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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Monday 31 October 2016

2.30 pm

Prayers—read by the Lord Bishop of Truro.

Introduction: Lord Ricketts

2.37 pm

Sir Peter Forbes Ricketts, GCMG, GCVO, having been created Baron Ricketts, of Shortlands in the County of Kent, was introduced and took the oath, supported by Lord Patten of Barnes and Lord Jay of Ewelme, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Llewellyn of Steep

2.44 pm

The right honourable Edward David Gerard Llewellyn, OBE, having been created Baron Llewellyn of Steep, of Steep in the County of Hampshire, was introduced and took the oath, supported by Lord Patten of Barnes and Lord Hague of Richmond, and signed an undertaking to abide by the Code of Conduct.

Road Safety: Eye Tests

Question

2.48 pm

Asked by ***Viscount Simon***

To ask Her Majesty's Government what action they are taking to encourage drivers to have their sight checked regularly in the interest of road safety.

Viscount Simon (Lab): My Lords, I declare my interests, which are in the register, and beg leave to ask the Question standing in my name on the Order Paper.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, the Driver & Vehicle Licensing Agency's driving licence application form makes clear the importance of meeting the required eyesight standards. The Department for Transport also makes clear the eyesight standards for driving in its leaflets and forms, as well as on the GOV.UK website. The department supports the NHS recommendation that adults should have their eyes tested every two years. This advice was promoted through a communication campaign in 2013, supported by the BMA, the Royal Society for the Prevention of Accidents and Brake.

Viscount Simon: My Lords, I thank the Minister for his reply. Given that in 2014 the driver eyesight survey estimated that crashes resulting from poor driver vision caused 2,900 casualties in the UK per year and that three-quarters of the adult population require either contact lenses or glasses, will the Government do more to alert drivers of the dangers of not getting their eyesight tested regularly, and can consideration be given to using motorway electronic signs to display this message? Road safety week starts on 21 November. Would that not be an excellent time to start running a trial to establish whether these actions have a beneficial effect?

Lord Ahmad of Wimbledon: I congratulate the noble Viscount. He has been a vociferous and devoted campaigner for road safety, and I know that he recently received an award from the Police Federation recognising his achievements and service in this area. Highways England uses electronic variable message signs but, as the noble Viscount is aware, these are intended primarily to advise drivers of immediate safety issues and journey information. With regard to road safety week, we are intending, with Highways England, to use other forms of media, such as social media, to promote the importance of getting your eyes tested.

Lord Brougham and Vaux (Con): Is my noble friend aware that in Switzerland, where my cousin lives, if you are over 70 you have to retake your test every two years? If you are over 80, you have to retake it every year, including an eye test and a full medical. Would he not consider something along those lines?

Lord Ahmad of Wimbledon: It is always useful to hear personal anecdotes. I actually had my eyes tested on Saturday, and I passed. Turning to my noble friend's question, the UK has one of the greatest road safety records. People aged 70 are required to sit the test to renew their licence for another three years, and we provide other services through DVLA. Pilots are also being taken up, including with GP practices in Birmingham, to raise awareness of eye tests, particularly for those over 70.

Baroness Randerson (LD): My Lords, I want to ask about people who have perfectly good eyesight but who choose to use it to look at their mobile phones while driving. In 2014, mobile phone use was a contributory factor in 492 accidents, 21 of which were fatal, and an RAC survey has shown a steep increase in mobile phone use at the wheel since then. Do the Government intend to increase the penalties for these drivers, and to provide funding to deal with the 27% drop in dedicated roads policing officers since 2010?

Lord Ahmad of Wimbledon: As the noble Baroness may be aware, the Government have already taken action in this respect and increased the penalties for mobile phone use while driving. I am sure the whole House will be aware of the news today of the sentencing of the driver who caused the tragic death of a mother and three young children. Our thoughts are of course with the family. The noble Baroness raises an important point and the Government continue to look at how we can work across the board with all industry players to underline the importance of educating people. Yes, mobile phones have a role to play, but not while people are driving.

Lord Winston (Lab): My Lords, it is good to hear that the Minister has had his eyes tested, but does he accept that one of the problems—which may also be true in his case—is that in the routine eye test, changes in conditions between darkness and light are not tested properly? One of the real issues with older people is that, particularly as cataracts form, their visual acuity

[LORD WINSTON]
may be unchanged but they are unable to accommodate in dark situations, which is when accidents are most likely to happen. Can the eye test perhaps include that in future?

Lord Ahmad of Wimbledon: The noble Lord speaks from great experience in this regard and I will certainly take his suggestion back. I found that my recent eye test was thorough in every respect, but the department and I will reflect on his point about those who are older.

Lord Rosser (Lab): Following the supplementary question asked by my noble friend Lord Simon, how many fatal road accidents per year do the Government accept can be attributed in part or wholly to the eyesight of one or more of the parties involved in the accident being below the standard required to pass the driving test?

Lord Ahmad of Wimbledon: I shall write to the noble Lord on the specifics, but as I have said, our safety standards have led to one of the lowest comparative figures across Europe for such accidents, and the Government are looking at how they can work with the medical profession. The pilot in Birmingham that I referred to consists of 113 surgeries where people can talk to their general practitioners about the need for an eye test and nominate themselves to get their eyes tested. Indeed, GPs are also looking at how their duty of care can be extended where someone refuses or is unable to report their eyesight deficiency to the DVLA.

The Countess of Mar (CB): My Lords, the Minister implied in an earlier response that from the age of 70 drivers are expected to take a retest and then do so subsequently every three years. In fact, it is not a driving test as we understand it: it is just a question of filling in forms saying that you do not have certain diseases. Can he please correct his statement?

Lord Ahmad of Wimbledon: The noble Countess is quite correct. I was talking about people having their driving licence renewed after reaching the age of 70, and as I am sure noble Lords know, it is on a three-year basis and the noble Countess is right to point out that it is a specific declaration made by drivers themselves. But as I have intimated, we are looking into how we can work with health practitioners, particularly GPs, to make self-nomination work more effectively.

Children: Oral Health

Question

2.56 pm

Asked by ***Baroness Benjamin***

To ask Her Majesty's Government what plans they have to promote oral health for children.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, Public Health England continues to lead a wide-ranging programme to improve children's oral health. The childhood obesity plan has also introduced two important measures for oral health: a soft drinks industry levy and a sugar reduction programme.

Baroness Benjamin (LD): My Lords, I thank the noble Lord for that Answer but oral health is not mentioned in the Government's childhood obesity plan, even though there is an epidemic of child tooth decay along with hospital admissions for extractions. The state of the nation's children's teeth is shocking and a huge cost to the NHS. Common sense says that we need targeted action now. Can the Minister tell the House what is happening with the 10 pilot oral health improvement programmes announced in May and whether the Government will at least consider making oral health part of the daily school regime as a preventive measure?

Lord Prior of Brampton: The noble Baroness is right to say that childhood oral health is very poor, but it is getting better. Some 75% of children no longer have tooth decay compared with 69% in only 2008, but it is still not good enough. The Government's policy is very much around prevention rather than treatment. The new contract being discussed with dentists will put this work on to more of a capitated basis rather than an activity basis. NHS England has identified 10 areas of deprivation for special treatment and we are looking at a new programme with Public Health England to improve education in this area. Quite a lot is happening.

Lord Watts (Lab): My Lords, surely the way to prevent this is by introducing fluoride into the water supply and to ignore those people who think it is a bad thing. Does not all the evidence seem to suggest that it would be very good, especially for deprived communities?

Lord Prior of Brampton: My Lords, the evidence for fluoride is incontrovertible: it is good for teeth. There may be other issues attached to fluoride, but in terms of dental health it is unquestionably a good thing. It is interesting to note that in Birmingham, which has been adding fluoride to its water for many years, the incidence of child tooth decay is 29% whereas in Blackburn it is 57% and in Hull, which is considering fluoridation, it is 37.8%. The evidence is very strong, but it is up to local authorities to decide.

Baroness Gardner of Parkes (Con): My Lords, when I have asked Questions, as I have done repeatedly, mainly for Written Answer, about the difference in health between Birmingham and Manchester, with people in Manchester having the worst teeth in the whole of the UK—that was where the problem was with blocking hospital beds—the answer has always been that the only difference in health pattern is in teeth. I have had that point queried and asked what research the Government have done and whether they can really substantiate that fact. I am very much in favour of fluoridation, but I think that people are confused and want to be clear that there is no other health implication of fluoridation. I respect that view. What action will the Minister take to ensure that thorough, general health tests, as compared with the two arrangements referred to, are undertaken?

Lord Prior of Brampton: My noble friend has slightly confused me, I am afraid. There is no question that fluoride has an impact on oral health. I am not aware of any evidence to suggest that it has other, detrimental impacts on children's or other people's health. We have huge inequalities throughout the United Kingdom, most of which are as a result of social deprivation, poor housing, high unemployment and the like. Those are the fundamental drivers of health inequalities, rather than health systems per se.

Baroness Janke (LD): My Lords, given the harm caused by high levels of sugar added to some processed foods, does the Minister agree that the present restraints on the food industry are woefully inadequate? Does he further agree that much tougher measures need to be taken if the Government are to meet their own public health objectives on oral health, diabetes and obesity?

Lord Prior of Brampton: My Lords, the introduction of the sugar levy is evidence that the Government take this matter extremely seriously and believe that it cannot be left solely to industry to reduce sugar levels. The Treasury is due to report on the extent of the sugar levy on 6 December. As part of the obesity strategy, targets are being set for nine key categories of food eaten predominantly by children. The results of reduction over time will be made transparent and open. A combination of those measures should have an impact.

Lord Colwyn (Con): My Lords, although dental decay can easily be prevented by reducing sugar consumption, regular brushing and adequate exposure to fluoride, it has been shown to be the number one reason why children aged five to nine are admitted to hospital. It is painful, can be dangerous and wastes millions of pounds of NHS resources. When will the Government reverse those statistics and facilitate the fluoridation of all public water supplies?

Lord Prior of Brampton: My Lords, I think that I have already answered my noble friend's question on fluoridation. On his second point about regular tooth-brushing, Scotland has a scheme called Childsmile, where there is supervised tooth-brushing in primary schools and nurseries, as well as a fluoride varnish twice a year. We can learn something from Scotland in that regard. It is expensive, but Public Health England is nevertheless looking at it and we may adopt it in our country soon.

Baroness Uddin (Non-Afl): My Lords, do the nine categories of food to which the Minister referred also include baby foods, which are packed with sugar? I declare an interest, having a granddaughter, Imaan, who has allowed me to taste the enormous amount of harmful sugar contained even in organic baby food. Will the Minister consider adding baby food to his basket list of things to look at?

Lord Prior of Brampton: My Lords, I cannot recall whether baby food is one of those nine categories that have been identified in the obesity strategy, but I will look into that and write to the noble Baroness.

Directly Elected Mayors

Question

3.04 pm

Asked by ***Lord Grocott***

To ask Her Majesty's Government what is their policy on directly elected mayors.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the Government are clear that directly elected mayors can provide that strong and accountable governance locally that is necessary if significant powers and budgets are to be devolved to local areas, and are the most appropriate governance model for the most ambitious deals, particularly in cities.

Lord Grocott (Lab): My Lords, has the Minister seen the—certainly, for me—welcome suggestions in various newspapers that the Prime Minister is not nearly as keen on making directly elected mayors compulsory for areas engaged in devolution as was the case with the enthusiastic support they got constantly from George Osborne? If it is the case that the Prime Minister is a little bit more open-minded on this, should not the Government at least let those local authorities know, in areas where they are discussing devolution settlements, that if they do not want a directly elected major, they do not have to have one?

Lord Bourne of Aberystwyth: My Lords, first of all, there is no question of areas having to have directly elected mayors: these are grass-roots decisions, brought forward by local authority leaders if they want elected mayors. There is nothing compulsory about it. However, it remains very much the case that that is the policy—the most ambitious deals will go forward only if they have directly elected mayors.

Lord Cormack (Con): My Lords, is my noble friend aware that in Lincolnshire, which is a large rural area, the county council overwhelmingly voted not to have a directly elected mayor, although it would welcome, and be able adequately to exercise, devolved functions? My noble friend, in his Answer, said, "particularly in cities". Can he now say that it will not be necessary in rural areas?

Lord Bourne of Aberystwyth: My Lords, first of all, I was aware of what happened in Lincolnshire. Of course it was not a definite, final decision: that will be taken only in the first two weeks of November. I have indicated that there have been deals without mayors—that was the case in Cornwall—but they were unambitious deals. It remains the case that, whether it is rural or urban, the most ambitious deals will have mayors.

Lord Shipley (LD): My Lords, the Minister told us that this was a matter for grass-roots decisions and was not compulsory. Do the Government have a list of those powers that can be devolved with an elected mayor and a list of those powers that can be devolved where there is not an elected mayor; and will the Government publish those lists?

Lord Bourne of Aberystwyth: My Lords, it is the case that the most important strategic powers on transport, planning, investment and adult education go with having a directly elected mayor via the combined authorities. The noble Lord will know that there are lesser powers in Cornwall, for example. It is also important to note that the mayor is the voice for the area in terms of gaining investment and representing industry. This role is significant and important on the continent and in America and will, I believe, be important here.

Lord Harris of Haringey (Lab): My Lords, I think I am probably more of an enthusiast for directly elected mayors than my noble friend Lord Grocott. However, the significant point is that in London, where there is a very successful mayoralty, the local people voted in a referendum to have such a system. Given that the Minister is talking about this being a grass-roots-led process, why do the Government not allow the communities concerned to decide whether they wish to have a directly elected mayor, rather than imposing the conditions centrally from Whitehall?

Lord Bourne of Aberystwyth: My Lords, as I indicated, it is the directly elected representatives of cities such as Liverpool and Manchester—not necessarily Conservative areas—who bring forward the idea and then it is for the people to make their choice on the mayor. All the evidence on the continent, in the United States and, as the noble Lord rightly said, in London, shows that this is the way forward for ambitious deals.

Lord Lexden (Con): My Lords, have we not had enough referendums for the time being?

Lord Bourne of Aberystwyth: My Lords, there are certainly all sorts of drawbacks to having too many referendums.

Baroness Hollis of Heigham (Lab): My Lords, is the Minister aware that the much-vaunted eastern region devolved administration of Norfolk and Suffolk—Cambridgeshire has been spun off—is falling apart because of the requirement of an elected mayor? The main reason for wanting those devolved powers is precisely to strengthen the rural transport connections, as part of East Anglia, for example, is surrounded on three sides by water. Following the question from the noble Lord, Lord Cormack, will the Minister review the position and understand that rural areas are precisely the places where transport connectivity might be vital for economic growth, so that those in the more deprived rural areas can come into their market towns, but that it is not possible because of the Government's absurd, 1970s insistence on elected mayors?

Lord Bourne of Aberystwyth: My Lords, I am not sure that this is something that was prevalent in the 1970s. On the noble Baroness's example of Norfolk and Suffolk, I very much hope that they do pursue a deal, but that is very much a matter for Norfolk and Suffolk. There are other rural areas that are pursuing this with vigour as well—Cambridgeshire, for example. It is a matter for those areas.

Lord Wallace of Saltaire (LD): My Lords, the Minister will be aware of the discussions in Yorkshire between rural and urban areas and the question of whether one goes for Leeds-and-a-bit, a greater Yorkshire or an alternative. While an elected mayor for Leeds is entirely appropriate, an elected mayor for the mixed urban and rural areas of Yorkshire, containing between 4 million and 5 million people, seems to us to be entirely inappropriate. Will he take that on board?

Lord Bourne of Aberystwyth: My Lords, I bow to the noble Lord's knowledge—I know he is very well aware of the local situation—but it is for the people of the locality to come forward with the plans and then, of course, it will be looked at by the department. However, I take his point on the specific example.

Lord Kennedy of Southwark (Lab): My Lords, I declare an interest as an elected councillor of the London Borough of Lewisham and as a vice-president of the Local Government Association. Will the Minister explain to the House why these ambitious deals must have a directly elected mayor? Why cannot the local people decide?

Lord Bourne of Aberystwyth: My Lords, with respect to the noble Lord, I think I have already answered that question.

Noble Lords: No.

Lord Bourne of Aberystwyth: It has certainly been asked in a different guise, but let me reply to it again. It is a matter for the directly elected representatives of the constituent councils to come forward with plans. They know their localities. On occasion, they have not wanted to pursue it; as was the case, for example, in South Tyneside. So it is a matter for them. As I have said previously, all the evidence from the continent, from the United States and from London is that this system works.

Lord Grocott: If the Minister has doubts about referendums will he please explain, in the case of Birmingham and Coventry specifically—where there was a clear rejection in a referendum of directly elected mayors—why now, without a referendum, he is imposing a directly elected mayor across the whole West Midlands region?

Lord Bourne of Aberystwyth: My Lords, I am all for people exaggerating my powers but I am not imposing anything at all. As I have indicated, it is a matter for the people of the locality, through their elected representatives, to come forward with these plans. The noble Lord is mixing up two very different things. The referendums he referred to were not combined authority elections.

Transforming Rehabilitation Programme

Question

3.11 pm

Asked by ***Lord Ramsbotham***

To ask Her Majesty's Government whether the Transforming Rehabilitation programme is, as suggested by the then Minister of State at the Ministry of Justice, Lord Faulks, changing the lives

of thousands of people by reforming the supervision of all offenders in the community (HL Deb, 11 March 2014, col 1695).

The Earl of Courtown (Con): My Lords, the Transforming Rehabilitation reforms mean that, for the first time, around 45,000 prisoners serving sentences of less than 12 months receive statutory supervision and support on release and a nationwide through-the-gate resettlement service has been introduced for all prisoners. As these fundamental reforms bed down, we are conducting a comprehensive review of the probation system to make sure that it is reducing reoffending, cutting crime and preventing future victims.

Lord Ramsbotham (CB): My Lords, I thank the Minister for that reply. On 12 September the Public Accounts Committee in the other place published a highly critical report on Transforming Rehabilitation, saying that after two years there was still no clear picture of how the reforms imposed on the probation system by the Offender Rehabilitation Act were working in important areas, such as the supervision of several thousand previously unsupervised short-term prisoners, as mentioned by the Minister. The skilled advocacy of the noble Lord, Lord Faulks, during the passage of the Act persuaded many noble Lords to vote for the proposed reforms, despite a very alarming Ministry of Justice risk assessment that there was a distinct possibility that many of them could not be delivered. Will the Minister please tell the House whether there is any evidence that the reforms are changing more lives than the system they replaced?

The Earl of Courtown: My Lords, I shall deal first with the issues raised by the noble Lord, Lord Ramsbotham, concerning the Public Accounts Committee. We are considering the committee's report; its findings and recommendations are informing our review of the probation system. We will respond in due course. As the noble Lord said, a review of the whole probation system is being undertaken. I should also inform the House that a White Paper will be published shortly that will look more at prison reform and safety.

Lord Beecham (Lab): My Lords, the probation service is clearly key to an effective and successful rehabilitation programme. What assessment has the Ministry of Justice made of the scale of impact of staff reductions in community rehabilitation companies and the National Probation Service? Is it correct that the CRC contractor in South Yorkshire is facing a possible service credit fine of up to £2 million because of its failure to deliver the better relationships programme for perpetrators of domestic abuse?

The Earl of Courtown: My Lords, the noble Lord, Lord Beecham, asks a number of detailed questions. I will have to write to him on these issues. It is too early to judge the success of the CRCs. We will not know whether they have achieved their initial payment-by-results targets until final reoffending data are published in autumn 2017.

Lord German (LD): My Lords, the report just a few days ago of Her Majesty's Chief Inspector of Prisons and Chief Inspector of Probation makes harsh reading for the Government. This is the second report that they have produced in the past 12 months and it says:

"There has been little change, little delivered, and progress is pedestrian at best".

Can the Minister tell us how the Government are intending get a grip on this situation, so that we can have less offending, get more people into work, have fewer people in prison and put money back into the public purse? It is surely time for the Government to get a grip on this matter.

The Earl of Courtown: My Lords, the noble Lord is correct about how much reoffending costs the country, which is in the region of £13 billion. He is right that we must get a grip on this. As he is aware, in 2010 we had the report, *Breaking the Cycle*. In 2012, we had *Punishment and Reform*, looking at probation services. We had another report on services and then *Transforming Rehabilitation*. This is what we are trying to do. Offenders need to be supported through the prison gate, but we must not look only at offenders. We must also look at public protection and at supporting victims.

Lord Watts (Lab): Would it not be more effective to invest more money in schools training in prisons and to create job opportunities when they leave prison?

The Earl of Courtown: My Lords, the noble Lord is right. This is how one of these systems, on supporting offenders through the prison gate, is working. These services were already working with prisoners before they leave prison. Once they leave, they are helped with accommodation and finding jobs so that they can support their families and make an honest living.

Baroness Corston (Lab): My Lords, will the Minister accept from me that Transforming Rehabilitation has been an absolute disaster for women's community services? Previously, women's centres took women ex-offenders. Now, very few do. The companies that contract, many of which are multinationals, as the Minister knows, have 44-page contracts with gagging clauses. They have provision for a £10,000 fee if any provision is changed. These are small charities doing a remarkable job for the public good. Will the Minister please look at the report of Dame Glenys Stacey, the Chief Inspector of Probation, who has condemned what is happening under this Government, and make sure that women offenders have somewhere to go when they come out of prison?

The Earl of Courtown: The noble Baroness makes a very good point about women offenders. We are closely monitoring the system to ensure that probation providers take account of the particular needs of female offenders and deliver on their commitments. I am sure the report to which the noble Baroness refers is being studied by the department.

Lord Laming (CB): My Lords, is the Minister willing to look again at the level of support available for young people who have been in care for a large part of

[LORD LAMING]
their lives and who leave prison with very little, if any, support? We expect a great deal of coping skills from people with the fewest opportunities in life.

The Earl of Courtown: The noble Lord makes a valid point on the importance of supporting young people who come out of prison. I do not have the exact figures, but I imagine many of them are repeat offenders as well. There is of course a duty for us to try to prevent these individuals reoffending.

Investigatory Powers Bill
Third Reading

3.19 pm

Clause 8: Civil liability for certain unlawful interceptions

Amendment 1

Moved by ***Baroness Hollins***

1: Clause 8, page 7, line 37, at end insert ", or

( ) in the course of its transmission by means of a public telecommunication system."

Baroness Hollins (CB): My Lords, I had hoped not to detain the House, but last night the Government indicated, to my surprise, that they will oppose this amendment. I hope noble Lords will understand the need for me to set out some of the context.

The debate on Report was very clear about the intention of our amendments to Clause 8, and the large majority in the Content Lobby affirmed this. The noble Earl the Minister helpfully suggested that our original amendments, as drafted, may not achieve our stated objectives. I took advice from the Public Bill Office at some length to clarify the amendment, as allowed for in the *Companion to the Standing Orders*, at Third Reading. Amendment 1 today aims to ensure that costs protections will apply to new claims alleging illegal phone or email hacking by newspapers, as was originally intended and as was debated.

If the clause is amended today, it will implement, to the limited degree that we are able in this Bill, the court costs incentives and protections of Section 40 of the Crime and Courts Bill, which Parliament overwhelmingly agreed over three years ago. So far the Government have failed to commence Section 40, in breach of that cross-party agreement, so this amendment is just one tiny step towards bringing some much-needed balance into the system.

I refer noble Lords to the report issued to Parliament by the royal charter Press Recognition Panel only last week, which clearly and cogently emphasised why such changes are needed and called on Her Majesty's Government to commence Section 40. We should remember that the independent Press Recognition Panel audits press regulation; it is not a regulator.

I have had discussions with senior members of Her Majesty's Government, who contacted me to persuade me not to pursue this amendment on the grounds that it may somehow delay Royal Assent for this important Bill, which has as one of its primary purposes the aim of improving national security. However, given the huge support that the amendments have received so far, I am not minded to give way to this pressure. Very briefly, I will explain why.

One argument being made by the press recently that small local newspapers will be at risk from Section 40 is wrong. Newspapers can simply choose to join a recognised regulator and get the same costs protections that the public will get, unlike newspapers that choose not to join. Since we last divided, there is now a recognised regulator: Impress. The limited amendments to this Bill will not affect small newspapers adversely at all—they do not hack phones. The local newspaper threat is a smokescreen. The protests are really coming from the big newspaper groups, which own most of the regional papers and in effect are using them as newsprint shields. It is the big companies preventing the small papers that they own from seeking the costs protection that flows from membership of a recognised regulator. It is precisely the small papers that will benefit from Section 40 protection—they will be much better placed to practise good investigative journalism—unless they choose voluntarily not to seek that protection. That should be their choice.

This is now urgent. Now that Impress has been recognised, many independent small publishers that are already Impress members are suffering actual detriment from the non-commencement of Section 40, and victims of non-Impress newspapers are not getting the costs advantages they were promised. It is complicated. A central theme in the Leveson report and the cross-party agreement to implement it was how to prevent political interference in press regulation in the interests of free speech. That is why the independent Press Recognition Panel was established, which is politician free. But political interference by the Government is what we are now seeing, with the Secretary of State holding the starting gun for the commencement of Section 40. The Secretary of State appears to accept that IPSO is nowhere near good enough but believes that political pressure will force it to improve to a point where it is on a par with Impress.

On behalf of victims of press abuse, the general public, newspaper readers, front-line journalists and those of us who gave evidence to the Leveson inquiry, I call on the Government to commence Section 40 as they promised to do when this House and the other place overwhelmingly passed it into law. If the Government do so now, we in this House will not need to see the Bill again. But if there are problems with the amendment which might affect security in some way—unbeknown to those of us who have added our name to it—perhaps the Government could meet me and interested parties, and allow a few days' latitude to get this right. I beg to move.

Lord Paddick (LD): My Lords, briefly, I support the noble Baroness. My understanding is that this amendment has been tabled because of a drafting issue in the amendment that was overwhelmingly passed by the House, on the basis of the principle of protecting those whose phones have been hacked into by newspapers which have not signed up to an independent complaints system. It is also because the original amendment applied only to private communication networks; Amendment 1 would change it to public communication

networks. There is no question at all of a change in principle. I therefore do not understand why the Government would not agree to support this amendment, which is clearly simply to correct that drafting issue. On that basis, we will support the noble Baroness.

Baroness O'Neill of Bengarve (CB): My Lords, I support my noble friend's amendment. The situation is complex and I think everybody concedes that the amendment as passed by your Lordships' House last week had deficiencies. However, it was agreed by the Public Bill Office that it was adequate, as it has agreed that the amendment which is now before your Lordships is adequate. It seems to me that the ball is in the Government's court to try to work out a way in which to achieve this. We must remember that in this Bill we have, for good reasons to do with press freedom, given the media very considerable additional protections for journalistic sources. That is open to possible abuse because sometimes there is no source or there might be, let us say, an incorrect reporting of a source. The quid pro quo for that is surely some protection for the public. Amendment 1 is not perfect, but if it is not to be accepted by the Government, I hope that the Minister will suggest how the Government propose to deal with the evident lacuna, and the risk to members of the public, of having greatly empowered media.

Lord Low of Dalston (CB): My Lords, in considering this amendment we need to be mindful of lessons from history. We have heard the tale before that the press will reform itself. Some noble Lords will remember similar debates following the 1990 Calcutt inquiry. When asked to report on the efficacy of the PCC in 1993, Sir David Calcutt said that it was not doing its job and that the time for statutory regulation had come. But Parliament lost its nerve and the press was allowed to carry on underregulated, with disastrous consequences for ordinary people. Predictably, the newspapers are telling us that IPSO is a much improved version of the PCC, but it falls woefully short of the standards set out by Lord Justice Leveson.

Since we last voted, the Government's position has actually hardened. When setting out the Government's response to the amendment of the noble Baroness, Lady Hollins, in Committee, the noble Earl, Lord Howe, said:

"I fully understand that many noble Lords here, particularly those who have been victims of press abuse themselves, are frustrated as to what they see as a lack of progress towards implementing the recommendations of the Leveson inquiry report. I want to reassure noble Lords that that is not the case … the Government continue to look at this issue closely … this is something that the Government are actively considering. … The position is that, for the time being, Section 40 remains under consideration".—[Official Report, 11/10/16; col. 1809.]

Last Monday, on 24 October, the Secretary of State said at the Culture Select Committee that she was not minded to commence Section 40. The *Times* the next day—last Tuesday, 25 October—ran a triumphant front-page story based on what it later said were reliable government sources. It said:

"Westminster sources revealed last night that the 'punitive elements' of Section 40 of the Crime and Courts Act …'will not go ahead'. The change of tack, which avoids a clash between Theresa May and the media, came on the eve of a decision to approve a new regulatory body".

The Government have not informed Parliament of this and have not sought to correct the story.

3.30 pm

Worse still, at the Select Committee the Secretary of State indicated that she was willing to abandon the Leveson process altogether and allow voluntary press regulation without any independent recognition process. She said:

"I am looking at all the representations to make sure that we get to that right conclusion. As I say, clearly I expect to see robust regulation of the press, which even if those regulators choose not to apply for recognition under the Press Recognition Panel, at least would meet the standards, if they chose to".

In other words, this is no different from the self-regulation regime which characterised the PCC. She said that she would personally make the newspapers improve IPSO to a Leveson standard, but she did not say who, other than the press, herself or politicians like herself, would be the judge.

The noble Earl, Lord Howe, wrote to Peers after Committee on these matters. He wrote that the Government are clear that independent self-regulation is the way forward and want the industry to comply voluntarily with the reforms that were recommended by Leveson and are enshrined in the royal charter. When Peers met him before Report, he gave no indication of the Government's change of policy. Perhaps he will do so now and clarify the situation for us.

We are now supposed to watch and wonder whether and how the Secretary of State will be able to stand up to the press industry. The Secretary of State appears to accept that IPSO is nowhere near good enough but believes that political pressure will force it to improve to a point where it is on a par with Impress. History tells us that such promises by government and regulator are worthless. For example, it is precisely what the PCC promised in the mid-1990s when trying to fend off legislation on privacy. These are tried and tested tactics used by the press. They are designed to retain the PCC position of sham regulation, as Leveson warned.

History tells us that we cannot rely on the press to regulate itself or on politicians who, as we know, are subject to manifold pressures from the press which they often find it difficult to stand up against. We need Section 40, and we need the amendment which the noble Baroness, Lady Hollins, has moved this afternoon in order to clarify what is being asked for.

Lord Rosser (Lab): My Lords, when the amendments moved on Report by the noble Baroness, Lady Hollins, were discussed, the Government said that they did not believe that they would achieve the outcome she was seeking since the relevant clause dealt with the interception of private telecommunications systems, such as a company's internal email or telephone system. The fact that the noble Baroness has been permitted the amendment before us at Third Reading suggests that it is accepted that it seeks to address the point made by the Government on Report; namely, that the amendments that were carried on Report do not achieve the outcome the noble Baroness is seeking.

I understand the Government oppose this amendment. Perhaps they will argue that this amendment also does not achieve the objective the noble Baroness is seeking.

[Lord Rosser]
As the noble Lord, Lord Low of Dalston, reminded us, on Report the Government said that they fully understand that many noble Lords, particularly those who have been victims of press abuse, are frustrated about what they see as a lack of progress towards implementing the recommendations of the Leveson inquiry report, albeit that the Government went on to say that they did not accept that that frustration was justified.

I am not able to comment personally on whether this latest amendment, which was tabled at a very late stage, achieves its purpose or not. But I do know that the Government do not seem to have been particularly helpful so far in seeking to assist with what wording would achieve the purpose sought by the noble Baroness, Lady Hollins, and the other noble Lords who are signatories to the amendment concerned, bearing in mind these were amendments which, on Report, had the support of the House.

On Report, the Government accepted the commencement provision amendments, while making it clear that that did not mean that they had accepted, or would be accepting, the earlier amendment related to Leveson which had been passed by the House. Despite that earlier stance, the Government do not appear to have been willing to adopt the same approach to getting the wording right, in their view, for the amendment carried in this House on Report.

We will support this amendment if it is put to a vote. Therefore, if it is carried, the Government will have another opportunity, albeit in the Commons, to put forward wording which achieves the objective sought by the noble Baroness, Lady Hollins, and indeed up to now by this House in relation to this amendment and amendments already carried on Leveson-related issues, before the Commons makes a decision on whether to accept or reject the amendments passed by this House or to put forward an alternative amendment of its own.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, we discussed this issue in some detail on Report. As we previously made clear, the cause of action, or tort, provided for in Clause 8 is intended to replicate the safeguard in the Regulation of Investigatory Powers Act 2000. This focuses on circumstances where an individual's communications are intercepted on a private telecommunications system by a person who has the right to control the operation or use of that system. This was a necessary safeguard to protect individuals, in very limited circumstances, where their employer may unfairly be intercepting communications on a company's internal computer system, which is not within the scope of the offence of unlawful interception.

A number of noble Lords have spoken about the objective of the amendment. With great respect, the fundamental difficulty is that it really has nothing to do with the purpose or purposes of Clause 8. It is not, as the noble Lord, Lord Paddick, suggested, simply a case of deleting "private" and substituting "public" , or of seeking to amend the proposed amendment at this stage or to improve it—it simply has no place in the clause. Clause 8 was not intended to regulate the press or to deal with awarding costs in circumstances where such a case is brought against a publisher. It simply has no application in this context. I quite understand the concerns about Section 40 that have been expressed, and the question of commencements is understood and is under consideration. But to amend Clause 8 in this way is to ignore the very purpose of this part of the Bill.

The Bill already provides for a criminal offence where an individual has unlawfully intercepted communications. An individual convicted of such a crime is liable, on conviction on indictment, to imprisonment for a term of up to two years, a fine or indeed both. So anyone carrying out phone hacking would face, under this Bill, a criminal conviction. That is a significant penalty and, in our view, the appropriate penalty for such an offence.

As we made clear in the previous debate, there are already avenues for individuals to pursue civil claims against those who carry out unlawful interception such as phone hacking. For example, cases have been brought on the grounds of misuse of private information. Although I agree with the noble Baroness that the outcome of Leveson and press regulation are very important issues, I maintain that this Bill, and in particular Clause 8, is not the appropriate place to deal with them. I therefore invite the noble Baroness to withdraw her amendment.

Baroness Hollins: My Lords, thank you for contributing to our understanding of this problem a little further. At no point has the House been told that the amendments are not in scope. In fact, it was suggested to me over the weekend by members of Her Majesty's Government that I should seek instead to place such amendments within another Bill, such as the Digital Economy Bill. I sought advice from the Public Bill Office but, after considering the matter at length, it advised me that that was not possible and they would not be within the scope of the Digital Economy Bill.

If the House supports the amendment today, as I hope it will, I will be more than happy to work with the Government to find a wording which does no more than provide for as much of the Section 40 costs incentives as could be provided in the scope of the Bill without going any further. I would not be asking the House, in ping-pong, to do anything that destabilises anything else in the Bill. The best solution, of course, would be for the Government to commence Section 40, as they promised and as they should. Then, we could drop all the amendments. It is the Government's choice and always has been.

On previous occasions when I have had drafting difficulties—and this is a complicated Bill—Ministers have been most helpful in achieving the intentions of your Lordships' House. I wrote to the noble Earl, Lord Howe, asking whether there were any technical difficulties with the amendment, and the answer was no.

I am not content with the answer given by the noble and learned Lord, and I wish to seek the opinion of the House.

3.41 pm

Division on Amendment 1

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Amendment 1 agreed.

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3.57 pm

Clause 41: Special rules for certain mutual assistance warrants

Amendment 2

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

2: Clause 41, page 34, line 28, leave out "to which the warrant relates" and insert "authorised or required by the warrant"

Lord Keen of Elie: My Lords, I will now address a series of government amendments which are minor and technical in nature. They aim to correct minor drafting oversights and inconsistencies within the Bill, as well as to clarify provisions and make minor consequential changes. Clause 41 contains special rules that apply for certain mutual assistance warrants, and Amendments 2, 3 and 4 correct inconsistencies in language in this clause. Amendment 5 is consequential on amendments made on Report in this House, which clarified that a communication can be between machines as well as people. Amendment 10 corrects an inconsistency in language with regard to the renewal of equipment interference warrants. Amendments 21, 22 and 23 are all minor amendments to those clauses of the Bill that relate to bulk acquisition warrants. Amendment 33 is another technical amendment, which provides that Clause 272(4) comes into force on the day on which the Bill is passed. Finally, Amendments 34, 35 and 36 are all minor and technical amendments that are designed to improve and clarify the written language of the Bill. These minor and technical amendments will help to clarify the extent of the provisions of the Bill. I beg to move.

4 pm

Lord Rooker (Lab): My Lords, I support the Minister on this group of amendments. As I do not propose to speak on the next and final group, I just want to make a couple of general points about the Bill, which will take only a minute or two.

This is the final day of our deliberations on the Bill, which has had a remarkable passage through Parliament. That is mainly due to the fact that the Government had a draft Bill, and there was also the independent report on surveillance and the work of the Joint Committee. Added to that, the Government were willing to respond to points made by amending the Bill. There will of course be only one issue for the Members of the Commons, who will see a non-government amendment on the matter on which we have just voted and on which I do not wish to comment.

I hope that Labour Party Members in the House of Commons will support the hundreds of Lords amendments. Many of these have been proposed by members of parties other than the government party, although a lot have come from the Government. They make this legislation more than a government Act; in my view, it is truly a parliamentary Act, given the input from other parties.

When the Bill was introduced in the Commons in March this year, I broke a 15-year vow of silence by speaking at the Parliamentary Labour Party to oppose the idea that Labour should abstain if there was a vote

at Second Reading. I pleaded for support for the Bill at that point. However, there are still people on the Labour Benches in the Commons who oppose the Bill and I think that my colleagues there should ignore them. It is not a snoopers' charter; it is not draconian; and it is not a stop-and-search power for the digital age. It will make UK citizens safer. Whether one looks at things like the request filter, the oversight procedures, the privacy protection or the obligations on communications service providers, just to take four aspects, it is a Bill that deserves active support, not sniping from the sidelines or the Front Bench.

There is one hole in the Bill. The Bill is about the state and its duties and responsibilities. The gaping hole now is the use that commercial service providers make of personal information given to them by citizens as they use the services. On page 41 of the report of the RUSI panel, on which I had the honour to serve, we listed the word length of the terms and conditions of popular internet services, and I do not propose to go over those again. All we do as users is tick a box, which means that companies analyse the content of our search results and the content of our emails when we send and receive them and when they are stored. This is done so that we can receive targeted advertising. Indeed, one service provider has filed a patent about being able to sense the mood of the user so that it is better able to make more profit. The Government will not be allowed to do that under this legislation, and Labour MPs should think about that if they are asked to oppose the Bill.

Lord West of Spithead (Lab): My Lords, I support these amendments and I strongly support my noble friend Lord Rooker in everything that he has said. This Bill is a classic example of how a Bill should come through this place. The way in which it has been built up across Parliament has been remarkable. It meets all the requirements for our security and for personal liberty, and we should be very proud of it.

Baroness Jones of Moulsecoomb (GP): My Lords, I was going to speak later but I will speak now, as I am driven to do so by the comments of previous speakers.

The Bill is undoubtedly better than it was at the start. It could not help but be because of all the effort that people have put into making it better, but it is still a most appalling piece of legislation and I should like to read something to noble Lords:

"Today, an ordinary person can't pick up the phone, email a friend or order a book without comprehensive records of their activities being created, archived, and analysed by people with the authority to put you in jail or worse. I know: I sat at that desk. I typed in the names. When we know we're being watched, we impose restraints on our behaviour—even clearly innocent activities—just as surely as if we were ordered to do so. The mass surveillance systems of today, systems that pre-emptively automate the indiscriminate seizure of",

private records, constitute a sort of surveillance time machine",

"—a machine that simply cannot operate without violating our liberty on the broadest scale. And it permits governments to go back and scrutinise every decision you've ever made, every friend you've ever spoken to, and derive suspicion from an innocent life. Even a well-intentioned mistake can turn a life upside down. To preserve our free societies, we have to defend not just against distant enemies, but against dangerous policies at home. If we allow scarce resources to be squandered on surveillance programmes that violate the very rights they purport to defend, we haven't protected our liberty at all: we have paid to lose it".

That sums this Bill up. It was written by Edward Snowden, who, as he said, sat at that desk. It was written for Liberty.

Lord West of Spithead: My Lords, does the noble Baroness accept that Edward Snowden, by releasing millions of bits of classified material, has actually made all of us less safe than we were? It is a certain fact that he has done that. He is hardly someone to quote as a great and noble person.

Baroness Jones of Moulsecoomb: I think that we will find in the future that this legislation will return again and again to bite us, and many of us here will regret having passed it.

Lord Murphy of Torfaen (Lab): My Lords, I disagree with the noble Baroness, Lady Jones. She played an important role in the course of this Bill in reminding your Lordships of the need to deal with the liberty of the citizen. But the greatest threat to the liberty of the citizen is the threat to life. This Bill, which is now in its final stage, is extremely important in ensuring that in future our citizens are protected against terrorism and the threats that face this country and beyond.

Of course, there were and are still issues that need to be taken very seriously with regard to the liberty of the subject. But in all the years that I have been in Parliament, I have not seen as much scrutiny of a Bill as this one. Not only did the Joint Committee, which I had the honour to chair, go through all the details of the Bill over a number of months, the other committees in Parliament also dealt with it, not least the Intelligence and Security Committee.

I commend the Government—not something that I usually do, but I will on this occasion—on accepting a great number of amendments to the Bill, which have improved it in the sense of ensuring that our liberties are safeguarded but that the basic thrust of the Bill remains the same. This has been a tremendous exercise in parliamentary scrutiny. As my noble friend Lord Rooker said, it is Parliament's Bill as much as it is the Government's.

Lord Keen of Elie: I am obliged to the noble Lord, Lord Rooker, for making his point at this stage. This is an important Bill. It will update the framework for the use of investigatory powers to obtain communications for the foreseeable future. But it not only provides powers, it provides safeguards that are clear and understandable: the double lock for the most intrusive powers; the creation of a new Investigatory Powers Commissioner; important safeguards on oversight in respect of legal professional privilege and in respect of journalistic material; a government response to David Anderson's review in respect of bulk materials; and extensive consultation with the bodies affected by investigatory powers.

What we have today is the product in this House of cross-party collaboration. The parties opposite have taken an incredibly constructive and reasonable approach during the Bill's passage and we are sending a significant number of changes back to the House of Commons. But those changes are evidence of the constructive

[Lord Keen of Elie]
engagement from all sides in this House. I particularly note the contributions of the noble Lords, Lord Rosser, Lord Rooker and Lord West, the noble Baroness, Lady Hayter, and from the Liberal Democrat Benches the noble Lords, Lord Paddick, Lord Carlile and Lord Lester, and the noble Baroness, Lady Hamwee. Indeed, the noble Lord, Lord Strasburger, also contributed to our debates on this matter. Of course, members of the ISC and Members on the Cross Benches have taken a great interest in the passage of this Bill. I cite the noble Lords, Lord Butler and Lord Pannick, and the noble and learned Lords, Lord Judge and Lord Brown of Eaton-under-Heywood, and I am sure that I have missed many others. But this expression is intended for all Members of the House who have taken this matter forward and produced a Bill that we can send back to the other place with confidence, subject possibly to one amendment.

Amendment 2 agreed.

Amendments 3 and 4

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

3: Clause 41, page 34, line 41, leave out "to which the warrant relates" and insert "authorised or required by the warrant"

4: Clause 41, page 35, line 12, leave out "to which the warrant relates" and insert "authorised or required by the warrant"

Amendments 3 and 4 agreed.

Clause 49: Interception by OFCOM in connection with wireless telegraphy

Amendment 5 agreed.

Clause 56: Additional safeguards for items subject to legal privilege

Amendment 6

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

6: Clause 56, page 45, line 20, leave out "The Investigatory Powers Commissioner may" and insert "Unless the Investigatory Powers Commissioner considers that subsection (3B) applies to the item, the Commissioner must"

Lord Keen of Elie: My Lords, in moving this amendment I shall speak also to the other amendments in the group. This House has already discussed the important issue of legal privilege and whether the protections in the Bill for material that attracts privilege are adequate. At Report stage, the Government made a number of amendments significantly increasing the protections afforded to such material which were welcomed by this House.

In response to an amendment proposed by the noble Lords, Lord Lester and Lord Pannick, and the noble Baroness, Lady Hamwee, we also committed to consider whether there was more we could provide in the Bill to set out what the Investigatory Powers Commissioner must do when privileged material has been obtained and an agency wishes to retain it, and the considerations that he or she has to take into account when deciding whether material can be retained. The amendments tabled today speak to that issue, and in broad terms they do two things.

First, they provide that the Investigatory Powers Commissioner must order the destruction of privileged material or impose conditions on its use or retention unless the public interest in retaining the item outweighs the public interest in the confidentiality of items that are privileged, and retaining the item is necessary in the interests of national security or to prevent death or significant injury. Secondly, they provide for the commissioner to be able to impose conditions as to the "use or retention" of privileged items rather than its "disclosure", as was previously the case. This makes it abundantly clear that decisions about what can be done with privileged material—whether it can be retained and who can be told about it—rest entirely with the commissioner, a serving or a former High Court judge who is, of course, well placed to make decisions which have at their heart public interest in the confidentiality of items subject to legal privilege.

The amendments relate to the interception provisions, both targeted and bulk, to the equipment interference provisions, both targeted and bulk, and to the provisions that relate to bulk personal datasets. The Bill therefore makes it clear that in every circumstance where legally privileged material is obtained and an agency wishes to retain it, whether the material is obtained intentionally or inadvertently, the commissioner must order its destruction or impose conditions on its use and retention unless its retention is necessary in the interests of national security or to prevent death or significant injury, and the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to privilege.

Amendments 11 and 24 are more minor and technical in nature. They ensure that Clauses 132 and 195, which relate to the retention of items obtained by targeted and bulk equipment interference, are consistent with the equivalent provisions in those parts of the Bill that deal with interception. I trust that noble Lords will agree that the Government have listened at every stage to the concerns of this House about the vitally important protections that must apply to material which attracts legal privilege, and I hope that they will further agree that the revised protections in the Bill reflect the sensitivity of legally privileged material while ensuring that sensitive but potentially vital intelligence remains available to the agencies in very limited circumstances. These final additions to the Bill make it clear that the criteria which apply to a warrant that authorises access to legally privileged material similarly apply to its retention.

I am obliged not only to the noble Lords, Lord Lester and Lord Pannick, and the noble Baroness, Lady Hamwee, in respect of these amendments, but also to my noble and learned friend Lord Mackay of Clashfern, who is not in his place today but who has contributed much to the discussions regarding these provisions. I beg to move.

4.15 pm

Lord Pannick (CB): My Lords, when the Bill came to this House, legal professional privilege—that is, the right of members of the public to seek and obtain confidential legal advice—was not adequately protected. The Minister and the Bill team have listened to the concerns expressed by the Bar Council, the Law Society

and noble Lords on all sides of the House. The Minister has held a number of meetings; he has looked anxiously at these issues with the Bill team and has responded on Report and again today. I am very grateful to him.

Baroness Hamwee (LD): My Lords, I moved amendments at the last stage. Having listened today to the plaudits given to Members of your Lordships' House and the other place for the constructive way the Bill has been taken forward from when it was first a glimmer in the Government's eye, I want to add plaudits for the efforts made outside the Palace of Westminster. The noble Lord, Lord Pannick, referred to the Bar Council—even if not quite everything it wanted has been agreed to—and to the Law Society, whose work on behalf not of lawyers but their clients has been invaluable in this process. It has been heartening to take part in this process, given the outcome, and to see how seriously and carefully the Government and members of the Bill team, for whom I know this has proved something of an intellectual challenge, have dealt with it. We are grateful to the Government.

Amendment 6 agreed.

Amendments 7 to 9

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

7: Clause 56, page 45, line 22, after "impose" insert "one or more"

8: Clause 56, page 45, line 22, leave out "disclosure or otherwise making available" and insert "use or retention"

9: Clause 56, page 45, line 23, at end insert—

"(3A) If the Investigatory Powers Commissioner considers that subsection (3B) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (3)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.

(3B) This subsection applies to an item subject to legal privilege if—

(a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and

(b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury."

Amendments 7 to 9 agreed.

Clause 118: Renewal of warrants

Amendment 10

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

10: Clause 118, page 96, line 13, after "the" insert "renewed"

Amendment 10 agreed.

Clause 132: Additional safeguards for items subject to legal privilege

Amendments 11 to 15

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

11: Clause 132, page 109, line 19, leave out from "privilege" to end of line 21 and insert "which has been obtained under a targeted equipment interference warrant is retained, following its examination, for purposes other than the destruction of the item."

12: Clause 132, page 109, line 25, leave out "The Investigatory Powers Commissioner may" and insert "Unless the Investigatory Powers Commissioner considers that subsection (3B) applies to the item, the Commissioner must"

13: Clause 132, page 109, line 27, after "impose" insert "one or more"

14: Clause 132, page 109, line 27, leave out "disclosure or otherwise making available" and insert "use or retention"

15: Clause 132, page 109, line 28, at end insert—

"(3A) If the Investigatory Powers Commissioner considers that subsection (3B) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (3)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.

(3B) This subsection applies to an item subject to legal privilege if—

(a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and

(b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury."

Amendments 11 to 15 agreed.

Clause 154: Additional safeguards for items subject to legal privilege

Amendments 16 to 20

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

16: Clause 154, page 127, line 11, after "privilege" insert "which has been"

17: Clause 154, page 127, line 18, leave out "The Investigatory Powers Commissioner may" and insert "Unless the Investigatory Powers Commissioner considers that subsection (10B) applies to the item, the Commissioner must"

18: Clause 154, page 127, line 20, after "impose" insert "one or more"

19: Clause 154, page 127, line 20, leave out "disclosure or otherwise making available" and insert "use or retention"

20: Clause 154, page 127, line 21, at end insert—

"(10A) If the Investigatory Powers Commissioner considers that subsection (10B) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (10)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.

(10B) This subsection applies to an item subject to legal privilege if—

(a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and

(b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury."

Amendments 16 to 20 agreed.

Clause 159: Power to issue bulk acquisition warrants

Amendment 21

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

21: Clause 159, page 130, line 27, leave out "such data" and insert "communications data obtained under the warrant"

Amendment 21 agreed.

Clause 169: Implementation of warrants

Amendment 22

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

22: Clause 169, page 136, line 39, leave out "obtained" and insert "as authorised or required"

Amendment 22 agreed.

Clause 170: Service of warrants

Amendment 23

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

23: Clause 170, page 137, line 3, leave out "169(3)" and insert "169(2)"

Amendment 23 agreed.

Clause 195: Additional safeguards for items subject to legal privilege

Amendments 24 to 28

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

24: Clause 195, page 157, line 42, leave out from "privilege" to first "the" in line 44 and insert "which has been obtained under a bulk equipment interference warrant is retained following its examination, for purposes other than the destruction of the item,"

25: Clause 195, page 157, line 49, leave out "The Investigatory Powers Commissioner may" and insert "Unless the Investigatory Powers Commissioner considers that subsection (10B) applies to the item, the Commissioner must"

26: Clause 195, page 158, line 2, after "impose" insert "one or more"

27: Clause 195, page 158, line 2, leave out "disclosure or otherwise making available" and insert "use or retention"

28: Clause 195, page 158, line 3, at end insert—

"(10A) If the Investigatory Powers Commissioner considers that subsection (10B) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (10)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.

(10B) This subsection applies to an item subject to legal privilege if—

(a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and

(b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury."

Amendments 24 to 28 agreed.

Clause 224: Additional safeguards for items subject to legal privilege: retention following examination

Amendments 29 to 32

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

29: Clause 224, page 177, line 41, leave out "The Investigatory Powers Commissioner may" and insert "Unless the Investigatory Powers Commissioner considers that subsection (2B) applies to the item, the Commissioner must"

30: Clause 224, page 177, line 43, after "impose" insert "one or more"

31: Clause 224, page 177, line 43, leave out "disclosure or otherwise making available" and insert "use or retention"

32: Clause 224, page 177, line 44, at end insert—

"(2A) If the Investigatory Powers Commissioner considers that subsection (2B) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (2)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.

(2B) This subsection applies to an item subject to legal privilege if—

(a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and

(b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury."

Amendments 29 to 32 agreed.

Clause 273: Commencement, extent and short title

Amendment 33

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

33: Clause 273, page 226, line 1, leave out "and (3)" and insert "to (4)"

Amendment 33 agreed.

Schedule 3: Exceptions to section 57

Amendment 34

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

34: Schedule 3, page 246, line 33, at end insert—

"( ) In sub-paragraph (3) "intercepted material" means—

(a) any content of an intercepted communication (within the meaning of section 57), or

(b) any secondary data obtained from a communication."

Amendment 34 agreed.

Schedule 10: Minor and consequential provision

Amendments 35 and 36

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

35: Schedule 10, page 273, line 28, leave out sub-paragraph (3) and insert—

"(3) In paragraph (a) of the definition of "communication" omit "(except in the definition of "postal service" in section 2(1))"."

36: Schedule 10, page 283, line 19, leave out ", or Chapter 3 of Part 6,"

Amendments 35 and 36 agreed.

Motion

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

That the Bill do now pass.

Lord Keen of Elie: My Lords, I beg to move.

Lord Rosser: Let me take this opportunity to say that, while very differing views have been expressed in this House about the Bill, I believe it is accepted that it has benefited significantly from the attention it has been given through pre-legislative scrutiny and investigation, including by a Joint Committee, and during its passage through both Houses. We have now concluded our consideration of the Bill, and I want to

take this opportunity to thank Ministers and the Bill team for the thought they have given to the issues that have been raised, including those left outstanding following the Bill's passage through the Commons. Finally, I want to thank our own team, particularly Nicola Jayawickreme, for all the help and support they have given me and my noble friend Lady Hayter of Kentish Town.

Bill passed and returned to the Commons with amendments.

Wales Bill

Committee (1st Day)

4.20 pm

Relevant document: 5th Report from the Delegated Powers Committee

Clause 1: Permanence of the National Assembly for Wales and Welsh Government

Amendment 1

Moved by ***Lord Wigley***

1: Clause 1, page 1, line 19, at end insert—

"( ) A referendum under subsection (3) may only be held following a vote in the Assembly in favour of holding a referendum for the purpose mentioned in subsection (3).

( ) The rules relating to any referendum held under subsection (3) must be drawn up by the Assembly in cooperation with the Electoral Commission."

Lord Wigley (PC): My Lords, this amendment goes to the heart of the Government's intentions relating to the permanence of the National Assembly. The Bill as it stands contains the words:

"In view of that commitment it is declared that the Assembly and the Welsh Government are not to be abolished except on the basis of a decision of the people of Wales voting in a referendum".

But what is the Government's intention, and what do they really mean by those words?

I am aware that the introduction of those words follows a similar declaration in relation to Scotland's Parliament—that it is a permanent part of the governmental system of that country. In Scotland, the demand for that grew from the Scottish assertion of a claim of right: that sovereignty in Scotland comes from the people. That is fundamental to the developments in that country over the past 25 years. It was central, indeed, to the initiative taken by the late John Smith when Labour leader, and it was the background to the Scottish convention which brought the question of a Scottish Parliament back on to the political agenda in the late 1980s.

I believe that this principle should equally apply to the National Assembly. As it was established—and later emphatically confirmed—by referenda of the people of Wales, it is only right that the National Assembly can be abolished only by the democratic vote of the people of Wales.

My amendment deals with the circumstances in which such a referendum can take place. I believe that it would be totally unacceptable if Westminster were to decide, against the wishes of the National Assembly, to hold a referendum on its abolition. That would make a total nonsense of the provisions in Clause 1 about the permanence of the Assembly. It would be a creature only in existence at the behest of Westminster. Equally, if the rules for such a referendum were drawn up by Westminster, there is no knowing what impediments might be contained within them. One has only to think back to the 1979 referendum, with its 40% rule, which meant that on a 50% turnout, there had to be a four-to-one majority in favour of the Assembly for it to be established. That rule applied in Scotland too, where, unlike Wales, there was a majority in favour of the assembly, but it was overruled because of the 40% rule.

My amendment, therefore, does two things. First, it provides that the right and responsibility for holding any such referendum should lie exclusively in the hands of the Assembly itself. Secondly, Amendment 1 provides that the rules for that referendum should be drawn up by the Assembly in co-operation with the Electoral Commission. These two safeguards ensure that this Bill does indeed legislate for the permanence of the Assembly and recognises—as, I think, do all true democrats in this Chamber—that the future of the Assembly should lie in the hands of the people of Wales alone, and not be beholden to the whims and wishes of the Government of the day here in Westminster. As such, this is fundamental to our vision for the status and future of the Assembly. I ask the Government to accept this amendment or, if it is in any way technically deficient, to bring forward their own amendment on Report to reach these objectives. I beg to move.

Lord Elystan-Morgan (CB): My Lords, I wholeheartedly agree with the submission made by the noble Lord, Lord Wigley. He has adumbrated all the arguments that I can possibly think of in support of this amendment. It goes to the very heart of the question that this is essentially a contract, not inter-institutional in terms of the mechanics of Westminster, but a contract with the people of Wales.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I thank the noble Lord, Lord Wigley, for introducing this amendment, and the noble Lord, Lord Elystan-Morgan, for his contribution. The amendment seeks to define the trigger for a referendum to abolish the National Assembly for Wales and the Welsh Government, and would provide that the rules for such a referendum be drawn up by the Assembly in co-operation with the Electoral Commission. Clause 1 meets the Government's commitment in the St David's Day agreement and delivers the Silk commission's recommendation that it should be recognised that the National Assembly is permanent so long as that is the will of the majority of the people of Wales. New Section A1(3), in Clause 1, states:

"In view of that commitment it is declared that the Assembly and the Welsh Government are not to be abolished except on the basis of a decision of the people of Wales voting in a referendum".

As matters stand, referendums are governed by the law relating to referendums, as passed by this Parliament, and I do not consider that there is any suggestion that

[Lord Bourne of Aberystwyth]
that should be varied. The principle in the Bill establishes in statute what is already recognised to be the case—that the National Assembly for Wales and the Welsh Government are permanent parts of our constitutional fabric. The referendum provision strengthens this commitment and delivers on the second limb of the Silk commission's recommendation. Although there has never been a question about whether these institutions are anything but permanent, it is only right that if they were to be abolished that would have to be on the basis of a decision by the people of Wales. Let me be clear that such a referendum is not envisaged, and so the noble Lord's amendment deals with entirely hypothetical circumstances. I therefore believe that it is unnecessary. On that basis, I urge the noble Lord to withdraw the amendment.

Lord Wigley: Perhaps I may press the Minister to be a little clearer on this matter. Is he telling the House that there are no circumstances in which a Government in Westminster, in this Chamber or the other Chamber, could move to hold a referendum if the National Assembly for Wales were against holding such a referendum? Or is he saying yes, Westminster can pass such a referendum irrespective of the wishes of the National Assembly?

Lord Bourne of Aberystwyth: My Lords, the noble Lord will know that I do not set out the rules on the sovereignty of Parliament. He will be aware, as I am, that very recently we have seen situations that demonstrate the sovereignty of the people and the sovereignty of this Parliament, so nothing I say could obviate the possibility of a Parliament coming forward subsequently and reversing that. For example, it would be open to any Parliament here to repeal the Government of India Act. That would not be a sensible move and would not be politically realistic, but in terms of the sovereignty of Parliament, of course, that remains the case. This is an important declaratory principle that has not existed previously, indicating the permanence of the institution and the fact that it is the belief of this Parliament that it should not be done without the consent of the people of Wales.

Lord Elystan-Morgan: Does the Minister agree that this matter would be caught by the words of new subsection (6) in Clause 2:

"But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Assembly"?

In other words, it is the Sewel covenant. The Government would fall foul of that, it seems, if they were to act in a cavalier way.

Lord Bourne of Aberystwyth: My Lords, I am grateful to the noble Lord for his assistance on this matter. He is right that this provision gives that convention statutory force but, of course, it does contain the word "normally"; therefore it is still subject to the will of the Parliament of the United Kingdom. He is right that in normal circumstances that would be impossible to do.

Lord Elis-Thomas (Non-Afl): I do not wish to anticipate any major contribution that I may have to make on my own amendment on the word "normally" later on, but I do not believe that the Minister has really answered the question from my colleague the noble Lord, Lord Wigley, who asked whether the Parliament of the United Kingdom could legislate for a referendum on the future of the National Assembly without the consent of the Assembly. It seems to me that if we are legislating, as we are in the Bill, for the convention relating to the legislative consent Motions to be part of Welsh law and devolution law, then surely, in a situation where the future of the Assembly were subject to a referendum, consent should be sought. Or is the Minister allowing a little room for the removal of the Assembly without the consent of its Members?

Lord Bourne of Aberystwyth: My Lords, I think the noble Lord knows me better than to think that that is on my mind at all. I was not the person who brought forward this amendment. I am unable to rewrite the rules on the sovereignty of Parliament; I was merely pointing out the legal position in relation to this. There is a very clear declaration that is consistent with the Silk recommendation which was discussed by the Silk commission. It is not to be anticipated in any way that this Parliament would wish to do anything relating to the National Assembly except celebrate its existence. I make that absolutely clear; it is my position and the position of my party, as the noble Lord knows. I just point out that this cannot overrule the rules of science and of parliamentary sovereignty that exist independently of the amendment.

4.30 pm

Lord Wigley: My Lords, I am grateful to the noble Lord, Lord Elystan-Morgan, for his contribution and my noble friend Lord Elis-Thomas for his intervention—I nearly said my erstwhile colleague.

Lord Elis-Thomas: Call me whatever you want to.

Lord Wigley: I will not in this Chamber.

There seem to be two central points that have not been properly resolved. The first relates to a declaratory statement in legislation. I suspect that that is not something regarded as a strong principle in the systems we run because when we start pressing them we find they do not mean much more than the paper they are written on. Of course this place could pass laws that reverse the force of gravity, but they would not mean anything. The question is what they mean by this, especially, as my noble friend Lord Elis-Thomas said, in the context of the legislative consent orders required for all the legislation where the Assembly is involved. The Assembly is involved in this legislation because it is the Assembly that would be at stake and which would be involved in the undertaking of the practical aspects of a referendum. The legislation would therefore require a legislative consent order. If the Assembly said no, is the Minister then saying that that would be overruled? If it can be overruled in those circumstances, how does the principle apply in others when the Westminster Government might feel ill disposed towards policies put forward in Cardiff? This needs more clarification than the Minister has given so far. I invite him to clarify it.

Lord Bourne of Aberystwyth: My Lords, I am not sure that it is in order that I respond, but I will happily talk to the noble Lord outside the Chamber and report to other Peers. I have to say to the noble Lord that the declaratory statement was something pushed for by his party. I am very surprised that he then says that this does not have any significance, because his party pressed for it very hard. I would have thought he would welcome it being put in legislation.

Lord Wigley: I am grateful for that addition. Of course there are things that one declares. The question is whether one declares them intending them to have the force of law, which is what we are dealing with here—we are dealing with legislation. I will now go on from that; no doubt we can have a private conversation about it.

I believe that the people of Wales are entitled to know where they stand, in particular about the possibility that, if the going gets rough, Westminster can organise a referendum with a view to abolishing the National Assembly. That is not a good basis on which the Bill should be built. I welcome the declarations made regarding permanence. I was just looking for a way to ensure that that is the position in law, as well as in declaration, but we have probably taken this as far as we are going to this afternoon, so I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Lord Wigley***

2: Clause 1, page 2, leave out lines 1 to 6 and insert —

"PART A2

ESTABLISHMENT OF TWO DISTINCT JURISDICTIONS

A2 Legal jurisdictions of Wales and of England

The legal jurisdiction of England and Wales becomes two legal jurisdictions, that of Wales and that of England.

A3 The law of Wales and the law of England

(1) The law of England and Wales is divided into the law of Wales and the law of England.

(2) All of the law that extends to England and Wales immediately before the coming into force of this section—

(a) except in so far as it applies only in relation to England, is to extend to Wales (and becomes the law of Wales), and

(b) except in so far as it applies only in relation to Wales, is to extend to England (and becomes the law of England).

(3) In this section "law" includes—

(a) rules and principles of common law and equity,

(b) provision made by virtue of an Act of the United Kingdom Parliament or an Act or Measure of the National Assembly for Wales, and

(c) provision made pursuant to the prerogative.

(4) Any provision of any enactment or instrument enacted or made, but not in force, when subsection (1) comes into force is to be treated for the purposes of that subsection as part of the law that extends to England and Wales (but this subsection does not affect provision made for its coming into force).

A4 Senior Courts system

(1) The Senior Courts of England and Wales cease to exist (except for the purposes of section A8 (3) and (4)) and there are established in place of them—

(a) the Senior Courts of Wales, and

(b) the Senior Courts of England.

(2) The Senior Courts of Wales consist of—

(a) the Court of Appeal of Wales,

(b) the High Court of Justice of Wales, and

(c) the Crown Court of Wales, each having the same functions in Wales as are exercisable by the corresponding court in England and Wales immediately before subsection (1) comes into force.

(3) The Senior Courts of England consist of—

(a) the Court of Appeal of England,

(b) the High Court of Justice of England, and

(c) the Crown Court of England,

each having the same functions in England as are exercisable by the corresponding court in England and Wales immediately before subsection (1) comes into force.

(4) For the purposes of this Part—

(a) Her Majesty's Court of Appeal in England is the court corresponding to the Court of Appeal of Wales and the Court of Appeal of England,

(b) Her Majesty's High Court of Justice in England is the court corresponding to the High Court of Justice of Wales and the High Court of Justice of England, and

(c) the Crown Court constituted by section 4 of the Courts Act 1971 is the court corresponding to the Crown Court of Wales and the Crown Court of England.

(5) Subject to section A9—

(a) references in enactments, instruments and other documents to the Senior Courts of England and Wales (however expressed) have effect (as the context requires) as references to the Senior Courts of Wales or the Senior Courts of England, or both; and

(b) references in enactments, instruments and other documents to Her Majesty's Court of Appeal in England, Her Majesty's High Court of Justice in England or the Crown Court constituted by section 4 of the Courts Act 1971 (however expressed) have effect (as the context requires) as references to either or both of the courts to which they correspond.

A5 County court and family court

(1) The county court and the family court cease to exist (except for the purposes of section A8 (3) and (4)) and there are established in place of them—

(a) the county court of Wales and the family court of Wales with the same functions in Wales as are exercisable by the county court and the family court (respectively) immediately before this subsection comes into force, and

(b) the county court of England and the family court of England with the same functions in England as are exercisable by the county court and the family court (respectively) immediately before this subsection comes into force.

(2) For the purposes of this Part—

(a) the county court is the court corresponding to the county court of Wales and the county court of England, and

(b) the family court is the court corresponding to the family court of Wales and the family court of England.

(3) Subject to section A9 references in enactments, instruments and other documents to the county court or the family court (however expressed) have effect (as the context requires) as references to either or both of the courts to which they correspond.

A6 Judiciary etc.

(1) All of the judges, judicial office-holders and other officers of Her Majesty's Court of Appeal in England or Her Majesty's High Court of Justice in England become judges, judicial office-holders or officers of both of the courts to which that court corresponds.

(2) All of the persons by whom the jurisdiction of the Crown Court constituted by section 4 of the Courts Act 1971 is exercisable become the persons by whom the functions of both of the courts to which that court corresponds are exercisable except that (despite section 8(2) of the Senior Courts Act 1981)—

(a) a justice of the peace assigned to a local justice area in England may not by virtue of this subsection exercise functions of the Crown Court of Wales, and

(b) a justice of the peace assigned to a local justice area in Wales may not by virtue of this subsection exercise functions of the Crown Court of England.

(3) All of the judges, judicial office-holders and other officers of the county court become judges, judicial office-holders or officers of the county court of Wales and the county court of England.

(4) All of the judges, judicial office-holders and other officers of the family court become judges, judicial office-holders or officers of the family court of Wales and the family court of England except that (despite section 31C(1)(y) of the Matrimonial and Family Proceedings Act 1984)—

(a) a justice of the peace assigned to a local justice area in England is not a judge of the family court of Wales, and

(b) a justice of the peace assigned to a local justice area in Wales is not a judge of the family court of England.

A7 Legal professions

(1) Every legal practitioner who would (but for this Part) at any time after the coming into force of this Act be entitled to carry on a reserved legal activity for the purposes of the law of England and Wales, in proceedings in England and Wales or before the courts of England and Wales, has at that time the same entitlement for the purposes of the law of England and the law of Wales, in proceedings in England and proceedings in Wales and before the courts of England and the courts of Wales.

(2) In this section-

"legal practitioner" means every solicitor, barrister, notary, legal executive, licensed conveyancer, patent attorney, trade mark attorney, law costs draftsman, accountant or other person who, in accordance with the Legal Services Act 2007 (c. 29), is entitled to carry on a reserved legal activity;

"reserved legal activity" has the same meaning as in the Legal Services Act 2007.

A8 Division of business between courts of Wales and courts of England

(1) The Senior Courts of Wales, the county court of Wales, the family court of Wales and the justices for local justice areas in Wales are to apply the law extending to Wales (including the rules of private international law relating to the application of foreign law).

(2) The Senior Courts of England, the county court of England, the family court of England and the justices for local justice areas in England are to apply the law extending to England (including the rules of private international law relating to the application of foreign law).

(3) All proceedings, whether civil or criminal, pending in any of the Senior Courts of England and Wales, the county court or the family court (including proceedings in which a judgment or order has been given or made but not enforced) must be transferred by that court to whichever of the courts to which that court corresponds appears appropriate.

(4) The transferred proceedings are to continue as if the case had originated in, and the previous proceedings had been taken in, that other court.

Supplementary

A9 Power to make further provision

(1) Her Majesty may by Order in Council make provision (including provision amending or otherwise modifying any enactment or instrument, including this Act) that appears appropriate in consequence of, or otherwise in connection with, the provision made by this Part.

(2) The provision that may be made under subsection (1) includes in particular provision relating to—

(a) courts,

(b) tribunals,

(c) the judges, judicial officers and other members and officers of courts and tribunals,

(d) the Counsel General or other law officers,

(e) the legal professions,

(f) the law relating to the jurisdiction of courts and tribunals, and

(g) other aspects of private international law (including, in particular, choice of law, domicile and the recognition and enforcement of judgments and awards).

(3) No Order may be made under subsection (1) unless a draft of the Order has been laid before, and approved by resolution of—

(a) each House of the United Kingdom Parliament, and

(b) the National Assembly for Wales."""

Lord Wigley: My Lords, I am delighted to have the opportunity to move Amendment 2, which addresses an issue that has been widely debated in Wales: establishing distinct jurisdictions for Wales and for England respectively. I immediately acknowledge that I am not a lawyer by background. It is a matter of regret that Plaid Cymru does not have in this Chamber a Member with in-depth experience in the law. I beg the indulgence of noble Lords, in particular of noble and learned Lords, who are much more knowledgeable than me in these matters.

I also speak to the other amendments grouped with mine. Amendments 4 and 5 in the name of the noble Baroness, Lady Morgan of Ely, calls for a Justice in Wales commission to reveal whether the existing single jurisdiction of England and Wales should be divided in two, one for Wales and one for England. I shall also speak to Amendment 10 in the name of the noble Lord, Lord Thomas of Gresford, which calls for a commission on jurisdiction to examine the desirability of a separate and distinct legal jurisdiction in Wales. I await the cases that will be made by the noble Baroness and the noble Lord relating to their respective approaches

to this matter, but should my amendment for any reason not be accepted, I would certainly regard their amendments as steps in the right direction that I would support.

I accept that there are divided opinions among lawyers on these matters. I suspect that a majority of legal people in this Chamber might not initially warm to my proposals. I ask any doubters to consider that there has already been keen debate on this issue within legal circles in Wales—the range of amendments being debated emanating from different parts of this Chamber bears that out. I ask noble Lords to accept that there are leading legal brains, such as Sir Roderick Evans and Winston Roddick QC, who have long campaigned in favour of Wales having its own jurisdiction. In his memorable Lloyd George memorial lecture in 2008, Winston Roddick stated, "My view is that a devolution settlement, by which the Assembly is given full legislative competence but not the responsibility for the administration of justice, would be dysfunctional, constitutionally unsound and demeaning to Wales's developing constitutional status".

In fact, the need to address the divergence between Wales and England was recognised long before primary law-making powers were devolved. In the first four years of devolution over 1,100 statutory instruments were approved by the Assembly. A very large proportion of these were unique to Wales or reflected distinct differences to those pertaining to similar instruments operational in England, with these differences reflecting the different circumstances of Wales. As long ago as 2004 Professor Tim Jones and Jane Williams wrote an article in which they stated that Wales was emerging as a separate jurisdiction that needed to be separately recognised. If that was true then, how much greater is that need now and how much greater again will it be in another five or 10 years?

Notwithstanding the force of these points I feel I should address wider and more general questions in justifying the change that I advocate. One might argue that the separate or distinct jurisdiction requires a defined territory, a law-making body within that territory empowered to make laws for it and a judicial system within it to administer those laws. However, discussion of a separate or distinct Welsh jurisdiction must have regard for the wider UK context. England and Wales, and Scotland and Northern Ireland, have their legal jurisdictions, but none of them is separate in a watertight fashion. The Scottish judicial system enforces laws made in Westminster, as it does laws made in Edinburgh. The same is true of Northern Ireland in the Belfast/Westminster context.

In addition, important elements of the tribunal systems that operate in each jurisdiction are organised on a UK or GB basis and function alongside intra-jurisdictional tribunals. There is also the Supreme Court of the United Kingdom, which sits at the pinnacle of the judicial system of each jurisdiction. A Welsh jurisdiction would not be separate in an isolationist sense, but would take its place alongside the other jurisdictions of the UK and therefore perhaps the word "distinct" is more appropriate.

A question concerning the difference between separate and distinct jurisdictions might be exercising some noble colleagues, and I understand that. What does it mean in practice? A distinct jurisdiction will consist of a unified court system, encompassing Wales and England, but applying two distinct bodies of law: the law of Wales and the law of England. The infrastructure is therefore in place, minimising costs. A distinct jurisdiction may over time grow into a separate jurisdiction and that will reflect the evolution of our devolved Government.

As I understand it, the case is based on the need for there to be absolute clarity with regard to the legal rectitude of a legislative action taken by the Welsh Government. This will build up over time in terms of the primary and secondary legislation passed, amended and no doubt sometimes annulled by the National Assembly, and by the plethora of court cases that over time will create the interpretive framework for such laws and regulations.

In the earlier years of devolution—the years through which we are living—there will no doubt be lawyers practising in Wales and England who will be able to keep a focused eye on the law and its interpretation on both sides of the border. As the years go by and the volume of relevant legislation accumulates, it will become increasingly difficult to ride both horses without slips and mistakes. In one sense there is already an embryonic Welsh jurisdiction. There are approximately 15 tribunals that function in Wales. I believe that one was actually created by the National Assembly itself. Responsibility for these rests with the Welsh Government.

A Welsh jurisdiction could have whatever structures and institutions it is decided are needed to best serve the interests of Wales. There is no template that has to be followed and a jurisdiction, once created, is not immutable. It can change and develop as needs dictate; for example, the present Northern Ireland jurisdiction is structurally different from that originally set up. Creating a jurisdiction for Wales is having a clean sheet of paper and deciding on what we need at this stage. It is the opportunity to create a structure that meets the demographic, geographic and linguistic needs of Wales and, most of all, its democratic needs in the context of our devolved legislature and its responsibilities.

I will now address the reasons for creating a Welsh jurisdiction. First, the argument cited most often, as I have mentioned, is that Wales is developing a body of law that is different from the law of England, and those differences will increase as devolution progresses. It is a good, valid and attractive argument but it is not the only one and not necessarily the most persuasive. The differences between the laws of Wales and the laws of England are unlikely ever to be fundamental. There are no differences so fundamental between the laws of Northern Ireland or Canada or Australia and, say, England and Wales that a judge could not come to terms with them.

Secondly, the refinement of the "different law" argument into constitutional terms is, to my mind, far more persuasive. The judiciary, as the third pillar of government, needs to be properly in place in Wales to support the progress of devolution and to act in relation to the Welsh Government as the judiciary in London acts in relation to Westminster. I contend that the joint jurisdiction has not served Wales particularly well. Institutions of the law from the courts to prisons have been developed according to templates set to

[LORD WIGLEY]
accommodate the large cities of England and not the needs of Wales. The infrastructure of the administration of justice has never been developed on a whole-Wales basis. It is not acceptable that there is, for example, no Crown Court west of Swansea or between Swansea and Caernarfon, and no Crown Court between Merthyr and Mold. County courts and magistrates' courts have been closed in a way that would be unthinkable if the jurisdiction was run from Cardiff. Wales is able to decide on the siting of its schools and hospitals but not its courts and prisons.

Thirdly, I contend that legal services are an important economic driver and the development of a jurisdiction in Wales would provide a boost to the Welsh economy, which would by no means be limited to the legal professions. Wales is treated for the purposes of the present jurisdiction as a circuit of England, and work from Wales goes to support employment and career structures in England. We need to maximise the opportunities for the brightest of our young people to work in Wales. That is what devolution should be about and it is as relevant in the context of the law as it is in other walks of life.

Fourthly, many positives could grow out of having a Welsh jurisdiction. It would be small and able to react quickly and effectively to the need for change. It could, for example, develop innovative rehabilitation initiatives, which are linked to responsibilities already devolved to Cardiff. The importance of this was recognised by Gordon Brown a few years ago. Following the Good Friday agreement, criminal law was a reserved matter and it continued to be until 2010. In a speech delivered on 16 October 2008, Gordon Brown, then Prime Minister, sought to encourage the Northern Ireland Assembly to seize the opportunities that the devolution arrangements offered, and he said:

"There is something more vital at stake for your entire society, something that only the completion of devolution can deliver. How can you, as an Assembly, address common criminality, low-level crime and youth disorder when you are responsible for only some of the levers for change, and when you have responsibility for education, health and social development but have to rely on Westminster for policing and justice? The people of Northern Ireland look to you to deal with these matters because to them they are important. Full devolution is the way to deliver better services, tailored to the needs of all communities, regardless of the politics. It is the best way for you to serve them".

The fifth justification I would advance relates to the Welsh language. Although in recent years attitudes towards the use of Welsh in the administration of justice have changed for the better, nearly half a century after the passing of the Welsh Language Act 1967 we still have a system that is fundamentally English and which accommodates the Welsh language only when it has to. Welsh and those who wish to use it remain in an inferior legal position and this is something that we in Wales have to put right. There is a growing call for a distinct jurisdiction for Wales. Recently, a majority of witnesses at the Welsh Affairs Select Committee in the other place recommended that the diverging body of distinct Welsh law could be best served only by this distinct jurisdiction. Lawyers and constitutional experts alike reiterated the case to that committee that to establish a clear and lasting legal settlement for Wales, a distinct legal jurisdiction is necessary. Academic and constitutional expert Professor Richard Wyn Jones summed it up in a pithy and memorable phrase. He said that a Welsh jurisdiction represents,

"the constitution catching up with the legislative reality".

4.45 pm

The amendment which I have tabled is based on the wording proposed by the Government of Wales and supported by First Minister Carwyn Jones, himself a barrister. I understand that the Welsh Government have recommended this wording after taking expert legal advice on the matter. Emphasising the Welsh Government's continued support for a distinct legal jurisdiction, the Counsel General for Wales and Labour AM, Mick Antoniw, this month described a distinct Welsh legal jurisdiction as an inevitability. He claimed that a distinct jurisdiction would also offer the National Assembly,

"an opportunity to develop a Welsh solution to … UK … reforms",

which are widely seen as "reducing access to justice". This facility would lead to tangible benefits for the people of Wales.

I would also point out, as the Minister well knows, that the Silk commission—of which he was of course a distinguished member—accepted that there would in due course be a pressing case for a Welsh jurisdiction, even if at this point in time the need is not so overwhelming. It recommended that a facility should be developed so that within a decade such a new structure could come into existence. It recognised that, over time, the case should become increasingly irrefutable as the body of Welsh law accumulates and public policies in Wales and England inevitably follow divergent paths. I am told that if we do not have our own distinct jurisdiction in Wales, we shall be the only legislature in the world that does not. That such a situation exists is a reflection of the practical need for such a facility.

Personally, I would have liked to see the Government taking the lead in this matter and bringing forward their own proposals in the Bill by way of provisions to allow for a distinct jurisdiction. If they cannot bring themselves to support my proposal or the facility offered by Amendments 4, 5 and 10, I believe that they should at the very least bring forward on Report a new clause providing for an order-making facility which could be triggered when there is general recognition of the need for distinct jurisdictions, without the need for yet another Wales Bill. I believe, as did the Silk report, that this will be the case within a decade. The growing importance of this issue was recognised by the House of Lords Committee on the Constitution in its report last week, when it pressed the Government to keep the issue "under review", in its words.

Let us for once look forward and thereby avoid the need for a whole series of Wales Bills demanding legislative time at Westminster. I ask the Minister to consider this between now and Report if the Government cannot accept my amendment today. I shall look forward to the contribution of colleagues far more knowledgeable than me in these matters and I beg to move.

The Deputy Chairman of Committees (Lord Dear): At this stage, I should advise the Committee that if Amendment 2 is agreed to, I cannot call Amendments 3 and 4 by reason of pre-emption.

Lord Crickhowell (Con): My Lords, I am enormously grateful to the noble Lord, Lord Wigley, for putting forward his amendment in the form that he has. He has produced a very long and complex amendment to be added to a very long and complex Bill—too long and complex, in the view of many of us. It is interesting that, by doing this in Committee, he did not attempt to do as one normally would when introducing a matter of this complexity: to go through the detail of the proposal he was putting forward and the wording that has been suggested, which he told us originated with the Welsh Government.

I am glad that one of the things the present Government have decided to do is to revert to a system where we have Green Papers, White Papers, draft Bills and pre-legislative scrutiny. That is the proper way to proceed with legislation.

Clearly, it is quite impossible in a short Committee stage in this House to go through any process of that kind, so while I understand why the noble Lord wants to put the case for a separate jurisdiction of this kind, I suggest to him and to the Committee that it cannot possibly be sensible to proceed in the manner he suggests. Indeed, the noble Baroness, Lady Morgan of Ely, and the noble Lord, Lord Thomas of Gresford, have each tabled amendments which seem to try to place in legislation the working party which has already been established by the Government to look at this matter with calm deliberation and come forward with proposals for the future. That seems a sensible way forward. Translating the undertaking already given by the Government into some form of legislative commitment, as suggested by the noble Baroness, Lady Morgan of Ely, and the noble Lord, Lord Thomas of Gresford, may well be a possible solution, and I am not coming out against that.

I note that in Committee in the other place the Minister replying on behalf of the Government confirmed that the working group had been established and said that it would report in autumn 2016. We are well into autumn 2016. Surely if there is to be a report, it should be produced to this House during the Committee stage, not when we have completed it.

While I understand the fervour and enthusiasm with which the noble Lord, Lord Wigley, has advanced his case, it seems to me that he has produced compelling evidence for why we should not proceed in the way that he suggests in this amendment and that we should follow the line set out by the Government in their working party and possibly consider the proposals put forward by the noble Baroness and the noble Lord to which I have already referred.

Lord Hope of Craighead (CB): My reason for speaking at all is that I had the privilege of sitting in the Supreme Court of the United Kingdom in the first devolution case that came before that court from Wales. I think I was the first judge ever to use the phrase "Welsh law" because it seemed to me, even at that very early stage, that a body of law was in the process of developing which deserved to be recognised as such. For that reason, I am glad to see new Section A2 inserted by Clause 1, which recognises that there is a body of Welsh law. I am entirely in sympathy with that.

I am also broadly in sympathy with the broad thrust of the points made by the noble Lord, Lord Wigley. I have sympathy with him partly because I come from Scotland, which has its own system of law which was guaranteed when we entered into union with England to create the United Kingdom. It was part of the deal between the two countries that the Scots law that had evolved would continue to exist. We had the advantage of our own body of law, which was developed largely with the assistance of jurisprudence in the Netherlands and France. It was a different system of law from that of England. It was recognisably different, and it required different judges. That is not a requirement for the kind of jurisdiction that the noble Lord, Lord Wigley, is asking us to consider. There is not that kind of difference between Northern Ireland and England; their common law is basically the same. But the fact that they are different jurisdictions recognises the important difference of outlook between these two countries in the way their laws are developed.

Although I have said I am in sympathy with what the noble Lord, Lord Wigley, has said, I am bound to say that I find his amendment goes too far and too fast. It is asking us to take an enormous step without any assurance that there exists yet enough Welsh law to justify what would be done and as to whether we have the manpower and womanpower to create the judicial positions being contemplated. My preference, in sympathy with what the noble Lord, Lord Crickhowell, said, is for Amendments 5 and 10—I am not sure I mind particularly which of them—which would be a step towards considering, in a little more detail and at more leisure, how this matter should be handled. The noble Lord, Lord Wigley, will of course say, "That's going to mean another Wales Bill", but I am afraid that might be the price to pay for moving at the proper pace to make sure that the systems are properly designed. I would like to see a development of that kind, but it needs to be very carefully worked out, bearing in mind all the things that other noble Lords will no doubt say about the difficulty of creating a Welsh Bar, which will provide the essential requirements for the judiciary to develop.

I would also like the Government to consider whether their recognition of the body of Welsh law as the law made by the Assembly and Welsh Ministers itself goes far enough. I do not have an amendment to that effect, but the fact is that judges help to make the law too. The Supreme Court of the United Kingdom, which after all looks at Wales through the devolution system and has had Welsh lawyers appearing before it, has its own part to play in creating Welsh law, as I attempted to say in my opening remarks. I intervened really to support the noble Lord, Lord Crickhowell, and I hope, in a way, to support the noble Baroness, Lady Morgan, and the noble Lord, Lord Thomas of Gresford, in what they are about to say.

Lord Elis-Thomas: My Lords, I am happy to follow the noble and learned Lord, Lord Hope, and his references both to the concept of Welsh law and to its meaning in the context of this Bill. I also say to him that I suspect there will be many more Wales Bills as a result of this Bill if it goes through in its present form. Our successors will be here debating these matters further.

[Lord Elis-Thomas]

The point of my small amendment in this group, Amendment 3, is to clarify that the law of Wales is more than what is made in the National Assembly for Wales, or indeed in this place as English and Welsh law, or by the decisions of the judiciary, since law is developed as the noble and learned Lord indicated. In this sense, the Explanatory Memorandum is much more informative than what is in the Bill itself. Paragraph 25 of the commentary on the provisions of the Bill makes it clear that:

"Subsection (1) confirms that there is a body of Welsh law made by the Assembly and Welsh Ministers. The law made by the Assembly and Welsh Ministers is … only part of the law that applies in Wales".

I believe the noble and learned Lord, Lord Hope, made that point: the law of Wales is much broader, both historically and currently, than what is set out in the Bill. It is for that reason that I ask the Government to consider whether they can look for a wording that is more explanatory and of greater legal standing than that which they have currently adopted.

I will also quote, as I often do, my friend and mentor, the Reverend Professor Thomas Glyn Watkin. He told the National Assembly's Constitutional and Legislative Affairs Committee, of which I was then a member, in evidence quoted as part of the committee's report on the Bill:

"My own view is that there is now within the legal system of England and Wales three bodies of law that can be recognised: a body of law that applies only in Wales, a body of law that applies only in England and a body of law that applies in both countries. I think the legal system needs to adapt itself to that new reality, a reality that is growing as the body of law that applies only in Wales and the body of law that applies only in England increase in size".

Turning again to the issue of jurisdiction, which my noble friend Lord Wigley so clearly set out in the context of his amendment, there is a link between the complexity of the Bill and the move to preserve a single and undifferentiated jurisdiction. It was made clear to us in the Assembly committee, both in a special seminar convened as part of our scrutiny of the Bill and in evidence, as we stated in our report at paragraph 28:

"It is clear to us that the UK Government's policy to preserve the single jurisdiction has resulted in much of the complexity within the Bill".

That is why I believe the Government will have to address this issue either tonight, next Monday or on Report. I absolutely agree with the noble Lord, Lord Crickhowell, that the complexity of the Bill is linked to the whole issue of the lack of flexibility on jurisdiction.

5 pm

Lord Judge (CB): My Lords, as a former Lord Chief Justice of Wales and England, I want to make just a couple of points. The word "normally" in Clause 2 is a weasel word. It does not mean anything very much in legislative terms. I am perfectly well aware that it is in the Scotland Act, but what is this supposed to mean:

"the Parliament of the United Kingdom will not normally legislate"?

Who decides what is normal? If the Parliament of the United Kingdom decides, the Assembly is ruled out.

I am particularly concerned about Clause 2 in the context of Clause 53—

Lord Bourne of Aberystwyth: My Lords, with respect, I think that this is the next amendment.

Lord Judge: The Minister may well be right, but I listened to the noble Lord, Lord Elis-Thomas, talking about "normal" in the context of Clause 2. At some stage I want to make the point, so perhaps I may just finish making it, because I do not want to take long about it. Please can we look at the matter in the context of Clause 53 and, in particular, Clause 53(6) concerning statutory instruments, powers vested in the Secretary of State, affirmative resolution, and so on:

"unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament"?

It totally omits reference to the National Assembly for Wales, yet in Clause 2 we are told that the Government will not normally legislate without the consent of the Assembly. Somewhere along the line, this bridge has to be crossed.

Baroness Morgan of Ely (Lab): My Lords, I tabled Amendments 4 and 5 to establish a justice commission for Wales. Like the noble Lord, Lord Wigley, I apologise for not having the legal background or brilliance of the noble and learned Lords, Lord Hope and Lord Judge, to speak as I would like on the amendments, but I will do my best.

The noble Lord, Lord Wigley, made some relevant and serious points which need to be considered. It is premature to establish a separate legal jurisdiction for Wales, but there is without question an issue that needs to be addressed. I shall briefly summarise the background and explain why the commission is needed and what it would achieve.

There is clear consensus among constitutional and legal experts that there is a problem here that must be addressed. The creation of the National Assembly as a legislature with primary legislative powers, operating within a single jurisdiction of England and Wales, creates a situation which will throw up difficulties in the medium to long term. That single legal jurisdiction, to quote from those who have promoted this Bill in the other place, "has served us well". Yes, it may have done that, but it has served us well in different times. It served us well when the laws that applied across England and Wales were the same laws—when this place was the only legislature that could enact the laws of the jurisdiction. That is no longer the case and has not been for some time.

It is worth emphasising the point made by the noble Lord, Lord Elis-Thomas. There is no question but that the UK's Government's anxiety to protect the joint jurisdiction is the source of many problems in the Bill. We accept that some constraints have been removed, but there remain many reservations and restrictions whose primary purpose is to protect the consistency of law across England and Wales. The problem is that that consistency no longer exists: the horse has already bolted. The reality is that there is already a growing divergence of law which is the inevitable consequence of legislative devolution. The law on education, planning, the environment and social services is now fundamentally different in Wales. Without reform of the jurisdiction to reflect this divergence, there are risks to the rule of

law and the administration of justice. By necessity, a single jurisdiction involves a single body of law that extends across its territory. A single jurisdiction implies that the law is the same across that territory. The laws of England and Wales—already vast—must now absorb the increasing divergence between laws that apply only to Wales and those that apply only to England. This is highly complex, so how can we be sure that the citizens will understand the law or even that solicitors, barristers and judges will apply the correct law? This is not a debating point: these are real practical risks and they are increasing.

This issue demands a serious response and the UK Government see no need for concern on the grounds that this single jurisdiction has served Wales well. That misses the point. The shared jurisdiction served Wales well for four and a half centuries when Wales did not have its own legislature. That is no longer the case. The single jurisdiction is out of sync with the way that Wales is governed. It has not caught up with reality. But it is okay, because we have a glimmer of hope. All is going to be fine because the Ministry of Justice has set up a working group—what in Wales we call a committee—of Whitehall officials. The noble Lord, Lord Crickhowell, referred to this. Its birth was not auspicious: it was a party to which the Welsh Government were apparently invited but had not received their invitation. Never mind: it has now met, but we and the Welsh Government are in the dark as to its progress. Will the Minister enlighten us on some key points in relation to that working group? How many meetings has the group held? What engagement has there been with legal practitioners who understand the day-to-day realities of practising law in Wales? What is the work programme and when can we expect to see the report? Will we have it before Report stage?

It is an incredible coincidence that today, when we are debating this, the Welsh Government have received an invitation to the working group's second meeting. That is great news, but we should be concerned that that progress is not a serious way of demonstrating a commitment to the fundamental importance of this work. This is why we think it is important to bring forward a commission on which the Welsh Government have equal status and to which they are able to bring their expertise and that of those who have real knowledge of the Welsh justice system. We have no confidence that this informal working group will be capable of producing a serious response to the challenges I have outlined. Maybe it will: let us see if we can see something before Report stage. It is important to have a much more credible mechanism for taking this issue forward which will be independent of government and consist of senior judiciary and other practitioners who already have the authority and expertise required. Such a mechanism would provide a forum for developing solutions to problems that cannot be avoided and would be transparent in producing an annual report on progress against an agreed remit.

For all its flaws, one of the positive impacts of this Bill is that we have had to focus our minds on this key issue. It is clear that the single jurisdiction is no longer fit for purpose in its current form. What exactly should come in its place and how it should operate are questions that necessitate detailed analysis of the situation and the evidence of the problems caused. Much thought needs to be given to what is the right way forward. The relevant body should comprise those with most experience of the problems, and legal and constitutional experts adept at finding solutions. These problems will not go away. The proposed commission would provide a mechanism for addressing them. That is the purpose of this amendment. I hope that the Minister will support it.

Lord Thomas of Gresford (LD): My Lords, those of your Lordships who were here at Second Reading will recall that I told the House that when I was in my 20s and full of ambition and great principle, I thought that it was necessary, when drafting a Bill for the parliament of Wales back in 1967, to have a separate Welsh jurisdiction to determine the laws that that parliament would pass. As I indicated at Second Reading, I have changed my view; I think it is a matter of complete practicality. I disagree with the noble Lord, Lord Wigley, who said that the joint jurisdiction has not served Wales well. There is no joint jurisdiction. There is a single jurisdiction and it has operated over four centuries to provide the same standard of justice in Wales as in England. When he was called on to give an example of where it goes wrong, he talked about courts, as though a Welsh parliament would create new Crown Courts west of Swansea or in mid-Wales and would have the funds, judicial power and practitioners to man such a system. It is purely a practical question. To demonstrate that, I quote from the noble Lord's amendment. Under the heading "A6 Judiciary", the amendment states:

> "All of the judges, judicial office-holders",

and others,

"become judges … of both … courts"—

that is, the existing judges would continue to operate in both England and Wales. The amendment then proposes:

> "All of the persons by whom the jurisdiction of the Crown Court constituted by section 4 of the Courts Act 1971 is exercisable become the persons by whom the functions of both of the courts to which that court corresponds".

In other words, practitioners and judges in criminal courts could operate in both England and Wales. Where is the separate jurisdiction in that? Proposed new Section A6(3) states that all the existing judges and others should become judges in the courts of both England and Wales. The same situation is proposed for family courts and the legal profession. Therefore, the proposal put forward by the noble Lord, Lord Wigley, is that existing judges and practitioners should operate in the courts of both countries. How could that be possible if there were such a distinct and arcane system of Welsh law that only Welsh practitioners could understand it? Lawyers are accustomed to dealing with separate parts of the law, whether it is Welsh law, administrative law, the law relating to trusts or whatever. Practitioners and judges deal with differences between the laws passed by the parliament in Wales and those passed by the Parliament in England. There is no problem with judges doing precisely that. At the moment an Administrative Court sits in Wales and deals with legislation passed by the Welsh Assembly quite adequately—the Lord Chief Justice and an old friend of mine, Mr Justice Wyn Williams, sat in such a

[Lord Thomas of Gresford]
case last week—and no problem arises from that. However, the hare has been started, and for that reason I have advanced, as a matter of practicality, my Amendment 10.

5.15 pm

The noble Lord, Lord Crickhowell, and other noble Lords referred to the working party that has been set up to consider the question of a separate jurisdiction, which has met only once so far, as we understand it. There is no transparency about what it does or about the appointment of its members, and no suggestion as to when it will produce a report that will be of any use. The noble Lord, Lord Crickhowell, hoped that it would be received this autumn before we finish these proceedings; I very much doubt that that will happen if it has met only once so far and has not met the Welsh Government at all, as the noble Baroness said a moment ago. I suggest that a body of commissioners should consider the issue—it is a live issue in Wales, so let there be a body to consider it—but that it should take evidence in public so that everybody can hear what is being talked about and it does not happen behind closed doors. The Welsh Government and the academics of Wales can give such evidence as they think fit, it can be tested and considered, and ultimately a report should be produced within three years of its constitution to deal with the problem that has been put forward.

The amendment put forward by the noble Baroness, Lady Morgan, suggests a sitting commission that continues for all time, so that the issue is never put to bed. To my mind, this issue has been raised so it should be dealt with properly and considered, a report should be put forward, and if legislation follows from that so be it. However, from a purely practical view based on years of experience as a member of the Wales and Chester circuit and as someone who has dealt with the law on both sides of the border and had experience of other jurisdictions abroad, in the Far East, Jamaica, Trinidad and places like that, I believe that a separate and distinct jurisdiction for Wales is not necessary and should not be followed through.

Lord Elystan-Morgan: My Lords, I support the amendment in the name of the noble Lord, Lord Wigley, with all the Celtic fervour that I can muster. The principle is undoubtedly a proper one, but the technicality is narrow. Some arguments turn upon the existence of Welsh law—its distinctive character—and they are not without their merit. However, that to my mind is not the issue, which is the juxtaposition of a parliamentary jurisdiction and a court jurisdiction. I would go so far as to say that there is something wrong with the constitutional geometry of the situation where more than one parliament operates within the sphere of one legal jurisdiction. That is the essence of it.

Even if there was no difference whatever between Welsh and English law in this matter—and we know there is—it would still be the case, parliaments having the inimitable bent to go their own way, that to have two or more parliaments operating within a single jurisdiction was wrong. I think I heard the noble Lord, Lord Wigley, say that he doubted whether there was any situation in the whole world where that is so, but I ask the Minister—not perhaps in his ministerial capacity but in his capacity as a very distinguished professor of law—whether in any democratic system in the world there is an instance of two parliaments operating within a single legal jurisdiction.

Having said that, I appreciate that there are difficulties, and I have profound respect for what has been said by the noble and learned Lords, Lord Hope and Lord Judge. A great deal has already been started and been done. The Administrative Court has been referred to and it is undoubtedly a success. In addition—I think that the noble and learned Lord, Lord Judge, had a great deal to do with this—the civil and criminal divisions of the Court of Appeal were given every encouragement to meet in Wales, and they did so on many occasions.

There are many trends of that kind; nevertheless, the basic problem still has to be met. We have already heard of the situation in Scotland and Northern Ireland. The Isle of Man, Guernsey and Jersey have their own parliaments and their own jurisdictions. As a matter of legal purity, there should never be a situation where more than one parliament operates within one jurisdiction. Having said that, I appreciate that there are practical difficulties.

Lord Carlile of Berriew (LD): My Lords, I joined the Wales and Chester circuit of the Bar 45 years and two months ago. I went to chambers in Chester, where my noble friend Lord Thomas of Gresford was already well established, and I confess that I learned a great deal from him, almost all of it good. It is therefore with a good deal of pleasure that I rise to support his amendment.

I have some sympathy with the noble Lord, Lord Wigley, in his aspirations for Welsh institutions, but I fear that I have to come to the same conclusion as my noble friend Lord Thomas—that what he proposes is not needed and nor would it work. Speaking only for myself, I suspect, I have long been in favour of the creation of a separate Wales division of the High Court to cover civil and criminal proceedings. Although a great deal has been done, which I shall mention in a moment, we still do not quite have that formal division. In my view, that would be an excellent measure, well understood, and it would possibly allow Wales to have some appointments that would be appropriate to such a division, such as a presidency of the division—there are presidents of the other divisions of our senior courts. I think that that would be met with approval throughout the legal profession in Wales, although, as I shall set out in a moment, it is not necessarily those in the legal profession who are the right people to decide these things.

I join in the tribute that has been paid to the noble and learned Lord, Lord Judge, who as Lord Chief Justice did a great deal to give the Welsh jurisdiction an identity which previously it had not had for several hundred years. Of course, as I think my noble friend said at Second Reading—I have certainly heard him say it in your Lordships' House—there used to be a chief justice of Wales. Indeed, he and I appeared at the Chester city quarter sessions, in the building of which there is a large portrait of a former chief justice of

Wales—the well-known Lord Jeffreys or Judge Jeffreys. He is not necessarily the best precedent for such an appointment; nevertheless, there is that precedent. There could be a president of a Wales division, although not in a Jeffreys-like way—who, by the way, was not half as bad as history has made him out to be. Of course I will give way to my noble friend.

Lord Thomas of Gresford: Your Lordships will appreciate that I was born in Acton on the Jeffreys estate.

Lord Carlile of Berriew: I am delighted to hear that. My noble friend's sense of justice certainly does not in any way imitate that of Lord Jeffreys of the Bloody Assizes.

However, what I am suggesting is that the presidency of a Wales division of the High Court would have real attractions within Wales.

I would also like—I know that the noble and learned Lord, Lord Judge, would associate himself with this—to praise the actions of the current Lord Chief Justice, the noble and learned Lord, Lord Thomas of Cwmgiedd, who was born in south Wales and has frequently reminded us of that fact. Indeed, the noble and learned Lord, Lord Thomas, has evolved what was introduced by the noble and learned Lord, Lord Judge, and given further credibility to the respect that is given to Wales as a jurisdiction where relevant and appropriate.

One group who have hardly been mentioned in this debate is the poor old litigants who go to law in Wales. I had the great privilege of representing Montgomeryshire as its Member of Parliament for 14 years. It sits on a long stretch of the Welsh border. It is quite common for a customer to walk into an estate agent in, say, Llanfyllin, and negotiate the purchase of a property in another branch of that estate agency in Shrewsbury. It is very common—I may have done it myself—to go and look at a new car in Welshpool, but negotiate the price of that new car with somebody in Shrewsbury or some other English town. It is important for Wales that we develop as strong a financial services industry and venture capital industry in Wales as possible, but we need those English and foreign investors who want to take part in such transactions to have the confidence that they work in a predictable legal environment.

This is my final example, although I could give dozens. We need to be sure that those who face a trading standards dispute that arises with a company that operates both in Wales and in England are not faced by someone like myself scratching their expensive head in chambers and saying, "Oh, we've got a private international law issue here; a conflicts of law issue on which I will have to write you an extremely learned opinion"—at whatever my hourly rate for the time being happens to be. I do not think that we should inflict those disputes and problems on litigants. Inevitably, that is what would happen after time.

There are many common law jurisdictions around the world and they of course pay enormous respect to the decisions of what was formerly the House of Lords and is now the Supreme Court, and pay lower levels of respect to senior courts as you go down the hierarchy of courts. But inevitably there would be judgments in a separate Welsh jurisdiction that would be inconsistent with judgments in the English jurisdiction or any other common law jurisdiction such as the Scottish jurisdiction—which, as the noble and learned Lord, Lord Hope, knows, has a different origin—or for that matter the jurisdiction in Northern Ireland.

While I would not wish to leave things necessarily as they are and I welcome the proposal made by my noble friend of a detailed and one-off review, creating a completely separate set of law for Wales would be to turn the clock backwards rather than forwards and would have damaging effects on potential litigants in Wales and on the economy of Wales

Lord Deben (Con): My Lords, we are present at one of the most unusual occasions that I can remember. This is an occasion on which lawyers almost universally want to have a less complicated system in which they are less able to find reasons for charging people more money for doing more work. As the House knows, I have a particular penchant for intervening in debates that are largely among lawyers because it is important that they should not be allowed to have unique control over the way in which the law is worked. It therefore pains me to say that I am entirely on the side of the well-argued case put by the noble Lord, Lord Thomas of Gresford. He has explained exactly why there was no need to go down this route.

However, there is one thing that I hope my noble friend will help me with. I do not understand why the Government have set up a working party at this point which it appears will not report in a way that can help this House and which appears to be dilatory in the invitations it has issued. My concern reflects a point raised by my noble friend Lord Crickhowell: this House deserves better. I would like to know what the working party concludes. It would be easier for us to make proper decisions were the working party to give us its information before we make them. The reason I have risen to speak is not only because of my long-standing interest in Welsh affairs but because this House is very often treated rather poorly by the system. If we are to do the job of careful examination of Bills properly, we should have the information beforehand and not be told that there is a working party which will report afterwards. By then we will have missed the opportunity of being informed and doing our job properly.

I hope that my noble friend will not take it amiss, but this is a case which I have had to raise constantly in this House because it has become something of a habit not just of this Government but of previous Governments—to suggest that because they are having discussions, it does not count that we cannot have discussions as a result of their discussions. Discussions between civil servants, however noble, are not the same as discussions between parliamentarians, so we ought to have the information before we finalise our views.

5.30 pm

Lord Morris of Aberavon (Lab): My Lords, I rise to make a brief point which I believe will be of practical importance. Some three years ago I gave evidence to the Constitutional Committee of the Welsh Assembly.

[Lord Morris of Aberavon]
It was my view that while there was undoubtedly a growing body of Welsh legislation the time was not yet ripe to deal with it in the way proposed by the noble Lord, Lord Wigley. There will come a time when we will have to grapple with it but it is certainly not a matter of urgent importance now and there are serious practical points of difficulty in moving in that way.

I say this against the background that much has been done in an administrative way; I join in the tributes paid to the former Lord Chief Justice, the noble and learned Lord, Lord Judge, who moved so much of the work of the higher courts to Wales, followed by the present Lord Chief Justice, Lord Thomas of Cwmgiedd. The work has been done and it has met many of the problems, one of which is that more cases of this kind should be set down in Wales. The process should start there as opposed to being started in London.

The serious issue is the consolidation of legislation already passed by the Welsh Assembly. Over the years that the Assembly has been in existence, Act after Act has been passed, particularly during the most recent period. Any practitioner, be they in Wales or in England, who has to advise a client in Wales on a matter arising in Wales concerning property, employment and so on has to turn up a whole host of literature in order to give proper and responsible advice, otherwise he will be accused of being negligent. I hope that before it is too late the Welsh Assembly will use its powers and resources to consolidate the existing legislation and thus make it easier for practitioners and ordinary litigants.

Baroness Randerson (LD): My Lords, I rise with some trepidation among so many distinguished lawyers to make two brief points about the argument we have been having. The Government have acknowledged that there is a problem by setting up this working party, but I am not persuaded that they have done anything other than offer the working party as a sop to those who are concerned about this issue. If the working party was going to be rigorous and reach any kind of useful conclusion for us, it would have met several times by now. Otherwise it is up to the Government to say to us today that it will not be reporting this autumn but, rather, at some point in the distant future because it has discovered that there is a great deal of work to do. I therefore support the amendment tabled by my noble friend Lord Thomas because I believe that three years is a reasonable timescale for a commission to look rigorously and thoroughly at all the aspects of this.

I also endorse the comments of the noble and learned Lord, Lord Morris of Aberavon. The consolidation of Welsh law is becoming increasingly urgent. I know that the Minister is aware of it, having been a Member of the Welsh Assembly. Because the Assembly puts things on its website on the internet, they are not available in the printed format in which most law is available. People can find it difficult and complex to seek out legislation in order to find out which is the most recent version of the law. That issue needs to be discussed. Moreover, something that no one has mentioned so far in the debate is EU law, much of which has been incorporated into Welsh Assembly legislation. Once we have the great repeal Bill, I would ask the Minister how it is anticipated that this will be recognised within the single jurisdiction and whether the working party is considering the issue of EU law.

Lord Bourne of Aberystwyth: My Lords, this has been a wide-ranging debate on what is clearly an important matter. I turn first to the contribution of the noble Lord, Lord Wigley, who put his case very passionately, as he always does. He addressed some of the important issues in this. Perhaps I may make several points, the first of which relates to a matter he raised and which, I think, was touched on by the noble Lord, Lord Carlile, or perhaps it was the noble Lord, Lord Thomas of Gresford. The administration of the courts is quite separate, I think, from the issues of the actual sources of law and separate jurisdiction. The second point I would put to him and indeed to other noble Lords is that to some extent this is a question of semantics. We can say now that we have a separate jurisdiction because we have separate arrangements in relation to Wales. That is undoubtedly the case and some of them are already in place. So I appreciate the points that are being made, but there are shades of grey here. It is not as if it is all or nothing or as if separate arrangements are not being made for Wales now in relation to cases and judicial process; that is certainly the case.

I should also say that what the noble Lord is putting forward represents a massive change which I do not think is necessary. If you speak, as I have done, to people in the law schools of Wales and ask them how many students are actually opting to study devolved law as it is at the moment, you will find that it is a handful. I was stunned because I thought that far more would do so. I do not say that with any pleasure, but it is an indication of the fact that this is an evolving situation and as things stand we do not really have a pressing need for a separate jurisdiction in the way that he has talked about. I do not think that that is the case. Having spoken to practitioners and independent members of the Silk commission, I know that they, too, believe that there is a danger of throwing out the baby with the bathwater. The law schools of Wales recruit students not only from England but from overseas, which is a massive market for them. I know that the noble Lord would not want to jeopardise that. Practitioners, too, talk about the importance of the legal system that we have at the moment. That was exemplified by the noble Lord, Lord Carlile, in talking about the porous nature of the border and the fact that we have to recognise that.

It is right that the working party has met only once so far—I think that it is in Cardiff as we speak and is meeting legal practitioners and lawyers tomorrow. That was not suddenly set up; one cannot suddenly issue invitations in that way. The noble Baroness, Lady Morgan of Ely, was right to say that there is a forthcoming meeting—I think that it is on 7 November, although I am not absolutely certain of that date. The Welsh Government are invited to it, as they were to the first meeting—I think that they attended the first meeting, but I stand to be corrected on that . I will endeavour to

ensure that ahead of Report—I will come back to the question of Report in a minute—noble Lords have a summary or details of what has happened so far and of the people on the working party.

All I can say about Report is that we do not know when it will be. I was rightly pressed to say that we would not get to Report because of the need for an LCM from Cardiff. I am not a magician; I cannot say with absolute certainty when Report will be, but I will endeavour to ensure that insofar as we have information, noble Lords are apprised of it as soon as possible and ahead of Report.

Turning to points made by others, I am grateful for the contribution of my noble friend Lord Crickhowell on the complex and detailed nature of the proposal, and to the noble and learned Lord, Lord Hope, who spoke of sympathy with the general point but acknowledged that we are not at this stage in a situation of wanting a separate jurisdiction. We need to ensure that separate arrangements exist for cases that have a Welsh dimension and that practitioners and judges are steeped in Welsh law if such cases involve Welsh law. I accept that and we are looking at it. I take the point that we should look at this matter on a continuing basis, because it is right that it is an evolving picture. I do not think that we are currently at the stage of wanting a separate jurisdiction, but we need those separate legal arrangements and to make sure that the interests of Welsh litigants, Welsh witnesses, Welsh practitioners and Welsh law schools are all taken care of.

I will take away the points made about the commission. I do not think that a statutory commission is the right answer, but we need a body that looks at this matter on an ongoing basis—I have sympathy with the point made by the noble Baroness, Lady Morgan, that it is an evolving picture. I have sympathy, too, with the points made by the noble Baroness and the noble Lord, Lord Elis-Thomas, about the sources of Welsh law. I shall take those away and reflect on them before Report.

I thank the noble and learned Lord, Lord Morris of Aberavon, who has vast experience not just of Wales but of the law, for his comments about the need for administrative arrangements and the consolidation of legislation—it was a point well made. My noble friend Lord Deben assured me that he was not being mischievous in putting forward his point; I did not think for a minute that he was. It is absolutely right that we need the evidence from the working party ahead of Report. As I have said, we know that Report is a little way ahead because of the need for an LCM from the Welsh Government before we can proceed, so I hope that we have that in place. The noble Lord, Lord Elystan-Morgan, speaks with great experience, both judicial and political. I take his point about the symmetry of a separate judicial system where one has a separate Parliament and can understand his cri de coeur as a Welshman, but, as he rightly said, we have to recognise that we need to address practical issues in relation to ensuring proper protection for Welsh practitioners, As to Welsh students and Welsh lawyers, we want the best Welsh lawyers to be able to serve in Wales rather than be encouraged over the border because they feel that a separate system has been set up. All those points need to be taken into account and I do not want to shy away from them in any way. We have to do what is right for Welsh law, but, as I have said, it is an evolving picture at the moment rather than one that demands a separate jurisdiction. With the assurances that I have given, I urge noble Lords not to press their amendments.

5.45 pm

Lord Wigley: My Lords, I am grateful to the large number of colleagues who have participated in this debate: the noble Lords, Lord Crickhowell, Lord Elis-Thomas, Lord Thomas of Gresford, Lord Elystan-Morgan, Lord Carlile and Lord Deben; the noble and learned Lords, Lord Hope, Lord Judge and Lord Morris of Aberavon; and the noble Baronesses, Lady Morgan of Ely and Lady Randerson. A common thread that appeared to run through it was a recognition that, in the Minister's own words, we have an evolving situation. It is a situation that is under scrutiny by virtue of the body that is looking into the matter. As the Select Committee on the Constitution, of which the noble and learned Lord, Lord Judge, is a member, reported last week, there is a need for the Government to keep a constant eye on this evolving situation to see how it is working out. As the Silk commission recognised, there may be a need in due course for a change in law to accommodate the structures that are necessary so that there is a system working in Wales that reflects our own legislation and growing body of law. To the noble Lord, Lord Carlile, who cited cases, I say that, irrespective of the complexity of crossing the border, decisions will be taken within the framework of one set of laws or the other. The body of law in Wales is there; it is growing and it will continue to grow. Therefore the need to accommodate it will be there, however it is done. It may not be possible to do it by virtue of my proposals here, although the Welsh Government have also supported it. As the noble Lord, Lord Thomas, recognised, there is a need for a perhaps one-off review along the lines that the noble Baroness, Lady Morgan, proposes in her amendment. In other words, there is a general acceptance that it will need to be accommodated.

I hope the Minister will be able to tell the House that if it is not possible to do it within the framework of this Bill, as it seems it will not be, given the timescale for Report, the Government will be open to the possibility—if legislation is needed, and as the noble Lord, Lord Elis-Thomas, said—of further Wales Bills. I would rather that this could be dealt with now, but there may be a need to legislate by virtue of the facts that have been presented to this Committee. The point made by the noble Lord, Lord Elystan-Morgan, that we are the only place in the world that will have its own separate legislature but not its own system of jurisdiction to run in parallel with it, was not refuted. That must tell us something, and it should inform us, as experience unrolls in Wales with regard to the workings of the Assembly and the body of our law, that we may need to do something about it. I hope the fact that it has been raised today will serve to ensure that a focus is kept on these issues and is not allowed to die away, and that at the appropriate time—and there will come a time when this needs to be acted on—there will be no shying away from the

[Lord Wigley]
needed legislation if that is what best serves Wales and these islands generally. I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendments 3 to 5 not moved.

Clause 1 agreed.

House resumed.

NHS Funding
Statement

5.50 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, with permission, I will repeat as a Statement the response given by my right honourable friend the Secretary of State for Health to an Urgent Question in another place on NHS finances.

"Mr Speaker, compared to five years ago, the NHS is responsible for a million more over-75s. In five years' time there will be another million. Our determination is to look after each and every NHS patient with the highest standards of safety and care, but there is no question that the pressures of an ageing population make this uniquely challenging. I therefore welcome the chance to remind the House of this Government's repeated commitment to support the NHS. The NHS budget has increased in real terms every year since 2010. NHS spending has increased as a proportion of total government spending every year since 2010 and was 10.1% higher per head in 2014-15 in real terms than when we came to office. The OECD says that our spending is 10% higher than the OECD average for developed countries and, at 9.9% of GDP, it is about the same as other western European countries, for which the average is 9.8%.

Given the particularly challenging current circumstances, however, in 2014 the NHS stepped back and for the first time put together its own plan for the future. It was an excellent plan, based on the principle that because prevention is better than cure, we need to be much better at looking after people closer to or in their homes instead of waiting until they need expensive hospital treatment. The plan asked for a minimum of an £8 billion increase in NHS funding over five years. It asked for this to be frontloaded to allow the NHS to invest in new models of care up-front. Following last year's spending review, I can confirm to the House that the NHS will in fact receive an increase of £10 billion in real terms over the six years since the Five Year Forward View was published. In cash terms, that will see the NHS budget increase from £98.1 billion in 2014-15 to £119.9 billion in 2020-21—a highly significant rise at a time when public finances are severely constrained by the deficit this Government regrettably inherited.

Because the particular priority of the NHS was to frontload the settlement, £6 billion of the £10 billion increase comes before the end of the first two years of the spending review, including a £3.8 billion real terms' increase this year alone, something that represents a 52% higher increase in just one year than the party opposite was promising over the lifetime of this Parliament".

5.52 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am very grateful to the noble Lord for repeating that, but I am afraid that his attempt to gloss over the real story of the Government's manipulation of NHS funding figures simply will not wash. The Government have been found out by the considerable and Conservative chairman of the Health Select Committee, Dr Sarah Wollaston. She has pointed out that the so-called extra £10 billion can be arrived at only through significant manipulation of the figures, including an extra year in the spending review period, changing the date from which the real terms' increase is calculated, and disregarding the total health budget.

The Nuffield Trust pointed out in a report this morning that the £8 billion figure—which is the real figure, not the £10 billion figure—

"has been flattered by redefining what counts as 'the NHS'. In the past, the government used to count NHS spending as the entire Department of Health budget for England. Now it only counts the subset of that spending that comes under the control of the department's commissioning arm, NHS England. Only 'NHS England' is protected with 'real-terms increases' while the rest of Department of Health spending will be cut by £3 billion by 2020-21".

Therefore, not only is the £10 billion or £8 billion a wild exaggeration: but the fact is that the NHS is facing an acute funding crisis, wholesale rationing of services and the denial of life-enhancing medicines to many patients.

I would like to put three points to the Minister. First, I see that he quoted OECD figures, but looking at the latest OECD per-capita spend on health, I note that 18 countries in the OECD group have a higher GDP spend on health than we do in this country. Can he confirm that, compared to any country of equally sizeable wealth, we have fewer doctors, fewer nurses, fewer beds and less access to medicines and new medical equipment?

Secondly, when the Minister says that the £8 billion was what the NHS asked for, can he confirm that the NHS did not ask for £8 billion, but indeed took no part in any discussions? There were discussions with NHS England, which is a government-appointed quango and is not the National Health Service. Can he also confirm that, in negotiations, the Government themselves—including the Treasury—told the chief executive of NHS England that £8 billion was the maximum amount that he could call for?

Finally, on the five-year forward plan—the underpinning of it by sustainability and transformation plans—can the noble Lord confirm that first analysis shows that swingeing reductions are to be made in acute care without any guarantees that community and other services will be put in their place to reduce demand on acute services?

Lord Prior of Brampton: My Lords, I will try to respond to those last three points. First, the noble Lord is right: the NHS is—and I would regard it still as—the highest-value healthcare system in the world.

It does have fewer doctors and MRI machines—however you want to measure it—compared to many other OECD countries, but its outcomes, on the whole, are very good. I can, therefore, certainly confirm that the NHS is a very high-value healthcare system. As far as the involvement of the NHS in the plan is concerned, it was very much put together by the NHS and signed by all of the arm's-length bodies at the time. This is a quote from Simon Stevens about the spending round settlement:

"This settlement is a clear and highly welcome acceptance of our argument for frontloaded NHS investment. It will help stabilise current pressures on hospitals, GPs, and mental health services, and kick-start the NHS Five Year Forward View's fundamental redesign of care".

This brings me to my last point, the fundamental redesign of care. That was possibly not really recognised at the time of the NHS review, because it is a fundamental redesign of care. As the noble Lord said, it means moving resources away from acute settings into community settings, very much as mental health care was restructured 20 or 25 years ago.

Baroness Walmsley (LD): My Lords, the Secretary of State said that there were going to be another million over-75 year-olds in five years' time, and I very much hope that I am going to be one of them. May I give the noble Lord a couple of other statistics? The King's Fund quarterly monitoring report found that, for each month in the first quarter of this year, there were an additional 54,000 attendances at A&E departments and 14,200 emergency hospital admissions compared to the same time last year. All these emergencies are no way to run a health service.

The noble Lord and the Secretary of State pray in aid the five-year forward view as if it were a statement of fact. It is a plan; it is an aspiration, and at the time it was written, the hole in the funding of the NHS was not £4.5 billion, as the Select Committee says has been given to the health service; it was not £8 billion or £10 billion: it was £30 billion. The Government gave about a third of it and suggested, through the five-year forward aspirational plan, that the rest could be done by efficiencies. We have the STPs, which are supposed to find those efficiencies. We have heard many times in this House over the last few weeks about the shortcomings of those, so when will the Government respond to my right honourable friend Norman Lamb when he calls for a cross-party commission on proper funding of social care and the health service?

Lord Prior of Brampton: My Lords, I am sure that the noble Baroness will be here well past the age of 75, and that there are many years to come before she reaches that age.

The noble Baroness is absolutely right: for many elderly people, the worst way to be treated, frankly, is to be blue-lighted in an ambulance into an A&E department of a very busy acute hospital. The whole purpose of the five-year forward view is to deliver care to many more such people outside. I think we all agree with that. The noble Baroness's party, like ours, agreed with the £8 billion of extra government spending over the course of this Parliament, and accepted the fact that very significant efficiencies could be generated from the NHS. We still subscribe to that view, and the STPs will be the right vehicle for delivering many of them.

Lord Sutherland of Houndwood (CB): My Lords, the Minister rightly referred to the realities that are required of a fundamental redesign of care. The point has just been made, and was made in the report from the House of Commons this morning, that that must include looking, at last, at the connection between social services budgets and the health service budget. This is one of the major factors. It will not solve all the problems, but it is a critical point that Government after Government have ignored for the last 20 years.

Lord Prior of Brampton: I entirely agree with the comments made by the noble Lord. We have to integrate health and social care to a much greater extent. We also have to integrate healthcare: healthcare is delivered in silos and is highly fragmented around the country, and that comes out of the same budget, so he is absolutely right. However, we have to recognise that another massive reorganisation between social care and healthcare could be highly disruptive. The great beauty of the STP process is that people in local areas—local authorities, health providers and commissioners—are sitting around tables coming up with plans for their local areas.

Lord Lansley (Con): My Lords, does my noble friend agree that it is only by virtue of the 2012 Act that NHS England is an independent body, able to express, on behalf of the NHS, a plan for the future, and that this would not have been possible otherwise? Will he further confirm that the coalition Government, in the last Parliament, met their promise to increase the NHS budget in real terms, year on year, but that that promise applied to an NHS budget that included public health and NHS education and training? The NHS's future sustainability requires a more preventive approach and increased numbers of domestically trained NHS staff.

Lord Prior of Brampton: I entirely agree with my noble friend that the independence of NHS England has been very important. Had the NHS plan been developed by politicians it would have had a lot less credibility. I entirely agree that prevention and public health are hugely important, but of course it takes a long time for public health initiatives to have an impact, so I do not think that any reductions in them in the last two years will have any major impact over the five-year period. Clearly, it will have an impact over a longer period. As for the changes to Health Education England, those savings have largely been generated by moving from a bursary system for nurses to a loans system, which will actually deliver more nurses and therefore help to deliver the five-year forward view.

Lord Patel (CB): My Lords, is the Minister saying that there are no financial pressures on the NHS? If he is, that is contrary to every piece of evidence that the House of Lords Select Committee on the Long-Term Sustainability of the NHS has heard. Furthermore, it is the lack of a settlement in social care that is killing

[Lord Patel]
healthcare. Is it not time that we had a new settlement for both healthcare and social care that is sustainable in the long term?

Lord Prior of Brampton: My Lords, I acknowledge that there is tremendous pressure on all parts of the health service and in social care, but if there is not pressure, there will not be change. Getting the radical, fundamental change we need in the health service will not be achieved if we just pour more money into the existing system: we have to have change.

Improving Lives: Green Paper

Statement

6.04 pm

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Secretary of State for Work and Pensions in another place.

"This Government are determined to build a country that works for everyone. That means an economy that serves the interests of ordinary working people. It means a society where everyone has an opportunity to go as far as their talents can take them, regardless of their background. As part of that, it means creating a country where a disability does not dictate the path a person is able to take in life.

Under successive Governments, we have made good progress in improving the lives of disabled people. Laws have been changed, old attitudes have been challenged and understanding has improved. More disabled people are in work; 500,000 more than just three years ago. That is encouraging but we need to build on that progress and do more to help disabled people reach their full potential.

It is clear that for many disabled people the barriers to entering work are still too high, and that people in work who get ill too often fall out of work, lose contact, lose confidence and do not return to work. The impact extends far beyond the individual. Families suffer, the health service faces extra strain and employers lose valuable skills. Most of all, it is a human tragedy. Potential is left unfulfilled and lives are lessened. Of course, the health and welfare systems must support those who will never be able to work, too. They should offer the opportunity of work for all those who can, provide help for those who could and care for those who cannot. It is the help for those who could that, through this Green Paper, we will transform.

First, on the welfare system, in 2010 we inherited a broken system with few incentives to move from welfare to work. Too many of our fellow citizens were simply taken off the books and forgotten about. Since then, we have brought control and the right values back to the system. I want to recognise my right honourable friend, the Member for Chingford and Woodford Green, for his passion and conviction over the last six years to make that a reality. We have ensured that work always pays, through reforms such as universal credit, while ensuring a strong safety net for those who cannot work. Spending on disabled people will be higher every year of this Parliament than in 2010, but we need to continue to review and reform the system based on what we know works.

One of those areas is the level of personalised and tailored support someone gets when they fall out of work. In the last 12 months, half of all people who attended a work capability assessment were deemed too ill to work, or even prepare for work, at that time. They then routinely receive no employment support at all. It is not surprising then that each month only 1% of people eligible for employment and support allowance after an assessment leave. This benefit was meant to help people back into work; the statistics show that it is not living up to that original aim.

We will build on the success of universal credit and provide more personalised employment support by consulting on further reform of the work capability assessment. We will also introduce a new personal support package for disabled people, providing better-tailored support, including a new "health and work conversation" between someone on ESA and their work coach, focusing on what they can do, rather than what they cannot. We will recruit around 200 community partners into jobcentres, to bring in expertise from the voluntary sector, and we will give young people with limited capability for work the opportunity to get valuable work experience with employers. These are practical steps and support that the welfare system will provide for disabled people.

Turning to the health sector, this Green Paper marks a new era in joint working between the welfare and health systems, between the Department for Work and Pensions and the Department of Health. This is about recognising that work and meaningful activity can promote good health, so we will work with Health Education England, Public Health England and others to make the benefits of work an ingrained part of the training and health workforce approach. We will also review statutory sick pay and GP fit notes to support workers back into their jobs faster and for longer. It is also about transforming the way services join up. We will be consulting on how best to do this, as well as boosting existing joint services. For example, we are more than doubling the number of employment advisers placed in talking therapies services. It is right that we focus on services such as these, as mental health conditions, together with musculoskeletal conditions, are behind many people falling out of work.

However, this is not a challenge for government alone, so, finally, I want to turn to the role of employers. Employers have so much potential power to bring about change, not just in their recruitment strategies, but in how they support their employees. We need all businesses—small or large, local, national or global—to use that power to deliver change. The fact is that as well as being good for health, it makes good business sense: sick pay for workers who get ill costs business £9 billion a year.

Businesses are leaders in innovation and transformation. We need to harness that positive power of business to promote disability awareness, so we will create a Disability Confident business leaders' group to increase employer engagement in looking after the health and well-being of their employees and opening up opportunities

to them. Now is the moment for every business to take a proper look at the relationship between work and health and what it means for their business and productivity.

Over the coming months, we will be talking with disabled people and those who have health conditions. We will be talking to carers, families, professionals, and a range of organisations that are so important to getting this right, and which, like us, want to see further change. Together, through this Green Paper and building on our work since 2010, we intend to deliver just that: to improve the way the welfare system responds to real people with health conditions; to see employers step up and play their part; to see work as a health outcome; and to see a culture of high ambition and high expectations for the disabled people of this country".

My Lords, that concludes the Statement.

6.12 pm

Lord McKenzie of Luton (Lab): My Lords, I start by thanking the Minister for repeating the Statement, although it is a Statement that is, frankly, thinner than we would have hoped.

We support the ambition to halve the disability employment gap, the clear pathway to its attainment, and the proposition that we have debated on endless occasions that there should be work for those who can, support for those who could and care for those who cannot. That has characterised labour market approaches from several Governments over recent times. I found on my shelf a booklet entitled *Improving Health and Work: Changing Lives*, from 2008, at about the time the Minister was an adviser to the then Labour Government. We have a shared ambition and recognition of those issues. The challenge is to convert the intent into policy and the policy into action that can be delivered. That needs resourcing. I do not think the Minister said much about the cost of his proposals; it would be good if he could give us an indication.

There was a suggestion that too many people were taken off the books, as I think was the expression, in 2010, but that does not give proper credit to the work undertaken at that time. There was a gradual realisation of the importance of the Waddell and Burton thesis, which characterised much of the work of the Labour Government, the coalition Government and this Government.

So far as the welfare measures are concerned, we have not seen the detail, but we can see the innate merit of a personalised support package for disabled people. As for community partners, can we know the basis on which they are likely to be allocated across jobcentres? I think the figure was 200 of them; I guess they would be spread fairly thinly across those centres. The Minister said there is to be a consultation on further reforms to the WCA. Can we hear a little more about the thrust of this consultation and what it will entail?

So far as health is concerned, we had a revolution announced—a new era: there will be some joint working between the Department of Health and the DWP. Of course, that is to be welcomed. The idea of ingraining the concepts of work and health in training is something that again we can see the merits of and would support. We certainly would need to understand the basis of any review of SSP and the fit note, which has had a patchy existence since it was changed from the sick note, but the underlying concept that it should focus on what can be done, rather than on what cannot, is right and something we would support.

The Minister asserted that universal credit always makes work pay. Would he care to write to us on that proposition with the evidence, taking account of the work of the Resolution Foundation and its recent pronouncements on it, and the cuts to the work allowance? Universal credit started life with a very clear ambition to do exactly what the Minister said. Successive cuts to the programme have certainly impaired that ambition and that outcome. We should be clear on the basis of the Government's assertion that work will always pay.

Finally, the Disability Confident business leaders' group seems a worthwhile development. We need to understand how it would be funded and the extent to which individuals would engage.

We see in the Statement a good deal of consultation, further work and quite proper engagement with a range of people, particularly disabled people themselves and their carers, but that is a long way from having a clear, funded policy to make a real difference to the lives of the people we are talking about today.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I, too, thank the Minister for repeating the Statement. We on these Benches are pleased to finally see this Green Paper. It has been delayed time and again and many of us were wondering whether it would ever see the light of day.

Reducing the disability employment gap is a worthy aim. There are many people with disabilities whose skills and talents are not utilised. Working with employers to ensure that they recognise the benefits to their businesses of employing disabled people is vital for both the health and well-being of those disabled people who are able to work, and for our economy as a whole.

The move to reform the work capability assessment is an overdue step in the right direction. However, at its heart the structure of the WCA remains fatally flawed. This is in part because of a failure to assess what types of jobs may be available to claimants, and whether they can find such jobs within their skill set and in their local area. I therefore ask the Minister whether, in reforming the system, he will look to create a process that assesses not just whether a claimant is fit to look for a job but whether the jobs available are fit for the claimant.

I also impress upon the Minister the importance of conducting a fundamental overhaul of the system. Tweaking at the edges is unhelpful. Sick and disabled people have little confidence in the WCA, rendering it unworkable. This is particularly important given the incredible mental pressure that the lack of trust in the system puts on claimants, many of whom already suffer from mental ill health. I suggest the Minister seeks to restore confidence as a priority.

On the Government's plans for helping those disabled people who can work back into work, we welcome the creation of a business leaders group. However, will the Minister look at rewarding the best practice of businesses that are good employers of people with disabilities?

[Baroness Bakewell of Hardington Mandeville] For example, Liberal Democrats have proposed that those employers who meet a strengthened version of the two-tick system for mindful employers of employees with mental health conditions are able speedily to access funding, such as Access to Work. It is important that those employers who have a good track record are given a facilitated route to employing more people who may need additional support.

Finally, will the Minister explain why a proper analysis of the failings of personal independence payments is not included in the Green Paper? This has affected people's ability to lead independent working lives. Will the Government look again at the demands of many in this House, not least my noble friend Lady Thomas of Winchester, on the 50-metre rule and its inappropriateness in assessing mobility? The impact of disability varies greatly between rural and urban areas, and PIP as a supposedly personalised benefit should assess these barriers.

All in all, the Green Paper is welcome, but until the Government address these myriad other problems we will still fall well short of providing the support that people with disabilities should be able to expect.

Lord Freud: I thank both noble Lords for their very thoughtful contributions and for their general welcome, with maybe a little complaint in one case about thinness. I take the point.

Both noble Lords made the point, in different ways, about the level of engagement going on now with this Green Paper. We make no apology for that. We need a process that fully brings on board the disabled groups, so that they have full impact. We want to take the time necessary to do that properly. The noble Baroness, Lady Bakewell, looked at the health and work relationship; it is confined to the area that it is because the process is not about PIP at this stage. There will be other times to look at PIP but it is not part of this consultation.

As the noble Lord, Lord McKenzie, pointed out, fundamental here is the Waddell and Burton report of September 2006. It was very valuable for me when I was writing my first piece of work on what to do with the benefits system. It turned on its head the traditional relationship between the benefits system and work when it said that work, particularly good work, is good for people. It is not one of the problems; it is one of the solutions. It has been really hard to move and change a system that is designed to protect people from work, which made sense when there was heavy industry. It now changes at every level.

We all feel that this is taking a long time, but there is a good reason for it. We are transforming a system that put people in a silo of disability and did not let them back into work. Transforming that requires universal credit as a fundamental base where you do not just have those different groupings; you have everyone able to do what they want, with their pay adjusted accordingly. That is the answer to the noble Lord, Lord McKenzie, about universal credit: it makes work pay.

If you make a comparison between what somebody who had been in the system would have got and what universal credit does, you come up with different figures. Once you are in the universal credit system, the reality is that you are incentivised to work. That will have a behavioural effect, which we are already seeing in the way that universal credit operates. It helps and encourages people to work more. While we do not yet have many numbers of those who are disabled in the system, there are some and they are going in. Within universal credit we will build evidence as to how best for them to do so. As noble Lords appreciate, we are building the universal credit system very carefully with a "test and learn", and it is still one of the areas about which to learn a lot.

This is a new era, of joint working. I said it, as did the noble Lord, Lord McKenzie. It is joint working not just between the two departments, which is pretty tough, but also with employers. Getting all that to work well is one of the reasons why we are taking time over our consultation. Clearly we are looking at building on the three types. We now have three tiers of employers in the new two-tick system that was relaunched in July, with the top tier being the leaders. In response to the question from the noble Baroness, Lady Bakewell, about whether there will be the demonstration employer—and we all know individual employers who really have put huge effort into supporting people—I can say that we are setting that up with tiers where the leaders will support others.

On the question from the noble Lord, Lord McKenzie, on statutory sick pay and the fit note, that is clearly at the heart of getting the relationship between health and work and the employment system in the DWP to work better. That is why consultation in this area is so important. One of the most important things is to get the health system seeing employment as one of the therapeutic outcomes for which it is looking. We have already taken that step, and it takes us a long way. I cannot at this stage tell the noble Lord what the allocation of the community partners will be, but we will work on that.

With that, I think that I have dealt with the first level of questions and would enjoy some more.

6.27 pm

Lord Low of Dalston (CB): I too thank the Minister for repeating the Statement and would like to add my word of welcome for this Green Paper. The objective of halving the disability employment gap is commendable, and a lot of work and thinking have been going on in the department about how to achieve it. I commend the Minister and the department on that, and I look forward to studying the product of that activity in the Green Paper more carefully than I have had the opportunity to do so far.

Can I just make a plea for the Minister to revisit the reduction that was made to employment and support allowance going to those in the WRAG in the most recent session of Parliament? As the Minister knows, we had long discussions about this and there would be widespread agreement, even if the Minister did not share it, that although those asking the Government to revisit that cut lost the vote, they won the argument on this one. If the Government do not revisit this cut with a view to cancelling or at least ameliorating it, they will find that they have shot themselves in the foot and prevented themselves even getting to first base in the matter of halving the disability employment gap.

This cut to employment support allowance will hinder people's ability to look for work by undermining their ability to pay for well-being activities that help recovery and enable them to consider paid work; will make people more worried and stressed, thus impacting their mental health; will have an impact on work-related activity such as travel to appointments or volunteering opportunities; and will make it harder to attend training courses and work-focused interviews if people are already struggling to meet basic needs. That is a substantial argument, which was developed in detail by the charities that produced the report on the impact of the cut to ESA. The case was well made and the deleterious impact of the cut was demonstrated beyond any doubt. Again, I ask the Minister to revisit this if he wants to attain his objectives.

Lord Freud: I very much regret having to say that we are not in a position to look again at that measure. The WRAG was not doing what it was designed to do. What we are now looking at in the Green Paper is how to separate the financial aspects of the benefit from the support that people require.

Lord Fink (Con): My Lords, what is my noble friend the Minister doing to help employers take on disabled people?

Lord Freud: It is clear that many people who happen to have a disability have immense talents and valuable skills, which employers should want to tap; they will miss out if they do not. We already offer some support—for instance, Access to Work—and we are increasing that spending. The consultation will ask employers what they need from government to help them recruit and train disabled people.

Lord Blunkett (Lab): My Lords, it would be unfair to use the old joke, "This is déjà vu all over again", because this is a welcome initiative. I have just two quick points to make. The Minister knows a great deal about this. Perhaps he will accept that trashing the past rather than learning from it is not helpful. This is not an entirely new era. In 2005, as he well knows, the Department of Health and the Department for Work and Pensions jointly appointed Professor Carol Black. All the things that came out in the report he has mentioned flowed from that initiative. While it takes a great deal of time to implement good policy, as we are all painfully aware, there has been a great deal of it; for instance, the Employers Network for Equality & Inclusion has 2,500 employers already engaged. A new business leaders' group is not required. What is required is to build on what is there, to build on the experience of the pathways and the talking therapies, and to ensure that what we all say—and we do all say it—about joined-up policy is put into practice.

Lord Freud: My right honourable friend in the other place, the Secretary of State, took some pleasure in quoting James Purnell from 2008 about the objectives here, illustrating that they are the same. We must acknowledge the continuity there has been in this difficult area and, in particular, give thanks to Dame Carol Black, who I have worked with now for many years and who has done an extraordinary job in trying to get these two networks together. We are building on many years of work but, like everyone else, I acknowledge that it is hard pounding—it takes a long time to get this right.

Baroness Thomas of Winchester (LD): My Lords, I welcome the Statement and I completely understand that PIP is not part of this Green Paper, but the Minister's department will have to work hard to restore people's faith in the DWP's consultation process because it comprehensively ignored the PIP mobility consultation, when more than 1,000 people said that we should not have what was subsequently put into law. I hope the Minister will agree to listen to the voices in the consultation process before there is legislation in this area.

Lord Freud: I know that the noble Baroness has very strong feelings about this. At her urging, I did make significant changes to the mobility measure. We did not have a clean measure before. We now have a precise measure with the 20 metres but we have it on the basis defined—safely, securely and regularly—which is something that she wanted, and have made it a much more measurable part of the PIP process. More people are receiving the top rate of PIP than receiving it were under DLA.

Baroness Browning (Con): I have great respect for what my noble friend is trying to do, particularly in getting people with autism into work. Will he bear in mind a couple of things? First, we have seen many schemes over a long time that are badged as work prep, with all sorts of names attached to them to get people ready for work. They are important but where they have failed in the past is in going that step further and finding the appropriate job and getting a person into that job. That applies particularly to those people on the autistic spectrum with learning disabilities or chronic mental health problems. When my noble friend is engaging with employers, I ask him to make sure that it is not just the prep they think about but the advice people with those conditions need for interviews and on how to adjust in the workplace.

Secondly, I filled in a work capability assessment form on behalf of a relative. It is not always doctors who can interpret how a particular medical condition affects somebody's everyday life or how it will affect them in the workplace. Very often physiotherapists, social workers or support workers are better placed than the local GP to know just how an individual is impacted and how they need to be supported in a much wider range of ways than just giving a diagnosis and saying, "This is how it affects them".

Lord Freud: The noble Baroness is right. One of the areas of greatest concern is people who have learning difficulties and people with autism. The figures are not good. There are more than 1 million people with learning disabilities and only 6% have work. I think we are going to see a report on autism this evening showing that only 16% of people with autism are in work. Clearly, in this period of consultation we need a particular focus on people in this group to help them into the workplace.

Baroness Masham of Ilton (CB): My Lords, how is the Minister going to see that the various departments work together and not in silos so that disabled people

[Baroness Masham of Ilton]
get the help they need? For instance, there are some brilliant people in the spinal injury field but they may need help to get up in the morning and go out to work.

Lord Freud: That is exactly the kind of focus that pulling the two systems together should start to address. As the noble Baroness says, if somebody needs a bit of help at a regular time every day to get to work, just putting that little bit of resource in is transformative for that person. That is something that the system has never really been able to do until now and one of the things that we can start to look at as we bring work and health together.

Baroness Manzoor (Con): My Lords, I very much welcome the Green Paper, which is definitely the right direction for us to go in, as is having wide consultation. Has my noble friend the Minister thought about new technologies to support people with disabilities, both in the home and in the workplace as well, as part of the consultation and working with employers?

Lord Freud: Yes, some of the technologies that one sees are remarkable. The noble Lord, Lord Low, who is not in his place at the moment, demonstrates that for the blind every time he stands up—I cannot imagine how he can do it—as did one of the members of my private office, who was also blind. There are amazing technologies to help support in that case; I know that it is also true elsewhere. We want to adopt and take on new technologies. One of the interesting and heartening things with Access to Work, where we have been a little concerned about the take-up, is that we have just introduced a digital offer there and we are encouraged by the response to it. There will be other areas where we can get a lot of benefit from going with new technologies.

Lord Farmer (Con): My Lords, as we have heard, this Green Paper is to be recommended. It will obviously need some broad support to get it through. Can my noble friend tell us what he is doing to garner broad support for these changes?

Lord Freud: We have deliberately designed this Green Paper to ask for responses from a lot of key areas. Noble Lords may remember that when we started off on this process, it was by looking down a direct White Paper route. We have pulled back and gone for the Green Paper route, with a lot of areas for consulting. We plan to hear from and work with disabled people and people with long-term health conditions. We want to hear from employers, health and care professionals, the voluntary and community sectors and the devolved Administrations. We really want to build a consensus on what we can do and get the widest support that we possibly can for any changes.

Baroness Jolly (LD): My Lords, can I ask the Minister not to forget education, because the transition for young people from schools into work at 18 is really important? If they start working from 18, it is much more likely that they will remain in work during their lives.

Lord Freud: The noble Baroness is absolutely right that these transitions need to be managed carefully. It is clearly not a health issue for the majority, but it is for some. Just getting into the habit of living independently is tough for youngsters. We are looking at how we can help them. However, it will be separate from this Green Paper exercise.

Lord Pearson of Rannoch (UKIP): My Lords, thinking of young people with learning disabilities, how easy will it be under the new arrangements for them to move from one council or area of the country to another? Does the Minister agree that this has been considerably restricted over recent years, and something that they perhaps deserve under the new arrangements?

Lord Freud: Youngsters are able to go to other areas to work. I think that the noble Lord must be referring to the restriction on 18 to 21 year-olds getting housing benefit. One of the exclusions that we have been debating with people—we announced that we would look at that strategy—was to make sure that those youngsters who move between areas for work could be exempt from that particular restriction.

Lord Sterling of Plaistow (Con): My Lords, I have just come from next door, where there has been a gathering on autism. I have two interests. One is through Motability; the other is because I have a young grandson who is right at the bottom end of autism, so this is very personal. One very key factor on autism is that 60% of people said that they did not know where to go for support or advice about employing an autistic person. I see people nervous of how they should support and handle people whom they have never quite understood. Also, if I may, another factor that we have found over the years—I have had the pleasure of discussing this with noble Baronesses opposite—is that this can also deal with loneliness. If you are disabled and at home, and do not have a job, you might be left on your own for hours or days. I very much greet this Green Paper because it is the start of the right dialogue. How can one achieve on the former factor and make certain that we can help to educate workforces, before somebody comes to them, as to how to handle what they would consider a problem and we would consider a challenge?

Lord Freud: One of the problems with autism is, clearly, that many—too many—of those people are not in the workforce. That essentially acts to exclude them from the normal economic life of the country, which in itself leads to isolation. If we want to get the volumes that we are talking about and halve the disability gap, we need some concrete policies to come out of this Green Paper and address this issue. We now have dialogue between the health systems, the DWP and employers. It should not be beyond our capability as a society to solve this problem.

Baroness Scott of Bybrook (Con): My Lords, I welcome this Green Paper not just for myself but for my daughter, Sarah. My daughter has worked for many years since she left college but has been out of work for the last four months. The majority of disabled people really want to work. It is demoralising and

lonely not to be working for any length of time. They do not want to be on benefits; they want to be, like all the rest of us, self-sufficient and a member of their society.

I particularly welcome two things in the Green Paper. Having listened to other noble Lords, I suggest that disability is just a word but it means a huge and wide range of issues that people in our communities have. Tailored support is therefore very important because you cannot lump everybody into the same type of support. There should be specific support—I am sorry that the noble Lord, Lord Blunkett, is not here—but that is not in here at the moment, so I urge the Minister to make sure that, while we go through the whole process with the Green Paper and White Paper et cetera, what should be delivered now is being delivered. That is really important; my daughter does not want to wait for a Bill to go through.

It is particularly important that we talk to employers earlier rather than later. When employers have disabled people working for them—when they go over that barrier—they find it a very positive experience for their businesses and for the rest of their employees, but they need a little help to understand and to be able to manage. Sarah has been for numerous jobs and every time, as soon as they know she is in a wheelchair, they do not come back to her. That is a nonsense. It only needs a little help to understand that a wheelchair is not a barrier to somebody working in a business. I urge the Minister not to stop with what is being offered now but to get on with this, because it is extremely important, not only for disabled people but for the economy as a whole.

Lord Freud: I thank my noble friend. We will get on with it. We have the Access to Work Programme to help her daughter, Sarah. I hope she will find work. We are putting more resource into the programme right now. I can only hope that Sarah is successful, and I trust that my noble friend will keep me up to date with her progress.

Nissan: Sunderland

Statement

6.50 pm

The Minister of State, Department for Business, Energy and Industrial Strategy (Baroness Neville-Rolfe) (Con): With your Lordships' permission, I will now repeat a Statement made in the other place by my right honourable friend the Secretary of State for Business, Energy and Industrial Strategy.

"Last Thursday, 27 October, the Nissan Motor Company Ltd announced that, following a meeting of its executive committee, both the next Qashqai and the next X-Trail models would be produced at its Sunderland plant. The plant will be expanded through new investment to be a super-plant manufacturing over 600,000 cars a year.

Eighty per cent of the plant's output is exported to over 130 international markets. The decision is a massive win for the 7,000 direct employees and 35,000 total British employees in the plant and in the supply chain. It is a stunning tribute to the local workforce which has made the Sunderland plant, in the words of the chief executive of Nissan, 'a globally competitive powerhouse'. We are immensely proud of it and proud of them.

Of course, the decision is great news for the people of the north-east more widely, our world-class automotive sector and the whole of the British economy. This is but the latest in a series of exciting investments in a United Kingdom that is proving to the world that it is open for business. Indeed, it is hard to think of more unambiguously good news.

I and my colleagues in government have been vigorous in ensuring that the Nissan board had no doubts about the importance of this plant and this industry to the British people. Through many conversations I and my colleagues had here and in Japan, it became clear that four reassurances were important to securing the investment for Britain. Three were about the automotive sector generally and one was about Brexit.

They were, first, that we would continue our successful and long-standing programme of support for the competitiveness of the automotive sector, including Nissan. This support is available for skills and training of the local workforce, research and development, and innovation in line with EU and UK government rules. Since 2010 the Government have invested £400 million into the UK automotive sector in this way, and we will continue to invest hundreds of millions more over the coming years. All proposals, from any company, must be underpinned by strong business cases and tested against published eligibility criteria. All proposals are subject to rigorous external scrutiny by the independent Industrial Development Advisory Board and are reported on to Parliament.

Secondly, we would continue our work with the automotive sector, including Nissan at Sunderland, to ensure that more of the supply chain can locate in the UK and in close proximity to the major manufacturing sites. Working with local enterprise partnerships, city and local growth deals have provided a way in which local councils, businesses and the Government can upgrade the sites and infrastructure for small and medium-sized suppliers. This programme will continue with vigour.

Thirdly, we would maintain a strong commitment to the research and development and take-up of ultra-low-emission vehicles. The opportunities presented by bringing the energy and climate change department together with the business department make us ideally placed to build on Britain's strengths in low-carbon energy, the automotive sector and science and research.

Fourthly, in our negotiations to leave the EU we will emphasise the strong common ground that there is between ourselves and other EU member states in ensuring that trade between us can be free and unencumbered by impediments. A good deal for the UK can also be a good deal for other member states, and that will be how we approach the negotiations. Whatever the outcome, we are determined to ensure that the UK continues to be one of the most competitive locations in the world for automotive and other advanced manufacturing.

Last Thursday was a great day for Sunderland and for Britain, but the best is to come. Over 30 years Nissan has invested more than £3.7 billion in our

[Baroness Neville-Rolfe]
country and created excellent jobs for a whole generation of world-beating British workers. Last week's announcement means that a new generation of apprentices, technicians, engineers, managers and many other working men and women can look forward to a career filled with opportunity and success. This Government will always back them to the hilt, and I commend this Statement, and Nissan's welcome decision, to the House".

6.55 pm

Lord Mendelsohn (Lab): My Lords, I thank the Minister for repeating the Statement made in the Commons.

The announcement on 27 October by Nissan Motor Company that it will produce the next Qashqai and will add production of the next X-Trail model at its Sunderland UK plant is to be welcomed. This increase in its investment in Sunderland will not just secure and sustain the jobs of more than 7,000 workers at the plant but be welcome news to workers holding the 28,000 British automotive supply chain jobs and the tens of thousands of jobs in the local economy that are dependent on the thriving plant there. It is, of course, a great tribute to the extraordinary workforce there, and we are very pleased to associate ourselves with the comments about their great achievements.

It is also entirely appropriate to pay tribute to Nissan's commitment to the UK and its fantastic record since the plant opened in 1986. It is, I believe, not just the UK's largest car plant but the largest plant ever in the UK. To date, Nissan has invested more than £3.7 billion in Sunderland. It stands as a globally competitive powerhouse of manufacturing and is proof that the UK can and should excel in manufacturing.

In his statement, the Nissan chairman and CEO made two important points, which are the reason for the Minister's Statement and the Secretary of State's foray into the media and on to the news programmes over the weekend. He said that:

"The support and assurances of the UK Government enabled us to decide";

and, secondly, that he welcomed the Prime Minister's,

"commitment to the automotive industry in Britain and to the development of an overall industrial strategy".

I ask the Minister to provide the House with more detail around a few important issues, such as the nature of the assurances, the Government's openness with dealing with underpinning the economy in dealing with the consequences of Brexit and their approach to assurances for other areas of the economy.

We heard over the weekend—there were perhaps more details in the interview with Marr than in the Statement—a number of announcements in relation to the commitments given to Nissan. The first is that this deal is on offer to the whole car industry. Will the Minister confirm that all aspects of the support package will be available to the companies operating assembly plants in the UK? Does it also apply to the more than 650 automotive companies and even the 2,000-plus automotive suppliers in the UK? Have the UK Government made an estimate of the range of potential financial implications if this offer is accepted by Nissan and all the assembly plants and automotive companies?

On "The Andrew Marr Show", the Secretary of State said that there were four things in the letter, and those were repeated in the Statement. One was that the Government will provide funding for training. The Statement suggests that this will be around £66 million a year. It would be very useful if the Minister could tell us how much Nissan currently receives from the money that has been apportioned over the past six years and whether there were any indications that more was requested or that more would be supplied.

Secondly, the Government have said that they will bring the supply chain back to the UK . The Society of Motor Manufacturers and Traders estimates that 80% of components in a car can be made in the UK. Currently, the average UK content in British-built cars is 41%. The government commitment is therefore to make up this 39%—effectively doubling it—by a new, energetic campaign. This could be one of the most significant industrial undertakings of current times. However, it concerns me that the Statement indicates that this is no more than is done currently in a programme which has made a very small shift but which is running out of steam and where the year-on-year changes are reducing. I would be grateful if the Minister will provide us with any details on anything that would indicate whether this is a new, sustained effort or more of the same programme that is running out of steam.

Thirdly, the Government have given an undertaking to be at the leading edge of research and development for electric cars. Can the Minister confirm the Government's full commitment in relation to that? Did it relate to grants, tax incentives, employment assistance or R&D spend? Was anything mentioned? The principal argument seems to be that the merging of the departments was enough. Did that really satisfy the Nissan executive or were more details provided? Were any of the details that were provided, whether by letter or verbally, the basis for any conclusions to be drawn by Nissan?

Fourthly, the Government say they will try to achieve tariff-free trade in the Brexit negotiations. Did the Minister—verbally, in a letter or in any other way, such as through officials or in any other form of communication—explain or give any steer on what would happen if the Government failed to achieve an agreement for tariff-free trade? Were any details provided? It is hard to believe that a company such as Nissan was convinced by good intentions alone or that what the Secretary of State has already said meets the test of "support and assurances" that the Nissan chairman and CEO could report to the Nissan executive. There is nothing wrong, and everything good, with providing reassurances and support, but in current circumstances, the Government need to be more open. Ensuring the UK's economic well-being after Article 50 is lodged may well be the responsibility of the Government, but it will not be achieved only by the Government. There are many others ready and willing to help.

The Government should publish not just the letter between the Secretary of State and Nissan but also any supporting information and data they collect that are relevant to the development of the assurances and their delivery. Can the Minister undertake to do that? Can the Minister also confirm that the Government are united on their approach to negotiations with

Europe? Has the Secretary of State cleared his commitment to tariff-free single market access with the Secretary of State for Exiting the European Union and with the Secretary of State for International Trade?

The chairman and CEO of Nissan was explicit that the commitment to an industrial strategy was an important consideration. Could the Minister provide the details of what was provided, if anything, in addition to the statements that the Government have already made public? Does this mean that the Government are willing to provide such assurances to other parts of the economy? Car manufacturers make a valuable contribution to our economy in terms of jobs, productivity and exports, but so do many other sectors, including strategically important ones such as steel, aerospace and pharmaceuticals. Then of course there is the service sector, which accounts for most of our economy. What are the Government going to do support the rest of our economy through Brexit? Could the Minister outline any elements of the strategic architecture or even some of the measurements which will be used to devise a proper plan rather than a factory-by-factory approach?

The UK is currently a beneficiary of EU R&D funding. Will the Government guarantee to match this funding after Britain leaves the EU—including the funding that UK institutions get to lead and manage programmes across the EU, which act to cover the core costs of important UK research institutions? Will the Minister please confirm the current Government's thinking on what and how affordable it would be to provide some sort of "support and assurances" to the banking sector if it is unable to secure passporting? The Government continue to block action against steel dumping at the EU level. Will the Secretary of State commit to giving equal treatment to other vital sectors by taking action to support our steel industry? Can the Minister give any idea whether the Government will take a different view after Brexit?

We are where we are, and we have to act to ensure the UK thrives. The Government need to provide more detail, and not less, if we are looking to launch Article 50 in five months. Surely the Minister needs to understand the reasonable expectations of having a better timetable and explanation of the government plan. Being more open about the terms agreed with Nissan would be a useful start.

Lord Foster of Bath: My Lords, I too thank the Minister for repeating the Statement. On these Benches, we are of course pleased that 35,000—some people argue 42,000—direct and indirect jobs have been saved because of the Nissan decision. We too join the tributes that have been made to the workforce and to Nissan for its commitment to the United Kingdom. But we remain unclear about cost, unclear about whether or not the deal extends beyond the Nissan Motor Company, unclear about the implications for sectors other than automotive and, frankly, completely in the dark about where the Government are seeking to take us. Like the noble Lord, Lord Mendelsohn, we wonder whether we have heard all there is to be told about the Nissan deal.

The Business Secretary says his negotiating demeanour—to use his word—will be to try to ensure continued access to the markets in Europe without tariffs and without bureaucratic impediments. What is the fallback position if he fails? WTO rules do not allow compensation to be paid to Nissan for imposed tariffs, so what will happen then? Alternatively, are the Government seeking partial membership—for some sectors and not others—of the single market and customs union? After all, the Prime Minister has said that membership of the customs union is not a binary affair. Does the Minister agree with the Prime Minister? Is she aware that experts simply cannot see a system where there is, for example, free movement for cars but not for bicycles? Does the Prime Minister know something that the rest of us do not?

If the Business Secretary succeeds in a tariff and bureaucracy-free solution for cars, who will then have responsibility for the manufacturing regulations? Will the UK have a say on them? That will be so important, not least for the specialist car sector and for our work, as the Minister said, on electric and driverless cars. What guarantee can the Government give Nissan in the long term if we do not have a voice in any regulatory framework? What of those other sectors, including aerospace, pharmaceuticals, the service sector and many others including the millions of small businesses? The Business Secretary has made clear that the Nissan deal is not a general deal. So is it the case simply that those who shout loudest get the best deal from the Government? If the Government cannot have a sector-specific customs union, will they stay in the customs union entirely? If so, why do we have a Secretary of State for International Trade trotting around the world proposing deals which would of course be illegal?

The Nissan saga shows all too clearly that the Government do not have a clear plan and that their idea of not having a running commentary on Brexit is, frankly, laughable. When Cabinet discussions are leaked, and when some companies and not others are given specific assurances, it causes confusion and rumour that impact on the economy and the confidence of millions of business owners, savers and investors across the country. Does the Minister agree that it would be better if the Government came to Parliament with a clear statement of their intentions for negotiations and then let Parliament have a vote on that negotiating strategy? We would like to hear the answer.

Baroness Neville-Rolfe: My Lords, I start by thanking the noble Lords, Lord Mendelsohn and Lord Foster of Bath, for their support for this important investment by Nissan. We are right to welcome it so widely. It seems to me a very long-term decision—a new plant and a new supply chain—and I congratulate everyone involved. It is in everyone's interest and shows the strength of our economy. It builds on three decades of success, supported by all parties, in Sunderland and for Nissan.

What is the best way to start on the nature of the assurances? I emphasise that this is not a compensation package. That is important in relation to all the points that have been made. This was about convincing Nissan of the UK's continuing competitiveness. Governments regularly invest in UK competitiveness by supporting businesses making major investment decisions. This investment has been secured thanks to the highly skilled workforce, the strong partnership between

[Baroness Neville-Rolfe]
government and industry that we now have, and long-term investment in new technology and innovation. Those same strengths are what matters to the other sectors and other companies that noble Lords have touched on. There is real progress with the announcement that these two important, new, potentially world-leading models will be made in the UK.

I set out in my Statement the importance of electric cars. I do not apologise for the fact that putting the two departments together helps with the electrification of vehicles and encourages those sectors of industry in the UK to tool up to be world-competitive. That is also helped by the departments coming together in BEIS, the curiously pronounced new department.

On Brexit, as the Prime Minister has said, the Government want British companies to have maximum freedom to trade with and operate in the single market and to let European businesses do the same here. People do not emphasise often enough the huge mutuality of interest. That has to be taken into account in the Brexit negotiations that are being developed.

I do not want to stray into a running commentary, which would go beyond my brief, but we have been showing Nissan and others that we are committed to getting the best possible deal from the future relationship that we will be negotiating with the European Union. We wish to ensure and assure the competitiveness of the British economy, which is what they have been so pleased about. We understand the concerns of industry, and it will be a priority of our negotiation to support UK car manufacturers.

We are working across government in a joined-up way, coming to the correct, mature decisions, and we have an ambition to do the very best for our industries. That includes the other industries mentioned. We have been working across the divide as part of the Brexit process. We have 50 streams of work looking at the different sectors, including aerospace, pharma and steel, where there has been some good progress since we last debated it in the Chamber, with the reopening of the plate mills in Scotland and progress in Scunthorpe and, I would say, Port Talbot.

Finally, I should mention the industrial strategy. We are determined to ensure that the UK is a competitive place to manufacture and to have financial services and all the other things that have been mentioned. As we develop the industrial strategy, we want to work with companies such as Nissan across the economy to ensure that we get the very best results for Britain.

I shall close at that point. I have tried to answer the questions. I will need to come back to the noble Lord on the training numbers.

7.13 pm

Viscount Hailsham (Con): My Lords, with regard to the fourth reassurance given to Nissan, does my noble friend accept that in return for "free and unencumbered access", to use the words of the Statement, European negotiators are likely to seek concessions from the UK on movement of persons, the acceptance of internal regulations and the payment of contributions? What was said to Nissan on precisely these points? If nothing, would my noble friend care to share the Government's position with the House?

Baroness Neville-Rolfe: In the discussions with Nissan, we emphasised the strong common ground that there is between us and EU member states, our intentions and ambition to get a really good deal and the mutuality of interest in the automotive industry. I am confident that the UK can get a good deal from other member states. That is the view that Nissan has come to, which is why it is making the investment it is.

Baroness Armstrong of Hill Top (Lab): My Lords, does the Minister acknowledge the centrality of manufacturing to the north-east of England? Nissan is very important. I am probably the only person in this House who was born and brought up in Sunderland, and I well remember the challenge when Nissan was eventually persuaded to invest. It is a loyal company. I have just seen the Japanese ambassador, and that is precisely what he emphasised: the loyalty inherent in Japanese companies.

However, the supply chain is critical. The north-east manufactures more per head than any other region. It is more dependent on manufacturing than any other region in the country. The supply chain is critical, as are other industries, as the noble Baroness says. What discussions is she or are the Government having with Hitachi, which is critical to train development in Newton Aycliffe? It has made new investment there and is very worried because it now does not think, because of EU rules, that it will be easily able to make trains in this country for other European countries.

Baroness Neville-Rolfe: The noble Baroness is completely right about the north-east: I always love the opportunity to visit, and have been to Newton Aycliffe in the not too distant past. We have a catapult not far away researching world-leading innovation. We are in constant discussion with Hitachi on its investment plans, which are indeed very important. This is the sort of foreign investment that we need to continue to welcome to the UK and the north-east.

Baroness Ludford (LD): My Lords, I would not wish to look a gift horse in the mouth, and it looks as if the Government intend to seek membership of the single market and the customs union. My noble friend Lord Foster's question on that was not answered. On behalf of the Government, will the noble Baroness come clean about that objective, instead of all this secrecy, confusion and incoherence, as a Member of the other place, Andrew Tyrie, the Conservative chairman of the Treasury Committee, is urging? He is also saying that the secrecy has nothing to do with the conduct of negotiations but everything to do with the confusion and incoherence in government. Please can we have a clear answer about the single market and the customs union?

Baroness Neville-Rolfe: We have already said that it is a priority for our negotiations to support UK manufacturing and ensure that the ability to export to and from the EU is not adversely affected. We need to remain competitive. Our ambition is high. In relation to the customs union, we made it clear that we are seeking the best possible deal with the widest possible access and that we do not expect exports to the EU to be adversely affected.

Clearly, work on this continues, but your Lordships can be clear that our ambition cannot be denied. We are not giving a running commentary because, as the noble Baroness will know, in negotiations, you cannot reveal every detail as you go along. Talking about confidentiality, we have not published the correspondence with Nissan, which she was perhaps hinting at, for the very good reason that investors in the UK—I used to be in business—must be able to have confidential discussions with the Government on their plans and be sure that those will not be revealed to their competitors. That is the way you have to work in the modern competitive world.

Lord Liddle (Lab): My Lords, perhaps I may press the Minister on the deliverability of what she is saying. If she had said, "Yes, we recognise that we've got to be fully in the single market", or, "We've got to be in the customs union", perhaps she would be able to say to us that she could deliver. Her refusal to say that effectively means that the Government are trying to negotiate a series of sectoral agreements without the wider obligations of single market membership. Does not she agree that this is an extremely hazardous process for the United Kingdom and that there is very little prospect of it being completed within the two years of the Brexit timetable? What will be the position in 2019 in those sectors if negotiations have not been completed? I strongly support Nissan, but does she agree that it will be much easier to get a sectoral deal in goods—where, overall, Britain has a trade deficit—than in services, where we have a huge surplus? If we are looking at our interests overall, how does what the Government are saying add up to an adequate pursuit of the national interest?

Baroness Neville-Rolfe: The noble Lord is right to express his concerns with passion. You can see that we have already made some important totemic advances. The Nissan statement is one and the other is the Chancellor's statement about financing the Horizon 2020 investments, which we will ensure are guaranteed. We are working hard in a complex negotiation, moving forward with ambition and a determination to ensure that exports continue both ways. I perhaps have a more optimistic view of matters than the noble Lord does.

Lord Wrigglesworth (LD): My Lords, I have had a long association with Nissan. I was chairman of the Port of Tyne until fairly recently, from which virtually all Nissan's cars were exported to Europe and the rest of the United Kingdom. I was also a director of the Northern Development Company, which did such sterling work in bringing it to the United Kingdom 30 years ago. I have followed its prospects and ups and downs over the years. This is not the end of the matter for Nissan. It is very good news in the short term, but we have had this before in the north-east: will the model come or not? The great advantage with the Qashqai is that it has been the most successful model that Nissan has ever made there. It has been made there for the last few years, so it was obvious to carry on making it there and a much easier decision for Nissan to take than if it were bringing a completely new model to the plant. Therefore, the Government have to face up to the fact that, unless this is a complete blank cheque, the future of the plant is still going to be in question when a new model has to be built there. Has a blank cheque been given to Nissan? Is it going to be compensated for any tariffs that are put on goods coming out of the factory in the future? As other Members have said, what about Komatsu and Hitachi and all the pharmaceutical industries in the north-east and other parts of the country that are also going to be affected if we are not in the single market?

Baroness Neville-Rolfe: I have already made it clear that there is no compensation package. Indeed, Nissan has itself said that there is no special deal and nothing for it that the rest of the industry would not be able to have access to. I commend the noble Lord for the work that he has done in the north-east. It is very important that we continue to invest in these areas with things like the Sunderland and South Tyneside City Deal for new advanced manufacturing. The noble Lord asked about other companies: it is important to bear in mind that the nature of the deal is available to other companies as well, because we are investing in competitiveness right across the board. I already said in my opening remarks that we have invested £400 million since 2010. Companies can apply for support but, rightly, those applications have to underpinned by strong business cases. They have to be approved by the independent industrial advisory body. While we are in the EU, they have to respect state aid rules and even if we ended up in a WTO situation—which I am not forecasting—they would have to respect the rules there. All that is very important.

Lord Inglewood (Con): My Lords, I declare an interest as chairman of a training company elsewhere in the north of England. Can the Minister confirm that Nissan will be treated like all other businesses in respect of the proposed apprenticeship levy and is not going to have some sort of exceptional status?

Baroness Neville-Rolfe: I am certainly not aware of any special arrangements for the apprenticeship levy. As I made clear, the sort of arrangements which I outlined in relation to training, skills and innovation are an across-the-board approach which Nissan is obviously welcoming. I know my noble friend's interest in the north-west and how important it is to him that we ensure investment in Cumbria, not only in nuclear but in manufacturing and other areas.

Lord Lea of Crondall (Lab): My Lords, is it not abundantly clear that what was worrying Nissan was the repeated statement that "Brexit means Brexit"? Is it not equally clear, from today's Statement, that Brexit does not mean Brexit and that the absence of access to the internal market and the customs union was starting to worry the management of Nissan? If these guarantees are now being given—and we hope that people on the continent will accept them, which is another question which I have not heard much about—can this be replicated in other sectors? At the end of all this, I hope the agreement with the European Union will include a lot of industrial policy and, as my noble friend Lord Liddle said, that things will be much nearer to acceptance of the internal market and customs union.

Baroness Neville-Rolfe: I do not have a lot to add, except to repeat the point about the mutuality of interest between Britain and our European neighbours and our determination to approach the matter in a constructive fashion. The Secretary of State for Exiting the EU outlined to Parliament our ambition to get the best possible access to the European market that we can negotiate. I think he said that we want business to operate in the EU tariff-free area for the future. We must not forget that leaving the EU also offers us potential opportunities to forge some new relationships around the world and to stand up for free trade, which I believe strongly helps the world economy, the people of Britain and the people of Europe.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, the Government's welcome clarity, albeit given in secret to Nissan, has assured the continuation of car jobs in Sunderland and the north. Does the Minister realise that their lack of commitment and uncertainty has contributed to costing some 290 high-tech aircraft engineering jobs in Yeovil? I will see if I can explain. The Government put an order for Apache to Boeing without any kind of competitive tender whatever. In consequence, the confidence has been eroded in the Government's wish to see a continuation of the helicopter design and manufacturing industry in Yeovil—the only one in Britain. That has contributed to the loss of 290 jobs just recently, with Leonardo probably going to Italy. Does the Minister agree that any attempt to produce any kind of industrial policy that did not say clearly that it wished to see Britain's aerospace industry maintained, and our standalone capacity to make helicopters sustained, would not be worth the paper it was written on?

Baroness Neville-Rolfe: I certainly agree with the noble Lord that the aerospace and aviation industries are incredibly important to Britain. I have already asked on a previous occasion to have a conversation with him about Yeovil in particular, so that I can report to my noble friend and other Ministers who deal with these issues. Especially at this time of uncertainty with Brexit, we need to engage more with business across the UK and discuss difficult issues that arise.

Viscount Ridley (Con): My Lords, will the Minister confirm that Nissan's practice, when choosing at which plant to build a new model, is to organise competitive tendering among its plants all around the world, that the best one wins and that that is why this decision has come? As recently as August, the BBC was reporting that Nissan in Sunderland would not even be able to bid for these new models, let alone win those competitions—a speculation in the long tradition of pessimism about the Nissan plant, going back to how it would be lost if we did not join the Euro et cetera. This is a tribute to the fact that, whatever the conditions, this plant is highly competitive thanks to the brilliant work done in the north-east of England.

Baroness Neville-Rolfe: My noble friend is entirely right. It is great news and a tribute to Sunderland and the people of Sunderland. I am delighted to know that Nissan in the UK scores so very well in the international league tables.

Lord Hain (Lab): My Lords, since the great bulk of Nissan Sunderland's production is exported to the European market and the typical life cycle of a new model is five to 10 years, can we assume that Nissan has been promised either tariff-free access to the single market or a transitional access of that kind over a 10-year period?

Baroness Neville-Rolfe: I have made it quite clear that there is no special sweetheart deal. I outlined in the Statement the broad ingredients of what we have agreed with Nissan, and it has endorsed this with a clear statement to that effect. Of course, we need to look ahead over 10 years. We need to tool our industry and ensure that it is skilled and that we have the right sort of investment and innovation. That can include things Nissan is expert in such as electric cars and, no doubt in due course, the move to autonomous vehicles. We can do all that together. Nissan is a very competitive company that likes Britain. There is plenty of opportunity. We do not need to be so pessimistic about the future.

Lord Campbell of Pittenweem (LD): My Lords, are we to accept that Nissan was persuaded by the answers to the first three proposals, which are about continuing and maintaining, and the fourth, which is about doing the best deal we can for the United Kingdom? If I was making an objective judgment of Nissan's capacity for negotiation, I do not think I would give it many marks out of 10 if this is all it amounts to. Why cannot we have sight of the correspondence exchanged between the Secretary of State with the relevant responsibility and Nissan? Surely this is not the normal run-of-the mill argument about confidentiality; this issue goes right to the very heart of the Government's case and their chances of success in negotiation. Is not that exactly the kind of accountability which this House and, indeed, the other place are more than entitled to ask for?

Baroness Neville-Rolfe: I feel sorry for Nissan. Over 30 years, it has invested more than £3.7 billion here. We have had important exchanges and correspondence with it of a confidential nature. We have summarised the key ingredients of that in good faith. I do not think there is anything I need to add to give a truer picture. I look forward to Nissan continuing to invest in the UK over many years.

Lord Trefgarne (Con): My Lords, I warmly commend what the Statement said about support for training. I speak as the former chairman of the Engineering Training Authority. I have visited Nissan on many occasions. Its training facilities are outstanding.

Baroness Neville-Rolfe: I very much agree with my noble friend. Part of our industrial strategy—to give a preview—will be that skills and training will be vital. As the world is changing, especially as it becomes more digital, they are becoming even more important, and we have to invest in skills and training to a much greater degree, as we have heard from the Prime Minister and the Secretary of State. I look forward to seeing a changing Britain with our new approaches and investments. We should learn from Nissan because it has obviously been so successful.

Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016

Motion to Regret

7.33 pm

Moved by ***Lord Storey***

That this House regrets that information about pupils' nationality and country of birth collected under the Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016 (SI 2016/808) could be used to help determine a child's immigration status.

Lord Storey (LD): My Lords, it is important that schools know how many of their pupils have English as an additional language. I hope that means that extra resources and support can be provided for those pupils. Indeed, schools and local authorities have been doing this for decades. However, the requirement for every school in England—by the way, we are not talking about Scotland, Northern Ireland or Wales—to collect information en masse about every child's country of birth is, frankly, unbelievable.

These regulations were made on 20 July and laid before Parliament on 27 July, after Parliament had risen for the Summer Recess. They were rushed through Parliament in the six-week summer holiday with no debate, no proper scrutiny or, indeed, public consultation. You might have thought that the DfE would have wanted to consult, take soundings and take the views of a range of organisations before embarking on this requirement. However, that was not the case. The regulations were rushed through Parliament and that was it.

Against a backdrop of a massive increase in anti-immigration rhetoric, as witnessed by big increases in hate crime, and at one stage the Government considering asking firms to report on the number of foreign staff they employed, there is real concern among members of different ethnic groups about victimisation and being targeted. I am afraid that this proposal has all the hallmarks of racism, particularly as language codes are already recorded for pupils with English as an additional language, as are codes on their ethnic background. We have already seen the effects of this new requirement. It became a duty for schools to collect this information this September. Some schools have asked pupils to bring in their passports. Can noble Lords imagine pupils having to bring in their passports? In investigating the school census, *Schools Week* found classroom discrimination whereby only non-white children were being asked to bring in their passports to school. The *Independent* reported that where parents do not provide information, teachers will be asked to guess the ethnicity of pupils. Is it any wonder that children and young people have felt discriminated against and embarrassed in front of their peers? The Government may say that the guidelines state such and such, but that is a very different matter from practice in schools.

What is the purpose of collecting the information? The Minister says in his letter to me that the information will help us to understand the impact of migration on schools—for example, what extra support we may need to provide. However, there is no extra budget financing. He goes on to say that it will help us plan how we ensure there are enough good places for every child. However, knowing where a child was born has nothing to do with school place provision. The DfE says that the information will not be accessible to the Home Office, but already on 18 separate occasions since 2012 the National Pupil Database data have been handed over to the Home Office, while information has been granted to the police 31 times.

The actions of the Government and statements from them on nationality and country of birth have also raised real concerns about the confidentiality of the school census as a whole and the child's personal data given by parents in good faith when their child enrols at school. If information from the school census can be shared with other agencies, for example the Home Office and police, without any oversight at all or consent, what does that say about the confidentiality of such information? By acknowledging that the nationality and country of birth data are too sensitive to be kept on the National Pupil Database with other data, are the Government suggesting that that database is not a secure place for a child's data to be stored? How does this rest with our child safeguarding responsibilities?

I am very grateful to the Minister for his letter of 26 October, in which he made a number of key points. I hope that when he responds to the debate he will deal with some of them. He says that the new data on nationality and country of birth will be provided to schools by parents only if they choose to do so. It will be entirely optional. What is the point of all this if, at the end of the day, it will be entirely optional? How will that affect the need for extra resources or school placements?

On the question of passing information to the Home Office, the Minister says that it is solely for internal Department for Education use. How can we have a 100% cast-iron guarantee that this information will not be passed on to other agencies? He also talks about how we currently give information to private organisations and for research purposes. Is there to be carte blanche? What checks and balances are currently in place when people ask to see this information, and how do we ensure that if we agree that information goes to a private organisation, we are happy that it will be treated correctly and properly?

Finally, to go back to the point I made at the beginning, the Minister talks in his letter about extra support. Are we to understand that there are plans to provide extra financial support for schools which have children from different ethnic backgrounds?

Children are children, and to use their personal information for immigration enforcement is disingenuous, irresponsible, and not the hallmark of a tolerant, open and caring society.

The Earl of Clancarty (CB): My Lords, I thank the noble Lord, Lord Storey, for introducing this Motion and I agree with his concerns.

There are two aspects to this. One is concern over whether school census data might be passed to the Home Office for immigration purposes, and the other

[The Earl of Clancarty]
is whether the gathering of these data oversteps the bounds of privacy, whether or not there is any usefulness for education. I have to say that but for the perseverance of campaign groups such as Against Borders for Children and Jen Persson of defenddigitalme, we would be none the wiser about the sharing for immigration purposes of the National Pupil Database between the Department for Education and the Home Office that has already gone on.

It has taken two freedom of information requests by Pippa King as well as Parliamentary Written Questions from Caroline Lucas to uncover, for instance, that in the last 15 months alone, requests to a total of 2,462 pupils have been made by the Home Office. I therefore feel that it is already very difficult to trust any reassurances that the Government now might make for the future. These revelations also contradict the statement that the noble Viscount, Lord Younger of Leckie, made in this Chamber on October 12 when he said,

"I reassure the House that the information is kept within the Department for Education and is not passed on to the Home Office".—[*Official Report*, 12/10/16; col. 1890.]

This is clearly untrue, and I hope that this statement will be retracted. So far, the Government have said nothing about these disclosures.

We learned at the weekend from the report in *Schools Week* that the noble Lord, Lord Nash, has said that the nationality and place of birth data would be kept in a separate database. This raises a number of questions, not least whether this is a tacit admission that the NPD is not a secure place already in terms of data sharing—and of course we know now that it is not. But I would like to know what would be so special about this separate database. What is the precise wording that will ensure that these data will not be shared with the Home Office? Will this be a legally binding agreement? That these data would be on a different database seems to me to be meaningless in itself. What, then, of the NPD? Can the Minister assure us that those data, aside from nationality and birthplace, will not be shared in the future with the Home Office? What is the wording of any agreement which will ensure that?

Parents are upset, not just about how this information might be used but because these questions are asked at all. They are fundamentally intrusive in the same way that the listing of foreign workers would be. We also know that the same questions are also being asked of school governors. If it is unclear how pupils' data can be used for the improvement of their education, it seems that the same information on school governors does not have anything at all to do with either a good education or good governance.

One of the things that ought to be emphasised is that these questions are in one important sense mandatory. You cannot leave them blank and, despite what it says in the guidance, parents have been asked for their passports for the simple reason that when the department asks a school to do something, they will naturally try to do so as effectively as they can. It is true that you can currently put "Refuse" as an answer, which parents are quite rightly doing out of protest at being asked these questions, but for many parents this will appear a provocative response. Can the Minister say whether there would be a straightforward opportunity for parents who are unhappy about having already given the information to have it retracted? Having "Refuse" as an option is a telling recognition that this is a sensitive area and, if these regulations continue, it will not surprise me at all if in a year or two that option is removed.

As everyone in education knows, it is a hard job to get pupils who may be excluded from mainstream education by circumstance into education. We need to get all our children into school, not frighten them away. In a sense, the Minister let the cat out of the bag in answer to a question from the noble Baroness, Lady McIntosh of Hudnall, that,

"it better enables us to monitor immigration issues within this country".—[*Official Report*, 12/10/16; col. 1889.]

How is that a function of the DfE? Data gathered by the DfE should not be used to monitor immigration issues. Teachers are not border guards.

This is a children's rights issue. Many parents are against the provision of these data and campaign groups have displayed serious concerns about it. The regret Motion of the noble Lord, Lord Storey, is unfortunately well founded.

7.45 pm

Lord Paddick (LD): My Lords, I support my noble friend Lord Storey in his regret Motion. He talked about an anti-immigration rhetoric, and we have seen the increase in hate crime, for example, which has occurred post-Brexit. However, it goes further than that.

In addition to the Government's attempt to require companies to report the number of foreign staff they employ, which my noble friend mentioned, under the Policing and Crime Bill currently going through this House the Government will require people who are detained by the police, where the police suspect the individual not to be a British citizen, to produce their passport. I cannot tell which group of people who are arrested will be required to produce their passport, but I suspect that it may largely be dictated by the colour of their skin. What happens if the individual is a British citizen who does not have a passport? I raise this issue because it paints the picture of where the Government are going as regards immigration.

Under a provision in the Immigration Act recently passed by this House, when the police stop somebody driving a car whom they suspect not to be a British citizen, the police can search that person's home for their driving licence without a warrant. Again, the question has to be raised: which drivers will be stopped by the police and taken to their home address to search for their passport? The whole thing shows the direction of travel that this Government are going in, which unfortunately not only provides—to use the current term—a hostile environment for illegal immigrants but does so for people who are here legally, and indeed for those who are born here but who do not appear at first glance to be British. So the charge my noble friend Lord Storey makes that the provision in the regulations smacks of racism is supported by these other measures that the Government have passed and continue to put through.

The Government say that the details that are asked for will be only for Department for Education use. The noble Earl, Lord Clancarty, made reference to the website *Schools Week*, which reports:

"The government has refused to release a new agreement that prevents the Department for Education from passing pupil nationality and country of birth data to the Home Office".

All that the Department for Education would say to *Schools Week* was that,

"an old agreement that allowed the Home Office to access certain information from the national pupil database had now been 'superseded'",

but it refused to release the wording of that new agreement without a Freedom of Information Act request. If the Government are absolutely sure that none of this information will be shared with the Home Office, can the Minister please explain to the House why they will not publish what the guidance is and why they require a Freedom of Information Act request to secure it?

In a letter to my noble friend, the Minister apparently said that this information is intended to enable schools to receive more support. Can the Minister say why in London—where not only is there a higher proportion of low-income pupils eligible for free lunches than in any other region in England but around 42% of the city's students do not have English as a first language, compared with the national average of just over 15%, and the schools overwhelmingly have larger class sizes than the national average—the schools are doing far better than schools in other, comparable regions in the country? What extra support are these schools going to need because they have pupils who are foreign nationals?

Unfortunately, all the evidence points to this being an immigration tactic rather than having anything to do with trying to improve the education of young people or supporting our schools.

Lord Tunnicliffe (Lab): My Lords, there has been a historic tradition of separating school education from the state in the United Kingdom. Leaving aside the issues of selection by ability and admission arrangements, it has been accepted that, subject to a place being available, a child can attend a local school without any test of right of residence, nationality or language spoken at home. So the new requirement to collect information on nationality and country of birth could well be a tipping point, as these data could be used to assist the Government in pursuing their immigration policies.

It is safe to assume that, when the DfE decided last year to add these new components for the 2016-17 school census, it did not anticipate the furore that that would cause. After all, the DfE has collected data on pupils' ethnicity for many years. Human rights groups would probably have raised questions, but the DfE might just have been able to fend them off with an appeal to "trust us". However, that was last year and last year was, literally, another world, because in the intervening period we have had a referendum and now we are in the very messy process of extricating ourselves from the EU. The fact that the regulations appeared on the day before Parliament went into recess in July is probably an indication that the realisation had dawned within the DfE that this had become a politically sensitive issue.

Two effects have combined to cause the furore. One is that, despite the fact that schools are not allowed to ask to see children's passports or birth certificates, there are reports that some have reacted to the new questions on birth and nationality by doing just that. The DfE has made it clear that parents are not obliged to comply, yet fears remain. What steps will the Government take to ensure that all schools make that information available to parents?

The fears emanate from the second effect—the fall-out from the referendum. The vote in favour of leaving the European Union has left the immigration status of EU nationals living in the UK much less clear than it was 12 months ago. Indeed, the International Trade Secretary, Liam Fox, has suggested—in my view, appallingly—that they could be,

"one of our main cards",

in the negotiations on leaving.

Then came the Tory party conference, with the Home Secretary, Amber Rudd, saying that companies could be forced to reveal how many foreign workers they have. Then the Health Secretary, Jeremy Hunt, announced plans to train more British doctors to replace overseas medics already here. With the Prime Minister also using her party conference speech to focus on immigration, there is now an unambiguous government culture of making foreign nationals feel unwelcome.

It is within that context that the implications of the SI we are discussing today are viewed. That is why DfE denials of any ulterior motive do not sound convincing. In a letter to the noble Lord, Lord Storey, last week, the Minister stated that,

"given the sensitivity of the new information being collected we will not add this to the NPD, so no-one outside the department will be able to access it".

That is a welcome development, and I am willing to accept it at face value on a personal basis. The problem for us on these Benches is that the Minister cannot speak for other government departments, nor can he control what might happen in terms of the Home Office gaining access to the information, should circumstances, or that department's needs, change.

Given that a recent FoI request revealed that the NPD had been accessed by the Home Office on 18 occasions, will the Minister tell noble Lords what information about individual pupils will be provided by the DfE to the Home Office in future? And why has the DfE said that it will not make public the agreement with the Home Office that will prevent the passing of pupil nationality and country-of-birth data to UK Visas and Immigration? If the Minister wants noble Lords to have confidence that he can deliver what he says, why not produce the proof? Unless it has a statutory footing, any new agreement will have limited validity and lack clear oversight. Will the Government consider giving the new arrangement a statutory basis? That at least would prevent it being altered by a change of policy in the future.

Given that the department already collects information on the number of students with English as a second language, can the Minister explain in more detail how

[Lord Tunnicliffe]
the addition of country-of-birth data will further assist the department in supporting schools with children who have English as a second language? Will holding country-of-birth data result in more resources being directed to schools with higher numbers of children with English as a second language?

Before announcing the new components of the census, what assessments did the DfE make of the additional burdens on teachers, school administrative staff and parents, and the additional costs involved?

The school census is clearly beneficial in assessing the impact of migration on schools, but academics and journalists conducting research also make extensive use of the database. The Government now intend to restrict such access to important statistics on schoolchildren. In future, those who use the database must not write anything about the data without first showing it to the Government, with 48 hours' notice. With commendable candour, a government email admitted:

"This will reduce the risk that DfE are caught off guard by being asked to provide statements about research the appropriate people have not seen".

Can the Minister say how many similar arrangements apply within the DfE or in other departments?

It is clear that the Government did not think through the political implications either of collecting data on pupils' country of birth and nationality or of transmitting named pupil information, to be held by the DfE, which can be matched with data in other departments. Any difficulties they are now experiencing are entirely of their own making.

It is not too late for the Minister today to assuage the concerns of many noble Lords, and I hope that, by providing answers to the questions that I and other noble Lords have posed in this debate, he will be able to do that. My noble friend Lord Watson of Invergowrie attempted to give notice of our questions to the Minister last week through the Government Whips' Office but I understand that that did not succeed. Fortunately, I was able to give the Minister a few hours' notice of them this afternoon. If he cannot give the assurances we seek, he should be aware that my colleagues in the other place will be pursuing these issues with vigour.

8 pm

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, I thank the noble Lord, Lord Storey, for tabling this Motion. Today's debate will help shine a light on our reasons for collecting these data and dispel some of the myths and fearmongering that have taken hold in some parts of the media and in other places, with talk of anti-immigration rhetoric and so on. To deliver a world-class system that works for everyone, we need the right data and evidence to develop strong policy. We will use information on pupils' nationality and country of birth to understand how we can give all pupils a better education—one that caters to their individual needs. This is about children's needs first and foremost.

In its eighth report of this Session, the Secondary Legislation Scrutiny Committee drew this instrument to the special attention of the House. The noble Lord, Lord Storey, referred to the timing of this instrument. In its report, the committee noted that the timing for the parliamentary passage of the instrument did not respect our undertaking to schools to have a term's interval between laying and coming into force.

The committee acknowledged our explanation that the delay was unavoidable due to the referendum purdah and subsequent change of Administration. However, a concern remains whether schools were prepared. The department regrets that we were outside the normal practice of providing schools with at least one full term's notice. But the commitment that all school-related regulations would have a common commencement date of 1 September was met. Guidance was made available to schools on 4 May this year. We informed the committee that we had received no complaints about the compressed timescale and I reassure the House that this is still the case. As part of its report, the committee also made available to the House letters it has received from campaigners with comments about the department's policies on access to our data.

Our schools educate pupils from a huge variety of backgrounds and we already ask for information on points such as disadvantage and special educational needs. This information enables us to target and ensure that our policies support all children so that they get the most from their education. There is nothing new in schools collecting information about their pupils. We have been asking them to do this for over 10 years through the school census. These regulations allow DfE to start collecting information on nationality, country of birth and English proficiency through the school census for educational reasons. Questions on nationality and country of birth are standard demographic information that is routinely collected in many data collections.

Let me be clear on a number of points. The new information collected has not been and is not shared with the Home Office. The DfE has no way of determining a child's immigration status, nor would we seek to do so. Providing this information is entirely optional; parents can refuse to do so if they wish. This is clearly stated in our guidance. The noble Earl, Lord Clancarty, asked about the ability of parents to retract this information and I will certainly take that back and consider it.

There is no requirement for schools to request or see evidence of nationality or country of birth. We know that some schools have not followed the guidance and have asked for this, so we will be working with them to ensure they do this properly in future. To address any uncertainties regarding how information should be collected, an information note is in the House Libraries and is on our blog for schools and parents. It is with these new data, which are to be used only by the DfE, that we can work to have a better understanding of what is going on and how to work with schools to deliver the best for all the children, regardless of where they have spent their prior years. The decision to collect these data was taken in 2015, long before Brexit, and followed approval by the Star Chamber Scrutiny Board, which is an external panel of schools and local authorities representing the sector.

I reassure the House and repeat that these data items will be used for research, evidence and analysis within the Department for Education only.

Children of foreign nationals can face additional challenges on starting school in the UK. The education system that they have arrived from may be very different from the English system, so they may not be up to the same level as their classmates. This puts pressure on the pupils, teachers and schools. I visit schools constantly up and down the country where they have had substantial, and in some cases very substantial, influxes in-year of pupils with no or little English, or who are new to English—NTE, as it is becoming known—into the school system. They have to educate these pupils in separate classes until they can speak enough English to engage with lessons. That is expensive and they are not specifically funded for this.

One school that I visited recently distinguishes between whether pupils have enough English to engage with maths, which will be earlier than when they can engage in English classes. A colleague visited a school recently where he spoke to a pupil and the pupil next to him said, "He doesn't speak any English, but I do. I'm from the same country and I'm his interpreter". That is another approach. We need to understand this behaviour and its impact on our pupils from different educational jurisdictions and the impact on our whole school system.

The noble Lord, Lord Paddick, questioned our motives on this. We know that white pupils on free school meals are some of our lowest-performing pupils, particularly in areas of intergenerational unemployment, whereas once EAL students can speak English they can be particularly aspirational. That has had a positive and significant impact, as he said, on our school system in London. But that is once they can speak English. In the meantime, it can be very time-consuming and resource-intensive for schools and we need to understand different approaches. EAL is also a very blunt instrument in that many pupils characterised as EAL are fluent in English because it is their second language and these factors are not currently included in our accountability measures. We need to consider whether they should be, but we need more information first. Any noble Lord who doubts that should visit some of these schools. I would be delighted to recommend some that they can visit to see this in action.

The noble Lord, Lord Tunnicliffe, asked about the impact and burdens on staff. That is exactly why we seek to get this information—to understand. In short, we do not currently understand the impact of migration on the education system and we should. Understanding nationalities helps us to put the right policies in place to help these children.

Lord Tyler (LD): I have a particular interest in this subject because my grandchildren attend a primary school in east London, which has a large number of children from different ethnic backgrounds. I want to ask a practical question. The Minister has laid great emphasis this evening and previously on the fact that this is optional. If a number of parents in the school my grandchildren attend take the option not to give this information, how reliable will the information be?

Lord Nash: Obviously, it will not be as reliable as if they had, but it will be better than nothing. At the moment we just do not know and we are seeking a better picture. Frankly, many schools and, I am sure, parents, will understand why we want this information. Parents want their children to be educated better and they want them to be integrated into our school system better. We need to be better at doing that.

Having these data also helps us shine a light on where good practice is taking place. The new data on English proficiency will allow the department and individual schools to explore whether there is a better way of targeting specific children who need additional language support. I repeat loud and clear that the data on nationality, country of birth and language proficiency are not and will not be shared with the Home Office or police. There is a memorandum of understanding in place to this effect, to which a number of noble Lords have already referred. The MoU sets out the terms for sharing data with the Home Office and it reflects the need for practical arrangements between departments of state. It would be disproportionate to put this arrangement on a statutory footing. So far as our apparent refusal to publish this MoU is concerned, we anticipate publishing it shortly.

Where the police or Home Office have clear evidence of illegal activity or fear of harm to children, limited data, including a pupil's name, address and some school details, may be requested. To be absolutely clear, this does not include data on nationality, country of birth or language proficiency. We have shared data with the Home Office in relation to 520 pupils in the past 15 months, set against 8 million pupils in our school system. It is a very small fraction, but a none the less valuable contribution to the Home Office fulfilling its duties of law enforcement.

Separately from the new data items, the DfE does support the reuse of our data by third parties such as academics and education research organisations when the use of it is both secure and in the interest of adding to the evidence of what works. Recent examples include independent academic analysis of the performance of academies, and others unpicking the recent improvement in outcomes for London schools to ensure that we can maximise what the data tell us about the best things to do next to improve education outcomes.

The data are also reused on websites such as schoolsguide.co.uk and in the *Good Schools Guide*, which help parents make sense of these complex data when making vital choices. The noble Lord, Lord Storey, asked about our procedures in this regard. We give extracts of our national pupil database out, but only under strict controls. We do not share nationality and country of birth data as part of this process. Access to sensitive data is strictly controlled by the DfE Data Management Advisory Panel, which is comprised of senior experts on the data and legal issues associated with the release of data.

The noble Lord, Lord Storey, and the noble Earl, Lord Clancarty, suggested that perhaps our NPD data are not secure. We believe that they are very secure because we have not had a leak in 16 years. However, we take data protection extremely seriously. All staff who work with data comply with the requirements of the Data Protection Act and undertake mandatory

[LORD NASH]
annual data handling training. In addition, all information assets are appointed an information asset owner to ensure that access to data is restricted to only those people who have been vetted and approved. All department systems used to collect, store or transfer personal data undergo regular IT health checks to ensure that they are secure, and these policies and the processes within them are regularly reviewed by the Government Internal Audit Agency to ensure that they are appropriate and effective.

I have responded to the point about this being optional by saying that it is better than what we have by a long way. The noble Lord, Lord Storey, asked whether financial support would be available to schools. Let us first get the information and analyse it so that we can work that out. I have already responded to the point made by the noble Earl, Lord Clancarty, about the circumstances in which the data would be made available to the Home Office. They can be requested only where there is a reasonable expectation that a crime has been committed or fear of harm. I hope I have reassured noble Lords about the intended use of the data that these regulations will collect and that I have allayed the fears and dispelled the myths that have grown up around them.

Lord Storey: My Lords, I am grateful to the Minister for his detailed response and he has given us quite important information about some areas of this matter. The truth is that I do not think he or the Government realised the effect collecting such data would have on schools. We have seen some of the most appalling practices such as, "Hands up if you do not live in England". That is not conducive to good race relations or to how schools work.

On the question of resources, we already collect information about pupils' ethnic backgrounds so that we can provide them, but the notion of saying to children, "We want to know where you live and where you were born because at some time in the future we may provide some resources", just seems batty to me. This is not about shining a light; quite frankly, this is just inept. I am disappointed that the Government did not retract what they had done when they realised how stupid all this is. So I am afraid I am not convinced. I know that this will not have any effect on what has happened, but it is important that people stand up and be counted, and therefore I want to test the opinion of the House.

Motion agreed.

8.13 pm

Sitting suspended.

Wales Bill

Committee (1st Day) (Continued)

8.30 pm

Clause 2: Convention about Parliament legislating on devolved matters

Amendment 6

Moved by ***Lord Wigley***

6: Clause 2, page 2, line 12, leave out "normally"

Lord Wigley (PC): My Lords, the amendment stands in my name and that of the noble Lord, Lord Elis-Thomas. As your Lordships can well imagine, it is a probing amendment which, depending on the response that we receive in this short debate, may escalate into something more substantial. The Bill reads:

"But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Assembly".

So what does "normally" really mean?

I have searched through the Bill and have failed to find any definition. I am not aware that the term is so commonly used in other legislation that there is a generally accepted meaning as far as use in legislation is concerned. In an attempt to seek clarification, my colleagues in the other place contacted the House of Commons Library, which confirmed that there is no legal status for "normally". In this instance, it is inherently vague and asking for trouble, because it leaves every interpretation open to the courts—at least potentially so.

I am aware that questions on this matter arose also in the Commons and that the only response which Ministers were able to give was:

"The 'not normally' element of both the convention and clause"—

in relation to legislative consent—

"is essential as it acknowledges parliamentary sovereignty".—[*Official Report*, Commons, 5/7/16; col. 784.]

Following a further check with the Library, it confirmed that every Act which requires the assent of the Assembly already contains a clause that confirms parliamentary sovereignty. Including "normally" here achieves nothing but confusion. That is simply unsatisfactory. We cannot make a law on such a basis. "Normal" is an immensely subjective term. What is deemed normal by one person may be regarded as highly abnormal by another.

Noble Lords may be aware of my work in the field of learning disabilities. At one time, people with such disabilities were referred to as "mentally abnormal" or "educationally abnormal". That carried a huge stigma and was rightly consigned to the dustbin of history. The concept of normality is loaded with preconceptions and it should never be enshrined in law, certainly not without a very tight definition.

The word "normally" is a Trojan horse at the heart of this legislation. It is totally at the whim of Ministers at Westminster as to what it means. It enables them to use this loophole exactly as they might wish. It would have been more honest to write into the Bill that a Westminster Minister may intervene just when and how he or she wishes on matters falling into this category of Assembly powers.

This is just not good enough. I ask for the support of the House in removing the term if the Government cannot bring forward an acceptable term or some believable explanation for its existence in the Bill. I beg to move.

Baroness Morgan of Ely (Lab): My Lords, I shall speak to Amendments 7 and 8. These amendments are designed to clarify the circumstances in which the National Assembly's legislative consent is required for parliamentary Bills. As drafted—as the noble Lord, Lord Wigley, has suggested—the Bill provides that

Parliament will not "normally" legislate with regard to devolved matters without the Assembly's consent. He has just pointed out the difficulties in the definition of "normally", but neither is there any definition of "devolved matters". Indeed, elsewhere, the Bill speaks of "reserved matters" or matters that are "not reserved". It does not use the language of "devolved matters" at all.

This provision closely follows an equivalent in the Scotland Act 2016. Your Lordships might recall that the equivalent provision in the Bill leading to that Act was the subject of rather anxious debate. The concern was that the provision was incomplete in specifying when the Scottish Parliament's consent was required for UK parliamentary legislation. The provision had been included, following a recommendation from the Smith commission that the Sewel convention be given statutory underpinning. Unfortunately, the Government, in implementing that recommendation, gave the narrowest possible interpretation of the convention in writing it into the Bill.

While it is true that, as originally formulated, the convention proposed that a devolved legislature's consent was required only in respect of a provision within its devolved legislative competence, it soon came to be accepted that consent should also be required if a parliamentary Bill proposed a modification of that very competence. I will simplify this: if the UK Government wanted to bring in a law on an issue where the Assembly already had the power to legislate—so on agriculture or education—the understanding is that that would not be possible without the Assembly's agreement. However, if the UK Government proposed to change the Assembly's powers to legislate, it is not clear that that Assembly agreement would be necessary.

Demonstrating that this was not a matter of controversy, the Government have repeatedly said—and the Minister himself has said on this Bill—that a Bill that radically modified the National Assembly's legislative competence could not be passed without the Assembly's formal consent, even though that might not appear obvious from the language of devolved matters. This issue is highlighted in the report on this Bill by the Constitution Committee of this House:

> "There were important differences between the Sewel Convention as referred to in the Bill and the Sewel Convention as understood in practice. The Bill framed the Convention in terms narrower than those in which it is usually understood, by failing to refer to that limb of the Convention that is concerned with UK legislation that adjusts the scope of devolved competence".

It should not be a matter of dispute between the UK and Welsh Governments. The difficulty is that, although the two Governments agree on the circumstances in which the Assembly's consent is required for parliamentary Bills, the Bill does not reflect that common understanding. The purpose of the amendment, therefore, is simply to define what is meant by "devolved matters". In so doing, it sets out the agreed circumstances in which the Assembly's legislative consent is required for parliamentary Bills. Those circumstances importantly include the situation of the present Bill, which modifies the Assembly's legislative competence.

This is quite a useful clarification that could be achieved without raising any new issues of principle that might be of concern to the Government. I hope at least that the Minister will be able to reaffirm that when a parliamentary Bill comes forward with proposals for modifying a devolved legislative competence, such a Bill—as he has promised with this Bill—can proceed only with the relevant legislature's formal consent.

Lord Murphy of Torfaen (Lab): My Lords, I support both the noble Lord and my noble friend in their remarks. My noble friend Lady Morgan has outlined very well what "devolved matters" means in the Bill, and the noble Lord, Lord Wigley, quite rightly spoke about the sloppiness of the term "normally". I think that it opens up huge possibilities for rift between Cardiff and Westminster unless there is a proper definition, if the Government want this, as to when the Assembly is not allowed to pass its comments upon legislation going through this Parliament which affects so-called devolved matters. Is it for the Secretary of State for Wales or a Cabinet committee to decide what is "normal"? No, this is an absolute recipe for conflict between the Assembly and Parliament, and between the two Governments. I hope that the Minister will take this back and either strike it completely from the legislation or, if they insist that there should be qualifications as to when the Assembly cannot utilise its powers, these should be defined very precisely indeed.

Lord Crickhowell (Con): My Lords, I spoke at Second Reading and earlier today about the need for clarity in the Bill, and I must say that I share the concerns about the word "normally". Those concerns were reinforced earlier today by the remarks of the noble and learned Lord, Lord Judge, who produced what seemed to me a pretty devastating analysis and related it to a subsequent clause—I think it was Clause 53. It seems to me that the Government would do very well to ponder what has been said today very carefully. I also have some sympathy with the noble Baroness on the Opposition Front Bench about the use of the word "devolved" when we are dealing with reserved powers. It seems to me that that, too, is likely to be a cause of some confusion. I am not sure that I followed all her arguments, but I am not speaking about those; I am simply seeking clarity. I hope that my noble friend will not dig his heels in tonight, but will take these comments away and give them much careful thought before coming back at a later stage.

Lord Elis-Thomas (Non-Afl): My Lords, I am pleased to follow the noble Lord, Lord Crickhowell, and I am confident that the Minister, whom I have known in another place—if I can call the Welsh Assembly that—at the other end of the line, is not someone who digs his heels in. He successfully danced a fine tune to move his party, the Welsh Conservatives, into a stance on devolution which brings us to where we are today.

I come to the amendments in my name, which I am pleased to share with my noble friend, Lord Wigley, and the noble Baroness, Lady Morgan, my sister in the Assembly. Amendment 9 attempts to define "devolved matters". This is another issue that was addressed by the Constitutional and Legislative Affairs Committee in the National Assembly. The Minister will no doubt say that "normally" occurs in the Scotland Act and that the Welsh devolution settlement does not require any definition of "devolved matters". I am not very

[Lord Elis-Thomas]
enamoured of the argument that empowering the National Assembly to be able to legislate for devolved matters is somehow an overruling of parliamentary sovereignty, as if the traditional constitution of the United Kingdom, of Parliament assembled in these two Houses, could somehow be undermined or be in any sense overruled by legislative activity in Cardiff.

8.45 pm

The issue is the complexity of Welsh devolution, which remains unclear and undefined. The issue of what it is within the Assembly's competence to do is made even more complex than it was before by the Bill. I speak as someone who was involved—for too long, I suspect—in trying to determine what was within the competence of the Assembly and what was not, but I was well advised by excellent lawyers in the National Assembly and assisted more recently by the Supreme Court. It is not for me to comment on the activities of the Supreme Court, but clearly what we are doing here by not specifying more clearly what "devolved matters" are is not providing the required clarity, not just for politicians, lawyers or interest groups, but for the public in Wales. This is my greatest concern about what we are legislating in the Bill: we are continuing the cawl—*Hansard* will know how that is spelt—of Welsh devolution. There is no clarity in this soup, Minister.

Lord Thomas of Gresford (LD): My Lords, I was in this Chamber when this issue first arose in 1998 in the then Scotland Bill. I heard Lord Sewel produce his sentence, which was hastily cobbled together. There was no thought behind it. It was not part of the government programme at that time, but he was under great pressure from Scottish Peers to define when the Westminster Parliament would act where Scotland had competence. He came out with his phrase, using the word "normally", in that context. It has found itself into the Scottish legislation and has been adopted for the purposes of this legislation.

It is an unsatisfactory solution. There are no doubt exceptional circumstances, such as a declaration of war or something of a really serious consequence, when the Westminster Parliament may wish to overrule the Welsh Assembly or act in its place, but the word "normally" does not cover that. It is open to huge misinterpretation and the sort of litigation to which the noble and learned Lord, Lord Judge, referred in his contribution before the adjournment. The Government ought to excise the word altogether. I seem to recall it was still in contention as to whether it was a satisfactory phrase in consideration on the recent Scotland Bill.

I also support Amendment 8 in the name of the noble Baroness, Lady Morgan of Ely. I prefer it to the amendment tabled by the noble Lord, Lord Elis-Thomas, because it is disjunctive whereas his is not. An "or" at the end of his proposed new paragraph (c) might have made it a bit clearer.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I thank noble Lords who participated in the debate on this amendment. I turn first to the comments of the noble Lord, Lord Wigley. Clause 2 places the existing convention on legislative consent on a statutory footing. As the noble Lord, Lord Thomas of Gresford, just indicated, this is not something that the Government have suddenly dreamed up. It is an existing convention and something we committed to do in the St David's Day agreement. As has been noted by various noble Lords, it is also in line with Section 2 of the Scotland Act 2016. The convention states that Parliament will not normally legislate on matters devolved to the National Assembly for Wales without the consent of the Assembly, or in the case of Scotland the Scottish Parliament. These amendments seek to broaden the convention in two ways. They seek to remove the "not normally" requirement and also seek to expand the circumstances in which Parliament would not legislate without the consent of the National Assembly for Wales.

That said—the noble Lord, Lord Elis-Thomas, is right that I am going to refer to the doctrine of the sovereignty of Parliament—I can, nevertheless, understand the points that have been made. I am grateful for comments about this from other noble Lords, including my noble friend Lord Crickhowell, and earlier from the noble and learned Lord, Lord Judge, who is not in his place at the moment. I will go back and have a look to see whether we are able to do something by guidance, but the whole nature of the "not normally" is that that there will be circumstances that are difficult to foresee.

The nature of this signals that they are not justiciable, because it is left to Parliament. However, in line with comments from noble Lords and in the interests of ensuring that we look at this from all angles, I will go back and see whether there is something that we can do in relation to guidance on the two issues in relation to devolved matters as raised by the noble Baroness, Lady Morgan of Ely, and the noble Lords, Lord Elis-Thomas and Lord Wigley. I urge the noble Lord to withdraw the amendment.

Lord Thomas of Gresford: I understand the Minister is saying that it is not justiciable as to whether the word "normally" is applicable in a particular case. However, it could be subject to judicial review if a Minister brought forward a Bill that was the subject of contention as to whether the circumstances were normal or abnormal. To say that it is not justiciable is not, I think, correct.

Lord Bourne of Aberystwyth: My Lords, I do not think that I said that. I said that it signals that it is not justiciable. I am making the point that noble Lords have been making about the generality of the phrase and that it is difficult to define, and it means that if Parliament decides something it can decide that this is not normal. That is the point about it. As I say, I will take it back and see whether we can accomplish what noble Lords are seeking in guidance.

Lord Elystan-Morgan (CB): My Lords, does the Minister accept that there are two problems here? First, the bar is set at a very low level—a level of "normality". Secondly, as far as the word "normal" is concerned, although of course it appears in the two Scotland Acts, it does not seem ever to have been judicially interpreted in the courts. That is a considerable

weakness. I take the Minister's point that in a way it is a matter for Parliament to define itself—to define its own metes and bounds—which bearing in mind its absolute sovereignty are untrammelled, but nevertheless it is a crucial word in an Act of Parliament and as such it must be interpretable by the courts. I am afraid that, if the matter were raised before the higher courts now, they would say that "normal" means something that is not abnormal and they would leave us in the mists of uncertitude in that way.

Lord Bourne of Aberystwyth: My Lords, I am grateful to the noble Lord for his comments and for clarifying what I was intending to say, and I apologise if I had not made that absolutely clear. I have taken on board the points that are being made. I said that we will look at this in guidance, but as I have indicated there is a need for room for manoeuvre here, so I will take the points back and look at them.

Lord Wigley: My Lords, we are making progress. This is a good omen perhaps for a future amendment that is coming forward. I am grateful to the Minister for agreeing to take it back and look at it. It is always better to have something spelled out in the Bill quite clearly than to depend on guidance notes. Of course the objective of this Bill is to clarify and simplify the problems that have arisen over the past few years, not to dig more holes for ourselves. But in the spirit in which the Minister has offered to look at this again, I am happy to withdraw the amendment.

Amendment 6 withdrawn.

Amendments 7 to 9 not moved.

Clause 2 agreed.

The Deputy Chairman of Committees (Baroness Fookes) (Con): The instruction of 26 October suggests that Clause 3 will be dealt with later.

Clause 4 agreed.

Amendment 10 not moved.

Schedule 3: New Schedule 9A to the Government of Wales Act 2006

Amendment 11

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

11: Schedule 3, page 89, line 38, at end insert—

" The advisory committee for Wales established under section 5 of the Food Standards Act 1999."

Lord Bourne of Aberystwyth: My Lords, I will begin with government Amendments 19, 79 and 80, which relate to four cross-border health authorities. These are: NHS Blood and Transplant; the NHS Business Services Authority; the Joint Committee on Vaccination and Immunisation; and the Human Tissue Authority. The purpose of these amendments is to allow the Assembly to legislate to confer functions on these authorities in devolved areas without requiring the consent of a United Kingdom Minister. In recognition of their status as bodies serving both England and Wales, ministerial consent will apply in relation to any changes to these authorities' constitutions.

Government amendments 11, 12, 15 and 16 add four authorities to the list of "Wales public authorities" in Schedule 3. Because they are now listed as Wales public authorities, the restrictions placed on the legislative competence of the Assembly in relation to "reserved authorities" will not apply to these bodies. The authorities being added are: the Welsh Food Advisory Committee to the Food Standards Agency; the Flood and Coastal Erosion Committee; the Independent Groundwater Complaints Administrator appointed under the Cardiff Bay Barrage Act; and the person appointed by Welsh Ministers under Section 3 of the Local Government and Housing Act 1989. My office has been working with the Welsh Government to produce a complete list of Wales public authorities when the Bill is passed. The inclusion of these four authorities in the list is one outcome of this work. Amendment 18 replaces the reference in the list to the Residential Property Tribunal Wales with a fuller legal description of the bodies covered by this umbrella term. Again, my office has worked with the Welsh Government on this change.

In Amendments 13, 14 and 17, the noble Baroness, Lady Randerson, and the noble Lord, Lord Thomas of Gresford, are seeking to remove the governing bodies of further and higher education institutions, the Higher Education Funding Council for Wales and regulated higher education institutions from the schedule of Wales public authorities. The noble Baroness and the noble Lord seem to be seeking to address concerns that have been raised with the Wales Office that the categorisation of these authorities as Wales public authorities will undermine the private sector status or the charitable status of higher and further education institutions in Wales.

I reassure your Lordships that the definition of Wales public authorities in the Bill does not affect the legal status of these institutions as both private sector corporations and charitable institutions. The purpose of new Schedule 9A is to set out an illustrative list of public authorities that fit the definition of Wales public authorities in Clause 4 of the Bill. It delivers a key part of the clarity we are seeking to deliver through the Bill by setting out clearly the public authorities that the Assembly and Welsh Ministers can legislate on without consent.

By removing these educational institutions from that list, the amendments would make their status within the Welsh devolution settlement unclear. This would cast doubt on the status of these institutions when the Government's position is perfectly clear: education is a devolved matter and so the Assembly should be able to legislate in respect of educational institutions in Wales in an entirely unfettered way. However, I am happy to look in more detail at the precise concerns that are being raised. Welsh universities and further education institutions, as authorities exercising functions of a public nature in Wales, have been appropriately categorised in the Bill, but I will look to see how we can reflect their special position in the title of the schedule in order to stress the fact that they are different from other public authorities. On that basis, I beg to move government Amendment 11 and look

[Lord Bourne of Aberystwyth]
forward to hearing from the noble Baroness and the noble Lord about their amendments, which I hope they will not move.

9 pm

Baroness Randerson (LD): My Lords, I shall speak to Amendments 13, 14 and 17. I must declare an interest as a governor of Cardiff Metropolitan University and an honorary fellow of Cardiff University.

As the Minister has outlined, these amendments reflect concern expressed by Universities Wales, which represents the Welsh higher education sector, about inclusion in the list. It gave evidence of that concern to the Assembly's Constitutional and Legislative Affairs Committee, whose report has been circulated to noble Lords. The basis of the concern is that this may lead to inclusion as a public sector body by the ONS. Noble Lords may recall that a reclassification of this kind occurred for Network Rail. That reclassification was undertaken with the full agreement of the Treasury but its impact on Network Rail has been to have a huge effect on its ability to borrow.

Higher education institutions are clearly concerned about their ability to borrow. They are currently classified by the ONS as non-profit institutions serving households; they are therefore part of the private sector and, along with most other charities, enjoy that status. This reflects the extent of public sector control, as set out in EU accounting requirements. I must stress that universities regard themselves as independent organisations. They value their academic and institutional autonomy and are treated as public bodies for only a small number of very specific purposes—for example, for freedom of information purposes. It is true that higher education provision and fees are highly regulated but in Wales, less than 10% of university income comes from direct public funding. The ONS is already reviewing the classification of Welsh universities in the light of the Higher Education (Wales) Act 2015.

In England, the proposed higher education and research Bill will address complexities for those higher education institutions established as corporations, but that Bill will not affect Wales. So the potential reclassification by the ONS will badly affect higher education in Wales because all Welsh HEIs are charities. The Charity Commission is clear in its guidance, which says that a charity,

"must exist in order to carry out its charitable purposes, and not for the purposes of implementing the policies of a governmental authority".

A breach of this rule could of course impact on governors as well, who could be held personally liable. It would obviously have a massive impact on Welsh higher education's ability to raise funding for research and to assist poorer students, and on those institutions' tax status.

Understandably, Welsh universities do not welcome their inclusion as public authorities, but neither should the Welsh Government nor the UK Government. If they are reclassified by the ONS, their debts and spending will go on the Government's balance sheet. They will go first on the Welsh Government's balance sheet and affect their ability to borrow because universities in Wales have a significant borrowing requirement of their own, which would of course detract from the ability of the Welsh Government to borrow in addition to that. In turn, it would go on the Treasury's balance sheet.

I am surprised that the Welsh Government have indicated that they do not feel this is a problem and are not concerned about the inclusion of universities in this list. When I think of it, it is perhaps not entirely surprising because there has been a tendency over many years for the Welsh Government to seek greater control over the public sector, which the Minister will be aware of as an ex-Assembly Member. However it is important to remind noble Lords that the international reputation of our universities rests on their independence from government. Many were established as charitable foundations, and all continue to rely on charitable funding and on funds that rely on their charitable status. Universities in Wales are part of the devolved settlement, as the Minister said, and are hence subject to rules that are slightly different from those in the rest of the UK, but they are very definitely part of a UK-wide sector and of an international market, so they must not be undermined by incorrect classification in the Bill. This is a probing amendment, and I am glad to hear from the Minister that he will consider this matter further. I will be grateful for his further comments when he has time.

Finally, and briefly, the further education sector was also established autonomously in the 1990s. The FE sector has higher levels of direct government funding, but it values its independence, its ability to respond to the market and its flexibility. I will be grateful if the Minister looks at both sectors in detail before we discuss this issue again.

Lord Murphy of Torfaen: My Lords, I understand what the noble Baroness said about the charitable status of Welsh universities, and it is important that the Minister goes back and examines whether it is put at risk by this part of the Bill.

I cannot for the life of me understand Amendment 14, which excludes the Higher Education Funding Council for Wales from the Welsh public authorities list. It is not a university; it is a body that administers funding to the universities. It gets all its money from the Welsh Government, so I cannot quite understand the amendment, particularly because a recent review of non-compulsory post-16 education in Wales indicated that this body will be replaced by a new body dealing with funding for higher education and further education, which is a good thing. The amendment is an incongruous insertion when the argument is about universities and, to a certain extent, further education colleges somehow losing their charitable status, independence, right to borrow and so on. I would value the Minister's comments on why the Higher Education Funding Council for Wales is part of this scene.

Baroness Morgan of Ely: My Lords, Schedule 3 will provide some welcome clarity about competence in relation to Welsh public authorities. So long as Assembly Bills meet the competence tests in the Wales Bill, the Assembly will be able to legislate in relation to Welsh public authorities without needing to seek the consent of the UK Government.

Most of the UK Government's amendments add to or clarify the list, and we support them. We are also very content with the removal of special health authorities. I understand that they will be treated differently and need not be in Schedule 3. I beg to differ with Liberal Democrat Peers who suggested removing from the list of institutions in Wales a reference to the further or higher education sectors, the Higher Education Funding Council for Wales and the regulated institutions under the Higher Education (Wales) Act, to which my noble friend referred.

We do not think it appropriate to support any amendments which might act in such a way as to restrict the legislative competence of the National Assembly in respect of these further and higher education bodies. Having said that, I am very grateful to the noble Baroness, Lady Randerson, for outlining the real concerns of the institutions, which need to be addressed. I thank the Minister for agreeing to clarify this issue and for looking at attempting to reflect that special position and ensure that they can continue with their current status.

However, I am afraid that removing these institutions could create uncertainty in the future over the need for ministerial consent where a provision of an Assembly Act confers functions on such a body or removes them from it. No such uncertainty exists in relation to the current legislative competence of the Assembly, and the uncertainty would not arise in the future if these bodies remained on the list.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords for participating in the debate on this group of amendments. In response to the noble Baroness, Lady Randerson, and the noble Lord, Lord Thomas of Gresford, I will just perhaps restate some of the points I made earlier. Very much on the basis that we will still cover these institutions, if there is a way of looking at the nomenclature, such that we can seek to ensure that they have the continued strength and independence that they enjoy at the moment, we will do that, as that is very much in the best interests of Wales. We have first-class educational institutions at university and further education level, and we want to maintain that but at the same time ensure that they are brought within this part of the legislation.

I take the point that the noble Lord, Lord Murphy, made about the Higher Education Funding Council for Wales and agree it does not seem to be in the same category as the universities. I think the noble Baroness, Lady Randerson, agrees with that. That is different in nature, but if there is a way of protecting the universities and the further education bodies and their charitable status, at the same time as covering them within the Welsh public authorities, universities and so on, I am keen to do that, and will ensure that we look at the Bill in that regard. I thank noble Lords who brought forward these amendments but urge them not to press them at this stage.

Amendment 11 agreed.

Amendment 12

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

12: Schedule 3, page 90, line 30, at end insert—

"The Flood and Coastal Erosion Committee or Pwyllgor Llifogydd ac Erydu Arfordirol."

Amendment 12 agreed.

Amendments 13 and 14 not moved.

Amendments 15 and 16

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

15: Schedule 3, page 91, line 6, at end insert—

"The Independent Groundwater Complaints Administrator."

16: Schedule 3, page 91, line 34, at end insert—

" The person appointed by the Welsh Ministers under section 3 of the Local Government and Housing Act 1989."

Amendments 15 and 16 agreed.

Amendment 17 not moved.

Amendments 18 and 19

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

18: Schedule 3, page 92, leave out lines 1 and 2 and insert—

"A rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977 (including a leasehold valuation tribunal and a residential property tribunal)."

19: Schedule 3, page 92, leave out lines 8 and 9

Amendments 18 and 19 agreed.

Schedule 3, as amended, agreed.

Clauses 5 to 8 agreed.

9.15 pm

Amendment 20

Moved by ***Lord Hain***

20: After Clause 8, insert the following new Clause—

"Candidates at general elections

In section 7 of the Government of Wales Act 2006 (candidates at general elections), before subsection (1) insert—

"(A1) At a general election a person may not be a candidate to be an Assembly member unless the person is recorded on the electoral register as living in Wales.""

Lord Hain (Lab): My Lords, in moving Amendment 20, I will speak also to Amendment 21. Both stand in my name and that of my noble friend Lord Murphy of Torfaen, and assert the fundamental principle that to represent Wales in its legislature, an elected Assembly Member should actually live in Wales—the same principle asserted by the amendment of the noble Lord, Lord Wigley, which I also support. In doing so, I find myself in the ironic position of seeking to amend my own Act, the Government of Wales Act 2006, which I took through Parliament as a Bill as Secretary of State for Wales. It never occurred to me until the last few weeks that any Welsh Assembly Member would, or indeed could, live outside Wales.

[Lord Hain]

Amendment 20 makes the acceptance of formal nomination as an Assembly candidate contingent on living within Wales. However, if it is felt that is too prohibitive a requirement, since no candidate can be certain of election in advance, Amendment 21 instead makes the membership of the Assembly—that is, for an elected candidate—contingent on living within Wales. That is to say, disqualification would follow without residence within Wales and registration to vote within Wales. Either way, the principle is put in statute, as it would be by the amendment of the noble Lord, Lord Wigley, Amendment 22.

At the most recent Assembly election, 21 candidates stood who did not live in Wales. Fourteen were from the Monster Raving Loony Party, four were Conservatives, one was a Liberal Democrat and one an English Democrat. There was one UKIP candidate, Neil Hamilton, who was elected as a regional Assembly Member and who, I understand, still does not live in Wales but has nevertheless claimed and been granted appropriate expenses, in the same way as those Assembly Members who actually live in Wales. I am not suggesting that there is anything improper here, just that it is an anomaly.

To deal with another question that has been raised, I am informed that to be a Member of the Scottish Parliament or the Northern Ireland Assembly, there is similarly no requirement to be resident in Scotland or Northern Ireland, but that is no reason for Wales not taking the view which I advocate. Since devolution, Wales has been the first to adopt policies subsequently followed by other parts of the UK in a number of areas; for example, establishing an Older People's Commissioner and free bus transport for pensioners. There is no reason why Wales cannot be innovative in this matter either. Indeed, I have been notified that there is widespread cross-party support in the Assembly for the amendment, including from Welsh government Ministers.

On the substance of the amendment, it is an insult to voters in Wales not to live in Wales, within the nation you are seeking to represent and may find yourself representing in the Assembly. Personally, I have always believed that a constituency Assembly Member, like a Member of Parliament, should live in or, at the very least, very close to their constituency, as I did as Member of Parliament for Neath.

Of course, regional Assembly Members have different duties and no constituents in the same way, but surely they should at least live in Wales as well. How can any Assembly Member living outside Wales possibly keep in touch with public opinion in Wales? How can they keep in touch with issues that arise day to day in the political culture, public life or civic life of Wales? How can they spot new problems or opportunities as they arise in the course of their daily experience living as normal citizens of Wales do? How can they reflect Welsh culture without living within it, as I have been privileged to do? How can they really understand the evolution of Wales's young democracy as it very quickly develops?

It is fundamental, to me at least, that in a democracy, representatives are of the people and for the people, whatever your political party. I hope that the Government will agree with this principle and accept at least one of these three amendments. I beg to move.

Lord Crickhowell: My Lords, I preface my remarks with a story I was told long ago by Sir John Rodgers, who lived in Kent and was elected for a Kent constituency just a little way from his home. He decided to consult a neighbour, Winston Churchill. Winston replied: "Never live in your constituency". That is not my position, but I have real practical objections to what is proposed, particularly for candidates.

I have two objections. Let us consider candidates first. Someone may have been born and brought up in Wales and his family live in Wales, but he is at present working in, say, London, perhaps as a civil servant or in business. He decides that he wishes to fight an election. If the amendment were passed, he would be forced to move back to Wales and give up his employment before standing.

I know of at least one very distinguished individual who in the war was in a reserved occupation in the Foreign Office and was determined to serve in the Armed Forces. He promptly got himself chosen as a candidate and immediately had to leave the Foreign Office. He became a founding member of the SAS, served with immense distinction in the Baltic states and later became a very distinguished Member of Parliament. One can also think of someone serving in the Armed Forces—perhaps in the royal regiment of Wales—encamped outside the Principality. He is about to leave the Army or decides that standing as a candidate forces his removal from the Army list. He is perfectly happy, after the election, to move to his constituency and live in it but, as this amendment is drafted, that would not be possible.

I have a second objection. In recent years, I have moved to Monmouth. Take an individual who has been born and brought up in Monmouth. He lives and works there; he worships there; his children go to school there; he goes to a doctor there. However, it chances that he lives just across the Wye bridge and is therefore living in England. He is disqualified from standing. My present Welsh home is on a road that leads up out of Monmouth and virtually every house in it is in the town, but if you go three-quarters of a mile up the road from me to my next-door neighbour, that house is in England. Its occupant may live, work and do everything he has to do in Monmouth but he would be disqualified. This situation is not unique to Monmouth. It happens that a considerable number of Welsh towns straddle the border, starting in the north with Bangor-on-Dee. On Saturday afternoon I passed through Knighton on my way to a memorial service in Presteigne. Someone might live and spend their whole life in Presteigne but it just happens that the house they live in, which is still part of the town, is 100 yards across the border and in England. They are therefore disqualified from standing for election in the county of Powys. Going south, there is Hay-on-Wye, and I could name a whole string of other little towns and hamlets up the border which would be disqualified for entirely the same reason.

Broadly, I have slightly more sympathy with the amendment in the name of the noble Lord, Lord Wigley, which at least allows them to stand as candidates but says that they then have to be living in Wales before they take their seats. However, that worries me too. Going back to my example of Presteigne, can it

really be right that the person who lives, works and carries out all their business in that Welsh town is forced to sell their house 200 yards, say, across the border, in order to qualify for membership of the Assembly? It does not seem to me that this is a reasonable proposition.

I wonder too whether there may not be difficulties when boundary changes take place that force people suddenly to move their homes. However, I will not dwell on that. I have voiced my objections. I do not think this is a reasonable set of amendments and hope that it will not be passed.

Lord Wigley: My Lords, the noble Lord, Lord Crickhowell, has certainly given us cause to consider this issue further. As I speak to my amendment, I will deal with some of the points that he raised. Amendment 22 standing in my name is grouped with Amendment 20 moved by the noble Lord, Lord Hain. As he said, my amendment has a similar purpose to his—namely, to ensure that those who legislate for the future of Wales and those who decide the priorities of public expenditure in our country should do so on the basis that they actually live in Wales, know the needs of our communities and genuinely represent the people among whom they reside. I would have thought that was a fairly fundamental principle. I go further and say that ideally each representative, both constituency Members and regional list AMs, should live within the area they represent. In that way, they know the feelings and priorities of their constituents, friends and neighbours and appreciate the tensions which sometimes arise. During the 27 years I represented Caernarfon, a fundamental element in the way in which I undertook the job was that I could feel I was part of the community. I realise that cannot always be achieved and that some people living a couple of miles outside the constituency may be fully integrated into the community they represent. I also realise that there will be times when boundary changes may work in a way that takes the home of a sitting AM or MP marginally outside the constituency in which they were previously living. These amendments do not address those circumstances. They arise from the incredible fact that there is an AM, as has been mentioned, elected to the Assembly by way of the regional lists, who not only did not live in the region when he stood for election, but did not even live in Wales. What is more, he has indicated that he has no intention of moving his main home to Wales. Frankly, that is appalling and should not be tolerated. If our country is good enough to give him a job and pay his salary and expenses, it is good enough for him to accept that he should live there in order to undertake the work. Nobody is forcing him to come to the Assembly. If he chooses to do so, conditions go with the job, and I believe this is one of them.

I have tabled a slightly different amendment from that of the noble Lord, Lord Hain, as I can see circumstances where his wording could cause difficulties. There has to be a date at which a residency requirement applies. It could be the date a candidate is selected to fight a constituency, the date of the election or the date on which the AM in question takes up his or her responsibilities. I personally believe that the date should be that on which the Member takes up the seat, and should be geared to the point at which he or she takes the oath of office, although the qualification date will need to be geared to some existing verifiable location and date—my amendment suggests the electoral register in force at that time—but I realise that that, too, has shortcomings. If the date is that on which the election is declared, in the circumstances of a by-election, candidates from outside the area would effectively be debarred. Applying the rolling electoral register could possibly overcome that. I am not sure how this might have worked in the Neath by-election in 1991, for example, in which the noble Lord, Lord Hain, was first elected.

Lord Elis-Thomas: It was a very good by-election.

Lord Wigley: Yes, it was a very good by-election. I enjoyed it very much but then I was not standing. I should declare a past interest in that when I fought the Meirionnydd seat in 1970, which was then taken over by my noble friend in the subsequent election, I was working for Mars in Slough and living in the Thames Valley. There are many similar cases where people who have had to leave Wales to seek work might want to return, whether to a non-political job or to stand for election. The danger is that by having a rule as suggested in the amendments of the noble Lord, Lord Hain, there could be widespread avoidance, with prospective candidates renting an address for the period of the election, with everyone knowing that the address is merely a scam to give the impression that they are highly integrated local people. The address on the nomination paper for election should be the one at which they are registered to vote and to pay tax. If that is outside Wales, so be it; the electors can take that into account. However, once they are elected, they would be in danger of not being paid their salary or expenses if they had submitted a fraudulent address. Remember, these days there is a need to note for council tax purposes whether one's address is permanent or a second home.

9.30 pm

Implicit in all this is also the issue of the difference in treatment or in perception between constituency and list AMs. The issue of not living in Wales highlights a fundamental fault with the present system: the voter has no influence over the person elected on the regional list, only over the number of seats that go to the party. This anomaly should be sorted out by introducing an STV system of election; if that were done, every party would be under pressure to select candidates who live in the area which they aspire to represent. If the Bill becomes law, the Assembly will have the power to change the electoral system in this way, and I very much hope that it will do so.

Single cases make bad law, and I am hesitant to change our systems just to deal with one UKIP joker who has, like a bad penny, popped up in the Assembly with no intention whatever of integrating himself into the body politic of Wales. However, if the Assembly cannot sort this out for itself—that is by far the preferable course— amendments along the lines of my amendment or that in the name of the noble Lord, Lord Hain, or enabling powers to that end, are needed. I appeal to the Government to give serious consideration in responding to this short debate.

Lord Norton of Louth (Con): My Lords, my noble friend Lord Crickhowell has raised practical objections to the amendment. I do not wish to raise practical objections but I have an objection of principle. Amendments like this immediately concern me in so far as they restrict the choice of electors. Any amendment that places a restriction on candidates is in effect a restriction on the choice of those who have to do the election. It may be that, as the noble Lord, Lord Hain, said, candidates may not know the problems of the local area or may not know the culture. That is for the electors to decide and not elect them as their representatives. It is not for us to say to the electors, "Sorry, you can't elect them because we think they aren't suitable to represent you". That is fundamentally an issue for the electors. I am for widening choice for electors; if they want to elect whoever, that is entirely a matter for them. It is not for us to impose a statutory requirement.

I accept the point that the noble Lord, Lord Wigley, made about the problems that derive from the particular electoral system in respect of some candidates, but the problem there is the electoral system. My point is one of principle; therefore, one would need to look at the structure and the process of the electoral system to enable the electors to have a better choice, so that they are choosing those whom they wish to represent them. If one wishes the candidates to live within the area, that is a political issue. It is for them to promise electors, rather like Members here can say to their constituents, "If elected, I will live in the constituency". However, this is fundamentally a relationship between electors and those they choose to represent them. I am therefore wary of any amendment that restricts choice; various amendments have come up in different contexts that do that, and in the Bill I am particularly wary of moving in this direction. I hope the Minister will resist it.

Baroness Randerson: My Lords, I have great sympathy with the amendment in the name of the noble Lord, Lord Wigley. Although I understand the principle of the amendment in the name of the noble Lord, Lord Hain, I fear that it takes rather too hard-line an approach to an important issue of principle. I disagree with the noble Lord, Lord Crickhowell. The principle here is not the individual convenience of candidates who stand for the Assembly or those who are elected to the Assembly, but the fundamental principle that you should not be a member of a legislature to which you are not subject yourself. You should not pass laws that you yourself do not have to obey and take heed of. That supersedes anything that can be said about the practical problems, which undoubtedly exist, for people who live on the border. I think the amendment of the noble Lord, Lord Wigley, deals with that issue in that you do not have to go through the upheaval of moving to Wales if you live a couple of hundred yards over the border. Indeed, if you live in the middle of Surrey, you do not have to go through that upheaval until you are elected.

Until this Assembly term, it has always been taken for granted that you would live in Wales. I recall that when the current Assembly Member for Cardiff Central was first selected as the Labour candidate, she lived in Islington, but she felt obliged to obtain a small flat in Cardiff when she became the Labour candidate—and rightly so. It is important that people feel obliged to live in Wales, that they feel part of the Welsh culture and that they understand Welsh media and Welsh issues. Without living in Wales, that cannot be so. Therefore, I support the amendment of the noble Lord, Lord Wigley.

Lord Murphy of Torfaen: My Lords, I agreed to put my name to the amendment of my noble friend Lord Hain because it is both timely and relevant as the Wales Bill passes through this House. It is not all about Neil Hamilton but it is a bit about him in the sense that he is, as far as I am aware, the very first Member of the National Assembly for Wales who has not lived in Wales. Not only has he not lived in Wales but he lives a long way from Wales, and it highlights why we, as a Parliament, should address this issue—it is different from the franchise that we have known in our country for generations. We are talking about a country; we are not talking about a constituency. I think it is important that you live in your constituency but that is another issue; sometimes it is not practicable or reasonable to do so. However, we are talking about a country that now has a legislative Assembly which passes primary and secondary legislation for that country and which runs the country in many different ways.

The noble Lord, Lord Crickhowell, asked, very relevantly, what happens if you live in a town or village bang on the border. Of course, the border between England and Wales is very different from, for example, the Northern Ireland and Ireland border and it is different from the Scottish/English border, which has lots of built-up areas on it. However, there is a big difference between being a few hundred yards away in Monmouth and being in Wiltshire, and that in a way—

Lord Crickhowell: I say straight away that I entirely agree with that. I am not arguing for someone who lives in Wiltshire; I am merely pleading the case for those who have worked all their life in a Welsh town but, because of the geography, perhaps live a couple of hundred yards outside the town.

Lord Murphy of Torfaen: I think that can be addressed if, in dealing with this amendment, the Government look at what happens in local government. You can be a member of a local authority and live within, I think, three or four miles of the boundary of the local council, and I suppose that could happen with the Welsh situation. Thus, if you lived within a mile or two of the border but felt very much part of a town or village in Wales and you felt Welsh, the accident of the border could be overcome by applying local government laws to the Welsh Assembly.

I turn to the point made by the noble Lord, Lord Norton, about the ability of electors to elect an individual to represent them in the Welsh Assembly. There is an awful lot of merit in that. People should be given that choice but, again, there is a difference. The only example of someone living in England and not in Wales is the UKIP leader in Wales. He was elected as a top-up Member. He does not represent an individual first past the post constituency; he is part of a top-up regional list.

The difference is that on that regional list, one generally elects the party and not the individual. When people voted as they did in that region in Wales, they voted for Mr Hamilton not as Mr Hamilton but for UKIP. Therefore, they did not really have a choice of saying, "I don't want this person because he doesn't live in Wales". They did not get a choice in that. In one form or another, I represented people in Wales for 43 years. People then had the option of saying, "I don't want him on the local authority or in Parliament", because, perhaps, the candidate did not live in the constituency, ward or whatever. They had that chance, but they do not have that chance with regard to the top-up seats.

Lord Norton of Louth: Surely, the argument, therefore, is that they should be given that chance—that one changes the system so that they have that degree of choice.

Lord Murphy of Torfaen: If I had my way I would change the whole system—probably not to what the noble Lord, Lord Wigley, wants, but to the alternative vote system, for example. The point I am making is that the people in that part of Wales did not get the opportunity to say, "I don't want that person because they do not live in Wales". They were voting for a party instead of an individual. I cannot see any reason why, when we set up a Parliament or an Assembly in one of our devolved parts of the United Kingdom, a person should represent it without living in it. All the arguments that have been addressed are valid and I hope that the Minister will look favourably on these amendments.

Lord Thomas of Gresford: My Lords, this debate takes me back to 1981, when I applied to be a candidate in a constituency not very far from my home. It was impressed on me that I should buy a cottage in this constituency, to which my reply was that I lived half an hour away and had a fast car. That was one factor that meant I was not chosen as the candidate. The other was that I was competing against my noble friend Lord Carlile of Berriew. That was much more important.

I support the amendment of the noble Lord, Lord Wigley. We had problems in my party in the Assembly election before last where two candidates could have been disqualified by being members of public bodies at the time they filed their nomination papers as candidates. One was in a paid office and one was not paid. But they could have been disqualified. One of them succeeded, as noble Lords will recall, in gaining entrance. The other did not.

My recollection is that in the last Wales Bill we adopted a similar provision to that of the noble Lord, Lord Wigley; namely, that they should have ceased to hold those public offices by the time they were sworn in as Members of the National Assembly for Wales. I think that is fair. A candidate does not know, particularly in my party, whether he is ever going to be elected. Accordingly, to ask him to move his house and family, even if it is only half an hour away and he has a fast car, is not a sufficient reason for disqualifying that person from being a candidate. Therefore, I support Amendment 22.

Lord Carlile of Berriew (LD): My Lords, there has been an unusual noise of breaking bottles outside your Lordships' House this evening. It rather reflects what I personally would like to do with the Welsh Assembly electoral system. In my view, it has two quite incompatible electoral systems to it. The constituency Members are elected in the normal way to which we are accustomed. The top-up list of 20 is not really elected by the public at all. The truth of the matter is that the candidates who come top of the list of those of the political parties involved are selected by the members of those political parties. Those political parties can have their own selection process, which might well have absolutely nothing to do with residence in Wales or the interests of Wales. We have a fine example in one person who has been mentioned, who actually represents the riff-raff and detritus of our political system. It is very unfortunate for the Welsh Assembly that we have such a person within it.

I listened with great respect to the noble Lord, Lord Crickhowell, as I always do. I understand absolutely the point he is seeking to make. In my old constituency of Montgomeryshire there is a main trunk road that goes through the village of Llanymynech. One side of that road is in Wales and the other side is in England, and indeed there is a public house that is well known to the local residents which has a bar in England and the rest of the pub in Wales, which was of great importance at the time of Sunday closing of pubs in Wales. However, that said, there is no God-given right to be a candidate in an election in Wales. My noble friend Lord Thomas of Gresford just mentioned the two Liberal Democrats who were affected by their membership of public bodies in a way that was reasonably clear if you had gone to a lawyer to analyse the point before the election took place but was not totally clear otherwise.

9.45 pm

No one needs to stand for election in Wales. There are nearly 3 million people so there is plenty of choice of candidates for election, and it seems to be a sound principle that those who are elected to the Welsh Assembly should at the time of their election genuinely be residents of Wales. They always have the option to move to Wales and to stand in a future election, and indeed—if my noble friend Lord Thomas of Gresford will allow me to refer for a moment to the event which meant a selection between the two of us to be the Liberal candidate for Montgomeryshire—I moved to Montgomeryshire to become the prospective Liberal candidate for that constituency. That, in my view, is what people should do if they want to be elected to office in Wales.

Both the amendments before us on this subject probably do not quite do the trick, but I hope that the Minister, who understands the Welsh Assembly as well as anyone in your Lordships' House, will agree to take this issue away and return at a future point, having thought further about it. I hope that he will also recognise that there needs to be a solution to the problem which is particularly caused by the top-up system.

Baroness Gale (Lab): My Lords, I thank my noble friends Lord Hain and Lord Murphy and the noble Lord, Lord Wigley, for bringing these amendments

[Baroness Gale]
before us tonight. I am sure that we all agree that we have had a very good debate on them. I think that this is the first time we have ever debated the qualifications of candidates for the Welsh Assembly. It is something that we should all be looking at. The current qualifications for candidates are wide. A candidate has to be at least 18 years of age, be a British citizen, an eligible British Commonwealth citizen or a citizen of any member state of the European Union—but I suppose that that could change in the near future. There is also no requirement in law for a candidate to be registered as an elector in Wales. I believe that the qualifications for those who stand for the House of Commons are very similar.

That is very different from the qualifications required to be a local government candidate in Wales and England. Some of them are similar to those for standing for the Commons and the Welsh Assembly, but with one big difference. Candidates have to meet at least one of four criteria. They must be registered as a local government elector for the local authority area in which they wish to stand from the day of nomination onwards, or occupying as the owner or tenant of any land or premises in the area during the whole of the 12 months prior to the day of nomination and on the day of the election. The local government area must be the main or only place of their work during the 12 months prior to the day of nomination and on the day of the election, or they must have lived in the area during the whole of the 12 months before the day of nomination and on the day of the election.

It is clear that local government candidates must have some links with the area which they represent. That makes sense and is in line with the amendments before us. What is good enough for local government candidates must surely be good enough for Welsh Assembly candidates. However, it is important that there should be more than one qualification. It should not be just a case of whether you are an elector and live in Wales; you should have wider qualifications. Of the four or five qualifications, or however many there are, a person should meet at least one of them.

This has been a very good debate and it is important that we should have had it. As other noble Lords have said, it has been brought about because of this year's elections to the Welsh Assembly, which made us all think about the issue—I do not think that any of us had thought about it previously, because nobody believed that someone elected to the Welsh Assembly would not be Welsh or not be living in Wales. It has never happened before.

The matter requires further discussion, but I ask the Minister whether it could be included in the devolution of election matters to the Welsh Assembly as laid out in the Bill or whether it is a matter for the UK Government to determine. We believe that it should be for the Welsh Assembly to decide on qualifications of candidates. Let it decide what it believes are the right qualifications for candidates. It would probably agree that there should be more than one qualification to stand for election to it.

We need clarity, which I am sure the Minister will give us. If the matter is to be devolved, it is right that we should have had this debate. I am sure that Welsh Assembly Members and the Welsh Government will look what at what we have said. I look forward to hearing from the Minister.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on these amendments. I thank the noble Lord, Lord Hain, for bringing the matter forward and, indeed, for admitting to a degree of "mea culpa" on earlier provisions.

The amendments would prevent individuals not resident in Wales, and not recorded as such on the electoral register, being Members of the National Assembly for Wales. As the Government committed to in the St David's Day agreement, the Bill devolves powers over its own elections to the National Assembly for Wales. This includes the eligibility to stand as a candidate at such an election and the criteria under which a candidate may be disqualified from being an Assembly Member. These would be matters for Wales and the National Assembly for Wales. There is a slight irony in the fact that earlier we debated what "not normally" covers, yet here are seeking to legislate in areas that will now be presented to the National Assembly for discussion and decision. It is absolutely right that this area relating to electoral practice should be a matter for the National Assembly for Wales. I indicated to the noble Lord, Lord Hain—and I have had lawyers look at this—that these matters will be transferred to the National Assembly for Wales and it is right that it considers them.

Very good points have been made by noble Lords in relation to the arguments. The noble Lord, Lord Crickhowell, spoke about the residency requirement for those who may live just over the border at Knighton—close to the station perhaps, which is in England—rather than in the town of Knighton, and so on. They are issues that the Assembly will want to look at, just as it will no doubt want to look at the point made by my noble friend Lord Norton of Louth on the choice for electors. I speak as somebody who as an Assembly Member was determined to live in the area I represented; certainly, it was true then that everybody who was in the National Assembly for Wales lived in Wales. These are valid points for the Assembly to look at; they are not matters that we should pontificate on. With respect, I therefore ask noble Lords not to press their amendments.

Lord Hain: My Lords, I am grateful to the Minister. I will briefly respond to his points at the end of my remarks.

When I moved this rather innocent, inconspicuous amendment, I had no idea that it would provoke such a rich debate about political principles, political theory and the nature of democracy; it has been very instructive and valuable indeed. My noble friend Lord Murphy really came to the nub of the matter when he said that this was about a country's parliamentary legislature. This is something very precious to Wales and which needs to be given proper respect. That, in a way, links to the point made by the noble Baroness, Lady Randerson, which she expressed very eloquently indeed. She said that Assembly Members should—by living in Wales, in this case—be subject themselves to the laws that they are passing and subject themselves to the policies that they are instrumental in enacting.

The noble Lord, Lord Crickhowell, made a number of interesting points, but at one point he was almost saying that there should be no restrictions at all on candidature, or at least on Assembly Members. The main gist of his argument was about candidates, and I anticipated that, with my noble friend Lord Murphy, with our Amendment 21, as did the noble Lord, Lord Wigley, with his amendment. I do not think that this is the same issue as that about Members of Parliament, because the constituency boundaries are not being changed by the change in the parliamentary constituencies at all. Of course, the parliamentary constituencies do not cross the border of Wales. The new legislation, if eventually enacted, does not do that either.

I agree with the noble Lord, Lord Wigley, about his amendment. Frankly, I could not have done as effective a job as MP for Neath as I hope that I did without living in the constituency. That means living and breathing the life of the local rugby clubs, the local businesses and the local schools and hospitals, as I did for nearly a quarter of a century. He made a series of fair points in relation to pressing his amendment, by which I am rather persuaded. We can happily concede that. He asked about the Neath by-election. I had actually bought a house in the constituency five months before that by-election, although I must admit that I had a crazy mortgage, in retrospect. That was an important principle that I, like the noble Lord, Lord Carlile, felt was right.

The noble Lord, Lord Norton, raised some very interesting points, but he seemed to offer no restrictions on where one must live in order to stand for, or be a Member of, the Assembly. You could be living anywhere—hundreds of miles away from Wales. I simply do not think that that is acceptable. My noble friend Lord Murphy made the point that, in practice, Welsh voters do not have a real choice about the particular Assembly Members they get through the regional lists, and I do not think that he addressed that point. It is, as my noble friend Lord Murphy said, a question of voting for the party.

Lord Norton of Louth: My point was that one should change the system so that the electors actually have a choice. The noble Lord is quite right about the point I was making. I would make it as open as possible for electors to choose whoever they want. I am all for eroding the restrictions on candidature. It is fundamentally a matter for the electors, so if a candidate does live hundreds of miles away, that is a matter for the electors. I remind him that, many years ago, it was actually a Labour Member who listed his address as Greece.

Lord Hain: I did discover all sorts of anomalies when I was Leader of the House of Commons about what was actually going on in terms of people's residence, and I will not embarrass the noble Lord by mentioning where some of the Conservative MPs lived—that is another matter entirely. I am, as I say, more persuaded by the amendment in the name of the noble Lord, Lord Wigley, than by my two, if I have not dropped my noble friend Lord Murphy in it, so I am happy to withdraw our amendment in his favour.

I also think that my noble friend Lady Gale made an important point about the Assembly having the right to do this and I would like the Minister to look at actually inserting into the Bill a power explicitly conferred to the Assembly to make provision for the eligibility of candidates. On that basis, and agreeing with the point of the noble Lord, Lord Carlile, that the principle at stake here has to be addressed one way or another—if not by this Parliament, then I hope by the Assembly, though it is a matter for that body—I beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Amendments 21 and 22 not moved.

Clauses 9 to 13 agreed.

House resumed.

House adjourned at 10 pm.