip away at the broad remit the BBC currently has? Furthermore, under paragraph 12 Ofcom is now entitled at any time to carry out a “competition review” of any BBC service where it believes that it may be having,

“adverse impacts on fair and effective competition”.

This appears to be unrelated to any “material change” and can therefore be prompted at any time by competitor complaints. The impact of this on the BBC in terms of planning and gaining commercial partners could be enormous. All this could give rise to a relentless series of complaints and further erosion of the breadth of the BBC’s output—death by a thousand reviews.

Ofcom may try to resist the onslaught, but that risks it becoming a political football in a way that it has largely managed to avoid. Does the Minister accept that these are real dangers? Can he assure us that the provisions of the draft will be reviewed again to meet these criticisms?

My second main point arising from the draft framework agreement is one of omission and relates to the BBC’s role as a key provider of training and development for the UK’s media industries, referred to by my noble friend Lady Benjamin. Creative Skillset has pointed out that paragraph 13 of schedule 3 of the draft framework agreement places a duty on the BBC to train its own staff and to “work in partnership” with the rest of the industry on the development and maintenance of a highly skilled media workforce. But the training duty in the framework agreement is set out in very broad terms and is similar to the duty in the current agreement, under which the BBC has cut its investment in the BBC Academy disproportionately in recent years, by 35% between 2010 and 2014. Can the Minister confirm that the Government expect the BBC to make training and development a clear strategic priority, integral to the fulfilment of the BBC’s public

[LORD CLEMENT-JONES]
 purposes? Further, can he say that they expect Ofcom to set clear regulatory requirements, encompassing all the necessary elements, and to be rigorous in holding the BBC to account for its compliance?

In summary, we on these Benches agree that Ofcom has been an effective and responsible regulator, but the question is how it will use its powers over the BBC in future. Will it have adequate discretion and flexibility? First, will it have a robust approach and specific powers to reject vexatious and frivolous complaints which may be made in respect of the BBC? Secondly, how do the Government envisage Ofcom's ability to conduct competition reviews at any time under clause 21 of the agreement being exercised, even when there are no changes in services? Thirdly, what exactly is meant by, "adverse impact on fair and effective competition", specifically in the context of scheduling and the competition reviews that Ofcom will now be able to make?

Fourthly, how Ofcom goes about its duties in doing this will be critical. What leeway will Ofcom have in carrying out its regulatory functions and its duty to enforce compliance before it is open to legal challenge? I look forward to the Minister's reply to those crucial questions.

9.06 pm

Lord Berkeley of Knighton (CB): My Lords, I begin by picking up on some points that noble Lords have made. I was very interested in what my noble friend Lord Birt said about trying to be distinctive, because in some ways you can try too hard. Noble Lords may remember the BBC's excellent coverage of Wimbledon last year—and then it put on, on BBC 2, "Wimbledon 2Day", which was terrible and execrable. But it had the common sense and wisdom to change it, and I am sure that it will not be there in that format next year. So we can all make mistakes, and we all do.

In fact, I made a mistake when I last spoke in this Chamber on the £150,000 cap at which salaries should be revealed. I said then that I had no real problem with my salary being revealed—it is nowhere near £150,000. Maybe what I was thinking was that it would be very good if the public were aware of what most contributors to the BBC are paid. I mean, it is really almost embarrassing sometimes. I can tell you that Gary Lineker would not put his trousers on for what they get, although we know that he will take them off for his salary, because famously he did.

Several issues of importance are under discussion these evening. I am very grateful to the Minister for giving us this opportunity to air them. I agree with many noble Lords who have talked about the need to keep government at arm's length from the BBC, but we have to acknowledge that the Government have listened and moved some way from their initial position, if not as far as some would like. It is perhaps in the area of journalism that this issue is most important. Although I must acknowledge an interest as a BBC broadcaster and composer, I have been able to observe journalism from a fairly neutral and objective stance. In fact, I even read the news for some while, but I did not write it.

I would say—notwithstanding the example from the noble Lord, Lord Patten, of something going wrong, as it clearly did—that in my experience, successive parties, as they have come into power, so have they, as the Government of the day, found BBC interrogation and reporting to be an irritant. That is precisely what it should be if journalists are doing their job of examining, inquiring, and scrutinising the work of government. In that respect, journalism at its most probing is not unlike some aspects of the work of your Lordships' House, which sometimes irritates the Government.

What I really want to focus on this evening is this idea of distinctiveness. If the noble Lord, Lord Alli, will forgive me, I will not talk about having a general distinctiveness but more of being a specialist in the area that I have some knowledge of—the arts, and music in particular. As I was listening, I was thinking about what is distinctive. Is Simon Rattle's reading of Sibelius's seventh symphony distinctive because it is set apart from others? Are the speeches of Donald Trump distinctive? They are certainly set apart from those of others, for which we are rather grateful. Is Graham Norton distinctive? I think that what the BBC does in terms of the arts, and music in particular, is incredibly distinctive. It is the only broadcaster that commissions and encourages new work—young musicians—and unusual repertoire. Much can be said about a lot of speech; perhaps we can use the same terminology.

Why is this so important? I think that I would have no difficulty in getting the Minister, indeed the Government, to agree that, in the fields of science and technology and throughout industry, R&D—research and development—is essential. It is what makes us a nation of inventors, of innovators. It is what helps us to keep ahead of the game in world trade. Just look at the people who we produce, who bring a huge amount into the economy—Sir James Dyson, the iPlayer, the world wide web. And so it is in the arts and in music. Composers, conductors and players need the space and the investment to float their ideas. That is what the BBC singularly does for all areas of music, not just classical music. Classic FM, for example, does a very successful job of providing listeners with their favourite bits of music—and very good luck to them—but they do not embrace risk, the new, the things that are essential to research and development.

If noble Lords are perhaps thinking, "Oh dear, some new music is rather difficult and challenging", that is true—but in his day, Beethoven was described as cacophonous. Yet Beethoven is now part of our staple musical diet. He is a much-loved genius who we realise was ahead of his time. This is a really interesting thought, because "ahead of his time" is a description that we should bear in mind as we consider the freedom that we need to bestow on the BBC so that it may pass on that freedom to the composers, the writers, the directors of today. The opportunity to get it wrong is so important. Did your Lordships know that Donizetti, Bellini, and Verdi wrote a whole host of operas before they wrote the pieces that we all love and celebrate today?

Purely commercial broadcasters simply cannot hope to encourage innovation in this way, however good a job they do. The BBC does, in every branch of music.

I welcome the view that ratings are not everything, that to fly the intellectual, challenging flag of innovation and adventure is a position that we should be hugely proud of. If I may say so without embarrassing him, it is what the noble Lord, Lord Bragg, does in “In Our Time”. The rest of the world salutes this excellence, in series such as the Proms and “Hear and Now”. Excellence is not gimmick; excellence is innovation and the ability to look forward, in the same way as we ask of our scientists and our industrial captains, and to develop the world that we will all encounter tomorrow.

Lord Birt: Before the noble Lord sits down, I hope he does not mind my observing that he has just given us an excellent definition of what distinctiveness is, which should allay some of the fears of those who have spoken about it. What he said applies to every kind of genre, whether it is comedy or entertainment. Anybody who is a decision-maker in the BBC takes that set of ideas into every area of programming. That is what distinctiveness is. Does the noble Lord accept that?

Lord Berkeley of Knighton: I am very grateful to my noble friend for amplifying so articulately my feelings on this subject.

9.15 pm

Lord Inglewood (Con): My Lords, there is much in the draft charter and agreement of the BBC that I commend and welcome. However, I wish to focus on one issue above all others, independence, which I consider to be of paramount importance—that is, independence from government, Parliament and politicians and other people who potentially wish to exert undue influence.

First, I wish to make a few introductory points. The BBC belongs to everybody, even if it is the property of nobody. It does not belong to the Government; it is not a state broadcaster. It does not even belong to the licence fee payers. It belongs to everybody equally.

Secondly, we live in a world of partisan press—I have no problems with that—where the development of social media is creating an ever bigger echo chamber in a kind of broadcast version of barroom banter. All this makes the need for public service broadcasting all the more important. Of course, the BBC is at the heart of public service broadcasting in this country.

Thirdly, the BBC is a much-loved British institution; it is popular. There is nothing wrong with that. It may be illogical and perhaps nobody would have invented it in the way that it has evolved, but it is popular. We should recognise that the British people like it. I put on record that I agree with the evolution of the governance of the BBC that we see as we move away from the trust.

How do we attack independence? It seems to me there are two main ways: the first is financial and the second is political. The saying that he who pays the piper calls the tune is an old truism but no less correct for that. It therefore seems to me that the BBC’s financial settlement must be fixed and hypothecated, and for a fixed-term duration. As has already been remarked, it is absolutely no good for the Government to raid the till, regardless of their motives for doing so. Although the licence fee can clearly be criticised,

it seems the best on offer, and I support it. It must not become a cash reserve for the social security budget and should be dedicated wholly and exclusively to the BBC. I echo those who have said that they think that the previous licence fee settlement was a very disappointing exercise of clandestine politics in smoke-filled rooms. Instead, we ought to have an open process that is consultative and engenders public debate both inside and outside Parliament.

It is also important to remember that the Treasury may say that the BBC licence fee is a tax and define it as a tax. But in the English language it is not a tax; it is a licence for services and needs to be viewed as such.

Dealing with the problems posed by political influence may be a bit more difficult. For reasons which, if you think about it, are quite obvious, it is necessary to distinguish between Government and Parliament, because they are not coterminous. As has been said before, I am sure there may be better ways of appointing governors than the one contained in the draft charter and agreement. I certainly think that the approach envisaged for press regulation in the post-Leveson world, even though it has not yet been fully implemented, is probably a better model for the long run. However, the rules and processes that apply to appointment—particularly the observance of those rules and processes—is the most important part of it all. Although you can criticise the arrangements in the draft charter and agreement, whatever is finally done, the important thing is that the process is kept under review and honoured in the spirit as well as the letter, and that Nolan principles are properly and unequivocally applied. On top of this, I would make a specific request that the new arrangements include something new: that each governor, rather like a European Commissioner, should be required to take a specific oath “not to take instructions” before assuming office.

Perhaps the trickiest aspects of ensuring independence lie in the area of regulation and accountability/answerability. Of those two, regulation is possibly the easier. Ofcom as a separate regulator is the correct body to do this, subject of course to proper guarantees of its own independence and processes. Ofcom, the courts and, if relevant, the competition authorities should be the interface for confrontational complaints and regulation, be the complainant the Government, Parliament or a member of the public.

On accountability and answerability, I define the former as supplying information requested by law and the latter as answering legitimate questions from government and Parliament. It is of course axiomatic that they must not include matters that relate to journalistic independence and associated judgments. Within the parameters which are set out, this is fine so long as any subsequent pressures for change are not channelled direct but via Ofcom. It might follow from this that Select Committee reports of both Houses would have to be addressed as much to the regulator as to the Government.

One of the principal changes proposed by the new arrangements is that the National Audit Office becomes the corporation’s auditor. I must admit that I have reservations about that, and for exactly the same reasons as Sir Christopher Bland gave in his evidence to the

[LORD INGLEWOOD]

Communications Committee of this House in 2011, which I then chaired, and which are repeated in its final report, *The Governance and Regulation of the BBC*. He said that,

“the House of Commons is deeply attracted to getting its hands on the BBC and I think there are dangers in using the NAO in an inappropriate way”.

From my own perspective, it would be better for the BBC to have its own auditor, because auditors are by definition independent and the House of Commons should be able to instruct the NAO to look into aspects of the BBC’s financial activities, very much as now. With a system of independent regulation, the consequences of the House of Commons/NAO’s criticisms would be capable of much better and more transparent resolution than at present. This is the right way to approach the question of inappropriate use of public money.

As we all know, the BBC is a child of the law, and as a public body it is also a child of Parliament and Government. It therefore follows, not least in a set of arrangements which contain sunset clauses, that from time to time, refreshment and/or changes are necessary. Traditionally, as has been said on a number of occasions, this has been done by the straightforward use of the royal prerogative via the mechanism of the royal charter, the argument being that it ensures that this aspect of the media is above political and parliamentary pressure. History suggests that this is not the case, not least because it is always possible to amend a charter by Act of Parliament if you want to.

Traditionally, it has been felt that establishing the BBC by charter and agreement is an important democratic safeguard, yet the more you look at it, the more it becomes all words and no substance. However, if it is wished that it continues to be established in this mode, the precedent of the relatively recent and—as I, or as the noble Lord, Lord Lester, said—not fully introduced processes for press regulation offer the possibility of Parliament overseeing the Government’s potentially damaging exercise of the royal prerogative. It is desirable that there are proper safeguards over the Government’s use of the royal prerogative. This subject is of direct relevance not only to the BBC.

I recognise that I and many others have made points to the Minister that he cannot be expected to answer instantly. I therefore request that he undertake to respond to all the points in writing, with a copy placed in the Library and posted on the web, cross-referred to this debate.

As I said in opening, I have focused my remarks on independence, because that, above everything else, must be the core attribute of the BBC. It is not a state broadcaster and must never be allowed to become one.

9.24 pm

Baroness Liddell of Coatdyke (Lab): My Lords, I too declare that I am a former employee of the BBC—but in the face of so many senior luminaries of the BBC, I should point out that I was a humble Scottish economics correspondent. My son works for BBC Children in Need, so I suppose his boss is Pudsey.

I shall take up the point that the noble Lord, Lord Inglewood, made about the National Audit Office, because I am concerned about the implications of NAO audits of the BBC. The role of the NAO will be to look at the BBC’s commercial subsidiaries. The BBC is a global commercial enterprise. How can such a huge organisation, operating globally, function within the confines of a public service auditor?

My noble friend Lord Pendry talked about value for money and the “Wanted Down Under” programme. I have an even more serious addiction than the noble Baroness, Lady Kidron, who is addicted to BBC Radio 4. I am addicted to Radio 4 but I am also addicted to the World Service, particularly during the night. The value-for-money issues surrounding such intense public sector broadcasting are very difficult to quantify. Indeed, much though I am a huge fan of “House of Cards”, written by the noble Lord, Lord Dobbs, the BBC has already revealed that the cost of two series of “House of Cards” for Netflix, viewed by 6% of the UK adult population, would allow the BBC to deliver 14 drama series, viewed by 71% of UK adults. I would love to see how the National Audit Offices manages to deal with that.

A number of references have been made this evening to training. The BBC’s training function has historically been the gold standard of broadcasting training, and it is regrettable that there has been a reduction in training expenditure. Not only does it create a much better environment for our creative industries by raising the skill levels of the people in those industries but—here I am speaking particularly about news broadcasting—it allows us to reach out to countries that do not have the benefit of a free media. That is an area that I would like the Minister to expand upon, if not this evening then perhaps in a letter, saying what guarantees can be given in relation to the whole provision of training.

I mentioned the BBC World Service but I have also worked for the Foreign and Commonwealth Office. Although my career is not as distinguished as that of the noble Lord, Lord Williams, there is absolutely no doubt in my mind that one of the best aspects of public diplomacy that we have is the BBC World Service. It comes into its own in crisis situations, and it seems absurd that the Foreign Office is now absolved of responsibility for that function. It is absolutely critical that we do not consider cutting the funding of the World Service and that it should be expanded. Like the noble Lord, Lord Williams, part of my training took place at Bush House. Sadly, Bush House is no more but the World Service was an inspirational environment. I remember as a young woman being hugely affected by the comments of Terry Waite and John McCarthy. When they were eventually released following their kidnapping, they said how significant they found it being able to listen to the BBC World Service.

Similar things can be said about BBC Monitoring. In an environment in which we are concerned about international radicalisation, it plays a key part in our ability to understand what is happening in those parts of the world to which we do not have ready and direct access. Therefore, I urge the Government to

look more seriously at expanding, rather than reducing, the monitoring service. This matter was mentioned earlier this evening.

Obviously, as a Scot, I am concerned about BBC Scotland. It has already made a number of announcements about how it will meet the new commitment to recognising national identity. However, I want to say a little bit about Gaelic broadcasting. Gaelic is one of the most significant minority languages in the United Kingdom that is still used. I am not a Gaelic speaker and I do not come from a Gaeltacht, the Gaelic-speaking parts of Scotland—although I am allowed to call myself a Gaelic granny because I have a four year-old granddaughter in Gaelic-medium education, which is enormously successful.

BBC Gaelic radio has been mentioned in the charter since the 1920s but, for the first time, BBC Alba is referred to in the charter. BBC Alba is very successful; 15% of the Scottish population watch it. There has been a huge interest in Gaelic among young people, and the channel provides fantastic opportunities to develop independent production—over 100 people in the highlands and islands of Scotland work in the independent production industry thanks to the opportunities provided by BBC Alba. However, 74% of its output is repeats. Wonderful though it is to see Rhoda MacDonald—one of the most distinguished Gaelic broadcasters, and who used to be one of my special advisers—on BBC Alba, seeing her 20 years ago every week is a bit disconcerting. As most of the programmes we see on BBC Alba are repeats, that makes the channel unsustainable. It is about funding. It is necessary that the BBC, at a UK-wide level, addresses the issue of how to fund the advancement of minority languages.

Lord Birt: I wonder whether the noble Baroness would like to say how the BBC can do that given the circumstances that I outlined earlier, in which it has effectively lost 25% of its core funding over 10 years.

Baroness Liddell of Coatdyke: I recognise that. Indeed, one of my criticisms is the reduction in funding, and we have had a number of references tonight to the change in the licence fee for the over-75s. There are areas where I would criticise the BBC. Some of those criticisms are of the bureaucratic structures around the BBC and non-programme making, which are necessary but sometimes have spiralled quite considerably out of control.

If you want to have diversity, you must recognise that there are many areas of diversity. Part of that includes minority languages. The Irish got it right to a T. They built their modern economy by recognising the value of Gaelic education in encouraging the development of modern languages. As a consequence, if you look at the number of back-office functions in Dublin for major multinational corporations, you will see that a lot of those are there due to that early investment in the Gaelic language and, through that, in modern languages. I do not, therefore, dispute what the noble Lord says about the impact of cuts; they are very considerable indeed.

My time is up. As somebody who was a BBC news trainee, I know that the worst crime is to go into the pips. However, one of the most important things for

us to recognise is that there is a lot of bitching about the BBC. It is that same kind of negativity that has got us into problems with Brexit and so on. The BBC is probably one of the best standard bearers of British values and democratic values that this country can provide.

9.33 pm

Lord Storey (LD): My Lords, I want to preface my remarks by reminding the House that the BBC and the renewal of its charter as contained in this draft was not a foregone conclusion. The BBC as we know it was in real danger of emasculation. The constant, almost daily, drip of negative stories about the BBC in some media outlets, and the so-called informed leaks and misinformation, were a concern for many. Against this backdrop, it was good to hear the voices of reason and sanity reminding us what a revered organisation the BBC is, both nationally and worldwide.

I sat in on a number of debates in which noble Lords across all Benches spoke with objectivity and passion about how important the BBC is to us. I particularly remember the inside knowledge shown by our own Lord Speaker, who regularly rose from the Conservative Benches to defend the BBC. The work of the House of Lords Communication Committee was also invaluable, and, of course, the public response meant that no Government could turn their back on what was being said.

So now we have a draft charter and I congratulate the Government and the BBC on it. The charter and the licence fee are guaranteed for the next 11 years. The Government have listened to the concerns about the make-up of the unitary board, and yes, the BBC is a public service broadcaster, not a state broadcaster. I share the concern of the noble Lord, Lord Birt, about the size of the board and how crucial the appointment of those members to it is.

A number of issues still need consideration. We have heard a lot about distinctiveness. The BBC is distinctive and will continue to produce distinctive programmes. It surely does not mean that every programme has to pass a test or hallmark—excuse the pun—of distinctiveness. It does mean that the BBC should be at the vanguard of producing distinctive and original programmes, and, dare I say it, popular programmes.

The other concern is over talent pay. This is mean and measly. If it is about public money—it uses public money so it should be declared—that argument should be true wherever public money goes. So why are we not publishing the amount that chief executives of academies earn, or highly paid principals of academies? This is a ridiculous proposal that will have the effect of poaching talent and increasing costs. Thinking about it, if a particular star is working for an independent that is producing a programme for the BBC, their salary does not have to be revealed. It makes a nonsense of what is being proposed.

Lord Maxton (Lab): I accept up to a point what the noble Lord says, but the fact is Mr John Humphrys is not poachable by anybody. He knows exactly what salary is being paid to whichever politician he is interviewing at any point in time, but that politician does not know what his salary is and they ought to.

Lord Storey: So do I, as a former head teacher, know the salary of the chief executive of a particular academy chain? No, I do not, if that is the argument.

I turn to radio. There has been much debate over the course of the charter review process about the extent to which BBC services are distinctive compared with those offered by the commercial sector. UK Music has run the campaign #letitbeeb in support of the BBC's existing music services. It has argued and shown that 75% of all music tracks played across the BBC radio stations did not appear on commercial services. While it welcomes that Ofcom is being given powers within the framework agreement to consider the extent to which Radio 1 and Radio 2 promote UK artists, the new powers conferred on Ofcom should not be used as a means to introduce quotas, which might adversely affect the distinctiveness of the BBC's current music output.

Local radio is important to the identity and well-being of local communities. Local commercial radio is increasingly disengaging from the fabric of local communities, as its business model in an increasingly competitive commercial market moves towards local radio station mergers and a national provision with local opt-outs for news, sport and weather. The 39 BBC local radio stations are more important than ever to the identity of the communities they serve. The proposed local news partnership to support local journalism is a welcome initiative.

I support my noble friend Lady Benjamin and her comments about the importance of children's programming. She has long been a campaigner on this issue and I congratulate her on the tremendous work she has done on it. In 2014, the BBC spent £84 million on original children's programmes, with barely £3 million spent by commercially funded public service broadcasters. The proposal of a small amount of contestable funding is welcome, but even if commercial PSBs could be enticed back into commissioning children's programmes, should the licence fee payer subsidise profitable commercial organisations that no longer see a commercial market for children's content? What about engagement with children and parents on the role and significance of advertising free children's services?

The BBC charter debate around children's content has been dominated by industry and production interests. Perhaps we need also to reflect on the views of children and young people themselves. What about the BBC showing faith in young people by giving them an advisory committee of their own? There is an urgent need for all PSBs to cater for children older than 12. Such a need has been reinforced by Channel 4's inability to deliver on its obligations to provide programming of appeal to older children, particularly 10 to 14 year-olds, a fault which Ofcom has noticed but has apparently been unable to address.

The next 11 years will see the broadcasting landscape change beyond recognition. It is important that the BBC charter and Ofcom regulations do not inhibit the BBC in responding and adapting to these new challenges.

9.40 pm

Lord Best (CB): My Lords, I speak as chair of your Lordships' Select Committee on Communications. The committee spent nine months on its inquiry into the

BBC's charter, publishing its report, *Reith not Revolution*, earlier this year. We had decided against investigating new governance and regulatory arrangements for the BBC because others were doing so, so I have nothing to share with your Lordships on those important matters. Instead, we looked at the fundamentals: the purposes of the BBC, its scale and scope, the process for its funding and the period over which the charter should run.

Broadly, although we heard calls for radical changes to the nature and role of the organisation and the way it could raise its income, we concluded that there should be no such dramatic alterations to the BBC's overarching purposes or its scale and scope; that funding by means of a licence fee should be maintained; and that the new charter should last for a full 11 years this time, to provide continuity and freedom from government influence as well as to avoid the hazards of the electoral cycle.

In the event, the Government accepted this case, taking on board some modest tweaks to the current processes, and the significant changes in the draft charter concentrate on governance and regulatory measures. This is clearly a happy outcome from the committee's perspective, and it accords with the evidence that we received and the public's strongly expressed opinion on the subject.

My anxiety when reading the White Paper and before seeing the draft charter was that the new settlement might be effective only for five years, not 11, because it could be up-ended by the planned mid-term review. This exercise, I feared, could be an unwelcome opportunity to reopen Pandora's box and revisit all the issues around purpose, scale and scope which the committee hoped had been put to bed for a good decade. I raised this worry with Ministers on several occasions and requested that the charter make plain that the interim review should be confined to looking at the new regulatory and governance arrangements. It is therefore good to see these limitations on the scope of the interim review explicitly spelled out in the draft charter in just the terms that I know your Lordships' Communications Committee would wish. I thank the Ministers for this section in the draft charter.

However, a nagging doubt remains. It concerns the basis for deciding on the BBC's funding settlement. The licence fee system is, quite rightly in the committee's view, set to continue, with the extension to cover the new ways in which the BBC's output is accessed online. However, our report stressed the unsatisfactory way in which the licence fee was set last time around: a deal done behind locked doors with no public consultation and transparency. Many noble Lords have tonight criticised this clandestine—some have said scandalous—process. Now the draft charter suggests that in 2022 government will decide on the funding settlement—that is, the level and scope of the licence fee—but it is silent on any wider consultation about it.

Because the BBC is, of course, entirely dependent on the level of funding it receives from the public, the Government's unfettered ability to decide on the licence fee is of the greatest significance. If there is the possibility of major changes in five years' time entirely at the discretion of the Secretary of State then the sword of

Damocles referred to by the Minister will still constantly hang over the BBC's management. This power over the purse gives the Government a commanding influence over the BBC, not directly through the charter but outside it.

Our committee saw an important role for the independent regulator, Ofcom, in making a recommendation on the level of the licence fee based on proper evidence. Although the Secretary of State could reject that advice from Ofcom, we stressed that if they did so they should explain their reasons.

We also strongly recommend public engagement in that decision to moderate what could otherwise be a constant threat to the BBC's independence. Your Lordships' committee would certainly be strongly opposed to another behind-the-scenes deal, perhaps accepted by the BBC under duress. Surely the lesson from the major rows last time, including the controversy over the cost of free TV licences for the over-75s, was that a transparent process and public discussion on this issue is essential. Licence fee payers should surely have a voice in what they must pay. Can the Minister give some reassurance that the five-year review of the licence fee, like the 11-year review of the charter itself, will be subject to proper openness, public consultation and—I suggest—consideration by both Houses of Parliament?

9.46 pm

Lord Maxton: My Lords, I started off by looking at whether I should make this speech at all. I read what I said last time, in the debate instituted by my noble friend Lady Bakewell, and thought maybe I should not as I said then most of what I want to say now. However, I will say several things, which I hope will be brief.

First, as a Scot I do not want to see the Scottish Parliament in control of a BBC Scotland. I do not want the Scottish Parliament to have regulation of the broadcasting or internet services in Scotland. Lastly, maybe most mundanely but also most importantly, I do not want a "Scottish Six". In other words, I do not want to see an hour-long Scottish programme at six o'clock. One has only to listen to "Good Morning Scotland" on the radio to know that that is not something any Scot in his right mind would want. By the way, my wife always insists on turning on BBC Radio Scotland on the bedside radio, not because she is interested in listening to the news or even the weather forecast in Scotland but because it puts her back to sleep. I said, "Let's change it to Radio 4", and she said, "But Radio 4—the 'Today' programme—keeps me awake". So I do not want any of that.

I welcome the Minister to his new position and I welcome this debate, but at the end of the day we are not going to vote on the charter, we cannot amend it and we cannot do anything at all but have this debate today. That is it as far as I am aware. Several noble Lords—the noble Lord, Lord Birt, in particular—said that it is time the BBC was put on a statutory basis and that we had the introduction of a Bill to establish the BBC in that way. Then the House of Commons and the Houses of Lords, in which there are many experts as we have seen tonight, would be able to look

at that, examine it in detail and amend it and then we could go into that process. It may be too late for that now, but I hope that in the very near future the Government will consider it and put it in process.

I have three reasons for this. First, I must say to my noble friend Lord Cashman—

Lord Lester of Herne Hill: I just want to clear up a misunderstanding. The proposal is not for detailed legislative intervention in the BBC but simply for some standards and principles that the charter and agreement must meet. There is no suggestion of interference by statute in the BBC. It is setting down standards and criteria.

Lord Maxton: Well, the BBC is going to continue its life for the next 11 years, apparently, on the basis of the charter that we are debating tonight. There is no statute that we can seek to amend at this point in time.

I have to say to my noble friend Lord Cashman that there are people who are accountable to the licence fee payers. They are elected by the licence fee payers. They work along the Corridor from us. They are called Members of Parliament. They are elected by the licence fee payers and the BBC should be accountable to them. Therefore, that should be part and parcel of the work they undertake. Of course, that is not the only job they do; they do a lot of other work as well. I was one of them and I know they do a lot of other work. But the fact is that the BBC is a public body. It ought to be accountable to those who are elected to represent the people of this country.

Secondly, the noble Lord, Lord Sherbourne, is absolutely right. The noble Lord, Lord Birt, has to be congratulated on the work he did as director-general in moving the BBC into the new media, but 11 years is a long, long time in the modern world. If you look back 11 years to 2005, just after I came to this House, you will see how much the media have changed during that period. If you look forward 11 years, it will change even more and even faster. I can watch any programme I want from anywhere in the world on this screen I am holding, but also by putting it on to my television screen through a variety of devices, which will get cheaper and easier to use as time goes on. We have to take account of that. Having an 11-year charter is a nonsense when we could have the BBC established as a statutory body, accountable to the public and to those who are elected by the public, and then change it as we go along. At the moment it is almost immutable and 11 years is too long. We have to consider whether or not the changes that are taking place in our society are those that are going to be necessary and are going to happen anyway.

Lastly, person after person has used the term "broadcasting". We are moving, if we have not moved already, into an age in which broadcasting is the wrong word. It is now narrowcasting. We listen to what we want to listen to, we watch what we want to watch, when we want to watch it, on what device we want to watch it on, and how we want to watch it. That is the future, and we have to take that into account when we look at the future of the BBC.

9.53 pm

Lord Maclennan of Rogart (LD): My Lords, I thank the Minister for opening this debate in a way that enabled Members of this House to speak their minds, rather than putting his foot down and saying that this was the final decision.

The BBC is facing a reduction in its financing and that has to be taken into consideration. It has dropped by 25% and I seriously recommend that the Government contemplate how to deal with that. None the less, the BBC's services reach 97% of the UK population every week. The average is eight and a half hours of TV and 10 hours of BBC radio. My son-in-law works as a director for the BBC World Service, and I am proud to note that that service reaches a global audience of 246 million weekly.

The music of the BBC is wonderful and Radio 3 is particularly responsible for that. The head of public affairs at the BBC has suggested that the focus should be on the best of new British talent. I suggest that the organisation Awards for Young Musicians should be incorporated into Radio 3 and that the Government ought to approach Hester Cockcroft, who is in charge of that organisation, about this.

BBC News is considered to be the most accurate of the broadcasters, with 58% of the British public seeing the news in that way. That is highly commendable and I hope that it will remain the same.

On the issue of children, again, the head of public affairs at the BBC has said that the BBC will make the full range of BBC content for children available through a single online platform. That is subject to discussion but it would be interesting if that debate could be held.

I noticed that my colleague the noble Lord, Lord Maxton, said that he does not want consultation with the Scottish Parliament, but consultation with devolved Governments would be wise—not necessarily to accept what they say, but as the voice of the people around the United Kingdom.

Lord Maxton: If the noble Lord will allow me, I did not say that there should be no consultation with the Scottish Parliament but I do not want the Scottish Parliament to have control over the broadcasting services.

Lord Maclennan of Rogart: I entirely agree with that. I heard the noble Baroness, Lady Liddell of Coatdyke, pointing out that Scotland could have stronger broadcasting. She talked about the Gaelic language and how it was being noted and strengthened. That is very worth while.

I am concerned about two elements of this charter. One is that Ofcom could involve itself in editorial and creative judgments, which is a great mistake. Because it is to become the governors, I hope that will not happen.

The National Audit Office is also to audit the accounts. That should not allow it or the Public Accounts Committee to be involved in editorial or creative judgments. That must be emphasised and set out in the charter. The BBC is such a wonderful institution that it must speak for the people and to the people. I hope that it will continue to excel and to be the best broadcaster in the world.

10 pm

Lord Grade of Yarmouth (Con): My Lords, I first refer to my media and other interests set out in the register.

What is planned for the BBC in the draft charter represents the greatest vote of confidence this much-loved institution has had in living memory—and I go back to Muffin the Mule. The BBC now has long-term charter certainty, secure and adequate funding in an age when the economy is very challenging indeed, a reaffirmation of the licence fee and, most important of all, a constitution that further enshrines and guarantees its independence, the cornerstone of its public support.

However, to this trained eye the proposals before this House require some comment, in no particular order of importance. First, I can find nothing but unintended and expensive consequences resulting from the new requirement to disclose talent salaries. The Government's intention is not, I am sure, to feed the prurience of the press. Their stated intention is to make the BBC's spending on talent more transparent. It will be transparent, certainly, but ultimately it will be inflationary. I used to be an agent for talent many years ago, and later I had many years as a buyer of talent for different broadcasters. I can confidently predict intense pressure from talent agents as they scour the published fees of talent they do not represent and compare them against the deals they have negotiated for their clients. They will then have to explain to their clients why, let us say, John Humphrys is earning more than they are. "Why is he worth more than my client?", they will ask. This pressure will be as certain as it will be inflationary. What this disclosure requirement in reality says is that we must increase transparency in the interests of value for money by prescribing exactly the conditions to promote inflation. The other unwanted side-effect is that some top talent will choose not to work for the BBC under this proposed disclosure condition, not because they have anything to hide but because, understandably, they do not want their private, commercial arrangements subject to the judgments of tabloid leader-writers. To take an extreme example, does Alan Bennett really want a *Sun* readers' poll to decide if he is worth his fees? I would describe this proposal as Ongar which, as your Lordships know, is a small Essex town beyond Barking. I urge the Government to drop this idea now. Please believe me: it will only cost the BBC dearly.

Secondly, many noble Lords have alluded to training, a seriously important point which is recognised in the draft charter. The noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Liddell, put particular emphasis on it. The Government are laying responsibility for expenditure and commitment to BBC training on Ofcom. They should require Ofcom to consult Skillset, other agencies and broadcasters, including the BBC, and then to publish precisely what it expects of the BBC in respect of training investment.

Thirdly, there is the vexed question of the NAO and its new and broader oversight of the BBC's operations. I have reluctantly come to the conclusion that it must be right that the NAO has meaningful oversight of BBC efficiency and of the spending of public money—does anyone remember the £120 million of public

money that got written off the disastrous digital project? However, it is equally right that there is a clear editorial line that the NAO must never be allowed to cross. This is acknowledged in the Government's proposals, but in a dispute between the NAO and the BBC about where that line is drawn, it is the NAO itself which is judge and jury. This is far from satisfactory. Either we need an independent arbitrator—perhaps Ofcom—or, better still, the BBC's news operations should be ring-fenced and ultra vires for the NAO. This would remove all suspicion and would also ensure that some future Comptroller and Auditor-General does not stumble across the line. It is very important that the BBC's relationship with the NAO be maintained on a firm footing. We cannot have any kind of ambiguity about who is deciding what about where that editorial line should be drawn.

I keep hearing the word statutory in relation to the BBC. I do not think it is an accident that the BBC has always existed under a royal charter and that it remains independent to this day. Naturally, your Lordships are always concerned, as indeed I am, to ensure that the BBC's independence is maintained. There is a direct connection between its royal charter status and the fact that there are no votes in either House on the BBC and no statutory way in for the politicians to have their way with it, if they were so tempted. I urge your Lordships to be very careful in proposing statutory underpinnings for the BBC. The BBC has been invaded many times, but has never been conquered—it is a bit like China. I remember being out on the streets the last time the board of governors decided to stop the transmission of a programme. In the end, it is the British public and the staff of the BBC who are the great defence of the BBC's independence.

We have a new settlement for the BBC, and at the end of the debates in Parliament, the BBC will have a secure future. I have always believed that the long-term future of the BBC depends not on political favour but on the overwhelming support of the British people. It must continue to earn that support through its skill at turning the public's money into programmes on radio and television, and online, that they did not know they would enjoy. I have to say I am glad I no longer commission programmes. The worst idea I have ever heard for a television programme in my life is people going into a tent and being judged on how good their cupcakes are. I would have absolutely turned that down; I am glad I am not commissioning programmes any more. But God bless the BBC for having a go with it—well done.

The BBC must, above all, use its guaranteed income to take risks and to innovate. Yes, it needs to prove it can be popular from time to time, but not all the time. There has been much agonising about defining distinctiveness here this evening: it is a misconception that distinctiveness and popularity are mutually exclusive. There is a line going back from “Bake Off” to “Morecambe and Wise”, “The Two Ronnies” and “Porridge”, and many hundreds of wonderful shows in between. They were hugely popular and set the nation talking, but nobody ever said they were not distinctive. Popularity and distinctiveness are not mutually exclusive. I have a word of warning to Ofcom as it struggles with this issue: quotas and prescription are

the enemies of innovation and distinctiveness. The BBC must be editorially free to experiment and to take the risks and meet the challenges that free-to-air private sector broadcasters cannot afford to. It must always be a nursery for British talent, onscreen and offscreen. It now has the resources to do that, and a secure future—we wish it well.

10.09 pm

Viscount Colville of Culross (CB): My Lords, I am grateful for being allowed to speak in the gap. I declare an interest as a freelance television producer who used to work for the BBC.

I, too, want to raise my concerns about the talent drain at the BBC. I fear that this charter will damage the quality of many BBC programmes beyond repair. For me, the most worrying part of the charter is hidden away in Section 3 of Schedule 7 to the agreement, entitled “Television, Radio and Online Production”. It calls for 100% of BBC programmes outside news to be put up for competitive tender by the time of the next charter, a great percentage of them much earlier.

My noble friend Lord Hall made an agreement last year with PACT, the independent producers' association, which would open up 40% of the in-house production quota to competitive tender. I imagine he naively hoped that the move would assuage the former Culture Secretary's demand for competition to sweep through the BBC, but the Culture Secretary simply responded by kicking down the door and introducing 100% competition. This strikes at the very core of the BBC, the in-house production base. These are the people who make many of the great history, science, arts and current affairs programmes for which the BBC is so justly famous. For two decades, until this summer, I have been proud to have been involved in making these programmes.

The in-house programme makers are specialists who can turn a seemingly impossibly complicated science PhD paper into television or make a three-part series on dark matter, a substance we are not even sure exists. Until now, the volume of programmes being commissioned for in-house production has allowed a mass of talent to remain within the BBC. However, all these programmes are being put out to competitive tender. The first to be announced are “Horizon” and “Songs of Praise”.

The BBC is burdened with being the gold standard of the industry. Supporting a wide range of regional offices, it will inevitably have higher overheads than those of independents. In-house production costs have been dramatically reduced in the last seven years since the licence fee was frozen, but that will not be enough to compete with lean, mean independents. I speak as a freelance producer working for an independent company, so I know what I am talking about.

The BBC will lose these tenders and independents will take up the slack. That means that the whole industry will become casualised, and in the cut-throat world of independent television there is no place for very specialist producers who just concentrate on one genre. There is much more work and many more opportunities for generalists. As a result, the great stock of BBC programme-making talent that has been built up and passed on down the generations of BBC

[VISCOUNT COLVILLE OF CULROSS]
 producers is now coming to an end. Many of my former colleagues are leaving voluntarily. This week, huge redundancies are going to be announced for BBC producers across all genres. My noble friend Lord Hall says that these people are the core of the BBC, and I agree. We are about to lose a great treasure of knowledge and talent, and once it is gone we are never going to be able to rebuild it.

10.12 pm

Lord Foster of Bath (LD): My Lords, it has been a privilege to listen to the expert contributions to today's debate. There is clearly wide support for the BBC and for the need to judge the draft charter and agreement in terms of whether or not they ensure a BBC that is independent, impartial, financially secure and popular. After all, that is what the vast majority of the 190,000 respondents to the Government's survey said they wanted—not a BBC that had been cut down to size nor one that merely filled in the gaps left by the other broadcasters, but a BBC able to fulfil Lord Reith's vision of an independent British broadcaster able to educate, inform and entertain, as well as a BBC that was well governed and appropriately but proportionately regulated.

Like other noble Lords, I warmly welcome the many positive changes that have been made since the White Paper and I congratulate all those, not least those in government and in the BBC, who have made them possible. However, strong cases have been made for further changes, not least to statutory underpinning, as proposed by my noble friend Lord Lester. I congratulate the Minister on his new post and I thank him for the meeting that some of my noble friends and I had with him recently, but I hope he is still in listening mode. We are, after all, discussing a draft set of documents, so I hope he will confirm that proposed changes, including those that have been raised in this debate, are not ruled out. I was somewhat concerned to hear him implying that only a few minor technical details remain to be sorted out. Frankly, there is little point in a debate in your Lordships' House if from the outset it is to be ignored.

Given the shortage of time, I hope that your Lordships will understand that, rather than dwelling on the many positive aspects of the draft charter, I shall concentrate on those areas where we believe that further change is needed. For example, as my noble friend Lady Bonham-Carter said, there have been huge strides in the composition of and appointment to the new BBC unitary board, but we would still prefer to see all the non-executives independently appointed. Does the Minister not agree that it is somewhat hard to claim independence from government when the powerful chair of the BBC board and the chair of the equally powerful BBC regulator, Ofcom, will both be appointed by the Government?

Of course we welcome the assurance that there will be a more transparent process in setting the licence fee, but as many noble Lords, such as the noble Lord, Lord Best, said, far more is needed. Surely the Minister would agree that there needs at least to be public consultation on new licence fee proposals followed by debates in both Houses before decisions are made.

As many noble Lords said, proposals for the disclosure of presenters' pay are certainly not in the long-term interests of licence fee payers. They are, as the noble Lord, Lord Birt, put it, mischief-making, even ludicrous, as the noble Lord, Lord Patten, put it, and inflationary, as the noble Lord, Lord Grade, called them. We were certainly disappointed to see the threshold drop from £450,000 to £150,000, and even more concerned to hear from the Minister that applying that disclosure level to other BBC personnel has not been ruled out. I hope that the Minister can update us on that point.

My noble friend Lady Benjamin raised the issue of the long-term future of the contestable fund. If the three-year pilot is successful and the fund continues, we hope that the Minister can at least assure us that the licence fee will not be top-sliced to pay for it.

On top-slicing, we, like so many others in your Lordships' House, believe that it is entirely wrong to be transferring to the BBC responsibility for both policy and funding of free TV licences for the over-75s—a more than 25% cut in licence fee funding, putting much loved programmes and services at risk and placing the BBC in the very difficult position of having to become a social policymaker. Social policy should be made by government and funded by government through taxation and hence democratically accountable. Surely the Minister must accept that the BBC is not an arm of government and that this move undermines the independence of the BBC.

We are of course in greater agreement with the Government's plans for the expanded role of the NAO, but with some caveats and requests for clarification. The BBC has argued that its commercial arms, which do not use licence fee revenue, should be judged like any other business on financial performance, not on value-for-money practices, which are intended for public bodies. I would certainly welcome the Minister's comment on that.

I am very puzzled about the relationship between the NAO's value-for-money examinations and editorial and creative judgments. On the one hand, paragraph 55(7) of the agreement is clear that editorial and creative judgments should not be part of such examinations. Indeed, the Comptroller and Auditor-General is not entitled to question the merits of such judgments. On the other hand, paragraph 55(8) allows for the Comptroller and Auditor-General to determine what editorial and creative exemption means in practice. It states:

“Where an issue about the meaning of editorial or creative judgement arises it shall be for the Comptroller and Auditor General to determine the meaning having consulted the BBC”.

Surely it does not make sense that the Comptroller and Auditor-General cannot deal with editorial and creative judgment but he alone can decide what is and what is not such a judgment. I hope that the Minister will agree at least to review that situation.

I shall make one final point about the NAO. The agreement is clear that the Comptroller and Auditor-General and the BBC are required to agree a memorandum of understanding on VFM examinations, yet nothing is said about what happens if the two cannot agree. Perhaps the Minister can tell us.

I turn finally to the expanded role of Ofcom as regulator, especially in respect of distinctiveness and competition. Of course the BBC should be distinctive.

It already is, as many noble Lords have illustrated. But if demands for ever more distinctiveness are pressed too far, the BBC will move to become merely the provider of those things not done by other broadcasters—the market failure model so beloved by John Whittingdale. That would let other public service broadcasters off the hook, with the BBC being required to pick up the slack in less profitable genres which commercial PSBs drop, as we saw happen when Ofcom lowered commercial broadcaster requirements in 2003. Does the Minister agree that Ofcom has to be diligent in ensuring that all PSBs pull their weight?

Our other concern is that BBC long-term planning and the security of its partnership deals could be put at risk by having to deal with an onslaught of competition inquiries—death by a thousand reviews, as my noble friend Lord Clement-Jones has termed it. On Monday, Ofcom told a number of us that inquiries could be carried out in many different circumstances, from BBC proposals for major changes to no changes at the BBC but a change to the broadcasting ecology in which it operates. Of course, there will also be inquiries caused by complaints from rivals and others. I was heartened to hear Ofcom say that it will not be cavalier about initiating investigations and believes that a strong board will head off the likelihood of many being needed. But there is understandable uncertainty. Ofcom has still to consult on how it will carry out its new role. There is not even yet any definition of,

“adverse impacts on fair and effective competition”,

which forms the basis of any of its inquiries.

We have no idea how distinctiveness will eventually be interpreted and assessed. I share the view of many that, while the NAO cannot interfere in the BBC's editorial and creative judgments, there is no explicit prohibition, as there should be, on Ofcom. My noble friend Lord Clement-Jones has set out our concerns that Ofcom's powers to conduct competition reviews appear too open-ended and that the complaints system could give competitors a green light to flood Ofcom with complaints about competitive impact.

Given the understandable uncertainty, and for the avoidance of doubt, can the Minister confirm that no inquiry will be conducted unless there is a strong evidence base to justify it? Does he agree that Ofcom should investigate cases only where the changes in market conditions have taken place after Ofcom assumes full responsibility in 2017? Will the Government insist that, before Ofcom recommends any changes to BBC services following an inquiry, it must demonstrate that the competitive harm identified cannot be tackled except by changes within the BBC? For example, should not changes to BBC services be the last resort in cases where the market has changed around the BBC?

I look forward to the noble Lord's answers and if he cannot give them all now, as has already been proposed, will we receive a letter covering all the points in the debate? The BBC is the best and most trusted broadcaster in the world. I hope that the points made in this debate will help to ensure that it remains so.

10.23 pm

Lord Stevenson of Balmacara (Lab): My Lords, I thank the Minister for honouring his commitment, I think made on his first outing at the Dispatch Box—he is a brave man—to secure an opportunity for us to debate the draft royal charter and agreement on the BBC. It is a debate, which as he said, signals at least the beginning of the end of the process, which commenced immediately after the last election. I am also very grateful to him for putting on record his, and by implication the Government's, support for the BBC. We have waited a long time to hear a Minister endorse the corporation in such terms as the world's finest broadcaster. It is. As others have said, it is the envy of the world and we should cherish it.

This has been an excellent debate with a very distinguished cast list. It builds on the tradition established in your Lordships' House of a cross-party consensus about the BBC, and a steely determination to ensure that the BBC continues to inform, educate and entertain; and to survive and thrive in the long term.

Many of those who have spoken have raised issues about matters that have caught their eye in the papers before us. I will not deal with all of them, and if time presses when the Minister comes to respond, I should be grateful if he could undertake to write to all those who have participated on issues relating to, for example, the World Service, training and skills, diversity, children's programming, the impact of competitive outsourcing, regional production, Caversham, support of new technological areas, minority language programmes and local radio. It cannot be said that we have not given him a hard time—we have, but he is up to it, and I am sure that he will respond in the fullest possible way.

Given that whatever is signed and sealed by the Privy Council this autumn will be the charter, which will take the BBC into its second century, the key question that we need to have answered this evening is whether these draft charter and agreement papers strengthen or weaken the BBC over the next 11 years. We also need to examine what lessons can be learned for the future. We on this side have five main concerns in relation to the Government's proposals, covering independence, distinctiveness, transparency, regulation and process, all of which have been picked up already, and I shall not therefore go into them in great detail.

On independence, like many noble Lords, we are concerned that the Secretary of State will still retain a significant role in the appointment of the chair of the new BBC board as well as the four members representing the nations. Indeed, as we picked up on today, she has the casting vote, or at least the veto, on the English member, so she has a double whammy. Although the charter says that the appointment of the chair can be made only following a “fair and open competition” and after a reappointment hearing by the Select Committee, there are shortcomings in the existing public appointments process. We believe that there are still grounds for concern in the light of the Government's response to the Grimstone review of public appointments—for example, in the wide scope given to Ministers to intervene before and during any appointment process. It is vital that an appointment as important as the new

[LORD STEVENSON OF BALMACARA]

BBC chair is carried out to the highest standards so that the country can be confident that the successful candidate was selected purely on merit and not as a result of personal and political connections with the Government of the day.

On distinctiveness, I was a little amused, I think, to discover that the Minister took six minutes to mention the dreaded D-word. I do not know whether that was psychological or deliberate, but it was certainly interesting. We have discussed it at length, and everybody who has spoken has been concerned about it. We argued against the inclusion of such a term in the White Paper proposals when we had that chance but, like others, we broadly accept the current approach to distinctiveness as a way in which to analyse some of the issues arising from the new regulatory structure. However, like others, we wish to make sure that it is restricted to services and not to individual items of content. That was mentioned by the Minister and picked up on particularly by my noble friend Lord Alli, who raised the question of whether it might impact on scheduling. This is a really important issue and we need to have answers before the draft agreement and charter are sealed. We are concerned about this innocuous term—perhaps we should not be. The problem is that it could help the BBC not to rest on its laurels, as others have said, so that it constantly tries to inform, educate and entertain in new ways, but that has been turned into a veiled threat that it should not be popular. It will be a disaster if the rules concerning distinctiveness in the new charter and agreement have the effect of fostering a defensive mentality within the BBC that is not conducive to innovation and creativity.

As the Minister said, on transparency the BBC is a huge operation. It has an impact on many aspects of our lives, not just through its public purposes and commercial activities. It supports our creative industries; it carries out training, although we hear that that is already under pressure, and maybe needs further support from Ofcom; and it supports diversity and regional engagement. It is our biggest funder of the arts and culture in the country and, if noble Lords will forgive the metaphor, if it catches a cold, the whole creative economy gets flu.

It is, as the Minister said, important that its funding arrangements are put on a transparent basis, and the White Paper recognised that the last two licence fee settlements were carried out behind closed doors and without effective parliamentary scrutiny—or, indeed, any scrutiny. However, the draft charter and agreement failed to include any specific provisions as to how best to ensure a more transparent process. The Government have rejected the sensible proposal that the level of the licence fee should be set by an independent body akin to the Low Pay Commission, yet there is a wide consensus that having a clear, fair process for setting the level of the licence fee is in the public interest. We welcome the provision in the draft charter that the BBC's next funding settlement in 2022 will be for at least a five-year period, and the Government must consult the BBC and take account of the level of funding needed to deliver its mission and public purposes. But that is not enough. The draft charter already requires the Government to put terms of reference for

a future charter review before Parliament—both Houses—and consult the public and hold debates in each House. Why should this level of democratic accountability not also be applied to the setting of the level of the licence fee? Like other noble Lords, we think that the requirement for disclosure of salaries above a low threshold is neither necessary nor sensible and should be withdrawn.

On regulation, the BBC will in fact face two regulators: the NAO and Ofcom. We agree broadly with this approach but, as always, the devil is in the detail. It is, in this case, somewhat undercooked in some areas of the draft agreement that we have before us. The points made about the NAO have been well made by others and I will not go over them. It is, I am sure, unacceptable—as the noble Lord, Lord Grade, said—to have the NAO, or the Comptroller and Auditor-General, to be judge and jury in the same case. This needs to be sorted, and sorted quickly. There is a parallel, which has been mentioned, with the Bank of England, whose independence is secured by a set of arrangements which might well be copied across for the BBC.

Schedule 2 of the agreement requires Ofcom to set regulatory conditions to secure BBC output and services, and it gives specific, detailed guidance about what it must consider for the BBC's TV, radio and online services. But as others, including the noble Lord, Lord Clement-Jones, have said, these clauses follow an old-fashioned approach to content regulation that would introduce a prescriptive and inflexible regulatory framework, which is surely not what is required to achieve the BBC's editorial independence and creativity. Imposing quotas should be a response to evidence of failure to deliver the obligations of the charter, not the starting point. This needs to be redrafted. I suggest to the Minister that the principal aim should be to ensure that Ofcom, as an independent regulator, has the freedom to determine how best to regulate the BBC to secure agreed policy goals.

On the mid-term review, the Government have been at pains to stress—I am sure that they are sincere about this—that this should be a light-touch exercise, not involving the mission, public purposes or funding. It would, however, be helpful if the Minister could stress again, beyond peradventure, that this review is a diagnostic aid, not a pass/fail test.

Finally, on process, the Government pay lip service to the idea of a people's BBC; Ministers often repeat the mantra that the corporation remains accountable to the licence fee payers. However, neither the charter nor the agreement set out any mechanism for this accountability to be delivered in practice. Previous charters specified that the BBC Trust, or previously the BBC's governors, had accountability to the licence fee payer as one of its responsibilities. Why has this been dropped? The public consultation research by the Save Our BBC organisation unequivocally concluded that licence fee payers fully expect the BBC to continue to be accountable to them as major stakeholders. In this day and age, and as technical and communications methods develop apace, the ways in which this can be achieved increase and improve rapidly. I wonder whether our Communications Committee might like to look at this issue in the near future, perhaps also combining it

with some of the other big issues that have been raised today. Those include whether the time has finally come to give the charter statutory underpinning, which I would support; the role of Parliament in the charter review process; and the future of the licence fee after 2027, including the possibility of introducing a more progressive funding mechanism.

The BBC is the cornerstone of the creative industries in this country and the creative industries are the powerhouse of our future prosperity. They represent one in 11 jobs, they bring in £76 billion a year, they enhance our reputation overseas, they are intrinsic to our whole added-value economy and they have seen growth year on year well ahead of the rest of the economy. As has been said, Brexit really sharpens the need for us to ensure that these industries are supported. The truth is that the British creative industries cohere as a balanced ecology with the BBC at its heart. No sensible person would take an axe to the tallest tree in the middle of a forest and not expect to do serious harm to the whole of that forest. Why is it so difficult for Ministers to grasp that the existence of a strong and confident BBC does not harm the wider industry? It fosters and creates a competition for quality and we should support that.

The history of broadcasting in this country is rightly praised for what it has achieved: bringing on-stream, over time, both state-funded and commercial services, which compete for audiences but not for funding. As we approach the centenary of the BBC, we should reflect on and be proud of the fact that, for nearly 100 years, people from different traditions and political backgrounds have worked together to ensure that the BBC informs, educates and entertains, that it is independent, and that it survives and thrives into its second centenary. That remarkable feat of political engagement—evidenced again this evening—is in itself surely worth celebrating.

I look forward to the Minister's response. He has been listening hard and I am sure he will acknowledge that we have made some very sensible suggestions. He said that this was the end of the process, but is it really? After he has reflected on this debate, it would be good if he would write to us if any of the points we have made today have struck home and he is minded to move on them, because that would show the power that is available here which he should be using. In any case, it would be nice to know, before the other place has a chance to debate this, that we got in first.

10.35 pm

Lord Ashton of Hyde: My Lords, this has been a very useful and informed debate. I thank all noble Lords who spoke today and who have stayed so late.

The debate today has shown how far we have come, and I am grateful to all those who acknowledged the positive progress we have made over the last few months. However, some issues clearly remain and I hope to address as many of these as I have time for. I will follow the suggestion of many noble Lords in that I will write to all noble Lords who have participated in the debate on the issues that I have not addressed. I missed the penultimate point on the list of the noble Lord, Lord Stevenson, but I will read *Hansard*.

In answer to the noble Baroness, Lady Bonham-Carter, and the noble Lords, Lord Lester, Lord Foster, and others, we will of course continue to listen. I hope to give an example of that later. I will not guarantee that there will be any major fundamental changes—that is slightly beyond my remit—but we are listening. Perhaps I was a bit presumptuous in saying that we had come to the end of the process. It is better to say that we are perhaps at the beginning of the end of the process.

I start with an easy point—distinctiveness. This was always going to be a large part of the debate and has been raised by many noble Lords. Despite the scare stories that the Government would start to interfere in individual programming and scheduling decisions, the charter and agreement give the Government no such role. The documents are very clear that scheduling decisions are for the board.

Many noble Lords asked what we mean by distinctiveness. I agree that this is not straightforward. However, I also agree with those noble Lords who talk about its importance, including the director-general. Page 32 of the Government's White Paper sought to define distinctiveness, which centres around the range of genres, the quality of the BBC's programmes and its risk-taking innovations. This will be consulted on further by Ofcom, which will, of course, have to make the final judgment.

There were concerns that the provisions would give the BBC's competitors a hook on which to challenge individual BBC programmes on the basis that they might not be distinctive. I already set out earlier that the agreement makes it clear that the BBC's services and output, and services taken as a whole, need to be distinctive. While Ofcom may receive such representations from the BBC's competitors, it is clear from the agreement what the Government's intent is here, and they will treat those complaints accordingly. So for the record, let me reiterate: we do not want these provisions to give anyone the right to judge individual programmes, nor do we see the charter as allowing this to happen. We give Ofcom a role to set broad metrics about how to measure distinctiveness, and these include considerations around the BBC's genre mix, including genre mix at different times of day, and target audiences. But again, these are high-level requirements which will allow Ofcom to develop a sensible, evidence-based and dispassionate approach to considering the distinctiveness of the BBC, a measure on which the BBC itself is keen to improve.

The noble Viscount, Lord Colville, spoke in the gap and talked about the director-general, competition and moving to studios by the end of the charter period, making the BBC 100% competitive. The director-general himself has set out that he believes in greater competition as regards programme-making. He believes that BBC Studios, a new commercial production subsidiary, will unleash and invigorate the full creative potential of BBC productions. So in response to the noble Viscount, we do not believe that the BBC itself shares his concerns.

Another controversial point is the over-75s deal mentioned—disparagingly, I must say—by many noble Lords, who raised the issue of last year's budget deal around that concession. I remind noble Lords that, as has been mentioned, the licence fee is classed as a tax,

[LORD ASHTON OF HYDE]

despite my noble friend Lord Inglewood's disapproval of this, and that as such, the elected Government retain ultimate control over it. I can understand that a number of noble Lords might wish that that were different, but it is the system that we have been relying on successfully for decades. I cannot agree with the noble Lord, Lord Lester, that a public and parliamentary consultation is therefore appropriate. That track record remains unbroken, even by last summer's deal. Far from the disastrous consequences that were decried in the media, the BBC Director-General, the noble Lord, Lord Hall, said:

"The government's decision here to put the cost of the over-75s on us has been more than matched by the deal coming back for the BBC".

We made various concessions such as that on the iPlayer loophole, making sure that all those watching BBC content will pay for the BBC in the future.

The noble Lord, Lord Birt, and the noble Baroness, Lady Bonham-Carter, called the agreement that the Government reached with the BBC in 2015 a "raid" on the BBC. However, I point out to noble Lords that the measures in this charter, which ensure that the licence fee-setting process will happen every five years, is a certainty that the BBC has not had in previous charters, and which my noble friend Lord Inglewood should approve of.

A lot of discussion was had, quite rightly, on the effectiveness and the role of Ofcom and whether it has the ability to regulate the BBC. It is a widely respected and experienced regulator and is able, in the words of some noble Lords, to "call a spade a spade". There is no doubt that the regulation of the BBC is a big task for Ofcom to take on. However, the subject matter is not new to Ofcom, and nor will it come as a surprise that it has been preparing for it for many months. It already has a good overview of the BBC's business and the issues it faces. Under the current regulatory arrangement, Ofcom already conducts market impact assessments on the BBC's new services—a sensitive area, where Ofcom has provided valuable services. At the end of the long debate we decided that Ofcom would be best placed to regulate the BBC, and I agree.

Of course, Ofcom will clearly have to stand the test of time and prove itself, which is why the mid-term review will look at the BBC's governance and regulation. A reasonable amount of time will have passed by then to allow us to return to the issue and consider this question. On the view expressed by the noble Lord, Lord Stevenson, I repeat that this is not looking at the scope and purposes of the BBC, nor at the financial settlement. It is a health check on the governance and regulation of the BBC.

The noble Lord, Lord Stevenson, was concerned that we might possibly have been too prescriptive in what we were telling Ofcom to do. However, we think that it will have the ability to do its job. It is a change for Ofcom, and it is therefore right that we have set out to provide clarity and granularity regarding Ofcom's role, through the charter and agreement, wherever we can. There are a number of benefits to that. The concerns of Ofcom and the BBC, which have been involved in the negotiation, have been listened to and there is a sensible balance between the two.

Lord Lester of Herne Hill: My Lords, the late Lord Campbell of Alloway once rebuked me for making a serious point after the dinner hour. I am very sorry to make an intervention at a quarter to 11 pm, but am I right in understanding what the Minister said—that any new funding settlement will not be the subject of public consultation or parliamentary approval, and that there will be no binding safeguards against undue interference with the BBC and its editorial independence in the charter or the agreement? Is that correct, or have I misunderstood?

Lord Ashton of Hyde: The noble Lord is correct in saying that I have given no undertakings about how the process will take place in five years' time. I said that we had certainty for five years, which is a new thing. However, it is not for me to say what the Government will do in five years' time, although I know that the noble Lord would like me to do so. Measures in the agreement set out that the BBC will provide evidence to the Secretary of State, but at the moment there are no guarantees that there will be a vote in Parliament on the funding settlement. There may well be a discussion about it but I cannot give a guarantee today that there will be a binding vote.

Lord Birt: The Minister has proved himself to be a very generous listener. I hope he will accept that there has been something close to a consensus right across the House—with views expressed very elegantly by the noble Lords, Lord Inglewood, Lord Best, and many others—that it is a question not just of the licence fee but of the Government intervening and requiring the BBC to spend money on things that it might not have chosen to, and doing so, as we know, in circumstances of secrecy. I think that the mood in the House is that these processes should be open and transparent, that there should be public consultation and that Parliament should have a chance to discuss them. The problem here—let us again call a spade a spade—is not the DCMS but the young turks at the Treasury who want to retain their power to do this. They have exercised their power any number of times and they want to continue to do so. Will the Minister agree to take back the mood of the House and seriously consider introducing proper process into this strand of the charter?

Lord Ashton of Hyde: I think I said right at the beginning that I was in listening mode. Speaking as a former Treasury Whip, I use that expression. I certainly understand the strong views on this point expressed by the noble Lord and many others. I am not going to give a guarantee from the Dispatch Box tonight that this process will change, but I can guarantee that I will take back what has been said to the Secretary of State. I have already said that I will write to noble Lords, although I did not say that that would necessarily be before the next debate. I cannot do more than say that I am listening and that I will take back the views of the House.

Quite a lot of mention was made of training. We agree that the BBC plays an important role in skills and training. I do not think it is appropriate for Ofcom to regulate what the BBC does on training—in

contrast to what it does regulate, which is the BBC's output or its effect on the wider market. I am confident that the BBC will continue to make an important and valued contribution in this area.

There has been a lot of talk about salary transparency and the decision to drop the threshold from £450,000 to £150,000. Many spoke passionately and somewhat disparagingly about that. We have been clear that we believe that licence fee payers deserve transparency in this context. It is, after all, public money. Indeed, a number of those affected, including the noble Lord, Lord Berkeley, agree that increased transparency over salaries will not drive talent away. On the other hand, we have listened to some of the issues relating to BBC Studios, which will be competitive. There are concerns about whether the new salary transparency requirements will cover BBC Studios. We have thought very carefully about the concerns that both the BBC and a number of noble Lords have had about this outstanding question. I can today confirm that full, named salary disclosure will not be applied to BBC Studios in future.

Lord Berkeley of Knighton: I am very sorry to interrupt, but I must make one small correction. It is absolutely true that I did say that at one point. However, I was very convinced by what I heard from the noble Lords, Lord Grade and Lord Patten, and from my noble friend Lord Birt. Therefore, I would slightly retract from the position that I took. I think there is a danger that this disclosure could create an uneven playing field. I am sorry to disappoint the Minister in that small respect.

Lord Ashton of Hyde: I have noted the noble Lord's lack of agreement with me and will take it on board.

As I was saying, named salary disclosure will not be applied to BBC Studios in future. It will not be benefiting from taxpayer funding. It needs to operate on a fully commercial basis to be successful, so we agree with the BBC that to require full, named transparency would undermine BBC Studios' ability to compete effectively in the market. However, we expect BBC Studios not only to conform to best practice standards across the industry around pay and transparency but to lead the way.

We have also had reassurances from the BBC that it will respect the overall principle of pay transparency, which is clearly set out in the drafts. We expect that all those who have worked for the BBC this year and have earned more than £150,000 from the licence fee will be disclosed in the BBC's 2016-17 annual report, even if some of those individuals will have moved into BBC Studios before the end of the current financial year. I hope that shows that, at least in some respects, we are taking on board points, even at this late stage.

The National Audit Office is part of an important change that was made. I start by saying that the provisions that deal with the NAO in the draft framework agreement result in an arrangement that has, in practice, changed very little from that under which the NAO currently conducts its work on the BBC. It has been conducting value-for-money studies on the BBC's publicly funded operations for years, and the reports that have come out of this are welcome and have helped the BBC to improve.

All this work has been done in an environment where the NAO has been precluded from assessing the merits of the BBC's editorial and creative decisions, and that remains the case, as the agreement makes very clear. The agreement clarifies that it is ultimately for the Comptroller and Auditor-General to define that boundary. This is so the BBC cannot claim that a number of issues are editorial in nature, thus taking them out of the scope of the NAO's scrutiny. But, importantly, the NAO will also need to take responsibility for those decisions. I am sure the BBC will make it very clear publicly if it thinks the NAO has overstepped its powers. I do not accept that the NAO is a conduit for Parliament to lay its hands on sensitive BBC information. The Comptroller and Auditor-General is an officer of Parliament but he is fully independent.

The memorandum of understanding between the BBC and the NAO was mentioned, and the MoU between the Bank of England and the NAO was alluded to. We think the two organisations are perfectly capable of agreeing a memorandum of understanding, and that will include a dispute resolution mechanism. The statutory power of the NAO is a backup—a last resort—so that it continues to do the audit, but we expect the memorandum of understanding to be agreed between the two organisations. If there are any difficulties, my department and the Secretary of State herself, if necessary, will get involved to make sure that that happens.

Lord Stevenson of Balmacara: Could the Minister just repeat that? Is he saying that any disputes concerning the NAO exercising its statutory functions but against the will of the BBC, because it has a carve-out mechanism for editorial reasons, are going to be resolved by the Secretary of State?

Lord Ashton of Hyde: No, I did not say that. I said that the agreement says the memorandum of understanding should contain a dispute resolution mechanism. However, to take the position of the noble Lord, Lord Foster, what happens if that cannot be agreed? First, I am saying that if they cannot agree the memorandum of understanding, the DCMS and the Secretary of State herself if necessary will, if you like, bang heads together to make sure they can. But the noble Lord, Lord Foster, alluded to what happens if even that does not work. Then I am saying that the statutory basis on which the NAO goes in is what they will rely on. Having said that, it still cannot deal with editorial matters, but the problem is: what is an editorial matter?

Lord Patten of Barnes: Does that mean that, when the final decision is taken, the NAO's Comptroller and Auditor-General will be the final arbiter—that the NAO will make the decision even if the Secretary of State sympathises hugely with the BBC?

Lord Ashton of Hyde: It is not a question of the Secretary of State sympathising or not on that. The only role I mentioned for the Secretary of State is making sure that the memorandum of understanding, which includes a dispute resolution mechanism, should be signed and agreed. But at the last resort, yes,

[LORD ASHTON OF HYDE]
the Comptroller and Auditor-General will be able to do his job using his statutory powers if the dispute resolution has not been agreed.

Lord Birt: Could the Minister help us understand how those statutory powers support that in the context of a royal charter? I simply do not understand it.

Lord Ashton of Hyde: As far as I understand it from the Bank of England Bill, the NAO is set up and has statutory powers to go in and do its job. The framework agreement and the charter specifically say that, notwithstanding the statutory powers of the NAO, it is not able to judge on editorial matters. At the last resort it can go in under its statutory powers. It is not allowed to opine on editorial matters, but the tricky thing is: what is an editorial matter? That is where we want the memorandum of understanding between the NAO and the BBC to be agreed. My attempted explanation was to cover just what happens if the memorandum of understanding is not agreed. That is where I said the DCMS and the Secretary of State would lend a hand to make sure it is.

Lord Lester of Herne Hill: The Minister has my great sympathy as I listen to him. The fundamental problem I have is I do not understand how this charter and agreement will be enforced. I gave the example in my speech of the King Charles I clause—Clause 67 of the agreement. It is a power of unlimited censorship over the BBC. It is in an agreement, not in a statute. Could the Minister write to me and explain how the limits to that of proportionality, necessity and all the rest of it are to be enforced?

Lord Ashton of Hyde: Absolutely. I may be able to come to that, but if I do not I will certainly write to the noble Lord. I take his point.

The noble Baroness, Lady Liddell, and the noble Lord, Lord Williams, talked about the World Service. I agree with all noble Lords who spoke about that, saying that it is one of the most highly regarded offerings of the BBC. We acknowledge that. I can personally testify to that, having just come back from Myanmar, where it played a huge role during the time the generals were in charge. That is why we have protected funding for the World Service from the licence fee for the next five years and we have increased its funding even further by £34 million in 2016-17 and by £85 million for each of the three years thereafter. I will write to the noble Lord, Lord Williams, about the World Service in Korea.

BBC Monitoring is a Foreign Office responsibility and is co-ordinated by the Cabinet Office. An agreement between them and the BBC is expected very shortly.

I take on board the point made by many noble Lords about the statutory underpinning of the BBC. We do not agree with the noble Lord, Lord Lester, and other people on that. I will write to noble Lords about it. I have promised to listen; I do not hold out great hope that it will happen in this charter, but I recognise that it is an issue which has been raised around the House.

On the contestable pot mentioned by the noble Baroness, Lady Benjamin, we will consult in the autumn on precisely how the fund will work—I look forward to her full contribution to the consultation—to ensure that the fund can support under-served genres as effectively as possible. We will have to see at the end of the pilot exactly what we do.

I agree with the noble Baroness that diversity is one of the most important issues, which is why we have made it a new duty for the BBC. I do not think we can be much clearer about how much of a focus it should be. She may have seen in the newspapers a couple of days ago that Sharon White of Ofcom went public in saying how important she thought diversity was and that Ofcom intends to look at it.

There are a number of points to which I will not be able to respond—from the right reverend Prelate about accountability to licence fee payers, and from the noble Lord, Lord Lester, on Clause 67(4) and on his further point. On appointments, we think that we have moved quite a long way and are in considerably better shape than we were when all members of the trust were appointed by the Government. On independence, I think that there are things which the noble Lord, Lord Inglewood, will be happier about and the Government agree with him about the importance of that.

I need to come to a close because I am over time.

Lord Clement-Jones: I apologise to the Minister because I realise he is coming to the end, but there is one huge area that he has not dealt with. It is the whole issue of complaints on competition matters. Will he undertake to write to the House on that subject? After all, it is the death by a thousand reviews that I mentioned in my speech and that was echoed by my noble friend Lord Foster.

Lord Ashton of Hyde: I apologise for not mentioning that; I agree that it is a big issue. In short, we think that Ofcom is an experienced enough regulator to deal with that, but, as I have said several times, I will write to all noble Lords on all questions that I have not answered adequately, including those on the list of the noble Lord, Lord Stevenson.

I repeat my thanks to all noble Lords who have spoken tonight and who met us previously. I thank the devolved Assemblies and Parliaments, as well as the BBC negotiating team. I am particularly grateful to the officials who have got us here, including educating a new Lords Minister at short notice.

Whatever one thinks of the outcome, I think we will agree that this has been a genuine process of negotiation. While the White Paper established the principles that guided the outcomes of this charter review, the devil has been in the detail. Neither side has got exactly what it started with, but we should not undervalue what each side has achieved. Together, we have ensured that there will be a BBC fit for the future—one we will continue to be proud of. This charter and agreement will give it the tools to be exactly that. Now we must let it get on with the job.

Motion agreed.

House adjourned at 11.04 pm.