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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

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

House of Lords

Monday 7 November 2016

2.30 pm

Prayers—read by the Lord Bishop of Salisbury.

NHS: Primary and Community Services
Question

2.35 pm

Asked by ***Baroness Wheeler***

To ask Her Majesty's Government what is their response to the Carers UK report *Pressure Points: carers and the NHS*, concerning problems faced by carers in accessing primary and community support services for the people they care for.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, we recognise that far too many people who could be treated at home or in their communities attend A&E. Sustainability and transformation plans are bringing together commissioners and providers to deliver the five-year forward view locally and will include radically improved out-of-hospital care through stronger integration and improved access to primary care.

Baroness Wheeler (Lab): My Lords, I thank the Minister for his response. The report identifies major problems for carers accessing primary and community support services for the people they care for, and who therefore have no real option but to take them to A&E. Many of these emergency hospital admissions could have been avoided with adequate social care support at home, better access to a district nurse or essential local support for carers themselves. On carers' support, councils across the country are having to cut back on vital services. My own council in Surrey has a programme of cuts of 33% over three years. With the CQC's dire warning that social care is at a tipping point, is it not time for the Government finally to acknowledge this and use the Autumn Statement to provide the increased funding and investment that is urgently needed for carers and the people they care for to get the support they deserve?

Lord Prior of Brampton: My Lords, I acknowledge that there is tremendous pressure in the social care system. Looking back over the last 20 years, not enough support has gone into primary, community and social care relative to what has gone into acute care. The sustainability and transformation plans are designed to bring together social care and healthcare. They are being published intermittently as I speak.

Baroness Brinton (LD): My Lords, the country owes so many carers an enormous debt of gratitude for what amounts to unpaid work they are doing on behalf of the state. The NHS website says to carers:

"If someone you know is in hospital and about to be discharged, you should not be put under pressure to accept a caring role", or to take one if you are already doing this as their carer. It continues:

"You should be given adequate time to consider whether or not this is what you want … to do".

The carers report has found that three out of five carers say they felt they had no choice, and of those not consulted four out of five carers said it was way too early and that there were readmissions as a result. What will the Government do to ensure effective communication between hospitals and carers truly happens, so that there are no more unprepared discharges and carers get the support they need?

Lord Prior of Brampton: My Lords, delayed and inappropriate discharges are clearly a huge issue for the whole health and care system. Again, this is something the STPs are designed to address. The five-year forward view is explicit in saying that there are 5.5 million carers in England and their continuation goes to the very sustainability of the NHS. The importance of care is not in dispute. The Care Act, which the noble Baroness's party and mine put through in the last Government, recognised that so as to give them parity of esteem with those they care for. There is no question but that better communication with carers would go a long way to improving the problems we have with inappropriate discharges.

Baroness Pitkeathley (Lab): My Lords, the Minister has acknowledged that discharge from hospital is an important time for carers. You can literally become a carer overnight when your relative is discharged without warning. The carers strategy is currently being refreshed. Would the Minister consider an input into the carers strategy that meant it was incumbent on the National Health Service to consult carers and get their agreement before discharges are made?

Lord Prior of Brampton: My Lords, I am not sure we could go so far as to say that one should always have their agreement—sometimes, discharges from hospital are incredibly complex and difficult—but there is no doubt, arising from the Carers UK report, that where there is proper communication with carers, the discharge procedure is much better for everyone, from the point of view of the carer, the patient and the hospital. If proper arrangements are not put in place, delays arise long after the patient should have been discharged home. It could be to do, for example, with a care package or altering the patient's home.

Baroness Howarth of Breckland (CB): My Lords, I have recently become a carer myself and therefore have experience of a number of hospitals. Why is there such a postcode lottery in terms of where one finds oneself? West Suffolk Hospital, where my partner found herself, has given excellent service and—we must not run it all down—we have had fantastic aftercare in that area, whereas the London hospital does not even answer the telephone. Why is there such a difference? She was also in a mixed ward, the use of which I thought had already stopped.

Lord Prior of Brampton: My Lords, I am surprised that the noble Baroness's friend was in a mixed ward because their use is supposed to have stopped unless

[Lord Prior of Brampton]
there is an absolute emergency when only one bed is free. Unless there were exceptional circumstances, it is very disappointing to hear that that happened. Perhaps the noble Baroness would like to write to me about it. On her first point, there is variation in pretty much every aspect of health and social care around the country, which is inevitable. To some extent, it is not a bad thing, because it drives up standards if those who are not delivering great care can see how best it can be done. The STP process is designed to build in best practice, but I am afraid that a degree of variation is inevitable.

Lord Hamilton of Epsom (Con): My Lords, following the question asked by the noble Baroness, Lady Brinton, will my noble friend clarify whether everybody in need of care is the responsibility of the Government?

Lord Prior of Brampton: The thrust of the Carers UK report is that 5.5 million carers take huge responsibility for their loved ones and that the primary responsibility often falls—I think, rightly—on carers and families rather than on the Government.

Baroness Farrington of Ribbleton (Lab): My Lords, would the Minister care to join me in condemning Members of Parliament who have voted nationally to force local authorities to reduce services but have then attacked the local authorities because they wanted the libraries kept open, the bus services run and the care packages maintained—all of those things—while washing their hands of any responsibility?

Lord Prior of Brampton: I think the noble Baroness will agree with me that there are very difficult choices to be made when it comes to public spending. Sometimes, there is perhaps not always a high degree of consistency from our colleagues in the House of Commons.

Baroness Greengross (CB): The Minister mentioned discharge procedures. Unfortunately, carers often do not know about plans for discharge early in the period during which the one they care for is in hospital. As has been said previously, surely the discharge process should start at admission. If the carer is brought in at that point and works with people to make the discharge process work, it will be better. This has never happened. Does the Minister agree that it really must?

Lord Prior of Brampton: I entirely agree with the noble Baroness. Good practice means that as soon as a patient comes into a hospital, an estimated date for discharge should be agreed then with the carer, which would enable all the services to come together at the point of discharge. Where that does not happen, one can have long delays.

Japanese Knotweed

Question

2.44 pm

Asked by ***Baroness Sharples***

To ask Her Majesty's Government what progress they have made in controlling the spread of Japanese knotweed.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, we continue to explore bio-control options through the controlled release of the psyllid insect Aphalara itadori. Releases have been carried out at 18 sites this year using improved methods to increase the chances of establishment. Local action groups, some established with Defra support, continue to reduce or eradicate Japanese knotweed in several places in England. Community protection notices are starting to be used by local authorities to address the nuisance this plant causes.

Baroness Sharples (Con): I thank my noble friend for that reply. Is he aware that I first asked this Question nearly 30 years ago? There has not been a great deal of progress. Is he aware of the man who killed his wife and committed suicide as he could not sell his property because of knotweed? Also, many people cannot get mortgages on their houses because of knotweed.

Lord Gardiner of Kimble: My Lords, first, I acknowledge my noble friend's tenacity in seeking to deal with this brute of a plant. On mortgages, the Royal Institution of Chartered Surveyors published an information paper only last year that aims to help valuers and mortgage lenders better understand the implications of this plant for residential properties. We anticipate that this will lead to a more pragmatic approach between all parties in dealing with it. On what my noble friend said about the tragedy, this invasive species of plant is of great concern and we need to deal with it where we can.

Lord Greaves (LD): My Lords, while the Minister's work with the psyllid, the jumping plant louse, gets going, will he encourage local action groups around the country to tackle this dreadful plant in the ways it can already be tackled—though that needs a lot of work? Is he aware of the good work being done in my own borough of Pendle by an organisation called the Environmental Action Group? It employs young people who might otherwise have difficulty getting jobs, trains them and does good local environmental work. Along with the Ribble Rivers Trust, it has set about the task of eliminating Japanese knotweed from our borough.

Lord Gardiner of Kimble: My Lords, I certainly acknowledge what is happening in the noble Lord's part of the world and I am well aware of the group in Pendle. Many local action groups are working to treat this problem and there is very good national coverage. As examples of where, with tenacity, we can deal with this, the Norfolk local action group eradicated all Japanese knotweed on the River Wensum special area of conservation, while in Bristol Japanese knotweed on all publicly owned land is now 95% under management. There are a number of good stories to tell. My view is that wherever people are determined to deal with this, it can be dealt with.

Baroness Jones of Whitchurch (Lab): My Lords, the Minister recently wrote to me confirming that Defra has a list of non-native species on its national eradication

programme but that Japanese knotweed is not on it. Is that not evidence that the Government have rather given up on trying to eradicate it from our shores?

Lord Gardiner of Kimble: My Lords, I must be clear: this plant has been in the country since the 19th century and is very widespread—unfortunately, we sent it from Kew up to Edinburgh, thinking it was interesting. The prospect of eradicating every bit of Japanese knotweed is, alas, not viable at the moment but we hope the psyllid will, if successful, weaken the plant. That is the whole purpose of it. Certainly, where we have had species such as the Asian hornet, we acted immediately to deal with it. There are a number of species on the list that we want to eradicate immediately but I am afraid that a plant such as Japanese knotweed has been here rather too long.

Lord Foulkes of Cumnock (Lab): I thought one of the Bishops might have come in on this Question to help us. However, since we have experts such as the noble Baroness, Lady Sharples, and the noble Lord, Lord Greaves, in the House, have the Government thought of appointing one of them as a knotweed tsar to get rid of all this?

Lord Gardiner of Kimble: My noble friend would make an excellent tsarina. The noble Lord will be pleased to hear that we constantly update officials in the Scottish Government because, as I say, this occurs across our nation. We need to deal with it, which is why where local action groups work together, they have been successful. They use herbicides, injections, glyphosate and all sorts of things, and they are making a difference where they want to.

Lord Bird (CB): We could do what Dame Roddick did; when she went to Nepal and noticed that all the cyclamen were stopping water from flowing, she bought them and turned them into paper. If we could find a use for knotweed, all the Boy Scouts in the world could rush around to get it, raising money for our local charities.

Lord Gardiner of Kimble: I am all for raising money for local charities but, ideally, I would much prefer to have our native species than this invasive species, which is harming our natural environment.

Lord Spicer (Con): Is the Minister aware that our noble friend Lady Sharples is somewhat of a patron saint among gardeners for her sustained attack on Japanese knotweed and for telling Ministers to get knotted every so often when they give excuses?

Lord Gardiner of Kimble: I know that my noble friend is tenacious and persistent. I very much hope she will continue to keep Defra and me on our guard, making sure that we do all the things, such as the Check, Clean, Dry and Be Plant Wise campaigns, that we need to make ourselves ever more biosecure.

Children: Local Authority Care

Question

2.51 pm

Asked by ***Lord Laming***

To ask Her Majesty's Government what steps they are taking to ensure that children in local authority care are placed in a location close to their extended family and current school.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, the Children Act 1989 requires local authorities to take account of wider family and school networks when placing children. At 31 March 2015, 77% of placements were within 20 miles of the child's home. However, all decisions are subject to the placement being the most appropriate way to safeguard and promote the child's welfare. Ofsted inspects how well local authorities perform in this area, and where there are inadequacies, we will intervene.

Lord Laming (CB): My Lords, I am grateful to the noble Lord. He and indeed the whole House will understand that when the services of the state remove a child from its immediate family, that can be extremely distressing. It can be made worse if the child loses contact with its extended family, school, friends and familiar places. It can be made even worse when the local authority that places the child at a distance does not want its social workers to traipse up and down the country, and therefore contact is lost, and the local authority in whose area the child is placed will not know of its existence. This is an illustration of the saying, "Out of sight, out of mind". Will the Minister remind local authorities that being a good parent to these vulnerable children is about more than just putting a roof over their head?

Lord Nash: The noble Lord raises an extremely good point; I know he is very experienced in this area. Local authorities must notify each other when placing children out of area, and a placing local authority has a duty to visit looked-after children to supervise arrangements and to promote their welfare. Every child should be visited within the first week, and thereafter children must be visited at intervals of no more than six weeks for the first year, and in subsequent years visits must also take place at intervals of not more than six weeks unless it is a permanent placement, in which case it is every three months. The IRO must monitor the performance of the local authority, as does Ofsted. However, I will take back his concerns to make sure that local authorities are completely aware of their duties in this regard.

Baroness Armstrong of Hill Top (Lab): My Lords, will the Minister acknowledge that, for every child who goes into care, their trauma is added to because they want to know and understand what has gone wrong, and they want help to find the way forward? The more work is done with the family they have come from, the better the outcome will be. Some of the best outcomes come when children are placed in kinship care. Will the Government work hard to open up

[Baroness Armstrong of Hill Top]
opportunities for social workers to learn more about who might be considered a kinship carer and make sure that that is the first option for children who come within the local authority sphere?

Lord Nash: The noble Baroness makes a very good point. It is of course appropriate that children are placed with families and friends where possible. We have done a great deal of work in this area: the adoption support fund can help in this area and help the special guardians. The Family Rights Group and Grandparents Plus have also been funded in this area and we will continue to push in this regard.

The Earl of Listowel (CB): My Lords, while I recognise the important steps that the Government have taken to improve the welfare of young people in care, will the Minister look at whether more could be done to stop children coming into care, as they increasingly do year on year? This makes it so hard to place them locally. For instance, will he look at the lowering today of the caps on benefits to families to see whether that has any impact on the numbers of children coming into care? To look globally, how do we help local authorities by strengthening families so that children do not come into care?

Lord Nash: The noble Earl makes a very good point. I will certainly look at this and I am very happy to discuss it with him further.

Lord Farmer (Con): My Lords, the noble Lord, Lord Laming, highlighted the potential implications of out-of-area care placements on young people's sense of stability and belonging. Can my noble friend explain to the House how decisions about out-of-area placements are made and how rigorous the sign-off process is?

Lord Nash: Yes, there is a very clear process for out-of-area placements. They have to be approved by a nominated officer and if the placement is a distant one, which means not in its local authority or a local authority adjoining, it has to be approved by the director of children's services. Local authorities must consult with the authority in which children are placed and the independent reviewing officer—IRO—has a role as well. Ofsted will inspect local authorities for how well they are performing in this regard.

Baroness Hollis of Heigham (Lab): My Lords, does the Minister agree that children who are placed a longish way from home are more likely to run away to get home, and in the process they may be subjected to further abuse given their vulnerability on their travels home?

Lord Nash: I am not sure whether we have evidence of that, but I certainly agree that, intuitively, it seems likely that that is the case. We are using the innovation fund to see whether we can encourage local authorities to have a more strategic view of where they place children, to be more aware of their particular needs and to try to ensure that they have a more joined-up approach to sourcing suitable placements for them.

Baroness Janke (LD): My Lords, what are the Government doing about young people and children who are often difficult to place and end up in more than one kind of care? They very often end up in different schools and are not really being monitored throughout the system. Can he say what the Government are doing about monitoring these young people? Can he also say what opportunities for different kinds of care are being offered to many of these troubled young people?

Lord Nash: The noble Baroness makes a very good point. It is well known that children in care quite often have a depressing number of placements. We are very well aware of this: in schools, we now have the concept of a virtual school head to take responsibility and a designated teacher in each school. There are often mental health issues as well concerning these kind of pupils. Where the child requires specialist services such as CAMHS, the local clinical commissioning group has a clear role. The noble Baroness will be aware of our strategy *Future in Mind*, which focuses on that area as well.

Lord Watson of Invergowrie (Lab): My Lords, the Education Select Committee's report on the mental health of looked-after children, published in April this year, echoed the view of NICE that:

"Children and young people placed out of the local authority area are less likely to receive services from CAMHS in their new location".

Matching children and young people to suitable fostering and residential settings, including the kinship settings that my noble friend Lady Armstrong mentioned, is crucial to providing stability and longevity in a placement and happiness for the child. Will the Government revisit the advice that they give to local authorities to ensure that the mental health needs of a child or young person are properly considered when deciding where they are placed?

Lord Nash: We are looking at this. We have an expert working group co-chaired by Peter Fonagy and Alison O'Sullivan, which is looking at the current arrangements. Sir Martin Narey has also reported so, yes, we will certainly look at this.

The Lord Bishop of Durham: Does the Minister agree that children's social workers do a fantastically good job, but one of the difficulties they face is their sheer workload, which means that their monitoring of children in care is not as adequate as it is should be?

Lord Nash: I entirely agree that social workers have this challenge. It is one of the reasons why we are looking at bringing in the ability to innovate to have more flexible arrangements. We are doing a great deal of work with the chief social worker to improve the arrangements for social workers and their training.

HMS "Ocean"

Question

3 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government how the amphibious helicopter lift capability provided by HMS Ocean will be provided after she is paid off.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, following the decommissioning of HMS "Ocean" and prior to the Queen Elizabeth-class aircraft carriers being brought into service, a combination of the existing amphibious ships of the Royal Navy and the Royal Fleet Auxiliary will provide the lift capability for our amphibious forces.

Lord West of Spithead (Lab): My Lords, I thank the Minister for that Answer, which I find very disappointing. I have commanded task groups and amphibious assault groups, and it is clear and well known that the only way of providing simultaneous two-company lift is to have a large deck with at least six spots that can be operated simultaneously and a hangar that can carry up to 12 or 14 helicopters. Anything else will not achieve the amphibious capability that is laid out clearly in our doctrine. What worries me is that this is yet another cut to our Navy. There seems to be cut after cut. Some £65 million has just been spent on refitting this ship in order to run it until 2025, and it is suddenly being laid up in 2018. "Diligence" has just been laid up. Saying we are ordering eight frigates—which I am sure is the sort of response we will get—is great, but they are years late, and there are eight rather than 13. In this highly dangerous world, the most chaotic I have known in 50 years on the active list, can we not put "Ocean" into reserve status, as we will with HMS "Bulwark" next year, and keep her until 2025 when the carriers are online and she can be replaced, and therefore have that capability if it is needed?

Earl Howe: My Lords, as the noble Lord knows, the specified service life for HMS "Ocean" was 20 years as from 1998, and we announced in the SDSR 2015 that she would be taken out of service in 2018. The Royal Navy has been clear that, following the decommissioning of HMS "Ocean", its priority was to maintain surface lift capability using "Albion" and "Bulwark" while preparing to bring the carriers into service with a smooth sequencing programme. I do not share the noble Lord's perception of the Royal Navy as suffering cuts; if anything, it is very much on the up. We have the arrival of the two Queen Elizabeth-class carriers to look forward to, which will provide immensely greater capability than we have at the moment.

Lord Boyce (CB): My Lords, I am afraid that I do not find the Minister's Answer to the Question asked by the noble Lord, Lord West, particularly convincing. Does the Minister agree that paying off "Ocean" makes no strategic sense and that, despite what he said, it has been done because defence is badly underfunded and, in the Royal Navy's case, badly underresourced in people as well? Does he agree that it was a mistake to impose an unrealistically low manpower ceiling in the 2010 defence review and to compound that mistake by not addressing it properly in the 2015 defence review, and that the current underfunding of defence resources, which is requiring the services to make cuts of some 10%, is having a very bad effect on training and the quality of life of our soldiers, sailors and airmen?

Earl Howe: My Lords, I always listen carefully to the noble and gallant Lord, as I do to the noble Lord, Lord West. There are always difficult choices to be made within a fixed budget, and that applies to any government department. However, last year's strategic defence and security review announced an increase in the size of the Royal Navy of 400 personnel—to 30,600—by 2025. That represents an uplift of 1,600 over the 2010 SDSR position. Of course, there are manning pinch points; we acknowledge that and the Royal Navy is addressing them. But we have to live within the means that we have and address the capabilities we need, and I believe the Navy is doing that.

Lord Hamilton of Epsom (Con): Will my noble friend confirm that one of the pressures on the naval procurement budget results from the ordering of two aircraft carriers by the noble Lord, Lord West, which still do not have enough aircraft—the F35, at £100 million apiece—to fly off them?

Earl Howe: I am sure my noble friend will be pleased to know we have already taken delivery of five of the F35s and have announced an accelerated buying programme to allow us to embark up to 24 of these fantastic fifth-generation aircraft by 2023. When my noble friend sees the "Queen Elizabeth" coming into Portsmouth, as it will next year, he will be very proud of the capability that this country can offer in terms of naval power.

Lord Touhig (Lab): My Lords, the role of HMS "Ocean" has been to provide the marines with a capability to deploy on land using landing craft and helicopters, and I understand that in future this will be provided by modifying one of the new Elizabeth-class carriers. Can the Minister say what these modifications will entail and how much they will cost? As has already been said, the Government have spent £65 million on refitting "Ocean" only to decommission it. They also spent £16 million on refitting RFA "Diligence", our only at-sea repair ship, only to put it up for sale. That means they have spent £81 million refitting two ships in order to scrap them. What does this tell us about the Government's long-term naval planning—that there is no long-term planning, but simply an endless waste of taxpayers' money?

Earl Howe: I can reassure the noble Lord there is a great deal of long-term planning, as I witnessed myself at last week's Admiralty board. He asked about the sequence of programming for the new carriers. The first of the carriers, HMS "Queen Elizabeth", will enter service in 2018, after which she will conduct flying trials, initially with helicopters and then with the F35B Lightning II aircraft. We will deliver an initial carrier strike capability by 2020, but in parallel we will be developing our carriers to deliver amphibious assaults with Royal Marines and battlefield helicopters as well as to mount global counterterrorism strikes. I hope the noble Lord will agree that there is a logical sequencing programme in train.

Modern Slavery (Transparency in Supply Chains) Bill [HL]

Order of Commitment Discharged

3.06 pm

Moved by ***Baroness Young of Hornsey***

That the order of commitment be discharged.

Baroness Young of Hornsey (CB): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Wales Bill

Committee (2nd Day)

3.07 pm

Relevant document: 5th Report from the Delegated Powers Committee

Amendment 23

Moved by ***Lord Wigley***

23: After Clause 13, insert the following new Clause—

"Apprenticeship levy

(1) In Part 4A of the Government of Wales Act 2006, after Chapter 4 insert—

"CHAPTER 5

Apprenticeship levy

116O Apprenticeship levy

(1) The Treasury must make separate provision in regulations for apprenticeship levy charged to a person in Wales with a pay bill.

(2) The Treasury must lay an annual report before the Assembly and the House of Commons on the amount of apprenticeship levy raised in each tax year from persons in Wales.

(3) The Treasury must consult the Assembly before setting a levy allowance or a relevant percentage applicable to persons in Wales.""

Lord Wigley (PC): My Lords, after that rush of enthusiasm for the Wales Bill, I rise to move Amendment 23, which stands in my name and the name of the noble Lord, Lord Rowlands. It relates to the devolution of the funds generated through the apprenticeship levy. The issue has been raised with me because of the uncertainty experienced by employers based in Wales regarding this matter. The Government's rather chaotic and haphazard approach to the apprenticeship levy has left all the devolved Administrations scratching their heads. Although the specifics are clear for businesses in England, the way in which businesses and organisations in Wales will be able to access and benefit from the money generated by the levy remains completely opaque.

Of the projected £3 billion in the 2015 Autumn Statement, the Treasury specified that £2.5 billion would be spent exclusively on England while the remaining £500 million would be divided among Wales, Scotland and Northern Ireland. We were told we would have our fair share. Despite the fact that this levy is due to be introduced in April, just five months away, we are left facing more questions than answers on the matter. What is our fair share? Are the receipts going to be Barnettised? What happens if the levy yields less money than projected? Will England's funding be prioritised at the expense of that which is promised for Wales? The lack of transparency in the Treasury's funding formula for Wales, Northern Ireland and Scotland is creating practical hurdles for those Governments as they prepare for their own apprenticeship schemes.

Apprenticeships are a devolved matter. So are education and training. Operating at a UK level a levy that is meant to directly fund the devolved function has every potential to cause confusion. I am told that an employer-led institute of apprenticeships is to be set up in April 2017 to advise the Department for Business, Energy and Industrial Strategy on the administration of funding and apprenticeship standards in England. Is this institute specifically for England? If so, where does that leave Wales? Surely a similar institution for each of the devolved areas should have a parallel role in advising the Secretary of State. Are the devolved Governments expected to set up their own bodies analogous to the institute or are they expected to relate directly to an institute whose remit extends only to England?

Online services will apparently be provided to employers in England but will not be available to Welsh employers. Another issue that remains unclear is how the levy will work in relation to companies that have headquarters situated in one country but employ people across the border in the territory of a devolved Administration. Plaid Cymru MPs were given assurances in the other place that the Treasury is working in co-operation with the Welsh Government to determine the implementation of the levy. We are yet to see any development on that front.

The apprenticeship levy status in Wales is reduced to a mere link on the UK Government website directing readers to a nondescript Welsh Government webpage that provides no clarity to those in Wales seeking information. What discussions took place between the UK Government and the Government of Wales before that link was advertised? With apprenticeships and businesses keen to take advantage of the levy in Wales in the immediate future, it is not right that they are left guessing while their English counterparts are able to plan in advance.

The UK Government are introducing legislation that pays no regard to the specific needs of the corresponding system in the devolved Governments. They are England-centric in their planning and implementation and appear to be progressing the matter without any co-ordination with the devolved Governments. More broadly, the patchwork devolution settlement being offered to Wales in the Bill will result in confusion and mismanagement. One solution to this problem, as my amendment today sets out, would be to devolve the apprenticeships levy in its entirety to Wales. This would allow the Welsh Government to administer and control the money raised and to align it with apprenticeship policies. Put simply, it would clarify any doubts over Wales's fair share of the money raised, and would enable employers and apprenticeships to plan their programmes in a co-ordinated fashion.

This is a constructive proposal to address a very real problem. I appeal to noble Lords on all sides to indicate their support for the amendment and I appeal to the Government either to accept it today or to undertake to return on Report with their own amendment to answer these very real difficulties. I beg to move.

Lord Rowlands (Lab): My Lords, I declare an interest as honorary president of the National Training Federation for Wales, and in its early years I was one of its advisers. The federation brings together many or most of the training providers that deliver the apprenticeship and skills policies and funding from the Welsh Assembly Government. I am grateful to the noble Lord, Lord Wigley, for tabling this amendment and bringing to our attention the peculiar and now very difficult situation that has arisen as a result of the introduction of the levy.

I say nothing about the merits of the levy. Frankly, it is a fascinating piece of interventionist politics in the labour and employment market. In fact, it reminded me—although I make no direct comparison—of when I was first in the other place in 1966 and a Chancellor of the Exchequer introduced something called the selective employment tax. I am not sure how many Members still remember that or it its fate. It was a novel tax which did not last; I wonder how long this novel levy will last.

3.15 pm

The heart of the problem, as the noble Lord, Lord Wigley, pointed out, is that the conception and launch of the apprenticeship levy completely ignored the fact that in three of the four nations of the United Kingdom, the whole policy is devolved. Policy, funding and operation of all forms of training, including apprenticeships, has been devolved. There was no real consultation on how the levy would apply to or could be accommodated within the policies and processes that have developed to deliver apprenticeship and training programmes in Wales, Scotland and Northern Ireland.

I continue to be amazed that there are still corners of Whitehall and the Treasury where people have not realised that devolution has happened. This is an extreme example of just that point. I hope that when the Minister replies he will promise that something like the process that has happened in this case—when a Treasury or a Chancellor decides to do something that may have a profound impact on the policy and processes of the devolved Administrations—will not happen again.

Ever since the announcement of the levy and its operation, there have been attempts to understand how one can accommodate it within the terms, policies and processes that I know have been well developed within the Welsh Government and Welsh Assembly. To go further than the noble Lord, Lord Wigley, we have now reached the bizarre situation where a UK-wide levy may be impossible for any Welsh company or organisation to access. I will explain why in a minute.

Let us remind ourselves where the levy applies. It applies not only to companies but to all public bodies, third-party bodies and organisations with a payroll of more than £3 million. Therefore, the Welsh Government and Welsh health authorities will pay the levy, but I see no means by which they could access it to promote their training. In fact, they do not need to because, as a result of the extremely positive and forward-looking policies of the Welsh Government and Welsh Assembly, we have a system to develop apprenticeships, skills and training in Wales that is working very satisfactorily and requires no levy of any kind. It is therefore unnecessary.

Perhaps the Minister can confirm this, but I gather that in England, it is to be delivered by something called a digital voucher. We have had voucher systems in training levies before, and they have invariably failed. This has all the hallmarks of being an unnecessary bureaucratic nightmare. As a result, as I understand it, the Welsh Government and the Welsh Assembly have decided that they will not take part. They will not implement the digital voucher system. I hope that I have got that right; if not, the Minister can disabuse me. I gather that that is true of the other Administrations as well. So the means by which Welsh companies or organisations could access the levy money—the digital voucher—will not be put in place in Wales or the other devolved Administrations.

The Welsh Assembly and the Welsh Government already have a very well established programme and process. They have identified their priority areas. This has always been a major part of its budget. I think I am right in saying that in the most recent budget, it was agreed that £111 million would fund the whole apprenticeship and skills programmes. Welsh companies and organisations can access those skills and apprenticeship schemes through the process of going through the training provider network that has been created. In other words, there is no room for a levy, as far as I can see. I do not know how it can be inserted into this process. Again, as the noble Lord, Lord Wigley, said, this is so opaque and confused that I am not sure that I have got it right, so I hope the Minister will help us to understand it

As the noble Lord, Lord Wigley, pointed out, there are a lot of cross-border issues. For example, can a company, operating across both borders draw down the English voucher system to be used in Wales? I do not think that it can. So again, I cannot understand how it would be possible for Welsh companies and organisations to tap into the potential resources raised by the levy. Secondly—the amendment presses this point—we should have transparency. At present, HMRC, which is the means of collecting it, does not plan to identify the Welsh contribution. It does not intend to identify how much of the levy has been raised in Wales, so I cannot understand how it can be operated.

I hear that somehow the problem will be solved by the Barnett formula. We all know that its sell-by date has long gone. To and use the Barnett formula, which even Lord Barnett disowned some time ago, is preposterous. If it is to be used, how will it be done? How will companies and organisations which pay the levy be able to access it to service Welsh apprenticeships and training, through the Barnett formula, if that is the process planned? How will that happen? I understand that the Barnett formula is not priority- allocated. It is

[LORD ROWLANDS]
just a general pool, which does not mean that it will go into training or apprenticeships.

I am grateful to the noble Lord, Lord Wigley, for introducing this amendment because it has raised very serious issues in an area of policy on development and training on which I want to compliment the Welsh Government and the Welsh Assembly. The Minister will know that. I believe that this levy has added confusion and uncertainty, and sadly is a terrible example of a non-consultation with devolved Administrations on issues that are fundamental to such Administrations.

Baroness Gale (Lab): My Lords, we have had a very interesting debate. The noble Lord, Lord Wigley, and my noble friend Lord Rowlands have spelled out the difficulties of the apprenticeship levy. I believe that the noble Lord, Lord Wigley, is proposing that it should be a Wales apprenticeship levy, devolved to Wales in its entirety, and that it should be collected and administered in Wales. My noble friend Lord Rowlands pointed out quite a lot of the difficulties and the lack of transparency around this issue.

The UK Government have said that the new apprenticeship levy, when it is implemented in April 2017, will apply to all UK employers and that the levy will be charged on those employers with a pay bill of more than £3 million, with a levy set at 0.5% of the pay bill. The Welsh Government have rightly raised concern about the introduction of the levy, and noble Lords have spelled that out today. I understand that the Welsh Government were not consulted about this, and perhaps they should have been before the initial announcement was made, bearing in mind that the apprenticeship levy funding policy is devolved and it will be for the Welsh Government to decide how they use it.

Last year, the Welsh Government consulted extensively on aligning their apprenticeship model to the needs of the economy in Wales and the wider UK. They published consultation responses in July 2015 and, since that time, have delayed publishing their apprenticeship implementation plan, as they want to have the opportunity to properly consider the impact of the UK Government's proposals for the operation of the apprenticeship levy in England and the associated changes in apprenticeship standard.

We are several months away from the levy being implemented, and there is a lot of confusion and a lack of transparency. Can the Minister ensure that the UK Government will continue to work with the Welsh Government on the implementation of the levy? The Government should ensure that Wales receives a fair share of the revenue raised by it so that it can continue with its very successful apprenticeship programme. At present, it is funded by the Welsh Government with the support of the European Social Fund, which will probably disappear in a few years' time.

Can we get a much clearer picture than we have at the moment so that there is transparency and the Welsh Government will know how this is going to operate? It seems that they are a bit on hold at the moment, as other noble Lords have pointed out. I am sure that the Minister will be able to clarify the position.

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 have participated in the debate on the amendment. I thank the noble Lord, Lord Wigley, for moving it.

To fund the step change needed to achieve 3 million apprenticeship starts across the country by 2020 and to improve their quality, the Government are introducing an apprenticeship levy so that spending on apprenticeships will be double the level that it was in 2010-11 in cash terms. I think that that is something that noble Lords across the House will welcome. I recognise that some employers have concerns over the design of the levy. Following the announcement at the summer Budget of 2015, the Government consulted on its design; the consultation that took place during the autumn of that year revealed overwhelming support for the levy to be as simple as possible to operate across the United Kingdom. For this reason, it was decided that the apprenticeship levy would be based on the UK-wide definition of earnings as used for class 1 secondary employer national insurance contributions. Not only is the definition one that employers are familiar with but it is applied consistently to employers wherever they operate within the United Kingdom's single market and is information they readily have available in their payroll. The definition also avoids considerable practical difficulties that would arise if there were different rates and thresholds of the apprenticeship levy in different parts of the United Kingdom, which appears to be the purpose of this amendment—or at least a consequence of it. However, because the charge is on the employer, it would be necessary to determine how such a system would operate for organisations working across borders or with plants in different parts of the country, such as Toyota. This would create additional and significant administrative burdens for businesses that we believe are best avoided.

That said, I can recognise the points that are being made by the noble Lords, Lord Wigley and Lord Rowlands, and the noble Baroness, Lady Gale. I thank her for her comments. It is certainly the intention for work between the Treasury and the Welsh Government to continue, as she suggested. Policy on apprenticeships is devolved to the Welsh Government; once there has been a discussion on how we ensure that Wales has a fair share of the money, it does not necessarily follow that it will be Barnettised. I rather suspect that it will not, and presumably they will look at the number of employees in different parts of the country. I am not sure that Barnett would present the right answer. But once it has been done, it is a matter for the devolved Governments of Scotland, Northern Ireland and Wales as to how they operate the apprenticeship policy. They could presumably add more money in if they wanted to, or put in a smaller amount—that is a matter for them.

I have heard the contributions to this debate, and I understand that noble Lords want to ensure that Wales's corner is being protected; I do too. I will ensure that a note is sent round to noble Lords who have participated in the debate so that they can see the state of play as things stand at the moment.

3.30 pm

Lord Rowlands: My understanding is that the way it is going to be delivered in England is through this so-called digital voucher. First, can the Minister confirm that that is the case? Secondly, is it also the case that Wales and other Administrations have all rejected that process? If it is not going to be that, what will the process be by which Welsh companies can claim on the levy?

Lord Bourne of Aberystwyth: The noble Lord is right in the sense that the essence of devolution is that if the policy is devolved to Scotland, Northern Ireland and Wales it is a matter for those Administrations as to how the apprenticeship policy is rolled out. The apprenticeship levy discussion will be happening between the Treasury and the devolved Administrations. I will get noble Lords an update on how that is progressing. It will then be for them to decide how the money is spent. The discussion on how the cake is being divided up will be led by the Treasury with the devolved Administrations. That is my understanding of how it will operate.

Lord Wigley: My Lords, I will press the Minister further on this. Does he accept that, for the Welsh Government—or, for that matter, the Scottish or Northern Ireland Governments—to roll this out they need to know how much money they are getting; the mechanism for delivering it; the timing of it and the conditions that may be placed on it? It is now over 12 months since this thing was kicked off. Without knowing those details they cannot, with all the good will in the world, meet what is required. Inevitably, companies in Wales are going to be in an inferior position to those in England. Will the Minister also clarify the position of those who are employing people across the border: companies which may be based in England but employing in Wales, or vice versa?

Lord Bourne of Aberystwyth: My Lords, this was precisely the point that I was dealing with. As I said, I will get a note round about how the discussion is going on how the policy will be rolled out in terms of the amount of money that will be given to the devolved Administrations. The discussion will go on at that level on how that is being sorted out. As I understand it, the basis on which the policy is rolled out is that the place of employment will be where the policy applies. If a business is in Wales it will be a matter for the Welsh Government to decide a policy which is relevant to it. All the Administrations will want to bear in mind businesses which are on both sides of the border and ensure that there is some consistency in approach. However, that is a matter for them.

Based on my assurances that I will write to noble Lords on how the discussion is going now and that it is a matter for the devolved Administrations to decide the relevant policy—

Lord Crickhowell (Con): My Lords, I am sorry to interrupt. It is, of course, satisfactory that the Minister will write to noble Lords, but this is yet another example of where discussions have been going on for some time since the Bill passed in another place and yet the up-to-date position on them has not been presented to this Committee. Like the noble Lord, Lord Deben, who made the point in an earlier sitting, I do think this is very unsatisfactory. We really should be updated in adequate time on all these discussions and not told that we will be given the information at some stage, perhaps before Report.

Lord Bourne of Aberystwyth: My Lords, I am not quite sure what my noble friend wants me to say, other than that, as I have just said, I will endeavour to ensure that noble Lords will have the information that is being requested ahead of Report. With that, I ask the noble Lords to withdraw the amendment.

Lord Wigley: My Lords, I am grateful to the noble Lord, Lord Bourne, for his response, but he must be feeling a little uneasy with the quality of the brief that he has been given on this. It is recognised the length and breadth of Wales that this is a totally unsatisfactory position which is causing problems for employers and those employees who are hoping to gain benefit from apprenticeship schemes. It is causing problems for the Welsh Government as they forward plan their budget for the coming year. We are talking of a sum of money that may be, let us say for argument's sake, in the order of £150 million—a significant sum. Whatever the detail on the way in which these schemes are rolled out in Wales, Scotland or Northern Ireland, none the less, if this is the funding arrangement that has been agreed, there should be transparency. We are now in November, and the budget will be coming in April. It is totally unsatisfactory for the UK Treasury and Government to place the devolved Administrations in this position. Whereas the note that no doubt will be sent round will give the fullest information that the Treasury is willing to make available, it none the less may well not answer the serious questions that have been raised.

I am grateful for the contribution of the noble Lord, Lord Rowlands, with his expert knowledge in this area, and to the noble Lord, Lord Crickhowell, for intervening. We need to know. I realise that it is not the tradition to divide the House in Committee. However, if there is not a satisfactory answer from the Treasury and the Minister, I most certainly intend to come back to this on Report and, at that point, to press it. It is just not acceptable that we in Wales are placed in this position. It is not the fault of the Minister personally, but it is certainly the responsibility of the Government and the Treasury. I hope that between now and Report the Minister will have serious discussions with the Treasury, and that if he in his heart recognises that there is a serious problem here, he himself might choose to come back on this. On that basis, however, I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

Clauses 14 to 16 agreed.

Clause 17: Welsh rates of income tax: removal of referendum requirement

Debate on whether Clause 17 should stand part of the Bill.

Lord Murphy of Torfaen (Lab): My Lords, I beg to move that Clause 17 does not stand part of the Bill and in so doing apologise for the absence of my noble

[Lord Murphy of Torfaen]
friend Lord Hain, who is unable to be with us today. I am glad to say that my noble friend Lord Kinnock, who has also signed this Motion, is with us this afternoon.

It is just over 20 years ago now that the people of Wales voted in the referendum to establish a Welsh Assembly. It is just over 20 years ago that the people of Scotland voted to establish a Scottish Parliament. It was at that point, two decades ago, that the people of both countries were asked about the nature of the devolution that they wanted. In Wales, income tax was not an issue. In 1997, when the people of Wales voted, as they did, narrowly for an Assembly, it was not to have a system of income tax. On the other hand, the people of Scotland voted in favour not just of a Scottish Parliament but also of powers to vary income tax in that country, even though they have never done that.

The purpose of this probing amendment—and it is a big probe—is to find out why the Government have changed their mind since the previous Wales Bill. That Bill, just a couple of years ago, said that if income tax powers were to be introduced in Wales then the people of Wales would be asked their views. I suppose, in a way, we have had a lot of referenda of late, which have caused all sorts of difficulties and problems. Nevertheless, the principle of asking the people of Wales whether they want income tax powers for Wales is no different from what was asked in 1997 of the people of Scotland. Now, however, we have a proposal in this Bill to abolish that question. The people of Wales will not in fact be asked to decide whether they want income tax powers for their Assembly or whether they want the Assembly itself to agree to the principle of income tax raising powers for the Welsh Government and Assembly. I want to find out from the Minister why this change took place and, indeed, what mandate there is for this change to occur.

The second reason why this issue is important is that there is a good, sound economic and financial reason why the people of Wales should not be burdened by an extra income tax. I understand the issues of accountability, and that was the main principle that the Government and others have argued: that there should be this income tax provision. However, given the Minister's vast experience in this area, I am sure he will understand that Wales is not a wealthy country by comparison with England. Probably thousands more wealthy people live in the county of Surrey than in the whole of Wales. Therefore, the resource base in Wales for income tax is very low indeed, but the burden upon the people would be high were an income tax to be raised in Wales alone.

My noble friend Lord Hain is keen to expostulate that, if income tax is levied at a United Kingdom level, it is properly and fairly distributed among the less wealthy parts of our country. Therefore, Wales benefits from that fair distribution because we are not as wealthy as the south-east of England. That is an important issue to consider when we look at whether income tax should be devolved. Also, if income tax were to be raised in Wales—whatever the levy, be it 2p or 3p in the pound—if all that did was plug a gap because the block grant had been reduced, that, too, would be pointless. If income tax is to be raised, it should be extra and above the block grant allocation—the Barnett formula, flawed as it is—as my noble friend Lord Rowlands indicated.

The third and final reason why the Government should say why this change has been introduced is that they are in the middle of negotiations with the Welsh Government on a fiscal framework for Wales. That is a vital discussion and an important negotiation. If income tax is to be partly devolved to Wales, the onus lies on the Government to ensure that the fiscal framework is so devised that that inequality between Wales and the rest of the United Kingdom is recognised and any block grant or Barnett formula ensures that Wales has a fair deal. For those reasons, I ask the Government to rethink this measure and I shall be interested to hear the Minister's reply.

Baroness Humphreys (LD): My Lords, before contributing to this Clause 17 stand part debate, I apologise to the Committee, and to the Minister in particular, for not having taken part in the debate at Second Reading.

I welcome the Government's decision to remove the requirement for a referendum before devolving powers over income tax to the National Assembly for Wales. I am afraid that I have to take issue with the noble Lord on the Labour Benches, who still sees the need for a referendum.

Our democratic institution, the National Assembly, commenced 19 years ago and successive Bills have conferred increasing powers on it. The aim of this Bill should surely be to further build that democratic institution by providing it with the powers it needs to do its job. Along with those powers, there must also be a means of providing the Assembly's electorate with the opportunity to hold the institution to account. For me, these two factors—power and accountability—are the basis of democracy. Providing the Assembly with powers over partial income tax devolution, which brings with it the opportunity for transparency and accountability without holding a referendum, should be a mark of the confidence of this House in the Welsh Government's ability to carry out their functions. The Bill should be about indicating a clear way ahead for the Assembly to provide the people of Wales with the mature and confident democracy we want and deserve, not about placing further obstacles in the path of their progress.

I am tired of living in a country which has had to hold out the begging bowl to the Treasury to enable it to receive funding via its annual block grant. I am tired of hearing Welsh Ministers blame the UK Government for every shortfall in funding. But, most of all, I am tired of there being no means by which I, as a Welsh elector, am able to hold the Government of my country to account for the way they raise and spend their revenue.

3.45 pm

I welcome last year's devolution of powers over business rates to the Assembly and I look forward to stamp duty land tax and landfill tax being transferred in 2018. The addition of a £1.9 billion share of income tax, partially devolved to the Welsh Government,

would form the basis of a system the Welsh electorate could scrutinise and on which they could hold the Government to account.

However, I agree with the noble Lord who spoke about the possible difficulties of devolving powers. In their joint report, the Wales Governance Centre and the Institute for Fiscal Studies urge caution in the choice of funding mechanism we employ and note two material considerations: Wales's,

"relatively slower rate of population growth",

and,

"the size and distribution of the Welsh tax base",

which is,

"significantly divergent to that of the rest of the UK, with far more lower-income earners".

These are issues that we should take seriously. The prospect of these two factors having an adverse impact on the funding available to the Welsh Government in future years needs to be fully understood by Members of this House and mitigated against in the fiscal framework now under discussion. I would therefore be grateful if the Minister updated the Committee on the progress of the negotiations on the fiscal framework associated with the Bill. I also seek his assurance that a document will be in the hands of noble Lords before Report, enabling us to come to final decisions on a number of issues based on the evidence in the framework.

Finally, as we debate further amendments in Committee, I will certainly be listening very carefully to the Minister as he seeks to explain the Government's justification for the inclusion of many reservations to the UK Government. However, on the devolution of income tax powers to the National Assembly without the need for a referendum, I am happy to lend the Government my support.

Lord Wigley: My Lords, I am grateful for this opportunity to speak on Clause 17, which the noble Lord, Lord Murphy, opposes. On many matters concerning devolution, the noble Lord, Lord Hain, were he here, would accept that we are usually in agreement. I was a great admirer of the way that he succeeded in getting the 2006 Act on to the statute book, notwithstanding its shortcomings.

Tomorrow is election day in the USA. "No taxation without representation" was the phrase coined in 18th-century colonial America. Today, in 21st-century Wales, we have representation but we do not have powers over taxation. We need both.

As the noble Baroness said a moment ago, the devolution of fiscal powers to Wales establishes an intrinsic democratic link between citizens and the policymakers they elect. Devolving income tax means that we can create better Welsh solutions to the challenges faced by Wales, in both the economy and the delivery of public services.

Although I understand the background to the wishes of the noble Lord, Lord Hain, described by the noble Lord, Lord Murphy, for a referendum on income tax powers, I suspect that another referendum is not really what either of them dreams about at night. Indeed, if they do, they probably have nightmares about the use of this ostensibly democratic tool of government. They both know, as I do, how easily a referendum can transpose itself into a verdict on anything but the issue on the ballot paper. It should be used for only the most clear-cut matters, which the electorate clearly understand and know what the consequences would be. It may be fine for deciding locally whether pubs open or close on a Sunday but it is not an appropriate tool for deciding on taxation policy.

From what the noble Lord, Lord Murphy, said, I think he agrees with me on the need for the Assembly to have some tax-varying powers at the appropriate time for reasons that are becoming increasingly apparent. One of the major challenges for the Welsh Government now is to trigger a substantial capital expenditure programme to develop our industrial infrastructure. Plaid Cymru has called for a national infrastructure commission for Wales, which would enable the Welsh Government to borrow up to £7.5 billion over a 10-year period, and we need a tax-raising facility to fund such a programme. It does not have to be income tax—it could be other taxes, which we will discuss later—but income tax should be available for the Welsh Government, in their wisdom, to decide whether or not to use it.

It has been estimated that the servicing cost of that £7.5 billion would amount to £165 million a year, and it is unrealistic to believe that such a sum could be funded from the minor taxes alone. This is why the devolution of income tax is essential. We cannot call for an expenditure programme without accepting the need to fund it. The two go hand in hand and are essential to build a new forward-looking economy for Wales.

Income tax devolution will be the dawn of a new era of accountability for the National Assembly, reflecting the need for a mature public policy to balance the requirement for resources with the practicality of raising them. It is all too easy—and politically far too facile—for politicians of any party to call for greater spending on this or that element of public services without saying how the money is to be raised. It is equally irresponsible for politicians on the right to call for lower taxes without explaining which public services would lose funding. The acceptance of both as obverse sides of the same coin is a reflection of political maturity. Giving tax-varying powers to the Assembly represents another step to it becoming a genuine home of Welsh democracy. For that reason, I support Clause 17 remaining part of the Bill.

Lord Morgan (Lab): My Lords, I had not intended to intervene in this debate but I should like to make two points. First, I am not persuaded, after what we have experienced in the past few months, that referendums are a source of clear, unambiguous decision. They are disastrous. We have seen that in connection with larger matters than Wales. To have a referendum on the deeply technical issue of the relationships of finance between local and central authorities—a very complicated matter—would resolve into the popular papers of the Welsh press, such as we have, debating whether it would mean income tax going up or down. The idea that fiscal principles would be subject to deep and profound scrutiny is not credible. We have had quite enough referendums as a substitute for democratic decision. They are a bogus form of democracy for the reasons we have seen and I would not want one for this.

[Lord Morgan]

Apart from a referendum being an unsatisfactory source of clarity and wisdom, as has been said by other noble Lords, it is an imperative of devolution that the Welsh Government should have some fiscal powers. The Scottish Government have had them since 1997, although they have not used them, and that is perhaps significant for whether the Welsh Government would use them. We do not know.

A devolved democracy that depends on handouts from somewhere else inevitably provokes complaints—as it has done in the history of Wales for decades; Westminster never offers or does enough—and will produce unsatisfactory responses. On the references to the American revolution, the reverse of what was said is profoundly true: if you do not have tax powers or the ability to raise your own revenue, you are not really a democracy because you are in a position of subservience. The whole history of Welsh devolution and other parts of the Bill show—in spite of the excellent intentions of the Minister and others on the Conservative side—that Wales has been treated in an inferior sense. Its status has not matched that of Scotland or Northern Ireland. That is riddled throughout the Bill, nullifying its good and noble purposes. So it is with regard to taxation.

It has been said that we should wait until things sort themselves out and the Barnett formula is removed. Let us wait. It is a temporary stop-gap, as we were correctly told by the noble Baroness. Lord Barnett himself explained what a very bad idea it was, because it was designed to plug what was thought a short-term problem in, I think, 1978, when the distinguished noble and learned Lord, Lord Morris of Aberavon, who is sitting in front of me, was in Cabinet—if I am wrong he can contradict me. Like other stop-gaps, it has survived the decades. It looks remarkably healthy for a stop-gap. A proposal to wait until the Barnett formula is resolved is a way to put off a decision completely. I very much hope we will not have a referendum and that we will bring to further completion the process of democracy in Wales.

Lord Crickhowell: My Lords, I find myself agreeing with the noble Lord, Lord Morgan, on the subject of referendums and, indeed, with the noble Lord, Lord Wigley. I hope Clause 17 will stay part of the Bill. It would be particularly unfortunate to remove it when, as I pointed out at earlier stages, we still do not know what the financial arrangements will be. My noble friend has helpfully pointed out that we hope to know more about that before Report. In all the circumstances, it seems an extraordinary proposal that we should remove Clause 17. I hope very much, for the reasons given by the noble Lords, Lord Wigley and Lord Morgan, that it stays as it is.

Baroness Randerson (LD): My Lords, the powers on income tax are one of the most important aspects of the Bill. As the Minister knows better than I, the Silk report recommended a referendum as a compromise on income tax. There were those members of the commission who were very keen for the Welsh Government to have those powers and those who were not keen at all. The compromise position was that they should have the powers, but only after a referendum. I am sure the Minister will correct me if I am wrong—otherwise, I am equally sure, he will remain discreetly silent on the issue.

However, the devolution story has moved on a very long way since that recommendation. We have had the Scottish referendum, the St David's Day agreement, and, as the noble Lord, Lord Murphy, reminded us, the previous Wales Act, which I took through this place. So a referendum requirement is well out of kilter with the times. Forgive me: along with several other noble Lords who have already expressed their views, I am a little out of love with referenda. They do not always answer the question on the ballot paper.

I also remind the noble Lord, Lord Murphy, that powers over income tax could possibly mean that income tax could go down as well as up, or that the Welsh Government could choose to do as the Scottish Government have done for nearly 20 years: to have that power but not to vary the rate of income tax. But there are many reasons associated with the principle of powers over income tax that make it essential that the Welsh Government are given those powers.

There are reasons associated with certainty and transparency. The Welsh Government have evolved from being a purely executive body within the Assembly to being a full legislative body. As those powers have developed, they have lacked the right to levy taxes generally. Gradually, in the previous Wales Act, they were given some of those powers. Clause 17 would increase them.

4 pm

Along with many noble Lords here, I hope that the Assembly will exercise the power that the Bill gives it to call itself by whatever name it wants and will choose to call itself the Welsh Parliament. I very much want a Welsh Parliament—but a Parliament has to have tax-raising powers alongside its executive and legislative powers.

In the next group of amendments, we will look at greater borrowing powers. In life, in order to borrow money, one has to have a way of paying it back. It is therefore only logical that the Welsh Government and the Assembly are given the power to vary income tax. It is essential that the Welsh Government stop shying away from responsibility for their income and from full-blown power and control over its activities. We have to come to the day when the Welsh Government no longer blame the UK Government for everything.

Lord Kinnock (Lab): My Lords, in a tiny way this is a historic occasion: it is the first time in my recall that I diverge ever so slightly from the view of my noble friend Lord Morgan, and it is on the issue of the relevance and applicability of referendums. It is clear from what several noble Lords have said that bruises are borne as a result of the fact that we in this country having recently been through a referendum—indeed, I have not only bruises but scars to show for the experience. Nevertheless, the reality is that in a parliamentary democracy referendums are justifiable when there is a proposal to change the way in which we are governed.

That was the basis for the justification of the 23 June referendum, just as it was for those of us who campaigned for a referendum on entry to the European Communities

and those of us who campaigned for referendums on Scottish and Welsh devolution back in 1979 and greeted with satisfaction the proposal in the 1990s that referendums should determine whether a Welsh Assembly and a Scottish Parliament were introduced. The same joy stirred our hearts when we saw an enacted proposal for referendums to determine whether major conurbations in England should have elected mayors. I use these references only to demonstrate the realism and the relevance of using referendums when there is a proposal to change the way in which a democracy or part of a democracy is governed.

Such is the case if there is a proposal to offer to the Welsh Assembly the power to levy income tax. That would profoundly change the way in which Wales was governed. It is on that basis that there is a straightforward justification for a referendum on such a fundamental constitutional and economic decision that has immense social, commercial and personal implications for every family, every community, every business and every employee in the whole of Wales.

Left at that, it could be dismissed as an academic, almost arcane argument—but it is not. It is much more prosaic than that. I join with my noble friends in objecting to the removal of the undertaking to give a referendum on the issue of the introduction of income tax-raising powers for the Welsh Assembly. That undertaking was not only given by several political parties representative of and represented in Wales, it was the subject of statute. It remains the subject of statute unless and until this Bill is enacted. For many years—indeed, decades—most political parties offered to the people of Wales the utter reassurance that they would have the final determining word on whether the elected Welsh Assembly is to have the power to levy income tax. Clause 17 should be removed from the Bill to ensure the continuity and integrity of those previous, voluntarily offered undertakings to the people of Wales.

There is a further consideration: we have a model to consider. It has been referred to already. It is, of course, the fact that the Scottish Parliament, from its inception, has had the power to vary income taxation in Scotland and has never seriously considered—let alone debated or proposed—in any formal manner such a variation. Why is that? Because of the utter unacceptability and impracticality of such an idea, even for a substantially devolved institution in a unitary state. I will certainly give way in a moment but will just finish this particular reference. The proposal that the Welsh Assembly should have this additional power in the absolutely certain and cynical knowledge that it would not be exercised is like offering me a car with the capacity to travel at 200 miles per hour and I buy it in the knowledge that the speed limit in the United Kingdom is 70 miles per hour.

Lord Hope of Craighead (CB): It might be helpful to recollect that when the referendum on devolution took place in Scotland, there were two questions. One was on the principle of devolution but the other was whether a devolved Assembly, as it was called in those days, should have tax-varying powers. That was separated out in the case of Wales but in Scotland, where I was, we had a vote on both at the same time. On exactly the point that the noble Lord was making, we had the democratic decision with a substantial majority that the Assembly, as it was then called, should have tax-varying powers. We got it all achieved in one.

Lord Kinnock: I am grateful to the noble and learned Lord. At the time, I almost rejoiced in the full implementation of the long-standing Labour Party policy—developed under my leadership, as it happens, on the basis of continued representation from my comrades in Scotland—that a specific opportunity should be given to the people of Scotland to decide on that issue. Equally, and with substantial force, there were representations from Wales that that offer should not be made. Influences, parties and opinions in Wales suggested that that should not be the case. But their views were set aside—while undoubtedly being recognised and respected, as is our manner in Wales—and the issue was never put, and it never generated the merest scintilla of a spasm of objection.

Almost on the contrary, at that time in the 1990s and at this time in the second decade of the 21st century, there was and is no evident support among the public for the idea of income tax-raising or income tax-varying powers to be allocated to the Welsh Assembly. In this era, when all of us, if we have any sense at all, must be aware of the feeling of distance that exists between the general electorate and those who are elected to govern them, we should be sensitive to the idea that when there is no measurable support for a proposition that is as significant as the varying of taxation powers, and yet the recognised elected authority and the Executive go ahead and grant that power, on the best day it will be greeted as an irrelevance. On a less good day, it will be greeted with cynical dismissal.

Lord Crickhowell: The noble Lord said that it was a great constitutional change and dismissed the argument advanced—I thought very convincingly—by his noble friend Lord Morgan about the unsuitability of the question to be put in a referendum. However, will not the Welsh Government, or parties in the Welsh Assembly, have to put before the electorate the proposal in their manifesto that they will introduce or intend to introduce or change taxation? If they do so, will they not afterwards face the judgment of the Welsh electorate if the electorate disagree with what they have done and the way they have done it? Surely, therefore, we have a constitutional arrangement that allows the Welsh electorate to make their judgment both before and after a general election.

Lord Kinnock: I agree with the noble Lord. Certainly we have not only a constitutional but an electoral arrangement, which is of at least equal relevance. We speak of course in 2016, the year in which—indeed, just a few months after—an election of a new Assembly took place in Wales. I do not recall any proposition from any party—outside Plaid Cymru, which has been entirely and honourably consistent in its proposals—that said, "If you elect us, we will work to ensure that the United Kingdom, in a change of legislation, will allocate to us the power to vary income taxation in Wales". I know that that is a political point, but it is worth taking into account. On this central issue of accountability, I noted what the noble Lord, Lord Wigley, said when he advanced the idea that the allocation of powers to

[Lord Kinnock]
the Welsh Assembly to levy and vary income tax would enrich accountability in Wales. I say to him, and in part I respond to the noble Lord, Lord Crickhowell, that accountability must relate not to abstract, desirable, mooted, arguable or deluded powers, but to exercisable powers. What we see in Scotland is a myth of accountability. When they have the power to vary taxation, as they have had for the best part of 20 years, and have not even begun to consider the implementation of such powers I simply do not see how accountability—the central principle of democracy—is enhanced by having a power but never exercising it, and never daring to exercise it. Where is the enhancement of accountability there?

4.15 pm

Lord Hope of Craighead: Perhaps I might correct the noble Lord on a point of slight detail. The Scottish National Party, which is the governing party in Scotland, has made it clear that it intends not to follow the Chancellor of the Exchequer in England on the level at which the 40% tax rate comes in. I think that the proposal in England, and indeed in Wales for the moment, is that there should be a rise of that level at which 40% becomes payable. The Scottish Government have said that they are not prepared to go along with that, so for the Scots the level will remain as it is at present. I grant the noble Lord that this is under a different power which has been given in a later enactment but to say that there is no desire by the governing party to make changes is a little excessive, with great respect.

Lord Kinnock: I accept the point entirely. I can respond to it only by saying that I await, without bating my breath, for the implementation of this proposition. I can see the attractiveness of it, especially to a party which is self-confessedly populist and has gained great strength by means of offering simple answers to complex questions. That has served that party well for several years—astoundingly well. I await that exercise of the variation under the supplementary powers granted to them and on that occasion, I will withdraw all speculation about Scottish inclinations to vary taxation powers.

Lord Wigley: The noble Lord very kindly talked of our consistency on these matters; I also respect his consistency on them from 1979 onwards. Can I press him on the point that he made about exercisable powers? The next bank of amendments will talk about a new exercisable power to have a capital investment fund. Without some ability to vary taxation, how does the noble Lord square that circle or does he not support the demand for a greater capital expenditure fund?

Lord Kinnock: I say to the noble Lord, Lord Wigley, who I respect greatly, that it would be—without oversimplifying this—on the same basis as borrowings are undertaken now. He will know of the generous and immensely useful support given to a variety of projects in Wales by the European Investment Bank. Nobody has required the allocation of tax-varying or tax-raising powers to the Welsh Assembly to enable that support. Since there is also a guaranteed income for the Welsh Assembly—inadequate and stunted by the application of the Barnett formula, as he and I would agree—but nevertheless significant, as he and I would agree, nobody lending money for major capital investment projects in Wales, within reasonable limits and according to the required fiscal disciplines, should worry about it because they will be guaranteed a return on their investment. It is not necessary to add to the obligations of the Welsh Assembly to facilitate that—within limited confines, as I say. I will give him an example, which I will pluck out of the air.

If, for instance, a sensible proposal was made for establishing a link between Rhoose international airport and the main train line from London to Swansea, I would certainly support it, or, indeed a spur road from the M4 or even a direct road from the A48 into Rhoose airport in order to enhance the attractiveness of this major infrastructure advantage, substantially, and rightly, supported by the Welsh Government. There is no reason why a guarantee of return on the investment should not be made by the imposition of a small toll on the road or the railway line. It is not unprecedented across continental Europe. If we want to know how successful such arrangements can be, the noble Lord only has to look that the second Severn crossing. A huge capital sum, vastly in excess of anything that would be needed to link Rhoose airport, has been paid off with, in my view, excessive and unfair impositions—I am speaking of the degree, not the principle. The same thing could be done elsewhere. I am not advocating it; I am simply saying that there is a variety of ways of guaranteeing a reasonable return on long-term capital investment without requiring the allocation of fund raising through income tax-raising powers for the Welsh Assembly.

If this removal of a requirement for a referendum is to have a real justification, it has to have evident support from people across Wales. They have expressed no significant demand for, or preference for, the further allocation of such a power to the Welsh Assembly. The maxim employed earlier by the noble Lord, Lord Wigley, which was coined by a Welshman at the time of the American Revolution, "No taxation without representation", bears an addition in this century. It is: "No further allocated powers of taxation without at least consultation, without at least deliberation, without at least endorsement and, finally, without at least agreement". That brings us back to the referendum because where there is an absence of demand for this change in the way in which the people of Wales are governed, there has to be a supreme additional justification for allocating a power that is not only not demanded but that we have every reason to assume would not be exercised, a power that would not lend itself to extra accountability or enhance transparency or enrich democracy. I wait to hear from the Minister a justification of the dismantling of the undertakings previously given by all parties and enacted for a referendum as a prerequisite of the allocation of income tax-raising powers to the Welsh Assembly.

Lord Thomas of Gresford (LD): My Lords, I wonder whether I can assist the noble Lord, Lord Kinnock, in his final question by telling your Lordships about my

brother-in-law, who is Welsh, but who has lived in Aberdeenshire since the 1970s. In 1979, like the noble Lord, Lord Kinnock, he was wholly against devolution to Scotland. In 1998, he had not changed his mind, unlike the noble Lord, Lord Kinnock, and in the referendum he voted no to devolution to Scotland, but yes to tax-raising powers if a Parliament should be formed. At the time, we thought this was slightly odd. But what he was saying was that you should not have a parliament unless it is accountable—fully accountable. That is the point.

A lot of water has flowed under the bridge since the Welsh Assembly was constituted, and the Labour Party has, one way or the other, exercised power in Cardiff since its inception—it still does. The purpose of a proper Government is to raise taxes and to spend them, and to be accountable to the people from whom they raise those taxes as to how they handle their money. It is a perfectly simple proposition, but for the last 20 years, we have heard from the Labour Government in Cardiff that if they are incapable of providing adequate services in Wales—for example, in the health service or in education—it is because they do not have enough money sent to them from Westminster.

It does not require a referendum now. The reason why a referendum was provided for in the last Bill and why it appeared to be a good idea was that we were following the Scottish practice of 1998. But we moved on; devolution has moved on. We were tired, as my noble friend Lady Humphreys said, of the excuse that we are failing as a Government because Westminster does not give us enough money. It is time that income tax is devolved to Wales and that proper accountability should occur.

Lord Howarth of Newport (Lab): My Lords, I will briefly emphasise a point strongly implied by my noble friend Lord Kinnock but perhaps not yet made fully explicit in this debate, which is that there is an issue here about trust between people and their politicians. As has been noted, the Labour Party, the Conservative Party and others have promised a referendum on this question of income tax-varying powers over many years. Indeed, if I am not mistaken, it was a manifesto pledge by the Conservative Party at the last general election, and we need to look at that question of whether it is acceptable and politically prudent for a Government to slide away from a manifesto commitment that was so very clearly made.

I understand, and in large measure agree with, the point made by my noble friend Lord Morgan about the unsuitability of the referendum as a device for resolving technical and complex political issues. I also accept what has been said about income tax-varying powers being a mark of the maturity of the Welsh Assembly, which may call itself a Welsh Parliament. It is desirable in principle that a parliament should have those powers and be held accountable to the people on whom it would propose to levy income tax. It is perhaps desirable that these powers should be created, but one must also recognise that if the people of Wales are asked in a referendum whether they favour the introduction of powers that they would anticipate will be used to raise income tax, they might well say no. Taxable capacity in Wales is decidedly limited, and people on the whole do not vote for higher taxes. But none the less, if they have been offered the opportunity to make that choice for themselves, it may well be rash and improper to take that choice away from them.

The alternative will be that this legislature will impose on Wales an income tax-varying power for the Welsh Assembly. It has been assumed in this debate that that power to raise income tax would be most unlikely to be used in the foreseeable future. But I do not entirely share that confidence, because we have no long-term fiscal framework and no settlement. The Barnett formula has not been reformed, and I agree with those who have said that to wait to move on this until that formula is fully and satisfactorily reformed is to wait for ever. It is not beyond the bounds of possibility that, after 2020, we could see a future Government of the UK reducing the block grant for Wales—indeed, if the Government have their way in this Bill, we will see borrowing powers for Wales very severely curtailed—and in those circumstances Wales would need to increase the proceeds of income tax and to use those powers.

4.30 pm

We should come clean to the people of Wales. They should be offered a package. They need to know what the future fiscal framework will be. We need to see the reform of Barnett, and to see the structures of funding and transfer payments across the UK clarified and in place. We need to know what the scope for borrowing will be, taking into account the possibility that interest rates will be higher and that it may not be at all easy to service that borrowing. In that context, the people of Wales should be allowed to take the decision about whether or not they wish to be made subject to an income tax-varying power exercised by their own legislature within Wales.

Baroness Morgan of Ely (Lab): My Lords, I was 12 in 1979 when we had the first referendum on whether we wanted devolution to come to Wales, and I have had a little taster this afternoon of what it must have been like during that campaign. But we have had a different result from that in 1979; the Assembly has been established for 19 years and it is maturing and developing.

I thank my noble friends Lord Murphy and Lord Hain for tabling this amendment because this issue is worthy of debate. I am afraid the people of Wales were told when we established the Assembly that we would put the issue of income tax-varying powers to them in a referendum. We have heard today what a risky business referendums are; I concur—I also have the scars from the recent referendum—and, let me tell you, I am no longer a fan of referendums.

It is worth repeating the question asked by my noble friend Lord Murphy: what has changed since the last Bill that the noble Baroness, Lady Randerson, brought through the House, and what is the difference between that Bill and this one? What has made the Government change their mind on this issue? It is worth drawing attention to the fact that Wales is not a rich country. My understanding is that only about 6,000 people in Wales pay the highest rate of income tax, those who earn over £150,000, while only one in

[Baroness Morgan of Ely]
16 pay the 40p higher rate of income tax. We are not talking about people that it is easy to tax, so it is worth remembering and understanding that this is not going to be a power that is easily exercisable.

However, I beg to differ with my colleagues on this issue, because times have changed. As the noble Baroness, Lady Randerson, said, the Assembly has moved a long way during those 19 years. On top of that, we have the issue of austerity. The IFS said recently that, by 2020, there will have been an 11% cut since 2010 in funding coming to Wales. That is hitting some of the poorest members of our society. Austerity is hitting not only our revenue budgets but our capital budgets. It is all very well to talk about borrowing money from the European Investment Bank, but we do not even know whether we will be able to access that kind of funding in future.

Why do I support the amendment? I support the amendment because, at this difficult time, borrowing against this income stream will be essential if we want to invest in our infrastructure in Wales. There is demand for better infrastructure. People want improvements in Wales. That demand is there. However, it is important to understand—we will come to this in the next amendment—

Lord Bourne of Aberystwyth: I am grateful to the noble Baroness for giving way. I do not think that she is speaking in favour of the amendment; she might want to clarify that.

Baroness Morgan of Ely: I am not speaking in favour of the amendment because of the next amendment. We need an increase in the borrowing powers because of the funding stream and the devolution of taxation. That is critical to investment in Wales.

We know that the Welsh Government and the UK Government have an understanding and that there will be an agreement on the fiscal framework before we enter the next phase of the Bill. It is important that, in that fiscal framework, we have an offset to the block grant in return for that tax revenue. We need to see how that offset will interact with the Barnett formula, and we need the funding floor to be made permanent. It is critical that we should not accept a situation where Wales will be materially worse off as a consequence of devolving taxation. That would not be good for the people of Wales?

We expect the Minister to negotiate that with the Finance Minister in the Assembly, but can he can assure us that that fiscal framework will be resolved before we have an understanding? We will come in the next amendment to the amount that may be borrowed, but can he assure us that we will be able to have an increase in borrowing powers as a result of the fiscal autonomy that will be coming to Wales?

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in this debate. For the sake of clarity—I correct myself as well—this is a clause stand part debate rather than a debate on an amendment to Clause 17.

I thank the noble Lords, Lord Murphy and Lord Kinnock, for moving and speaking to the Motion that the clause do not stand part. I disagree with their intent. As the noble Lord, Lord Murphy, said, we have been here for nearly 20 years since the first successful referendum in 1997. Circumstances massively changed in that time, as the noble Baroness, Lady Morgan of Ely, said.

Let me try to deal with some of the points. Circumstances have changed since the Silk commission's first report. The noble Lord, Lord Wigley, has been consistent on this topic, as has the noble Lord, Lord Kinnock. I confess that I have not. I am more like the brother-in-law of the noble Lord, Lord Thomas of Gresford: I have changed my mind on some of these issues. I should set that out first. In the Silk commission, all four parties recognised the need for income tax powers for the National Assembly for Wales. If it was to become a full legislature in the proper sense, it was accepted that it needed income tax powers. Some noble Lords have used the phrase as if it meant all income tax powers; of course, it does not; some income tax powers remain with the United Kingdom. We should make it clear that this is not transferring all income tax powers; it is transferring some. It is a significant change, I agree, but the suggestion made by the noble Lord, Lord Kinnock, for example, that it is a fundamental, apocalyptic change to the way things happen but that it will not be exercised is somewhat inconsistent. It cannot be both apocalyptic and not be used.

I very much hope that it will be used. We cannot necessarily draw conclusions from what has been happening in Scotland. I hope that the National Assembly for Wales will be more imaginative. I was there for 12 years, and there was evidence of a lot of free thinking on many issues, not least in this area, so I do not accept that the power will not be used. We must realise that it is a limited power; it is not transferring all income tax powers to Wales.

I agree with the points made by the noble Baroness, Lady Humphreys, and the noble Lords, Lord Wigley, Lord Crickhowell and Lord Morgan, about circumstances having changed, that perhaps we make use of referendums too freely, and that they are not always appropriate. I feel that if we were to insist on a referendum, it is arguable that we would be holding Wales back. In some quarters—I certainly exempt the noble Lord, Lord Kinnock, from this—it is being put forward as a means of trying to defeat the proposal or slow things down. We would not be doing Wales a great service if we did that. This is a power for a purpose, as was identified by the Silk commission. It is bringing in accountability. It is making what I hope becomes the Welsh Parliament, in name as well as reality, a real Parliament with this element of tax-raising power on income tax.

Lord Kinnock: I asked the noble Lord for justification of the change in the law that would be implied by the enactment of the Bill, and he seems to suggest that times have changed and that the Silk commission has made recommendations. Does he believe that times have changed enough to give the Welsh people a real appetite for their Assembly to have the power to impose income tax additions? Does he think the Silk commission was really so conscious of the true economic condition of Wales and the distribution of incomes,

referred to by my noble friend Lady Morgan, that it would permit a change that altered the law, removed the requirement for a pre-income tax allocation referendum and justified the introduction of new law? I do not think times have changed that much.

Lord Bourne of Aberystwyth: My Lords, I disagree with the noble Lord on this point. I remember the same argument being put forward when we had the 2011 referendum. People were saying that it would not pass and that opinions had not changed in Wales. I remember people on my own side arguing that it would be defeated in all parts of Wales, up and down the country. That did not happen. It was won decisively in every local authority bar one—Monmouthshire, where it was marginally defeated. Do I think that circumstances have changed so that we do not need a referendum? Yes, I do. The noble Baroness speaking for the Labour Party thinks similarly, as do the other political parties. There is probably one political party that does not think that—UKIP—but I disagree with it. Opinion has changed and we would be doing Wales a massive disservice by having a referendum that I do not believe is necessary in the changed circumstances of devolution in 2016.

Lord Kinnock: Does the noble Lord recognise that to justify his contention about the movement of opinion in Wales, he referred to the 2011 referendum? Does he not consider that that makes my point for me?

Lord Bourne of Aberystwyth: No, it does not. Rather the reverse, it showed that opinion in Wales had changed much more than people thought. The noble Lord put a fair question to me: whether I thought that opinion had changed in Wales such that we did not need a referendum. I hope I have given a very fair answer. It is a truthful one—I think opinion in Wales has changed to that degree.

Arguments were put on various issues in relation to this, not least in the area of borrowing. I agree again that, to have significant borrowing powers, there has to be a separate stream of revenue. This would present a separate stream of revenue, and even if the income tax rates were retained exactly as they are in England, it would give that separate rate of revenue. So, there is that as well. I know that we are coming on to a subsequent amendment on this issue. In view of the fact that I do not believe that this change is necessary and the strength of opinion from noble Lords around the Chamber, I urge the noble Lord to withdraw the amendment.

Lord Crickhowell: On a point of detail, it was suggested that there was a Welsh Conservative manifesto commitment. I have taken the trouble during the debate to read the Welsh Conservative manifesto, which I confess I had never read before, and there is no such commitment.

Lord Bourne of Aberystwyth: My Lords, I am most grateful for that clarification. I do not think I had read it either. It is always useful to hear these things from someone who speaks with authority, and I thank my noble friend very much. Of course, I am not urging noble Lords to withdraw the amendment; I am just urging that the clause stand part of the Bill.

Lord Murphy of Torfaen: Obviously, I shall not oppose the clause standing part, but I shall make two points in response to the debate. First, I have never felt particularly deprived as a Welsh taxpayer and citizen by not having extra income tax for Wales. In the 30 years that I represented a Welsh constituency, not a single representation was made to me about this issue. In the five years when I was Secretary of State for Wales, not one Welsh Minister ever made representations to me about the need for income tax. However, the issue is not about the need for income tax—it is about the need for a referendum. That is what this resolution is about.

4.45 pm

Lord Thomas of Gresford: The noble Lord seems to think that this is about additional income tax but we are talking about tax-varying powers. They could go up or down or they could stay the same, but they would give a separate stream to the income of the Welsh Assembly, which would assist in borrowing. What disappoints me in the Minister's reply is not to hear some idea of the fiscal framework. I wonder whether the Welsh Government have ever put forward a variation on the Barnett formula. We all oppose the Barnett formula in one way or another, but I have never heard the Welsh Government suggest an alternative way in which to raise money, other than the Barnett formula. Can the Minister say something about the broader picture?

Lord Murphy of Torfaen: I had not quite finished my remarks—I thought the noble Lord was intervening on me. The issue is about the principle of a referendum. Right from 1997, the people of Wales agreed on a devolution settlement. In 1979, my noble friend Lord Kinnock and I disagreed with the idea of a Welsh Assembly. Twenty years later, we agreed with it—and, as the Minister himself said, in 2011 there was a referendum to change that settlement. I approved of it, I agreed with it and I supported it. That gave legitimacy to the change, because at the end of the day the people of Wales agreed.

I suspect there has been a change in the past 18 months because, after all, this is about a change in the current law. It is not about introducing something but about abolishing something: the right of the people of Wales to have a referendum on income tax. My guess is that it has nothing to do with the spread of devolution or the other issues to which the Minister referred; it is about their thinking that they would not win it. But the principle of the referendum would give it that legitimacy. Indeed, if the Government and others thought it would be hugely popular, what is wrong with a referendum on it? If we had one on the powers, we can have one on income tax. The Minister has not explained why the Government have changed their mind about the principle of a referendum in under two years. That is a pretty rapid change, and there must be other reasons lying behind the Government's views. At the end of the day, if the people of Wales want income tax variation—and, by the way, it is not extra money. I reject that idea; I do not think for one second that any income tax powers will produce a penny more for the people of Wales, because the block grant will be

[Lord Murphy of Torfaen]
reduced. That imposition has been put on a country that is poorer than England. Having said all that, I shall not push this to a vote this evening.

Lord Thomas of Gresford: In Committee, I think I am entitled to speak as many times as I wish. I apologise to the noble Lord, Lord Murphy, for interrupting him in full flow, but I still look to the Minister to give us some idea at this stage of how he sees it. What is the future fiscal framework? What does he have in mind? Will it be a deduction from the block grant, as the noble Lord, Lord Murphy, suggests, or will it not?

Lord Bourne of Aberystwyth: My Lords, I am very happy to supply the information that I gave previously at Second Reading, when I said that I would update noble Lords, before Report, on the progress of the fiscal negotiations that are going on between the Welsh and United Kingdom Governments. As I indicated then, the discussions are progressing well. The ministerial Joint Exchequer Committee has met twice and, according to reports I have had from both the Welsh and UK Governments, it is going well. I am not all over the detail; it would be unwise to be so until they are nearer to a conclusion. There will obviously be a reduction in the block grant because 10p income tax will be raised at the Welsh level. So the discussion is about exactly how we do what is right for Wales and for the United Kingdom within that context. It is good news that progress is being made.

Lord Wigley: I will press the Minister for clarification. Of course, if 10p is transferred over there will be a netting off, but if there is an increase of 1p in income tax there would not be a reduction in the block grant because of that.

Lord Bourne of Aberystwyth: That is absolutely right. The National Assembly for Wales doing something imaginative to raise income will be to the benefit of the Assembly and of Wales. That is the whole point of what is going on. I take issue with the noble Lord, Lord Murphy, in suggesting that there is something sinister in the change of heart here. Other parties have had this change of heart; it is a recognition that we do not need a referendum. I suspect that many of the people urging it are hoping to delay things—I exempt the noble Lord from this—or, indeed, defeat it. That should not be the aim. The aim should be to do what is right for Wales. I strongly and sincerely believe that if we were to have a referendum, it would be carried.

Lord Kinnock: On the issue of taxation levied on the people of Wales, will the Minister spend a moment explaining the logic, or lack of it, of a fiscal regime that has ensured, as he will acknowledge from his own experience, huge reductions in the public resources available to local authorities throughout Wales, with awkward consequences for some services and tragic ones for others? These include adult social care and post-16 educational opportunity. Where is the rationality in imposing such a fiscal regime nationally—for purposes I disagree with, but nevertheless that is the law of the land—and simultaneously introducing legislation that would, without a referendum, or further ado, allocate to the Welsh Assembly the power to vary, including raising, income taxes?

Lord Bourne of Aberystwyth: My Lords, we are being taken in a direction completely off the particular provision in the Bill. As I made clear before, this is a power which, as the noble Lord has just indicated, would enable the National Assembly for Wales to vary income tax up or down, or to ensure that it stays the same if that is what it wants to do. I myself dislike the word "imposing" on the National Assembly or people of Wales. Discussions are going on between the Finance Minister and his team in the National Assembly for Wales—for whom I have the greatest respect—and the Chief Secretary to the Treasury and his officials. I believe that an agreement will be reached. If it is not, we do not get the legislation, because the LCM will only come forward if an agreement is reached to the satisfaction of the National Assembly for Wales, and presumably the Welsh Government as part of that. That will carry things through. I do not see that the local government position is anything to do with this.

Clause 17 agreed.

Amendment 24

Moved by ***Baroness Morgan of Ely***

24: After Clause 17, insert the following new Clause—

"Lending for capital expenditure

(1) In section 122A of the Government of Wales Act 2006 (lending for capital expenditure), in subsections (1) and (3), for "£500 million" substitute "£2 billion".

(2) In section 161(2) of the Government of Wales Act 2006 (commencement), after "120(3) and (7)" insert —

"section 122A(1) and (3),"."

Baroness Morgan of Ely: My Lords, to me this is one of the key clauses in the whole Bill. I have made no secret of my lack of enthusiasm for the way the Bill has been written, but we are now living in very difficult financial times. The IFS has claimed that there will be a 3.2% cut, in real terms, in the Welsh budget over the next three years. We have little confidence that the UK Government are going to make up the losses that Wales will face as a result of Brexit. The IFS has said that if they do not make up the losses, that will lead to a doubling of those cuts if EU aid is not replaced after Brexit. I am aware that there has been a promise until 2020, but nothing beyond that.

The devolution of tax powers through the Wales Act 2014 will also enable the Welsh Government to borrow in order to invest in capital infrastructure. That will benefit the economy and communities across Wales. The current level of capital borrowing permitted to the Welsh Government is £500 million. That is based on the devolution of two fairly minor taxes: stamp duty land tax and landfill tax. In the Command Paper published alongside the Wales Bill in March 2014, the UK Government committed to reviewing the level of capital borrowing available to Wales if income tax is partially devolved. This Wales Bill will result in the transfer of an additional £2 billion in tax revenue to the Welsh Government, and so will significantly increase the size of the independent revenue stream

available to the Welsh Government. In line with the commitment given in 2014, the Bill provides an opportunity to give Welsh Ministers a more meaningful degree of borrowing power to reflect the significant increase in devolved tax revenues under their control.

The Silk commission, of which the noble Lord, Lord Bourne, was a member, recommended that the Welsh Government's capital borrowing limit should be at least proportionate to the limit agreed for Scotland, taking into consideration the relative lack of exposure to PFI in Wales. With comparable devolved tax powers, the UK Government agreed a capital borrowing limit of £2.2 billion in the Scotland Act 2012. In line with the recommendation from the Silk commission, a capital borrowing limit of £2 billion would therefore be proportionate to that agreed for the Scottish Government, after taking into account the Welsh Government's lower exposure to PFI. The UK Government's position that a limit of £500 million is appropriate, as set out in the Government of Wales Act, is contradictory to the approach taken for the Scottish Government in the Scotland Act. At a time when there are significant economic uncertainties, the ability to bring forward additional capital investment would provide a much needed economic stimulus to Wales. With a capital borrowing limit of £2 billion, the Welsh Government would have the fiscal tools available to support the level of investment needed in Wales.

The Welsh Government and Assembly are anxious to grow up, but it is as if the UK Government still want to treat them like children, telling them how much money they can spend and that they are allowed to borrow only if they tell "daddy" what they are going to spend the money on. An increase in the Welsh Government's borrowing capacity is absolutely critical, and I for one would find it very difficult to support the Bill without that increase. We understand that this will form part of the discussions on the financial framework, but we strongly recommend that both the Welsh Government and the UK Government come to an agreement on this critical area. I ask the Minister to give a commitment that there will be a revision of the amount that is currently in the Government of Wales Act.

Lord Wigley: My Lords, I will speak briefly to Amendment 24 moved by the noble Baroness, Lady Morgan of Ely, which seeks to raise the limit on capital expenditure lending from £500 million to £2 billion. We touched on this issue in our debate on the previous group of amendments.

In the economic climate we find ourselves today, with further uncertainties ahead of us, it is more necessary than ever to have available to the Welsh Government a facility to boost jobs and stimulate growth by way of capital investment—in particular, in capital expenditure on infrastructure projects. Many expect the Chancellor to reflect that sentiment in his Autumn Statement later this month. The Bill imposes on capital borrowing the disappointing limit of only £500 million, which is not enough even to pay for the Welsh Government's M4 relief road scheme—unless they were to adopt a more sensible route than that currently being advocated.

5 pm

My party colleagues and I may disagree with the Welsh Government's opinions on how to use capital borrowing, but we do agree that the National Assembly, as the body closest to the people of Wales, not Westminster, should decide how this money is spent.

As Plaid Cymru Leader Leanne Wood set out earlier this year, following the UK's regrettable decision to leave the European Union, the £500 million limit on capital borrowing powers is much too restrictive. The deal, made almost four years ago, on this element of the Bill does not reflect the new economic context in which we find ourselves. We currently have historically low interests rates and we need to mitigate the impact on jobs and wages of any economic shock brought about by Brexit. Perhaps most critically, we have productivity levels that show no sign of improving. For this to change, most economists believe that we need a major increase in infrastructure investment.

I alluded in earlier debates to Plaid Cymru's £7.5 billion national infrastructure commission for Wales proposals as a comprehensive and expansive strategy for investing in the infrastructure of Wales. I urge the Minister to read it. Schools, hospitals and vital transport links could all be developed through an effective use of capital borrowing. Therefore, although we would like to see no limit at all on the capital borrowing powers for Wales—that would be a responsibility for a responsible Welsh Government—or, if not that, a substantially higher one, this amendment is a step in the right direction and for that reason I support it.

Lord Crickhowell: My Lords, I am not sure that I know what the upper limit should be. However, I sympathise with the view of the noble Baroness who moved the amendment that the present limit seems on the low side. The Treasury has published a very useful paper setting out the allocations in England, Wales and Scotland. The noble Baroness referred to the comparison with Scotland. I would like to know the logic behind the Government's views in setting this limit and the differences that appear in that Treasury paper. I will withhold my judgment until I have heard the case advanced by the Government.

Baroness Randerson: My Lords, undoubtedly £500 million is an anachronistic figure. As has been said several times this afternoon, devolution has moved on, and time has moved on. However, I draw noble Lords' attention to another aspect of the Silk recommendations—namely, the fact that the report said that the borrowing limit should be subject to review at each spending review. Therefore, it is my view that, rather than putting a bald figure in the legislation, we need not just a figure but a mechanism in law which requires the regular review of that figure. Further, the Explanatory Notes should at the very least give some kind of rationale for how the figure was arrived at as the appropriate figure. I ask the Minister to address that issue in his reply.

Having said that, the key point is that borrowed money has to be paid back out of future spending—so the more the Welsh Government borrow, the more they eat into their spending capability in future years. I am rather cautious about this figure of £2 billion,

[Baroness Randerson]
because the Scottish Government have a right to borrow £2.2 billion. Therefore, to balance this properly, we need to look in great detail at other borrowing obligations that the Welsh and Scottish Governments have.

Given that the Bill clears the way for income tax powers, it is obvious to me that the £500 million figure needs to be looked at—but we need more clarity on the figure that is there and a proper mechanism for future revision.

Lord Howarth of Newport: My Lords, the figure of £500 million, set as the limit for borrowing by the Welsh Government, is so small as to be well inside the margin of error in any computation of UK Government borrowing. Will the Minister say what £500 million is as a percentage of the UK Government's present borrowing requirement? To set the figure so low is contemptuous of Wales. With the powers to vary income tax devolved, the Welsh Government will have the capacity to service a higher level of borrowing, even if interest rates rise. I agree with those who have said that it seems very odd to fix a figure in legislation. Will the Minister also explain why that fixed figure of £500 million is in the Bill? I think that the Government should be more generous towards the people of Wales and allow them the opportunity to invest as they need for the future of the economy of Wales.

Lord Berkeley of Knighton (CB): My Lords, if EU investment in south Wales suffers, as some of us fear it might, we could find ourselves with some very dire unemployment problems. Therefore, we will need every penny possible to reinvest in that area.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lords who have participated in the debate on Amendment 24, and I thank the noble Baroness, Lady Morgan of Ely, for moving it.

The amendment seeks to quadruple the Welsh Government's capital borrowing limit set in the Wales Act 2014 from £500 million to £2 billion. As the noble Baroness is of course aware, borrowing falls within the scope of the funding discussions between the United Kingdom Government and the Welsh Government that are proceeding alongside the Bill. As we know, the Bill cannot proceed without the legislative consent Motion, which is dependent on those discussions being successful.

I refer noble Lords to the communiqué published following the Joint Exchequer Committee meeting in September. The two Governments discussed the rationale for the existing capital borrowing arrangements and agreed to consider changing them. Therefore, I can give the noble Baroness the undertaking that she seeks, and I think it is consistent with what I said in the previous debate. It is unthinkable that the matter would not be raised. However, I think she will understand that I cannot give a specific figure. Indeed, the comments of the noble Baroness, Lady Randerson, perhaps indicate that we do not want to constrain the figure in case the discussions lead to it going higher than that. I have given noble Lords an undertaking, which I will repeat: ahead of Report I will give a summary of where we are on the fiscal discussions, which are going well—including, as I understand it, in this area.

As noble Lords have indicated, there are two key considerations in relation to the borrowing limit. The first is ensuring that borrowing is affordable for the Welsh Government. Of course, the transfer of the taxation powers that we have just been looking at will certainly help in that regard, as will the smaller taxes that have already been transferred. The second is ensuring that borrowing is appropriate within the funding arrangements for the United Kingdom as a whole. I am sure that those two points are being borne in mind during the discussions—which, as I said, seem to be going well.

In relation to Welsh Government affordability, as I have indicated, we need to ensure that the Welsh Government have sufficient independent revenues to manage their borrowing costs. As I said, the new taxation powers that are being carried forward by the Bill will help in that regard. In relation to the wider United Kingdom funding arrangements, it is important to recognise that, within any given fiscal position, additional Welsh Government borrowing will mean less spending in the rest of the UK, including in relation to some of the issues funded for Wales from United Kingdom taxation.

Those are the issues being looked at, and I can give two undertakings: first, we will not get the legislation without the LCM; and, secondly, I repeat the undertaking that I gave at Second Reading—I appreciate that not all noble Lords were here for that—to give a summary of where we are so that noble Lords will be aware of it ahead of Report.

I understand the points that are being made and I think all noble Lords who have spoken—the noble Lord, Lord Wigley, my noble friend Lord Crickhowell, and the noble Lords, Lord Howarth and Lord Berkeley—recognise the need for these powers in order that the Welsh Government can borrow. Of course, it is then for the Welsh Government to decide how they borrow and how they spend the money—that is within their devolved competence.

Given the undertakings I have given, I ask the noble Baroness to withdraw her amendment.

Baroness Morgan of Ely: I thank the noble Lord for those undertakings. I was particularly pleased to hear that the amount could even go above £2 billion. We will certainly underline and take note of that. I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

House resumed. Committee to begin again not before 5.55 pm.

Brexit: Article 50
Statement

5.09 pm

The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley) (Con): My Lords, with the leave of the House, I will now repeat a Statement made in the other place earlier today by my right honourable friend the Secretary of State for Exiting the European Union. The Statement is as follows:

"With permission, Mr Speaker, I will now make a Statement on the process for invoking Article 50. The Government's priority at every stage following the referendum has been to respect the outcome of that referendum and ensure it is delivered on. To leave the EU was the clear decision of the British people. It was taken after a six-to-one vote in this House to put that decision in their hands. As the Government told voters: 'This is your decision. The Government will implement what you decide'. No ifs, no buts. So there can be no going back. The point of no return was passed on June 23.

Implementing the decision to leave the EU means following the right processes. We must leave in the way agreed in law by the UK and other member states, which means following the process set out in Article 50 of the treaty on the European Union.

We have been clear about the timing. There was good reason why the Government did not take the advice of some in this House and trigger Article 50 immediately. Instead, the Prime Minister was clear that she would not invoke Article 50 before the end of this year. This is giving us the time to develop a detailed negotiating position. But we have also said that the process should not drag on, and that we intend to trigger Article 50 by the end of March next year.

Let me now turn to the issues at hand. Legal action was taken to challenge the Government on the proper process for triggering Article 50. We have always been of the clear view that this is a matter for the Government: that it is constitutionally proper and lawful to begin to give effect to the referendum result by the use of prerogative powers. As I have said, the basis on which the referendum was held was that the Government would give effect to the result of that referendum. This was the basis on which people were asked to vote.

Our argument in the High Court was that decisions on the making and withdrawal from treaties are clear examples of the use of the royal prerogative, and that Parliament—while having a role in this process which I will come on to—has not constrained the use of the prerogative to withdraw from the EU. Our position in the case was therefore that the Government were entitled to invoke the procedure set out in Article 50.

The court has, however, come to a different view, and held that the Government do not have the prerogative power to give notice under Article 50 without legislation authorising them to do so. The court said the starting point was that the Crown does not have power to vary the law of the land using its prerogative powers unless Parliament legislated to the contrary. It held that the European Communities Act 1972 brought rights arising under EU law into the law of the United Kingdom, and that the Crown has no prerogative power to withdraw from the EU because the effect of withdrawal would be to take away those rights.

Let me be clear about this: we believe in and value the independence of our judiciary, the foundation upon which our rule of law is built. We also value the freedom of our press. Both these things underpin our democracy. The Government disagree with the court's judgment. The country voted to leave the European Union in a referendum approved by an Act of Parliament. Our position remains that the only means of leaving is through the procedure set out in Article 50 and that triggering Article 50 is properly a matter for the Government using their prerogative powers. We will appeal the High Court's judgment at the Supreme Court.

Given our appeal, it would not be appropriate to comment further on the details of the legal arguments. I hope that the House will understand this, but let me say a brief word about the process of our appeal. We have taken two necessary procedural steps. First, the Government have been granted a certificate to bypass the Court of Appeal and 'leap-frog' the case to the Supreme Court. This will ensure that, when we lodge our appeal, it will be heard directly in the Supreme Court without further delay in the courts.

Secondly, we will this week apply for the substantive permission to appeal to the Supreme Court. It is likely that any hearing will be scheduled in the Supreme Court in early December. We would hope the judgment would be provided soon after. This timetable remains consistent with our aim to trigger Article 50 by the end of March next year.

We are now preparing our submissions to the Supreme Court in the usual way. As I have said, it would not be proper to go into those in great detail here today, but the core of our argument will remain that we believe that it is proper and lawful for the Government to trigger Article 50 by the use of prerogative powers.

Of course, there is also litigation under way in Northern Ireland. This is considering a number of specific issues linked to Northern Ireland's constitutional arrangements. The High Court in Belfast found in the Government's favour on these points. We welcome that outcome. A hearing in Belfast is being held tomorrow to consider whether an appeal by the claimants in this case should also leap-frog to the UK Supreme Court and whether the issues that overlapped with the English courts should remain stayed, pending the outcome of the Supreme Court.

Again, it would not be appropriate for me to say more on this at this stage, except that in the event of any appeal in the Northern Ireland litigation, the Government will robustly defend their position. For the avoidance of doubt, our view is that the legal timetable in relation to this case in the event of an appeal should also be consistent with our commitment to notifying under Article 50 by the end of March next year.

I have said that, because of our appeal, I will not go into detail here on the points of law that were raised in the High Court's judgment, but let me set out some fundamental principles for how we move ahead. First of all, our plan remains to invoke Article 50 by the end of March. We believe that the legal timetable should allow for that.

Secondly, the referendum must be respected and delivered. The country voted to leave the European Union, in a referendum provided for by an Act of Parliament. There must be no attempts to remain inside the EU, no attempts to rejoin it through the back door and no second referendum. The country voted to leave the European Union and it is the duty of the Government to make sure we do just that. Parliament had its say in legislating for the referendum, which it did in both Houses, and with overwhelming

[Lord Bridges of Headley]
majorities in this House and cross-party support. The people have spoken and we intend to act on their decision.

Thirdly, irrespective of the ongoing court process, there is an important role for Parliament. Parliament will have a central role in making sure that we find the best way forward and we have been clear that we will be as transparent and open as possible. There have already been a number of debates and parliamentary Statements on Brexit, and the Prime Minister has pledged that that process will continue before Article 50 is invoked.

I informed the House in October that there would be a series of debates on Brexit in government time. The first is this afternoon. This is on top of a number of other debates and opportunities for scrutiny. The new Select Committee on Exiting the EU has been established. This provides another place for parliamentary scrutiny of our withdrawal from the EU and the committee will be visiting my department tomorrow.

The Government will bring forward legislation in the next Session that, when enacted, will repeal the European Communities Act 1972 on the day we leave the EU. This 'great repeal Bill' will end the authority of EU law and return power to the UK. We have been clear that EU law will be transposed into UK law at the time we leave, providing certainty for workers, businesses and consumers. This will be an Act of Parliament, which we intend to have in place before the end of the Article 50 process. It is important to remember that Article 50 is the beginning of this process; it is not the end.

As the Prime Minister has made clear, there will be many opportunities for Parliament to continue to engage with the Government once Article 50 has been invoked. When negotiations have concluded we will observe in full all relevant legal and constitutional obligations that apply, but there is a balance to be struck between parliamentary scrutiny and preserving our negotiating position, which is why the House unanimously concluded last month that the process should be undertaken in such a way that respects the decision of the people of the UK when they voted to leave the EU on 23 June and does not undermine the negotiating position of the Government as negotiations are entered into. We will give no quarter to anyone who, while going through the motions of respecting the outcome of the referendum, in fact seeks ways to thwart the decision of the British people.

To conclude: we are disappointed by the court's judgment in this important case. We will appeal that judgment to the Supreme Court. None of this in any way diminishes our determination to respect and deliver on the outcome of the referendum and to notify under Article 50 by the end of March next year. We are going to get on with delivering on the mandate to leave the European Union in the best way possible for the UK's national interest—best for jobs, best for growth and best for investment. I commend this Statement to the House".

My Lords, that concludes the Statement.

5.20 pm

Baroness Hayter of Kentish Town (Lab): I thank the Minister for repeating the Statement, which I feel he had no hand in drafting. My guess is that he would have preferred to get on with allowing Parliament to trigger Article 50. Indeed, how much better it would have been if the Government had listened to the wise words of our Constitution Committee in September, when it said that a parliamentary vote would be needed. It is hard to understand why the Government are getting in such a tizzy about this. Rather like after their tax credit defeat, they overreact when faced by any challenge.

In September, I commented that,

"leaving the EU is not a simple step outside but a journey".—[*Official Report*, 8/9/16; col. 1131.]

But will we leave Brussels via Dunkirk or Ostend, by train through Calais, by plane via Dublin or, heaven forfend, by the good ship "Titanic" piloted by Boris Johnson?

These are serious matters. In our economy, highly dependent on services, we have to secure a future for our creative, internet, design, legal, engineering and financial services and for intellectual property. We must be sure that our insolvency practitioners, chasing down funds for UK-based creditors, have access to squirrelled wealth in EU countries—currently allowed for under the mutual recognition of appointments—and that our lawyers retain rights of address and legal privilege. We need to safeguard the future of UK nationals living abroad as they lose their EU citizenship. We have to disentangle our competition law from that of the EU, law developed to protect consumers from monopolies and cartels, while helping our exporters, who will still be subject to EU competition rules.

Until we know the terms on which we will leave the EU and our relationship with the remaining 27 member states after we leave, we cannot negotiate trade deals with the rest of the world, so the terms on which we disengage from the EU and their consequences should be debated in Parliament. Parliament needs to question whether the Prime Minister has the right negotiating objectives for how we leave the EU. What priority will she give to remaining in the single market? Is she safeguarding—indeed, promoting—our regions, which have done less well from globalisation? Is she seeking to enhance consumer, environmental and workplace protections? Are her objectives grounded in security considerations and promoting human rights and are they acceptable to the electorate?

The British people decided that we should leave the EU, but it is for Parliament, not simply Downing Street, to debate the exit details. Whichever route we take, we have a long journey ahead of us. In that time, my fervent hope is that we see no more of the British press, which ought to recognise the sovereignty of Parliament and the independence of our judiciary, printing 72-point headings naming the Master of the Rolls and the Lord Chief Justice as "Enemies of the people" simply for doing their job and pointing out that, constitutionally, the Government,

"does not have power under the Crown's prerogative to give notice pursuant to Article 50 … for the United Kingdom to withdraw from the European Union".

The High Court ruling will not derail Brexit. However, given that the Government were caught short by the referendum result and none of the preparatory work was done in the case of a Brexit outcome, can the Minister assure the House that they will not find themselves in the same position this time if the judgment is upheld, and that a Bill is in preparation? Our EU committees have already started work on the myriad issues to be addressed. Could the Minister confirm that the Government will listen to the experience and knowledgeable words of these colleagues as they go forward?

Baroness Ludford (LD): My Lords, I also thank the noble Lord for repeating the Statement. I could not agree more with the assertion in it that implementing the decision to leave the EU means following the right processes, including securing the time to develop a detailed negotiating position. The right processes mean implementing the repeated pledge to honour UK parliamentary sovereignty and seeking parliamentary approval for the negotiating position.

By December, the Government will have lost six months in that process. In fact, they seem to be tying themselves up in knots trying to avoid such parliamentary involvement, getting bogged down in their misguided pursuit of executive autonomy over the Article 50 process in an unnecessary and delay-inducing court case. Their incoherence is displayed in having to offer special comfort deals to particular firms such as Nissan instead of being clear in regard to the single market and the customs union. This is creating destabilising uncertainty for all kinds of economic operators and other bodies. Now we hear the Prime Minister talk about putting on the table more visas for Indian nationals, while apparently immigration is treated as a barrier to the single market. That seems somewhat contradictory.

We must rely on leaks in the press to try and read the Government's mind—or read the tea leaves. Indeed, there is much speculation about a Bill but no such indication in the Statement today. I join the noble Baroness in asking for clarification on that. We need a respectful relationship between Government and Parliament, one indeed sketched out in several reports of our own EU Select Committee under the chairmanship of the noble Lord, Lord Boswell, and one last month from the Constitution Committee under the chairmanship of the noble Lord, Lord Lang of Monkton. A lot of work and evidence went into those reports but the Government just brushed them aside.

The Government are not only behaving arrogantly towards Parliament when the political constitutional basis for Parliament's role was in fact clear without the legal process, but also—to the dismay of people across the political spectrum—indulging in populist and xenophobic language, culminating in the failure to properly defend the institution of the judiciary. Freedom of the press may incorporate a freedom to criticise a particular judgment but not to indulge in scurrilous personal and institutional abuse of judges and the judiciary. It is very disappointing that neither in the days since the High Court judgment nor today have the Government rebuked the nature of the press comments notably in the *Daily Mail* and rather more shockingly in the *Daily Telegraph*, including the famous "enemies of the people" slogan evocative of Nazi Germany. It would be good to hear from the Government a condemnation of that kind of press coverage, and of the incitement to rioting in the streets from the former leader of UKIP, Mr Farage.

The Government say they intend to act on the decision to leave but it is on the character of that action that we need clarity since there are many different varieties of Brexit—probably more than 57. It is necessary to be respectful to those who voted remain if the Prime Minister genuinely wants to unite the country. The phrase in the Statement about giving no quarter is a rather disturbing signal.

Liberal Democrats in no way seek to undermine the negotiating position of the Government. Parliament having an overview of the objectives would not do so. Indeed, having the backing of Parliament, as was mentioned in our several reports, would strengthen the Government's hand in those negotiations. We are not asking for details of particular trade-offs or red lines.

Any delay is down to the Government. If they act in good faith, there is no reason not to meet a March timetable. This does not mean a series of interesting but essentially purposeless general debates in which the Government stonewall, but an opportunity to get to grips with a concrete plan and a substantive strategy. Can the Minister therefore tell us whether the Government are planning to inform Parliament about their negotiating objectives in a White Paper, as is rumoured, and what kind of Bill they are planning to produce? The Government need to stop waffling and sidestepping and give us enough meat to be able to vote for the triggering of Article 50.

Lord Bridges of Headley: I thank the noble Baronesses, Lady Hayter and Lady Ludford, for their contributions. I am determined to work constructively with Members of this House who want to make a success of Brexit. I said that at the start, that offer remains, and I am grateful to noble Lords who have spared their time and their expertise to meet me in private. As I say, my door remains open to anyone who wishes to have any conversation with me.

The noble Baroness, Lady Hayter, asked why we are appealing. As I said in the Statement, our position has been and remains that the decision to leave the EU was taken by the people in a referendum and that triggering Article 50, the starting point of the process, is a matter for the Government. That is an important principle, which is why we are appealing the judgment. As regards what would happen were we to lose, we are obviously prepared for all eventualities, but equally obviously, we are focused on the appeal to the Supreme Court. As we said last week, the logical conclusion to draw from the High Court judgment is that legislation would be necessary, but we are appealing the judgment and hope that the Supreme Court will rule differently. In the event that it does not, we will assess what remedy the Supreme Court requires and will set out our approach at that point. Therefore the speculation about a Bill is just that at this juncture—speculation.

[Lord Bridges of Headley]

The noble Baronesses, Lady Hayter and Lady Ludford, referred to the response to that court ruling. To embellish a little what I said in the Statement, I strongly believe, as the Government do, that one of the basic tenets of a free society is freedom of speech and expression, but so too is the independence of the judiciary, which is clearly a cornerstone of our democracy in maintaining the rule of law. We must observe due process and the independence of the judiciary and abide by its rulings. Meanwhile, however, we must all respect the outcome of the referendum and the wish of 17.4 million people to leave the EU.

On the role of Parliament, the noble Baroness, Lady Ludford, said a fair amount just a moment ago. She also talked about this on the "Today" programme this morning, when I was munching on my cornflakes, saying that the Government were completely excluding Parliament, and she just said that the Government are being arrogant towards Parliament. I will not get into a war of words on this. I will just put on the record what the Government have done so far. They have answered 302 Parliamentary Written Questions, made three Oral Statements, answered seven Oral Parliamentary Questions, given four Ministerial Statements and made 10 Select Committee appearances, and have replied to over half a dozen other debates. Currently there are over 30 Brexit-themed Select Committee inquiries. I make that point to say that we are giving Parliament the chance for scrutiny. On top of that, Parliament will vote to repeal the ECA and, as I said in the Statement, parliamentary procedure will be followed to ratify any treaty.

Furthermore, on the role of Parliament, our key aim in the negotiations will obviously be to deliver the best outcome while protecting the national interest. The Government have said that we will be as open as we possibly can be and we have set out our strategic aims. I argue, as I have done before, that we will not achieve a good outcome if this negotiation is run from the back seat by the House of Commons and this House. No negotiation can possibly be run in that way. Indeed, if Parliament insists that triggering Article 50 should be conditional on us going into this negotiation with all our cards face up for everyone on the other side of the table to see, that detailed minimum negotiating position will quickly become the maximum possible offer from our negotiating partners. Furthermore, the talk of a second referendum from some in this House and elsewhere will simply encourage the EU to impose difficult terms in the hope that the British people will change their minds if only the question is put to them again. To those who argue for certainty I ask: what greater uncertainty can there be than for that to be injected into the system?

Therefore, parliamentary scrutiny? Absolutely. But telling the Prime Minister which cards to play and seeking to force her to disclose her hand to those with whom she will be negotiating? I say no.

5.35 pm

Lord Mackay of Clashfern (Con): My Lords, I entirely agree with my noble friend that the principles of judicial independence and of freedom of the press are fundamental to our constitution. However, my freedom as a citizen does not entitle me to assault my neighbour, and the freedom of the press certainly does not entitle the press to insult, in a vicious and vocal manner, judges who are carrying out their statutory responsibility.

Noble Lords: Hear, hear.

Lord Mackay of Clashfern: Everybody who took part in the case made it clear that the judges were asked to determine a question of law, which was entirely within their jurisdiction. They made it abundantly clear that they had no views to express on Brexit or anything associated with it except on the question of law which was put to them, which is simply whether the prerogative power enables this triggering to happen. I express no view upon that matter because it has been appealed to the Supreme Court and I verily believe that in due course, it will address it and I await its judgment. In the meantime, however, I am concerned about the reaction of a substantial section of the press, which needs to be dealt with now, which is why I felt it necessary to say what I have said. It is entirely necessary that the independence of the judiciary should be respected, and I believe that all my colleagues in this House are of the same opinion. I hope that the Minister is also of the same opinion.

Lord Bridges of Headley: My Lords, I entirely agree with my noble and learned friend that the independence of the judiciary and the right of the judges to determine without fear or favour the issues before them are absolutely sacrosanct. They are there to use their best endeavours to interpret and apply the law, which is clearly what they have done and will continue to do.

Lord Falconer of Thoroton (Lab): My Lords, I entirely endorse what the noble and learned Lord, Lord Mackay of Clashfern, said. I recognise that the Government cannot and should not try to control the press. I do not read the result of the referendum as throwing away all our constitutional protections. One of those constitutional protections is the rule of law—that depends upon the independence of the judiciary. The judiciary is strong; it is fine as long as it knows that the Government will support it against scurrilous attacks.

What is so disappointing about this Statement and the conduct of the Government since Thursday, when these scurrilous attacks began, is that: first, at no stage have they said that they accept that the three judges acted in accordance with their judicial oath; and secondly, nobody on behalf of the Government has separated themselves from the remarks of Mr Sajid Javid, who described the three judges as thwarting the will of the people. We in this House respect the noble Lord, Lord Bridges of Headley, and we know that he will have prepared properly for this Statement. Can he confirm on behalf of the Government that they accept that the three judges acted entirely in accordance with their judicial oath? Secondly, can he make it clear that the statement of Mr Sajid Javid on Thursday evening did not represent the views of the Government?

Lord Bridges of Headley: I will absolutely answer the first point by saying: yes. Indeed, I read with interest the noble and learned Lord's article in the

Daily Mail over the weekend, in which he made a number of these points. I completely agree that they acted in good faith and according to their oath. We are questioning the judgment and that is why we are appealing but I am certainly not going to stand here and say that they acted in bad faith. As regards what else he had to say, I have nothing further to add.

The Lord Bishop of Leeds: My Lords, it has been said that 17 million people voted in favour of leaving the EU; that still leaves a very divided country. Not everybody who voted to remain can be assumed to be trying to thwart the decision of the British people simply by asking legitimate questions. The final part of the Statement says:

"We are going to get on with delivering on the mandate to leave the European Union in the best way possible for the UK's national interest".

That is defined as,

"best for jobs, best for growth and best for investment".

Does the Minister agree that we should perhaps have added, "Best for social order and the nature of our public and political discourse"?

Lord Bridges of Headley: The right reverend Prelate makes a good point. He points to a sin of omission here. I totally agree that we need to be looking at what is best for the communities of this country; that is why I am delighted that I have met with representatives of the Church of England to discuss this. Brexit raises a whole range of issues which are posing challenges for communities. I know that is so as regards EU funding. There are concerns across the board on various points. I am happy to discuss those with all faith groups and I am delighted that the Church of England has agreed to do so.

Lord Morris of Aberavon (Lab): My Lords, will the Minister inform the Prime Minister that she should invite the Minister for Justice to study her constitutional duties under the Constitutional Reform Act—particularly Section 3(1) and 3(6)—to defend the judiciary, in view of her half-hearted and delayed defence of the judiciary and her failure to rebut some of the inflammatory comments in the newspapers, in which she was joined by a senior Minister as well?

Lord Bridges of Headley: I hear what the noble and learned Lord says. I have made my position clear on this and I really do not have very much more to add.

Lord Kerr of Kinlochard (CB): Can the Minister tell us when the Government intend to inform Parliament about the content that they would like to see in the framework for our future relationship with the European Union? The Minister will recognise that I am quoting from the language of clause 2 of Article 50. Also, when will we be told whether leaving the European Union will also mean leaving the EU customs union—a point of some importance to manufacturers with modern, just-in-time supply chains?

Lord Bridges of Headley: The noble Lord makes an extremely good point and speaks from considerable experience. We will be as open and transparent with Parliament and businesses as we possibly can, with the important caveat that I set out: we cannot and must not undermine our negotiating position and the national interest. As the noble Lord understands, we are looking at considerably complex issues right now. That is why we are looking at 51 sectors of the economy and at issues such as the supply chain. As I say, when we are in a position to do so we will be as open and transparent as we can be.

Lord Wigley (PC): My Lords—

Lord Campbell of Pittenweem (LD): My Lords—

Lord Taylor of Holbeach (Con): My Lords, we have not heard from the Lib Dem Benches.

Lord Campbell of Pittenweem: My Lords, we all believe in the freedom of the press and in the independence of the judiciary. But I doubt very much whether there is a single one of your Lordships who does not believe in the supremacy and sovereignty of Parliament. The decision made by the High Court judges underlines and ensures the application of that doctrine. Why, in the four corners of this Statement, is there no reference to the sovereignty of Parliament?

Lord Bridges of Headley: My Lords, the noble Lord asked me last week whether we respect the sovereignty of Parliament. We do. We respect the sovereignty of Parliament and the rule of law, but the sovereignty of Parliament reflects the will of the people—and the people voted for a Government to give them a referendum on leaving the European Union. Parliament passed that legislation and 17.4 million people voted to leave the European Union.

Lord Howell of Guildford (Con): My Lords, in view of all the high feelings which we have just heard, would it not be wiser and better in the interests of a smooth and speedy Brexit, which I certainly want to see, to work with Parliament from now on rather than battling against it? Why can the Government not give us a really detailed Green Paper, outlining and analysing all the complexities of the situation? It would be nothing to do with the negotiating position, which comes quite separately. We could then debate that Green Paper over two or even three days and give the best input of Parliament from both its Houses. The Government could then bring forward a one-clause Bill authorising the Article 50 process to go forward. Is that not a simpler and more constructive way of proceeding than the one we are on now?

Lord Bridges of Headley: I hear what my noble friend has to say but the Prime Minister has made it clear that we are going to appeal this judgment. That is the position we are in. As regards setting out our position on the future negotiations, as I said to the noble Lord, Lord Kerr, we have been clear that we will be as transparent and open with Parliament as we can possibly be, once we have finished our analysis of the options open to us.

Lord Wigley: My Lords—

Baroness Royall of Blaisdon (Lab): My Lords—

Lord Davies of Stamford (Lab): My Lords—

Lord Taylor of Holbeach: We really should try to go round the House. It is the Labour Party's turn.

Baroness Royall of Blaisdon: My Lords, the Minister rightly celebrates the independence of the judiciary. However, my noble and learned friend Lord Falconer asked him to condemn the words of Sajid Javid, who by his words undermined what the Minister is saying. What the right honourable Minister said was completely unacceptable; indeed, those words corrode the very democracy that the noble Lord seeks to uphold. Please will he condemn the words of the right honourable Sajid Javid?

Lord Bridges of Headley: My Lords, I am sorry to say that I have nothing further to add on this matter.

Lord Lang of Monkton (Con): My Lords, your Constitution Committee did indeed state in its report on the invoking of Article 50 that it was constitutionally appropriate that Parliament should be involved in the various stages of the negotiations, including the triggering of Article 50. I am sure that we would still stand by that view. However, we accept the need to make progress and to make it reasonably rapidly, removing uncertainty not least from the economy and the concerns of the business community, and the possible jeopardising of the future of that economy should matters be drawn out unduly. Does my noble friend agree that the triggering of Article 50 is essentially a matter of timing? It is therefore not an appropriate time for diving into the detailed study of the Government's negotiating plans, which it might anyway be inappropriate to lay before Parliament in advance and thus declare their position.

However, if it is a matter of timing, would it not be sensible to consider bringing before both Houses of Parliament a short and tightly drawn Bill and seeking the agreement of the various parties involved to achieve rapid progress through the House on a fast-track basis? That would remove the uncertainty that is causing so much concern; proper consideration can then be given to the negotiations. Finally, since this is about the invoking of Article 50 and not about what the *Daily Mail* said about the judges, could we have a debate on the invoking of Article 50 and the reports of the Constitution Committee and the European Union Committee on that subject?

Lord Bridges of Headley: On the second point, that is a matter for the usual channels. On the first point, I would certainly say that it is a matter of process. The Prime Minister and the Government have made it clear that we are going to appeal this judgment. I very much respect and value the work that the committee of the noble Lord, Lord Lang, does. We have tried to allay uncertainty wherever we can, be it by our approach to repealing the European Communities Act or to European funding. We are certainly doing that and will continue to look for ways in which we can mitigate it elsewhere.

Lord Butler of Brockwell (CB): My Lords, is it not the case that the Government have already laid out the basis of their negotiating strategy; namely, that we will insist on taking back control of immigration, that we will take back administration of justice in the UK to the UK courts, and that thereafter we will seek to do as good a deal as we can for trade in goods and services to the benefit of both the UK and our European partners? Given this basis, is there not plenty of time, following what the noble Lord, Lord Howell, said, for the Government to lay a Green Paper with rather more detail and get legislation through in time to meet their deadline of triggering Article 50 by the end of March?

Lord Bridges of Headley: My Lords, once again, I respect what the noble Lord has to say. I have set out as far as possible that we are undertaking that extensive analysis. Clearly he is absolutely right that we have set out the underlying principles of the Government's negotiating position, and with that in mind, that is the basis upon which our analysis is proceeding. As regards a Green Paper, to which the noble Lord and my noble friend Lord Howell referred, we intend to be as transparent and open as possible in the course of events.

Lord Wigley: My Lords, to the extent that the Government cannot divulge their full negotiating hand prior to moving Article 50, does that not reinforce and make even more important that 20 months down the road, or whatever it is, when these negotiations have been concluded, the question should be put back to Parliament to take a decisive decision?

Lord Bridges of Headley: My Lords, I am sure the noble Lord will be delighted to hear that there will be considerable opportunities between now and then for us to have many more Statements, debates et cetera. As regards what will happen at the end, we have made it very clear that all treaties arising from the negotiations will be subject to the due process of constitutional precedents. On that, I have nothing further to add.

Lord Maclennan of Rogart (LD): My Lords, why have the Government ignored the reports of the Constitution Committee referred to by the noble Lord, Lord Lang? Why is Parliament not being given the intentions regarding the presentation of specified information? Why are Ministers in principle not being required to report back to Parliament at all? Why is Parliament not being involved in the negotiation process subsequent to the initial determinations?

Lord Bridges of Headley: My Lords, we have taken the position we do on the court case—if I understand the noble Lord correctly—because we believe that starting the process of triggering Article 50 is a matter for the Government. As regards the negotiation process, I have nothing further to add to my response to the noble Lord, Lord Butler.

Lord Elystan-Morgan (CB): My Lords, why is the Minister so reluctant to condemn the scurrilous attacks made in the press on Her Majesty's judges? Does he not accept that what they were asked to do was to look very carefully, historically and analytically, at the prerogative powers? Those powers started as a monarchical dictatorship and were gallantly challenged in the 17th century in the civil war. Today, the remnant is not

sufficient to allow the Government to do anything that would further the process of Article 50. Had the judges done anything different they would have been betraying their oath and would have indeed been unworthy of their position. They have acted in the very best traditions of the British judiciary.

Lord Bridges of Headley: As I said, I am not going to go much beyond what I said before. I totally respect and wish to protect the independence of the judiciary, and I am absolutely sure that those judges acted in good faith.

Lord Higgins (Con): The Statement seems to imply that the referendum made a decision to leave the European Union. Those of us who served on the Bill setting up the referendum know that that is not so; it was clearly an advisory referendum. It is therefore very important that the Government should not now treat it as a mandatory referendum which would be contrary to and incompatible with our system of representative parliamentary democracy. I think the right thing to do now is to take the advice of the referendum, but it is clear that on the details—the expression "Brexit means Brexit" is totally meaningless—Parliament should be able to take a view on whether to implement Article 50 and go along with the judgment of the High Court.

Lord Bridges of Headley: My Lords, the Government are appealing against the judgment of the High Court and believe that the views of the 17.4 million people who voted to leave should be respected. As regards the position of this House, I repeat all the points I said before about the role it has so far had in setting up the referendum and the role it will have in due course in issues such as repealing the European Communities Act.

Defence Estate

Statement

5.55 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, with the leave of the House I shall now repeat a Statement made in another place by my right honourable friend the Secretary of State for Defence, "A Better Defence Estate". The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement on our strategy for a better defence estate. Our defence estate is where our people work, live and train, where advanced equipment is maintained and where cutting-edge research is undertaken. It is the place where major exercises are conducted and major operations launched.

Our estate is vital, but it is also vast. We control almost 2% of the United Kingdom's land mass, an area almost three times the size of Greater London. Yet bigger does not mean better. While the size and structure of our forces have changed to meet different threats, our estate has failed to adapt. It is too inefficient. It costs £2.5 billion a year to maintain, with 40% of our built assets more than 50 years old. And it often fails to meet the needs of our Armed Forces and their families, with capabilities spread across old, small, remote sites, often removed from population centres and job opportunities.

Last year's strategic defence and security review committed to increase the defence budget in real terms every year of this Parliament, with a £178 billion equipment plan to create a world-class Joint Force 2025, but an ambitious joint force needs an estate to match, so today I set out a long-term strategy to achieve that ambition.

First, we will transform an estate built for previous generations of war-fighting into one that better supports military capability and the needs of our Armed Forces. It will help deliver Joint Force 2025 by bringing people and capabilities into new centres of specialism and clustering units closer to their training estates. Since the beginning of this year, I have announced plans to dispose of 35 of our most costly sites. Today, based on advice from the Chiefs of Staff, we are going further by freeing up a further 56 sites by 2040 and bringing the total of sites released to 91.

I now turn to what this means in practice. It means that the Royal Navy will continue focusing on operating bases and training establishments around port areas and naval stations, with surface ships in Portsmouth and Devonport; all the UK's submarines on the Clyde; an amphibious centre of specialisation in the south-west, based around Devonport; and helicopters based at Yeovilton and Culdrose. It means the Army having specialised infantry in Aldershot; mechanised, wheeled capability, including two of our new strike brigades, in Catterick; air assault forces in Colchester; armoured and tracked capability around Salisbury Plain; medical services in the West Midlands; and hubs of light infantry battalions in London, Edinburgh, Lisburn, St Athan, Blackpool and Cottesmore. It means the RAF building on its centres of specialism with combat air in Coningsby, Marham and Lossiemouth; intelligence, surveillance and reconnaissance at Waddington; air transport at Brize Norton; force protection at Honington; and support enablers at Wittering and Leeming. Fuller details are published in the strategy, which will be available in the Vote Office.

Secondly, this strategy will deliver a better estate for service families. Over the next decade, we will invest £4 billion in improving our infrastructure and modernising our accommodation, including funding from disposable receipts and the £1 billion secured at the spending review. All savings from running costs will be recycled back into defence. By consolidating our estate and locating our service men and women together with capability, we will provide better employment opportunities for their partners, provide more stable schooling for their families and increase their ability to buy their own home. We have purposely focused on sites that will support recruitment and retention, giving our personnel and their partners greater certainty and confidence to put down roots in local communities.

Finally, a better defence estate will deliver better value for money for taxpayers. By releasing sites we no longer need, we can help build the houses that we do need. I can confirm the MoD has firm plans to achieve its target to release sufficient land to build up to 55,000 houses in this Parliament. My department will

[Earl Howe]
now work with industry, local authorities and devolved Administrations, as well as with our personnel, to deliver this—supporting construction and infrastructure jobs and boosting local economies.

This is a strategy that looks ahead to 2040 to provide the defence estate we need to keep Britain safe and promote our prosperity. As we implement it, we will seek to minimise any disruption to the Armed Forces as well as to service personnel, civilians and their families. We will give our people as much notice as possible over planned redeployments, ensuring all are well provided for. As well as the built estate, I am determined to widen our focus and seek better value from our training and reserve establishments as well. We will update Parliament on our progress in our first annual report next October.

These reforms provide a vision of a better defence estate: an estate that supports a more efficient and effective military capability; an estate that gives our Armed Forces a world-class base from which to work; and an estate that helps defence play its part in securing our security and prosperity. I commend it to the House".

My Lords, that concludes the Statement.

6.03 pm

Lord Touhig (Lab): My Lords, I thank the Minister for repeating the Statement, which is an opportunity to pave the way for a more efficiently and better-run defence estate. When I served as Minister with responsibility for the estate, it was worth £15 billion. I understand it is now worth £31 billion. Our first requirement in maintaining a defence estate is to meet the needs of our Armed Forces for bases, for training, for headquarters and operations, and of course for accommodation for service men and women and their families.

In an Answer to a Question in the other place on 12 January this year, the Defence Minister, Mr Lancaster, confirmed that the estate included,

"11 operating golf courses, one pitch and putt centre and one driving range".

I am not sure how these facilities contribute to our defences but they should at least be earning money for the defence estate, or alternatively be sold off. Perhaps the Minister might have something to say about that. My key point is that the defence estate should be managed by a commercial team of professionals tasked with a duty to meet the demands of the military in the way I have already set out, but also a duty to generate income by the sale of surplus land and facilities or derive an income from them where it is appropriate to do so.

There have been three separate announcements by the Ministry of Defence over the past year regarding the release of more sites where homes can be built. On 18 January, the Defence Minister, Mr Lancaster, said:

"The income generated from the sales will be ploughed back into defence".

On 24 March he said that,

"every penny generated from the disposal",

will be,

"ploughed back into defence spending".

On 6 September, the Defence Secretary, Michael Fallon, said that,

"all of the money generated from land sales will be invested back into meeting the needs of the Armed Forces".

Today's Statement does not mention this in the same way, so can the Minister confirm that all money generated by the sale of MoD land will be invested in defence and not taken back by the Treasury? Can the Minister say how much will be raised from the disposal of the surplus sites listed today?

On 18 January, we were told the sale of land would provide 15,000 homes and generate £500 million for defence. On 24 March, we learned that the sale of land would provide 7,000 homes and generate £140 million for defence. On 6 September, the Government said the sale of land would provide 17,000 homes and generate £290 million for defence. In total, the Ministry of Defence has freed up land for 39,000 homes, generating £930 million for defence. Can the Minister say what the £930 million from the sale of MoD land will be spent on? Is there a plan to use this money? If the £930 million is to contribute to funding the SDSR, how does the MoD plan to contribute the same amount next year when there may be no more MoD land to sell? His department has committed in its statements to,

"generating £1 billion through land sales during this parliament",

and providing land for "up to 55,000 homes".

The amount of land made available so far is sufficient to build 39,000 homes and will raise £930 million. This leaves a shortfall of 16,000 homes and £70 million. How do the Government intend to fill this shortfall?

Today's Statement locates the places where there will be Ministry of Defence facility closures. The closing of bases affects people's livelihoods. How many service men and women and their families will be required to move? What civilian staff will face redeployment? Can the Minister say what help and support will be given to civilian employees who are not able to move? How will his department be consulting with all stakeholders concerned? The Government's Statement indicated that they would seek to minimise disruption by giving,

"as much notice as possible over planned redeployments".

Where there are intended closures, how do the Government plan on minimising the disruption to those in the Armed Forces, their families and civilians? The Statement tells us that the defence estate,

"costs £2.5bn a year to maintain, with 40 per cent of our built assets more than 50 years old. And it often fails to meet the needs of our Armed Forces and their families, with capabilities spread across small, remote sites, often far removed from population centres and job opportunities".

One reason for the sale of this land, however, is to contribute to the Government's target of 160,000 new homes by 2020. Can the Minister explain why they want to build new homes on land that has been described as "small, remote" and "far removed" from population centres and job opportunities?

Finally, the timeframe in this Statement takes us up to 2040. Would it not be a good idea to have a regular review of this policy—say, at least every five years—as circumstances might make changes necessary?

Baroness Jolly (LD): My Lords, I thank the Minister for repeating the Statement. The MoD's aim is to reduce waste from overcapacity or inefficient use of facilities. That has to be welcomed, but as yet we have not seen the list of estates—if it has been released, I have not yet seen it. We welcome the general thrust of what the MoD wishes to achieve, but, as with all things, the devil is in the detail. The opportunity to improve accommodation for service personnel is long overdue, and their families will welcome that investment.

Times have changed. The noble Lord, Lord Touhig, referred to golf courses and pitch and putts, and I have to confess that over 40 years ago, the father of our best man was known as SHAGO—Security, Horse and Golf Officer—for one of the golf courses and Navy bases near Portsmouth. But several serious issues arise from the Statement.

There are the revenues from the sales, the impact on local communities and the opportunity to rationalise the functions of our Armed Forces geographically. Is this just a short-term attempt to plug the gap in defence accounts? We get capital from this money only once, so why is now the time to sell? Are there buyers for these sites? Will the income from the sales go into MoD or Treasury coffers?

In the Statement the Minister said:

"I can confirm MoD has firm plans to achieve its target to release sufficient land to build up to 55,000 houses in this Parliament".

This makes no mention of whether the houses are affordable homes, for which there is a very clear need; whether it is housing that will benefit the local communities, meeting their needs; or whether the houses will be expected to have green standards—all of which is the least that a community should expect, given that it will feel it is losing quite a lot. Has any impact assessment been done of the effect on local communities of losing jobs? There is no point in building houses in these places if there are no jobs to attract people.

I ask the House to excuse me: I am not going to refer to the Army or RAF issues as I have not had time to do the research. I know rather more about the Navy, so I would be grateful if the Minister could clarify some issues surrounding the Devonport naval base and the area around it. Would he confirm that the Trafalgar class submarine will move from Devonport to Faslane? Will he comment on whether the rehousing of the Royal Marines from Royal Marines Stonehouse to Royal Marines Tamar is a possibility? The closure and sale of Stonehouse was announced in the previous Statement amid much local sorrow and anguish but it was not clear, and I do not think it is clear yet, where the Marines and their capability and functions will move.

Earl Howe: My Lords, I am grateful to both noble Lords for their questions and comments. The noble Lord, Lord Touhig, began with a statement with which I wholly agree. This programme has been built around the needs of the Armed Forces; that is the first requirement that we should always consider. I hope the fact that the Chief of the Defence Staff has put his name to the document alongside that of the Secretary of State demonstrates that the strategy is based closely on advice from front-line command. This is about enabling an infrastructure that better supports military capability and the needs of a modern fighting force. That is its starting point. It will see the defence estate consolidated into fewer centres of gravity and specialisation, with better support capability.

He asked about golf courses, which I can cover quite quickly. The department currently has 11 operational golf courses, five of which are contained in today's announcement: Molesworth, Abercorn, Condor, Henlow and North Luffenham. While we do not resent our personnel enjoying the odd round of golf, there is perhaps a happy limit to the number of courses that it is proper for the ministry to maintain.

The noble Lord asked an important question about disposal receipts and whether they would be reinvested into defence. I can give him that assurance. It is not a statement that was included in the words that I repeated, but it applies as much to these disposals as those that we have previously announced.

The noble Lord asked how much would be raised. In the nature of this programme, that is not a question that I can answer because we are looking at a disposal programme over the next 25 years. These are sites that we are now signalling our intention to dispose of, but many of them will in fact not be sold for a number of years, for reasons that I will come on to. But I can say that the disposals will contribute significantly towards the MoD's £1 billion target for land release sales, as set out in last year's spending review. The money raised will be reinvested in the defence estate, where it is most needed. The strategy will also generate savings of more than £140 million in running costs over 10 years, rising to nearly £3 billion by 2040. Again, all that can be reinvested in defence.

The noble Lord asked how many service families would be required to move. We are closely reviewing how to offer service personnel more choice in their accommodation options in future, and by consolidating the defence estate around capability in regional clusters we are able to provide additional stability to service personnel. We recognise the vital contribution made by the families of our personnel and it is our intention to provide better employment opportunities, particularly spousal employment opportunities, for those who often make great personal sacrifices to support the careers of the men and women of our Armed Forces.

The noble Lord asked about regular reviews of this programme, perhaps every five years. I hope I can reassure him even more firmly than that: where plans are required to change we will inform our personnel and we will update Parliament every year on our progress. This is a matter of continual review, not just review every five years. The annual update that we give to Parliament will include updates to reprovision on a rolling five-year basis.

The noble Baroness, Lady Jolly, asked why now was the time to sell. As I have indicated, we do not anticipate selling these sites now or even next year, but some will be disposed of in this Parliament and some in the next Parliament and the Parliament after that. The key point here is that this is an imperative. We have to grip this. The estate is too large, the cost of maintaining it is spread too thinly and we need to configure the estate, as the Statement makes clear, in accordance with the needs of the Armed Forces and their capabilities.

[Earl Howe]

The noble Baroness asked about affordable homes and green standards. Those are discussions that will need to be had with the relevant local authorities as time goes forward. The whole issue of the disruption to local communities, and indeed the enhancement to some local communities, along with the jobs that will be lost and created will be part of those discussions. Again, though, the important point is that we are giving ourselves enough time to have those discussions with local authorities, and I hope that they will welcome that.

On Devonport and the removal of submarines to Faslane, I can confirm that the plan is to base all our submarines in due course at Faslane. I will have to get back to her about the other question she asked about the rehousing of the Royal Marines, if she will allow.

6.18 pm

Lord West of Spithead (Lab): My Lords, the place for the Royal Navy is at sea, and for that you need ships and submarines. I welcome this rationalisation, but can the Minister confirm that this new money, particularly the capital side of it, will be used to run on ships that have already been refitted, as we have discussed in this House, and maybe to buy new ships, and that it will not be used to disguise what is actually a systematic underfunding of defence for Joint Force 2025 because there is insufficient money there to achieve that?

Earl Howe: My Lords, I can confirm that. One of the plus points of the strategic defence and security review, if I can put it that way, was an agreement from Her Majesty's Treasury that by creating these efficiencies—for that is what they are—we can plough the money back into defence. Some of the money will go back into the defence estate, but in the round it will enable our money to go further. Additionally, we have the promise that during this Parliament the defence budget as a whole will increase by 0.5% in real terms every year. So this is not a plan to somehow secrete money away into areas other than the front line; it will in fact boost the front line.

Lord Marlesford (Con): My Lords, does my noble friend agree that the single largest and most valuable site which could—and, I would argue, should—be released for sale for housing, which would probably meet the £1 billion target on its own, is RAF Northolt? Is that being considered?

Earl Howe: Northolt is not being considered at the current time. It is a very valuable facility for the RAF, as well as for the services generally—it is located close to the centre of London—so it is not on the MoD's list at present. However, I recognise the point that my noble friend makes: it is clearly a valuable site.

Lord Hope of Craighead (CB): Can the noble Earl say a little more about the centres of gravity as they affect the Army in Scotland? He mentioned the position of the light infantry battalion in Edinburgh—3 Rifles is presently stationed there and has been for some time. It is widely rumoured that one place that is to be disposed of is Fort George in Inverness-shire, where one of the battalions of the Royal Regiment of Scotland—the Black Watch—is stationed. That raises a question: if Fort George is closed down, will there be any place for a battalion of the Royal Regiment of Scotland to be stationed in Scotland? If not, what is proposed? There is something to be said for having at least one of the Scottish battalions stationed within Scotland, not some distance south of the border.

Earl Howe: I am very grateful to the noble and learned Lord. Fort George is a site of historical importance to the Army; there is no question about that. It is home to the Black Watch, but it has many minus points. It is an isolated site; it is not good for retention for the Army; it is a long way from the training estate; and it costs £1.6 million a year to run. It is therefore on our disposals list, but we are clear that 3 Scots will relocate to an alternative location in Scotland. After all, the origins of 42 Regiment Foot, which is how Black Watch originated, were from the Tay. Although I cannot say that it will move back to the Tay, the fact that it is in Fort George is perhaps a product of history more than anything else. We will engage with the Scottish Government and the local authority to identify the most appropriate combination of development types to maximise the opportunity that Fort George presents. We now have time to engage with local authorities generally about how this is to be managed.

Lord Campbell-Savours (Lab): My Lords, will Crichel Down issues apply in the case of selling off of much of the land? Also, in the case of sites contaminated by former MoD activity, will proper evaluation be made of the cost of decontamination to ensure that when they are ultimately sold, they are not sold at deflated prices? Are MoD officials—civil servants—well aware that the National Audit Office will pore over the sales at some stage in future?

Earl Howe: As to the last point, yes, we are all too well aware of that. We are anxious at all times to achieve best value for the taxpayer. Crichel Down considerations can and do arise where former owners come forward to claim title. Of course, due process is followed. It is being followed in the case of Southwick Park, for example, which I think was announced as one of our intended disposals in September.

Decontamination is also a live issue on many of the sites. There is no question of disguising contamination where it occurs: environmental assessments always have to be made and are done openly and transparently with potential purchasers.

Lord Campbell of Pittenweem (LD): The noble Earl is quite right to say that the Black Watch traditionally came from north of the Tay—and south, as well—because it has traditionally recruited in Angus, Perthshire and Fife. My question is whether any impact on Reserve units in all three services arises from the Statement he has made today.

Earl Howe: There may well be some impact on Reserve units, in so far as where they train and are based when they are called up, but I cannot supply the noble Lord with any detail on that. If I am able to after this, I will happily write to him.

Lord Lansley (Con): My Lords, I follow that question precisely. My noble friend's Statement is very welcome, but he knows that in future forces, the Reserve Forces will play an enhanced and important part, so their ability to train on mobilisation is very important. Can he say a bit more about how capacity for their training can be supplied? In particular, Bassingbourn Barracks in my former constituency has lain idle for more than two years, is brilliantly situated and well-equipped to provide Reserve Forces mobilisation training.

Earl Howe: I am grateful to my noble friend. In a sense, considerations for the Reserve Forces cannot be separated from those for Regular Forces because, with the whole force concept, training is now taking place with regulars and reservists side by side, which is entirely appropriate. I am aware that Bassingbourn's future use has been the subject of a great deal of speculation, but I cannot inform my noble friend in detail about the site. Again, if I can enlighten him in writing I am happy to do so.

Lord Foulkes of Cumnock (Lab): My Lords, will the Minister confirm that the welcome announcement about the development of an infantry centre in Edinburgh, the improvements at Lossiemouth, his earlier announcement on the Royal Regiment of Scotland and the announcement made last week about the frigates on the Clyde are all possible only because the people of Scotland two years ago rejected separation, and that it is part of the welcome union dividend?

Earl Howe: The noble Lord makes a very good point, and I agree. It enables us as a department to commit to an enduring defence presence in Scotland through a number of programmes. As he is aware, we have now committed to building eight type-26 global combat ships on the Clyde. We are investing more than £500 million in the infrastructure and capability of the naval base at Clyde as it becomes the home of all Royal Navy submarines by 2020. We are investing in the expansion of RAF Lossiemouth, so that it will be home to at least one additional Typhoon squadron, as well as the maritime patrol aircraft. We are investing in concentrating some Army capabilities in Leuchars Station. That will improve access to suitable training areas. Across a whole range of projects, Scotland will benefit.

Lord Craig of Radley (CB): My Lords, I have a couple of questions for the noble Earl. Generally, I welcome the Statement, but in repositioning units and so on considerable capital expenditure is incurred. Is it reasonable to expect that the amount of money from sales will be adequate to meet that expenditure as it occurs, and not fall to the Ministry of Defence to find additional funds early on in the hope of jam tomorrow? Secondly, runways are of course vital to the Royal Air Force and to any flying unit. With the reduction in the number of airfields, will there be sufficient runway availability when some runways have to be repaired and flying from that unit will have to stop? Finally, this presumably refers only to MoD holdings in this country, and not to holdings overseas.

Earl Howe: I am grateful to the noble and gallant Lord. I can confirm that this applies only to holdings in this country. As regards runway availability, I will have to write to him as I do not have it in my brief. He makes an important point on the cost of reprovision, but again I come back to what I said earlier: this is being driven primarily by the needs of the Armed Forces. While we may find in some cases that the net receipt from a disposal is of a fairly de minimis nature, nevertheless the reprovision will be the right thing to do for that particular unit or part of the service.

Baroness Smith of Newnham (LD): My Lords, we have already heard about the National Audit Office and questions about value for money for the taxpayer. That has so far been on the receipts side, but can the noble Earl tell us what work is being done to ensure that the defence procurement contracts to deliver the better estate for service families, which will be most welcome, and the maintenance contracts for accommodation for services will also deliver value for money for the taxpayer and the best possible outcome for service families?

Earl Howe: My Lords, the department takes the provision of good service family accommodation very seriously. We are continuing to manage the improvement of the performance in this area of CarillionAmey, which is the contractor as the noble Baroness knows. At the end of May 2016, following what was called a "Get Well Plan", CarillionAmey effectively passed with a performance that was markedly better than it had achieved previously: in the next generation estate contract, 29 of 30 KPIs met performance targets; in the national housing prime, six of seven key performance indicators met performance targets. We will continue to monitor closely the company's delivery performance, working collaboratively with it, of course, to sustain and improve its performance. But the noble Baroness is absolutely right that we need to achieve value for money in this area. I believe that now we are nearly there, but CarillionAmey is under no illusions that it must maintain this rate of improvement.

Lord Robathan (Con): My Lords, like the noble Lord, Lord Touhig, I too was responsible for the defence estate for a time in the previous Parliament. My question concerns not golf courses but the growing disconnect between the Armed Forces and the people of this country whom they defend. With the reducing footprint that my noble friend the Minister has mentioned, the Armed Forces have a tendency to retreat back into their barracks and away from the people they defend, so there comes a greater disconnect. Can my noble friend reassure me that this will not lead to the civilian population regarding the Armed Forces as a race apart?

Earl Howe: My noble friend makes an extremely important point—one that has been very much in our minds as we have taken these ideas forward. I will be quite open with him: it is a risk. The more that personnel are concentrated in fewer centres, the more that the population as a whole will feel disconnected from the armed services. Ways must be found, therefore, to prevent that happening. We can see routes through

[Earl Howe]
events such as Remembrance Sunday and the commemorations around that. We can see it through the charitable work of organisations such as Help for Heroes, and so on. It is something that we need to bear in mind as we go forward. As Minister with responsibility for community engagement, I can tell my noble friend that I receive regular advice on this very topic.

The Lord Bishop of Chester: My Lords, I follow the point made by the previous noble Lord by asking about recruitment. I notice that Dale Barracks in Chester are on the hit list. That has been a centre of recruitment for the Cheshire regiment over the years. It is hardly a small and remote site, as referred to in the report. Now the 2nd Battalion the Mercian Regiment is pretty much based there. How is recruitment to the Armed Forces likely to be affected by this withdrawal from a large number of sites, where the association with the Army—or the Navy or Air Force, for that matter—goes back a very long way?

Earl Howe: The concentration of sites that I have been talking about plays into recruitment in the round because the more stable and confident armed services personnel and their families feel about their roots and where they are, the more we are likely to see a better performance in recruitment and retention. The problem with some of these sites—I do not necessarily include the one referred to by the right reverend Prelate—is that they are remote, do not play into the recruitment agenda very easily, and certainly not the retention agenda, and they are not conducive to spousal employment either. We want a better deal for families in the round, and I hope that over the next few years, as this programme rolls out, the personnel of our Armed Forces will see it in the same way.

Lord Kilclooney (CB): My Lords, as there will continue to be an enduring defence presence in Northern Ireland, can the Minister confirm that Ballykinler in County Down will be disposed of, and has Drumadd Barracks in Armagh city already been disposed of?

Earl Howe: My Lords, Ballykinler will continue to provide valuable training assets for both the Regular and Reserve forces within Northern Ireland. There are no plans at this stage to reduce the training facilities in either location. I apologise to the noble Lord—he mentioned a second site.

Lord Kilclooney: Drumadd Barracks in Armagh city. It was up for sale, but we do not know what has happened.

Earl Howe: I shall need to write to the noble Lord on that.

Lord Spicer (Con): My Lords, anything which improves the morale and efficiency of the Armed Forces is to be welcomed in the face of the rising Russian menace. In that context, and relevant to it, can my noble friend say at some time, if not now, what number of hostile probes there have been in NATO by Russian naval ships and by the Russian air force?

Earl Howe: I shall again need to write to my noble friend as this is slightly off the theme of the Statement, but I recognise the importance of the point he raises.

Lord Beith (LD): My Lords, will the vital monitoring of our skies against hostile incursions continue to be carried out from RAF Boulmer in Northumberland, bearing in mind that, the last time there was a proposal to move it, the proposal got short shrift from the National Audit Office?

Earl Howe: I was slightly dreading that I would get questions on the detail of these sites. Again, I hope that the noble Lord will allow me to write to him on that point.

Wales Bill

Committee (2nd Day) (Continued)

6.39 pm

Clause 18: Functions of Welsh Ministers

Amendment 25

Moved by ***Lord Elis-Thomas***

25: Clause 18, page 17, line 33, at end insert—

"(e) those functions of a Minister of the Crown specified in paragraph 11(1)(b) to (e) of Schedule 7B."

Lord Elis-Thomas (Non-Afl): My Lords, we come to the end of our scrutiny of Part 1 and to the group of clauses subtitled, "Executive competence etc". The Minister will not be surprised to know that I am particularly interested in the "etc", because the issue of the competence of the Assembly and how it is defined in law is one that he and I have followed throughout our political careers in Welsh devolution—or should we now say "Welsh reserved matters"? The Assembly has developed away from a body that did not have an Executive: the notion of an elected body—that is, the legislature—and a Government—an Executive—were confused in the original Government of Wales Act 1998, which was really a rewritten version of the Wales Act 1978. But that was the form of constitution with which we had to work. It is not just a matter of what politicians work with but the understanding of the constitution outwith the political class and the ability of the electorate to engage with the constitution that I have always been deeply concerned about.

I am not sure where we are going in the detail of this Bill. In the attempts to define the functions of Ministers and the transfer of ministerial functions, which we are dealing with in these clauses, we have not moved much further in clarity of understanding of what devolved matters are about and how Ministers derive their functions. I pray in aid the Explanatory Notes, which in introducing us to the delights of Clause 18 tell us about new Section 58A, inserted into the Government of Wales Act 2006, which seems to be taken as the urtext of our constitution—I may come back to that later this evening with the question of consolidation. The Explanatory Notes emphasise that that new section inserted into the Act,

"confers common law type powers on Welsh Ministers; these powers are described as executive ministerial functions and they will be exercisable both in relation to devolved functions and ancillary to executive functions conferred on",

Ministers in reserved areas. It goes on to say:

"Subsection (5) defines what is meant by an executive function; this does not include any prerogative functions".

Clearly, the earlier Statement in this House, repeated from the Commons, and the judgment of the High Court has been much about the definition of "prerogative" and its limits and potential in defining what Ministers can do. If we are being told that Welsh Ministers have no functions by virtue of any legislation or the prerogative, how do they derive their functions? There is no explanation known to me or my advisers for the exclusion to which I have just referred.

During the debate in the other place, the Government said that they intended to transfer,

"as many of these functions as we can".—[*Official Report*, Commons, 5/7/16; col. 835.]

That is, they will transfer to Welsh Ministers pre-commencement functions and devolved powers. What is the present ministerial position on that, and on the draft transfer of functions order which was promised to be brought forward in later stages of the Bill? In particular, I would like a clearer explanation of why the approach adopted in the Scotland Act 1998 has not been adopted in how we define the functions of Welsh Ministers. I beg to move.

6.45 pm

Lord Howarth of Newport (Lab): I have one very naive question, in which I shall simply display my ignorance—but I am puzzled by the explanation given in the Explanatory Notes that Clause 18(1) inserts a new section into the Government of Wales Act which,

"confers common law type powers on Welsh Ministers".

That is the passage that the noble Lord just quoted. I thought that the judges and the courts created common law; I did not think that the Ministers created it. I would be most grateful if someone, presumably the Minister, could educate me on that point.

Baroness Morgan of Ely (Lab): We have quite a strange group of amendments here but, rather than uncouple them, I would like to suggest a degree of support for the points raised by the noble Lord, Lord Elis-Thomas, and the question from my noble friend. We believe that our amendments, notably Amendment 29 in the next group, will achieve the same result of a better alignment between the Assembly's legislative competence and Welsh Ministers' executive powers. I shall save my comments on the general principle of aligning legislative and executive powers until the next grouping.

I shall address the specific issue of fishing, addressed by one of the government amendments in this group. At present, Welsh Ministers have powers to exercise fisheries functions in relation to Wales and the Welsh zone. The Welsh zone includes a zone of 12 nautical miles next to the Welsh coast and the territorial sea, which, because Ireland is to the west of most of Wales, reaches beyond that point significantly only in the south-west of Wales, on the Pembrokeshire coast. Unfortunately, the extent of Welsh Ministers' powers do not reflect the arrangements in England and Scotland, with those Administrations having executive powers in relation to their relevant areas. My understanding is that the Welsh Government have pursued a solution to this for several years, so it is encouraging that the amendment has been brought forward.

The amendment goes some way to addressing requirements, but it requires further work to work properly. For example, as currently drafted, the amendment would permit functions under Section 5 of the Sea Fish (Conservation) Act but not Section 5A, which permits functions to be exercised for "marine environmental purposes". A number of other aspects need to be considered. It would be better if the amendment mirrored the scope of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010, which covers the sort of functions required. It would help to achieve a degree of consistency around who controls fisheries management measures. While we support the Government's amendment on fisheries as far as it goes, we hope that further work can be done on this matter before Report to ensure that the provisions are fit for purpose.

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 have participated in the debate on these amendments, and the noble Lord, Lord Elis-Thomas, for bringing them forward. I am well acquainted with his burning passion in relation to these matters, which I know we have discussed many times before.

I turn to the amendments, through which the noble Lord and the noble Baroness seek to extend the common law-type powers of Welsh Ministers. I shall break off and explain what I think that means to the noble Lord, Lord Howarth. The issue here is that, yes, common law grows up over a period of time, mostly, though not exclusively, from the contribution of judges—some of it would be by convention in other ways, I think. Here we are seeking to confer these types of powers on Welsh Ministers. We cannot do that by the effluxion of time, because time has not allowed that, so we are taking what is already the position in relation to the common law powers that exist for UK Ministers and saying that we believe that those types of powers should exist for Welsh Ministers. We are transposing them because we cannot build in the period of time element.

It is our view that these amendments would undermine the protection given to a very limited number of Minister of the Crown functions, which the Assembly may modify only with the consent of United Kingdom Ministers. Clause 18 is a key part of delivering the clear settlement that we are putting in place through this Bill. Ministers of the Crown and Scottish Ministers already exercise these common law-type powers. This clause would put Welsh Ministers broadly on the same footing as Ministers of the Crown and Scottish Ministers by ensuring that in future they too will be able to exercise such common law powers.

The noble Lord, Lord Elis-Thomas, asked a very fair question in relation to the royal prerogative. I am very willing to meet with him to discuss this further

[Lord Bourne of Aberystwyth]
but, so far as we have been able to ascertain, the royal prerogative has not been conferred on Welsh Ministers. They derive their powers from transfer of function orders or under the legislation. The noble Lord probably knows more about the royal prerogative than I do; I am very happy to meet with him on this issue.

Lord Elystan-Morgan (CB): My very short and technical question is whether it is humanly possible, in any event, for prerogative powers to apply to a Parliament of the nature of the devolved Welsh Administration. As I tried to say in a contribution earlier this afternoon, the royal prerogative derives from what started off as a monarchical diktat, curbed by Coke in 1610, very largely whittled away during the Civil War, and largely defined during the First World War—the noble Lord will remember the case of the Attorney-General v De Keyser's Royal Hotel Limited. By now, there is hardly a remnant left, but I submit that that remnant can remain only with the mother Parliament.

Lord Bourne of Aberystwyth: The noble Lord jogs my memory on the Attorney-General v De Keyser's Royal Hotel Limited which was a compulsory purchase situation. I believe that he is right and he speaks with great authority. I am always stunned by the noble Lord's recall of these matters, without any note. I am confident that he is right on this issue, but nevertheless I am very happy to meet with the noble Lord, Lord Elis-Thomas, to look at it further.

I was also asked about the transfer of powers, which we are doing by transfer of function order rather than in the Bill. I have notified noble Lords of the functions that we have identified that will be transferred to Ministers. We are consulting with the Welsh Government in case they find any more that we have missed. I do not think that is the case, but if it is we will, of course, amend the transfer of functions orders.

The noble Baroness referred to and welcomed Amendments 31 to 35, which add a number of additional fisheries management functions to the licensing functions already being transferred to Welsh Minsters. These are management functions under the Sea Fish (Conservation) Act 1967. The noble Baroness has said that she is happy with this but it could go further. I will go away and take a look at it, reflect on what she has said and come back to it on Report. On that basis, I urge the noble Lord, Lord Elis-Thomas, to withdraw his amendment.

Lord Elis-Thomas: My Lords, I will take up the Minister's offer of a meeting, not that I want to add to his diary which is obviously very busy during the passage of the Bill. I know that he understands my concern about the general failure of the Bill to move us forward and provide a stronger basis for both the functions of Ministers and the operation of the National Assembly itself. I will not pursue that, because I am leading on the next amendment. I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Amendments 26 and 27 not moved.

Amendment 28

Moved by ***Lord Elis-Thomas***

28: Clause 18, page 18, line 4, at end insert—

"(6A) In this section and section 58AA, "within devolved competence" and "outside devolved competence" are to be read in accordance with subsections (7) and (8); but for the purposes of section 58AA no account is to be taken of the requirement to consult the appropriate Minister in paragraph 11(2) of Schedule 7B."

Lord Elis-Thomas: We come to a further elaboration of the relationship between ministerial functions and those of the Assembly. This is a basic constitutional issue which we have failed to address throughout the years of the pursuit of the holy grail which United Kingdom Governments of both parties and one coalition keep calling a "settlement" of Welsh devolution. I think I have said in this House—I have certainly said it in the Assembly—that there is no such thing as a settlement of democracy or politics: it always evolves. If we are looking for something akin to what is available in Scotland and Northern Ireland, which is what I would look for in the context of the United Kingdom, then this Bill does not deliver it, particularly in the area of the relationship between the definitions of ministerial functions and the competence of the Assembly. In her evidence in July, the chief legal adviser to the National Assembly, Elizabeth Jones, referred the constitutional committee—to which, I am happy to announce, I have recently been re-elected following my change of description—to the position, put forward by the former Presiding Officer, that,

"the situation in Wales should be equivalent with Scotland; that is that all ministerial functions, functions of Ministers of the Crown, exercisable within devolved areas … should lie with Welsh Ministers. From a constitutional law point of view, that would be a very logical situation and would also increase the clarity of the settlement very considerably".

I must pursue this. Perhaps I could discuss it with the Minister at the same meeting he gave me the option of having earlier when we discussed the royal prerogative. It seems to me that the aligning of executive functions of Welsh Ministers with the legislative competence of the National Assembly would address some of the complexity that will arise in relation to the Minister of the Crown consent in the current regime. If there was such an alignment, then UK government consent would not be needed before the National Assembly could affect UK Ministers' functions in devolved areas because those functions would already have been transferred to Welsh Ministers. These are the issues that I am trying to pursue in this series of amendments. The Minister will, no doubt, be aware of and have read the report of the Constitutional and Legislative Affairs Committee of the National Assembly, whose work in this area is equivalent only to the work of the Constitution Committee of this House. We have been so exercised by the attempt to make sense of the devolution structure with which we have to work that I do hope it will be possible for the Minister to consider whether a move towards the alignment of legislative and executive competence would not clarify the devolution structure much more effectively. I beg to move.

7 pm

Baroness Morgan of Ely: My Lords, I thank the noble Lord for setting out some of the issues relating to the transfer of Minister of the Crown functions and the need for an alignment of legislative and executive powers. Many of the amendments in this group make provisions for the executive competence of Welsh Ministers to be aligned with the legislative competence of the National Assembly; that is to say that Welsh Ministers would gain all the relevant executive functions in devolved areas. Given the Government's intention of producing a Bill that is to provide clarity and coherence to the Welsh devolution settlement, it is difficult to understand why such a simple provision as the alignment of executive and legislative competence has not been included.

The Government have made it clear that they believe that the reserved powers model of devolution is superior to the conferred powers model—that is common ground between us. Why then does the Bill provide for a reserved legislative competence but continue to operate on the basis of a conferred powers model in respect of executive powers for Welsh Ministers?

The continued heavy reliance on transfer of functions orders, with their itemised listing of the statutory powers available to Welsh Ministers, is a relic from the past. I note that the Minister has said today that he will look again to see whether there are any more that he has left out. But it is the principle involved here that we are concerned with. We need now to fully accept the logic of the reserved powers model and align legislative and executive competence in the way set out in the simple and straightforward formula proposed in Amendment 29.

It has become clear that the Government have used the Scotland Act as a guide in developing this Bill. Again, it is therefore difficult to understand why a fundamental principle of the Scottish devolution settlement is not being replicated in this Wales Bill. The Bill provides for the extension of the competence of the National Assembly in a number of areas. Surely as the legislative powers of the Assembly expand, it is essential to align executive powers with them. We recognise that transfer of functions orders will still be needed where there is a proposal to transfer ministerial functions in areas that are reserved—emergency powers are a case in point. However, in the general principle, it is just not clear why the Government have taken this point.

My noble friend referred to the constitutional committee of the Assembly. I now want to refer to the House of Lords Select Committee on the Constitution, which said that:

> "If the Government's intention is to align, as far as possible, the executive and legislative competence of the Welsh Assembly and Government, we question why it is doing so via secondary legislation rather than in primary legislation—as was the case in Scotland".

The general principle should be that executive powers in devolved areas should be exercised by Welsh Ministers. Why do the Government have such difficulty with this simple proposition? I hope that the Minister will be able to enlighten us.

Lord Hope of Craighead (CB): My Lords, I want to add just a word or two from the Scottish perspective to what has just been said. I was involved in the consideration of the Scotland Bill that became the Scotland Act 1998, some considerable number of years ago. One of the groups of sections, which is now to be found in Sections 52 to 56 of the Scotland Act 1998, dealt with ministerial functions. The critical section, which is closely aligned with what is proposed in this amendment, is Section 53, which says in subsection (1) that:

> "The functions mentioned in subsection (2) shall, so far as they are exercisable within devolved competence"—

those critical words—

> "be exercisable by the Scottish Ministers instead of by a Minister of the Crown".

That was part of the whole structure of the Scotland Act, which, as the noble Baroness, Lady Morgan, has noted, was designed on a reserved powers basis but is very much relevant to what has been designed for Wales today, dealing as it does with the idea that anything to do with devolved competence so far as Ministers are concerned should be within the functions of Scottish Ministers in place of Ministers of the Crown.

The functions listed in subsection (2) were three. The first is,

> "those of Her Majesty's prerogative and other executive functions which are exercisable on behalf of Her Majesty".

I do not think it is being suggested that that should be done in this case. The second is,

> "other functions conferred on a Minister of the Crown by a prerogative instrument".

The third and important one for the present purpose is,

> "functions conferred on a Minister of the Crown by any pre-commencement enactment".

Those are the words we see echoed in subsection (1) of proposed new Section 58B. We then have a definition in the Scotland Act of what a pre-commencement enactment means, which is exactly as set out in the amendment.

So far as Scotland is concerned, the effect of Section 53 was to achieve complete clarity and make it very simple for those who were designing statutory instruments to give effect to the transfer of functions to find a solid base for what they were proposing to do. Again, I was quite closely involved in observing the way in which the functions were transferred. It seemed to me that the matter went very smoothly, given the clarity set out in the Scotland Act.

Although I certainly am not as fully aware of the position in Wales as those who have already spoken are, I think, with great respect, that there is great force in the idea that an amendment of this kind should be made. It is part of the development that the noble Lord, Lord Thomas of Gresford, mentioned earlier of progressing the Welsh Assembly and its Ministers into the modern structure that suits the evolving nature of what is now taking place in Wales.

Lord Howarth of Newport: My Lords, the call for the alignment of legislative and executive powers is not just a call for tidying-up: it is a call for clarity of accountability. Unless we have that alignment, in the same devolved matter, Welsh government Ministers

[Lord Howarth of Newport]
will be accountable to the Welsh Assembly on some aspects and Ministers of the Crown will be responsible to this legislature on others. That makes for confusion and a political mess. Is not it far better to get some coherence and clarity of accountability, as my noble friend and other noble Lords are calling for?

Lord Thomas of Gresford (LD): My Lords, on 5 July, in the House of Commons, the Government promised to produce draft transfer of functions orders. Have those been produced so far—and if not, why not? Is the noble Baroness, Lady Morgan, right when she says that they will be conferred functions rather than reserved functions?

Lord Bourne of Aberystwyth: I thank all noble Lords who have participated in the debate on this part of the Bill and specifically the noble Lord, Lord Elis-Thomas, and the noble Baroness, Lady Morgan of Ely, who are seeking to broaden the definition of the Assembly's legislative competence to include functions where consultation with a Minister of the Crown is required before modification, by virtue of paragraph 11(2) of new Schedule 7B.

Specifically in relation to the functions set out in that sub-paragraph, I should say first that they are very few. We should be clear that the great bulk of ministerial functions will be transferred by transfer of functions orders—that is the intention—but there are four here that need prior consent. I am willing to go away and look at these, but I have to say that some relate to circumstances that perhaps noble Lords have not taken account of. For example, the very porous nature of the border means that for water—noble Lords will know that we are still looking at this—the present position is that the National Assembly for Wales has some competence in relation to customers who are in England, and vice versa. Therefore, it is not quite as straightforward as it might be in Scotland, with respect to the noble and learned Lord, Lord Hope. That said, I will have another look at the functions as they are set out and be in a position to better inform noble Lords as to the precise thinking behind these.

However, in relation to, I think, Amendment 36, in the name of the noble Lord, Lord Elis-Thomas, or Amendment 37, in the names of the noble Lord, Lord Elis-Thomas, and the noble Baroness, Lady Morgan of Ely, the reason for the measure is specifically the evolving picture on water. We are still looking at that. That is why the measure is in the Bill. Having looked at it, I think it is probably wider than we need, because, if it is needed just for water and sewerage, I do not see why we cannot say so. Therefore, I will certainly take that back to see whether we cannot amend it. If the noble Baroness and noble Lord look at that provision, they may see that we need it because of the situation to which I have just referred of some English customers being subject to Welsh law and Welsh customers being subject to English law. We need to tidy that up.

The noble Lord, Lord Thomas of Gresford, asked about the transfer of functions orders. He will be aware that I wrote to noble Lords setting out those we intend to transfer. Because of the evolving nature of reserved matters—for example, on teachers' pay—work on that is still going on. I assure him that work continues on that, perhaps not quite as we speak but pretty much as we speak. On the basis of these remarks, I would be grateful if the noble Lord would withdraw his amendment.

Lord Hope of Craighead: I take up the noble Lord on one point. If I heard him correctly, he said that the amendment was concerned with legislative functions. Strictly speaking, it deals with executive functions, certainly from the perspective of the Scotland Act. Looking at it against that background, I see this as dealing very definitely with the functions of Ministers, which is the executive branch, rather than the powers of the Assembly.

Lord Bourne of Aberystwyth: My Lords, the noble and learned Lord is absolutely right. I correct myself.

Baroness Morgan of Ely: The noble Lord has not clarified to me why he would object to the principle of this alignment between executive and legislative competence. He has told us that he has looked at all these different things, has brought most of them forward, that there is a long list and that he does not think there are many more. But why would he object to the principle of this alignment?

Lord Bourne of Aberystwyth: My Lords, with respect, for the reason I have given—namely, that it is fine as a principle but, because it on occasion throws up circumstances that cannot be foreseen, it is wise that we go through it with a fine-toothed comb. If we had not done so, it would create difficulties with the alignment we are seeking on water, for example.

Baroness Morgan of Ely: Would it not be possible to do it the other way round and make an exception to the principle? Would that not be easier?

Lord Bourne of Aberystwyth: Once we know what the exceptions are, of course, that is the case, but we need to go through them to make sure that there are none of those exceptions.

Lord Elis-Thomas: My Lords, I am grateful to the Minister yet again for his generosity in responding to the arguments. We await his further consideration and, no doubt, will have further discussions with him. As the former Member of Parliament and now the Assembly Member for a particular length of the River Dee, I certainly would not want to deprive customers anywhere on either side of the Marches of Wales of their water supply. It is a bit rich, when we revert to this exceptional issue, to suggest to the noble and learned Lord, Lord Hope, that because the rivers in Scotland apparently flow into the sea rather than into England, the situation in Scotland is somehow different. We need weightier arguments on that issue than we have had.

However, I am grateful to all noble Lords who have participated in the debate. The noble Lord, Lord Howarth, emphasised the need for clarity and accountability. That is exactly the clarity that all of us who have tried to build and rebuild the devolution

settlement in Wales seek. I was particularly grateful, as always, to the noble Lord, Lord Thomas of Gresford, for his incisive questioning, and, of course, to the noble Baroness, Lady Morgan of Ely, whom I affectionately earlier called the red baroness. I hope that did not cause her offence. Perhaps I called her that in the Assembly; I keep confusing the Assembly and this Parliament. I will withdraw the amendment but I give way to the noble Lord.

7.15 pm

Lord Crickhowell (Con): I propose to speak later on the water issue but the noble Lord observed that the rivers in Scotland flow straight into the sea. As a former chairman of the National Rivers Authority, I can assure him that the Solway does not flow straight into the sea; it flows from Scotland through England. We had considerable difficulties when we tried to charge the Scots for the work we did on fisheries on one side of the border, so there is not even that exception to justify the treatment. I hope we can move to simplicity and clarity in the Bill, something I have urged all along. I am grateful to noble Lords who have spoken for their clarity and brevity on this constitutional issue, in contrast to the extraordinary verbosity with which a so-called constitutional issue was addressed earlier this evening.

Lord Elis-Thomas: I do not think it is for me to comment on that. I am grateful to the noble Lord, who was a very distinguished Secretary of State and took many initiatives from which we benefited in Wales. He was certainly an extremely distinguished chair of the National Rivers Authority. I can never forget that. I recognise that there are exceptions in Scotland and in Wales. Perhaps one day we will legislate in this House in a way that removes this notion of a border between England and Wales. As a late medieval scholar, I always thought that everywhere within a 40-kilometre band of the so-called political border was the Marches. I beg leave to withdraw the amendment.

Amendment 28 withdrawn.

Clause 18 agreed.

Clause 19 agreed.

Clause 20: Transfer of Ministerial functions

Amendment 29 not moved.

Clause 20 agreed.

Schedule 4: New Schedule 3A to the Government of Wales Act 2006

Amendments 30 to 35

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

30: Schedule 4, page 94, line 6, at end insert "or the Marine Management Organisation"

31: Schedule 4, page 94, line 11, leave out "(c)" and insert "Functions of a Minister of the Crown under"

32: Schedule 4, page 94, line 12, at end insert ", so far as relating to sections 4 and 4A"

33: Schedule 4, page 99, line 11, leave out from "functions" to "so" in line 12 and insert "listed in sub-paragraph (2),"

34: Schedule 4, page 99, line 14, leave out from "exercisable" to end of line 15 and insert "concurrently with the Welsh Ministers."

35: Schedule 4, page 99, leave out lines 16 to 18 and insert—

"(2) The functions are—

(a) functions of a Minister of the Crown under section 1 (size limits, etc for fish) and section 3 (regulation of nets and other fishing gear) of the Sea Fish (Conservation) Act 1967;

(b) functions of a Minister of the Crown or the Marine Management Organisation under section 4 (licensing of fishing boats) and section 4A (restrictions on time spent at sea—appeals) of that Act;

(c) functions of a Minister of the Crown under section 5 (power to restrict fishing for sea fish) and section 6 (prohibition on landing of sea fish caught in certain areas) of that Act;

(d) functions of a Minister of the Crown under section 15(3) of that Act (conferral of enforcement powers on British sea-fishery officers), so far as relating to the sections listed in paragraphs (a) to (c);

(e) functions of a Minister of the Crown under section 5 of the Sea Fisheries Act 1968 (regulation of conduct of fishing operations), so far as they relate to the identification and marking of fishing boats, and section 7 of that Act (sea fishery officers);

(f) functions of a Minister of the Crown under section 2 (access to British fisheries) and section 7(1) (power to incur expenditure) of the Fishery Limits Act 1976;

(g) functions of a Minister of the Crown under sections 15(1) and 16 (financial assistance) of the Fisheries Act 1981."

Amendments 30 to 35 agreed.

Amendment 35A

Moved by ***Baroness Morgan of Ely***

35A: Schedule 4, page 99, line 46, at end insert—

"Functions exercisable concurrently or jointly with Welsh Ministers

4A_ Functions of the Secretary of State under section 272 of the Transport Act 2000 (financial assistance for inland waterway and sea freight) so far as they relate to—

(a) the carriage of goods by an inland waterway that is partly in Wales, or

(b) the carriage of goods by sea where the carriage concerned is wholly or partly by sea adjacent to Wales (within the meaning of that section),

are exercisable concurrently or jointly with the Welsh Ministers."

Baroness Morgan of Ely: I can move it, if noble Lords would like that. Is that acceptable? The issue addressed by this group of amendments is that of the trust ports.

The Bill as drafted enables the Assembly to legislate on ports and harbours and transfers additional executive functions in respect of them from the Secretary of State to Welsh Ministers. This is in line with the Silk recommendations and the St David's Day announcement. However, the Bill also creates a specific category of reserved trust ports which reach a certain turnover threshold on which the Assembly cannot legislate and

[Baroness Morgan of Ely]
over which Welsh Ministers cannot exercise any powers. Therefore, the Welsh Assembly is able to legislate on almost all ports, but a significant one is missing. This reservation was absent from both the St David's Day Command Paper and the Silk report. Currently, the only Welsh port to reach the threshold stated in the Bill is Milford Haven in Pembrokeshire. The UK Government's justification for this peculiar reservation is the strategic significance of Milford Haven as a key energy port. They point to the fact that 62% of all liquid natural gas that comes through UK ports is handled by Milford Haven and that the oil refinery and fuel storage facilities at the haven, which are dependent on the port, play an important role in securing supplies of road and aviation fuel.

That is especially odd considering that the UK Government declined to cite energy security as a policy driver for investment in Milford Haven to support the sale of the Murco refinery in 2014. It is worth noting that the trust port of Aberdeen, which could be seen to have a strategic significance equal to that of Milford Haven due to the importance of North Sea oil to the UK, is under the control of the Scottish Government. There is an element of double standards at work here. In Scotland, all ports and harbours are devolved, including Aberdeen.

Reserving the port also brings into play the danger that the UK Government could in future privatise the port authority against the wishes of the people and the National Assembly. Some have already noted their concern about the potential for asset-stripping and fragmentation, were that to occur. Removing any reservation regarding Milford Haven would safeguard from privatisation what some have called "The People's Port". It would also bring the Welsh Government's devolved powers with respect to ports and harbours in line with those of Scotland, with the Silk report and with the St David's Day announcement. I am therefore proposing amendments that would remove the concept of a "reserved trust port" from the Bill, which would enable the National Assembly to have competence in respect of all trust ports in Wales.

I should like to touch briefly on another amendment in this group, concerning coastguards. There is no rhyme or reason to discuss it here but it is included in this group. I think it is asking the Secretary of State very little to consult Welsh Ministers on the strategic priorities of the coastguard in Wales. This is done in Scotland and perhaps the Minister could comment on that.

Baroness Randerson (LD): My Lords, I support the noble Baroness's comments. I really cannot see any shadow of logic behind the exception being given to Milford Haven. It makes no economic sense to give the Assembly the power over all the other ports but to make this the one exception. Of course, the exception hurts all the more because, by some strange coincidence, it just happens to be the largest port in Wales.

I strongly believe that Welsh devolution should not be a slavish mirror of Scottish devolution. I accept that there is a long and well-populated border between Wales and England, and it is not always the case that what is good for Scotland is good for Wales. However, I can see absolutely no reason why Milford Haven, which is about as far from the border as you could possibly get, should not be subject to the same kinds of rules to which Aberdeen is subject. It is clearly inconsistent for the Scottish Government but not the Welsh Government to be given this power, and I fear that, yet again, it is a case of Wales being treated as second class.

I also fear that we are going to come across dozens of examples—if not today then certainly in next week's debates—of the Government simply mirroring the existing messy settlement in the long list of reservations. That will not provide the stable settlement I had hoped the Bill would achieve, and which I believe many of the Bill's architects had originally hoped for. Therefore, I very much hope that the Government will use the opportunity between Committee and Report to think again about this issue.

Lord Crickhowell: My Lords, for 17 years I was the Member of Parliament for Pembroke and I had very detailed and involved discussions—and sometimes arguments—with the trust board at Milford Haven. Undoubtedly it is a strategic port. Gas imports are important, and the port's position at the end of the oil pipeline that conveys the gas to the rest of Britain is clearly of great significance. However, from time to time I had profound disagreements with the port authorities, not least on safety matters, and I frequently urged the UK Government to interfere and take action, which on a number of occasions they were reluctant to do. The Welsh Government might be more likely to give attention to those concerns than the UK Government.

I remain completely open-minded on this issue. As I said, I understand the strategic significance but, on the face of it and on the basis of my experience, I am not entirely convinced that the job could not be done by the Government of Wales. Therefore, I will listen with considerable interest to the case made by my noble friend. I am quite prepared to be persuaded, but I think that a legitimate case is being advanced here and we need to know the exact reasons for the Government's decision.

Lord Wigley (PC): My Lords, I shall be brief. It strikes me that it is for the Government to make the case for Milford Haven being an exception. The natural position would be for it to be within the competence of the Welsh Government and Assembly, and a case for it needs to be made—a case that I have not yet heard.

I support the points about Milford Haven made by the noble Baroness, Lady Morgan of Ely. As she said, it handles 62% of all the liquid natural gas, but it has had other strategic existences in the past and it may well do so in the future. At one point it had a strategic position in regard to fishing due to its deep-water facility. At the time, there was the possibility of Celtic oil off the Pembrokeshire coast. In that context, Milford Haven would have been important to the economic development of the area. Therefore, taking out what should be a focus for possible future growth in Pembrokeshire seems perverse, and a strong case needs to be made for allowing that to happen.

On coastguards, many other services in Wales come under the National Assembly—one thinks of the ambulance service, for example. One would have thought

that the coastguard facility would naturally have the same sorts of conflicts. Again, I would be interested to hear the Government's case.

Lord Thomas of Gresford: My Lords, Milford Haven is at the other end of Wales from me and I have never been there. However, I am very familiar with Aberdeen Harbour, having on a number of occasions rowed upstream from there as far as the main road bridge, and I have fished in the river very frequently.

There are differences and I can assist the Minister to this extent: I do not believe that oil or gas is discharged in Aberdeen Harbour, as it is in Milford Haven. However, that makes my point. It seems to me that the Welsh Government would control the standards and risks of pollution at Milford Haven in a much more hands-on way than could ever be the case in Westminster. The Minister should explain why such a distinction is made between Milford Haven and the other ports in Wales.

7.30 pm

Lord Murphy of Torfaen (Lab): I support this amendment, the first of a series dealing with individual areas where the British Government do not want certain things devolved to the Welsh Government. I understand why that should be the case in some areas but the onus is squarely on the United Kingdom Government to explain why it should not be the case in others. I am not convinced that Milford Haven should be any different from any other Welsh port. If the issue is about the devolution of ports, the ports should be devolved, both Milford Haven and the rest of them. There may well be a reason but, given the general situation in regard to all these functions, as we go through them today and next week, I repeat, the onus must squarely be on the Government to explain why, under this new system of reserved powers, the Welsh Government cannot have responsibility for them.

Lord Bourne of Aberystwyth: My Lords, I apologise for being blindsided on the government amendments in this group but perhaps I may turn to them first before answering the points raised by noble Lords.

Through the government amendments we will give the Welsh Ministers new powers and more flexibility to make grants or payments to encourage freight modal shift from road to water. The Welsh Ministers are already able under Section 272 of the Transport Act 2000 to make grants or other payments for carriage of freight on inland waterways where this is wholly within Wales, but neither the Secretary of State nor the Welsh Ministers are able to award a grant for a cross-border inland waterway service. This relates to the porous nature of the water, canals and so on to which I referred earlier. Two separate grants would be needed—one for the section of waterway in England and the other for the section of waterway in Wales. The amendment will enable a single grant to be made by either or both the Secretary of State or the Welsh Ministers for a cross-border service on inland waterways. I hope noble Lords will acknowledge that that is very sensible. This already happens for rail in the mode shift revenue support scheme, which is a scheme for rail and inland waterways.

The amendment would also give the Welsh Ministers new powers to award grants or other payments under Section 272 of the Transport Act 2000 for freight services by sea to, from or within Wales. At present only the Secretary of State is able to do so. Although the waterborne freight grant scheme is a Great Britain-wide scheme, the Welsh Ministers do not currently have the same powers as the Scottish Government to award grants under it. The amendment will put that right.

Joint and concurrent powers will offer the flexibility to make awards for cross-border freight services by inland waterway and sea. They also allow for the possibility that there could be circumstances in which the Secretary of State might wish to provide support for services to or from a reserved trust port in Wales and another port in Wales.

Government Amendments 83C, 83D and 107B transfer further powers to the Welsh Ministers to allow them to make loans to harbour authorities under the Harbours (Loans) Act 1972 and the Harbours Act 1964. They enable the Welsh Ministers to make the loans out of the Welsh Consolidated Fund and they apply requirements for the loan accounts to be certified by the Auditor-General for Wales and laid before the Welsh Assembly. The effect of the amendments is to ensure that in relation to harbours wholly in Wales, other than reserved trust ports, the Welsh Ministers can fully exercise the loan-making functions currently conferred on the Secretary of State, subject to equivalent controls.

The Bill already provides for the Welsh Ministers to make loans under Section 11 of the Harbours Act 1964 to harbour authorities for works to harbours wholly in Wales, other than reserved trust ports. The first amendment will also allow Welsh Ministers to make loans to these harbour authorities to pay off capital debts, temporary loans and overdrafts as provided for by the Harbours (Loans) Act 1972.

The second amendment inserts new provisions into Section 43 of the Harbours Act 1964 which supplement the transfer of loan-making powers under the Harbours Act 1964 and the Harbours (Loans) Act 1972. These comprise giving the Welsh Ministers the power to set the repayment terms of any loans made; enabling the issue to the Welsh Ministers of sums to make the loans from the Welsh Consolidated Fund; requiring that all loan repayments must be paid into the Welsh Consolidated Fund; and requiring the Welsh Ministers to prepare annual accounts in respect of loans issued to and repaid by harbour authorities and the Auditor-General for Wales to certify and report on the accounts of the Welsh Assembly.

The noble Baroness, Lady Morgan of Ely, has tabled a number of amendments which would remove reservations for reserved trust ports from the Bill and indicated her intention to oppose that Clause 32 stand part of the Bill, which would remove the definition of a reserved trust port. Amendments 61 to 64 seek to remove reservations for and other references to reserved trust ports from Schedule 1, which reserves legislative competence for these ports. Amendments 84 and 86 to 95 seek to remove reservations for and other references to reserved trust ports from Clauses 29, 30 and 33, dealing with the transfer of the executive functions to

[Lord Bourne of Aberystwyth]
Welsh Ministers. Clause 32 does not contain any reservations but defines the term "reserved trust port", and its removal from the Bill would be consequential upon the amendments The Government believe that the reservations for reserved trust ports are an essential element of the Bill and therefore cannot support the amendments of the noble Baroness.

However, in the light of the comments made—particularly by my noble friend Lord Crickhowell, who obviously is well acquainted with the trust port—but without any promises, I will have another look at this issue. The point of the noble Baroness, Lady Randerson, that we should not be slavishly mirroring Scotland, is well made. We have to look at the issues specifically on the basis of the nature of Wales. It is right that this would be the only port caught within the definition by some margin—all the other ports are much smaller. Some noble Lords have said that this is just replicating the current position but that is not true because other trust ports would be transferred under the proposals in the Bill.

It is right that this is significant in relation to LNG—I have got 63% but we will not argue about 1%—and gas. It was also at one stage suggested by the current First Minister as a base for the nuclear fleet. The Government are not considering that but it gives an indication of the important strategic role played by Milford Haven. It is a deep water port of unique significance. As I say, I will have another look at the issue but without making a promise on the conclusion.

Lord Crickhowell: Perhaps I may clarify something. I entirely accept and understand the strategic argument but perhaps I should explain why I slightly question the aspect of safety. To give an example, the old Esso jetty, which is a mile long, stretches right across the entrance to the port into the area where all gas tankers entering the port have to pass. It is one of the most exposed parts of the port because it is close to the mouth of Milford Haven. If an accident was to happen, for example, by a gas tanker being blown on to the end of the Esso jetty—and collisions have occurred in the past with fishing vessels hitting the jetty—and an explosion occurred, it would devastate the towns and the oil refinery on the south bank and the town of Milford Haven on the north bank. It is therefore a matter of considerable interest to the Government of Wales on grounds of safety and its possible effect on inhabitants. It is an issue that needs to be considered because there is probably a case for the Government of Wales to at least be involved in some way in considering the possible consequences on the population around the haven if an accident were to occur.

Lord Bourne of Aberystwyth: I thank my noble friend for that intervention. He is absolutely right about the need for partnership working between the Government in Wales and the Government at Westminster—as happened in the past, I think he would acknowledge, in relation to disasters that happened in the port. As I said, I have also been involved with the port of Milford Haven through the enterprise zone. It is my understanding that there is co-operation with the Welsh Government at the moment, but there is certainly consultation on certain matters on the part of the port with the Government. It is, of course, important that they are fully engaged. As I have said, I will go and look at it, but without making any promises.

Amendment 98 would require the Secretary of State to consult with Welsh Ministers while setting the strategic priorities relating to the Secretary of State's delivery, in Wales, of functions under two pieces of primary legislation: the Coastguard Act 1925 and the Merchant Shipping Act 1995. These functions are all reserved matters, exercisable by the Secretary of State for Transport, and are in practice delivered in the United Kingdom by the Maritime and Coastguard Agency, an executive agency of the Department for Transport.

The strategic priorities involved would cover decisions over subject areas such as the 24-hour search and rescue helicopter service provided by the coastguard, and the promotion of seafarer health and safety standards. "Strategic priorities" does not cover operational activities and incident response decisions, which remain the responsibility of the chief executive of the Maritime and Coastguard Agency. Such consultation would normally be effected through administrative arrangements. However, I recognise that the noble Baroness's amendment mirrors the action taken by the Government through the Scotland Act 2016. Despite having said we will not slavishly mirror things, I will look at that and reflect on the issues raised by the noble Baroness in the amendment. In the light of that, I ask that she does not press her amendments in this group.

Baroness Morgan of Ely: I thank the Minister for that and welcome the amendments he put forward relating to the modal grants, the cross-border initiatives and the loans for harbour authorities. I note he said there was an exception and that trust ports would not be allowed to access those grants. I assume they would be allowed to access other UK grants. Perhaps he could clarify that.

Lord Bourne of Aberystwyth: My Lords, I think that related just to reserved trust ports, so it would only be those that are reserved in relation to the Milford Haven issue.

Baroness Morgan of Ely: I thank the Minister. I noted he said that Milford Haven was essential to the Bill. He then said that he would take another look. I ask him to think about the issues that people have underlined today. The integration of the economy, the environment and safety have all been touched on. The noble Lord was on the enterprise zone for that area. He will therefore be aware of how crucial that interactivity—the interaction between local communities and the local authority—is. All those things need to be co-ordinated. Would it not be a lot easier to co-ordinate that if that power were given to the Welsh Assembly? I appreciate that he will also look at the issue relating to the coastguard and I would be prepared to withdraw the amendment.

Lord Bourne of Aberystwyth: My Lords, on the point the noble Baroness raised on the enterprise zone, it exhibited that the current arrangements work very well, but I will have a look at it. In the meantime, I propose that the amendment be agreed to.

The Lord Speaker (Lord Fowler): The question is that Amendment 35A be agreed to.

Amendment 35A agreed.

Schedule 4, as amended, agreed.

Clause 21: Transferred Ministerial functions

Amendments 36 and 37 not moved.

Clauses 21 and 22 agreed.

House resumed. Committee to begin again not before 8.29 pm.

Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016 (Independent Reporting Commission) Regulations 2016

Motion to Approve

7.45 pm

Moved by ***Lord Dunlop***

That the draft Regulations laid before the House on 15 September be approved.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop) (Con): My Lords, this statutory instrument makes provision for the exercise of functions of the new Independent Reporting Commission. The commission is being established under the fresh start agreement to report on progress towards ending paramilitary activity connected with Northern Ireland.

Your Lordships will recall that the fresh start agreement included a range of measures agreed by political parties in Northern Ireland last November on ending paramilitarism and tackling organised crime. The Northern Ireland (Stormont Agreement and Implementation Plan) Act provides the legislative foundations for the commission. This House debated clauses relating to the commission in April and the Bill received Royal Assent on 4 May 2016. During the passage of the Bill there were many constructive contributions from noble Lords from across the House. I welcome the opportunity for further debate tonight on the provisions set out in this statutory instrument. The debate also provides me with the opportunity to update the House on progress towards establishing the commission.

The UK Government and the Government of Ireland signed an international treaty on 13 September to establish the IRC. This confirmed the two Governments' joint intent to ensure that future generations in Northern Ireland are not blighted by the scourge of paramilitarism. The treaty also brings to life our commitment to end paramilitary activity, which we made in last year's fresh start agreement.

A treaty is, of course, more than words on a piece of paper and more than a legal obligation. It is also a solemn and genuine commitment between states diligently to work together in pursuit of a common goal. The common goal in establishing the IRC is to rid Northern Ireland society of the harm caused by paramilitary activity. Let me be clear: there never was any justification for paramilitary groups in Northern Ireland. There is none today and there must not be any in the future.

The treaty was laid in this House on 22 September. It will come into force when the necessary UK and Irish legislation is completed. The Irish Government intend to pass their legislation by the end of this year and the Government expect the IRC to be established early in 2017. The statutory instrument before us, which gives full effect to the treaty, is the next step in the process.

Before I turn to the specific provisions of the instrument, I remind the House of the IRC's functions. These are: to report annually on progress towards ending paramilitary activity connected with Northern Ireland; to report on other such further occasions if jointly requested by the UK Government and the Government of Ireland; and to report on the implementation of the relevant measures of the UK and Irish Governments, and the Northern Ireland Executive, including on the Executive's strategy to tackle paramilitary activity.

I turn now to the regulations themselves. Regulation 2(1) requires the IRC to exercise its functions with a view to supporting long-term peace and stability in society, and stable and inclusive devolved government in Northern Ireland.

Regulation 2(2) requires that, in exercising its functions, the IRC must not do anything which might have a prejudicial effect on the prosecution of crime. Your Lordships may recall that Section 2 of the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016 already requires the IRC not to act in any way that might have a prejudicial effect on the prevention, investigation or detection of crime. Regulation 2(2) is necessary because Article 9(3)(c) of the treaty requires the commission not to act in a way that might have a prejudicial effect on any proceedings which have, or are likely to be, commenced in a court of law; and Article 9(3)(d) requires it not to act in a way which might have a prejudicial effect on the prevention, investigation, detection or prosecution of crime.

These requirements are already reflected in Section 2(3)(c) and (d) of the 2016 Act, with the exception that Section 2(3)(c) does not expressly require the commission to avoid acting in a way which might prejudice the prosecution of crime. The prosecution of crime could include criminal proceedings which are at too early a stage for it to be said with certainty whether proceedings are likely to be commenced. It may also cover matters related to prosecution which are not focused specifically on criminal proceedings—for example, the gathering of evidence. The purpose of Regulation 2(2) is therefore to ensure that this aspect of the treaty is given full effect in the UK.

Regulation 3(1) requires the Secretary of State to lay reports of the commission before Parliament and to arrange for them to be published. Regulation 3(2) requires the Secretary of State to lay the commission's accounts and auditor's reports before Parliament, and to arrange for the accounts and reports to be published.

The impact of paramilitary-style attacks and activity in Northern Ireland is all too evident. There have already been four paramilitary murders this year. This

[Lord Dunlop]
is abhorrent. We must ensure that the paramilitary label is no longer seen as a badge of honour and that paramilitary-style control, coercion and extortion of communities is stopped.

Since my appointment in July as a Minister in the Northern Ireland Office, I have made visits and met groups across Northern Ireland, and I have seen at first hand the progress and economic development being achieved. Paramilitaries are the enemies of progress and economic development in Northern Ireland. They hold back communities, deterring investment and jobs and preventing people moving forward with their lives. Tackling effectively paramilitary activity must therefore include measures to help communities challenge the control that these groups exert upon them. The reports of the new commission will play a key part in informing how we do that and ensuring that the Northern Ireland Executive are doing all they can to drive out paramilitary activity from local communities. The UK Government are committed to playing their part. We have committed £25 million over five years to support the Northern Ireland Executive's action plan to end paramilitarism. We have committed a further £3 million to fund the work of the IRC.

It is essential, however, that the Executive's plan is focused on delivery in areas where it is most needed and that it has both real and measurable outcomes. The Government are working with the Executive to ensure that the funding secured under fresh start is used to greatest effect.

The ultimate test of success in all our endeavours will be whether communities dealing with the malign influence of paramilitary activity experience a real, tangible and positive improvement to their lives. This will be the most important feature flowing from the Independent Reporting Commission's work. It is right that we should all set high expectations of what we seek to achieve, because those affected by paramilitary activity deserve no less. I beg to move.

Lord McAvoy (Lab): My Lords, I thank the Minister for his full explanation of the regulations before us. I thank him and his staff for keeping me fully informed on this legislation from day one. That assistance is greatly appreciated.

The Minister mentioned the paramilitaries and referred to work to remove the breeding ground for unjustified paramilitarism. That is very important. Collectively, we have made huge strides in Northern Ireland and that needs to continue. My honourable friend Vernon Coaker, former shadow Secretary of State for Northern Ireland, is long on record as having called for a commission along the lines illustrated by the Minister. I again place on record our full support for the Government's efforts in this field. The way in which the Government have sought to involve the Opposition and all Members in this matter indicates the bipartisan nature of attitudes towards issues in Northern Ireland.

A number of questions were asked in Committee in the Commons—I am not taking credit for them; I am just picking them up from *Hansard*. The questions may have been answered elsewhere by letter, but it would be useful if the Minister could either answer them now or, as did his counterpart in the other place, undertake to write. My honourable friend Stephen Pound asked whether the commission's reports would be laid before the House and whether it would be an annual process or a one-off. He asked also what attitude the Government had to the cross-community aspect of the commission, whether there would be a deliberate effort to make it cross-community or whether any other methods were being considered. As we all know, all communities in Northern Ireland need to feel that they have a stake in whatever happens.

The Minister in the Commons indicated that he would respond in writing on a number of matters. He indicated that he was not sure whether the reports would be placed in the Library or laid before the House. He continued:

> "As for sensitivities around the appointments"—

which we all understand—

> "there is a detailed process for making them, and I am happy to explain that in writing".

In the interest of clarity, will the Minister undertake to write to all noble Lords present tonight with responses to the questions asked in the Commons? Stephen Pound MP asked about the appointment of the chair of the commission. Are any proposals on record yet as to how that would be tackled? I want to make it clear that, like anyone else, I appreciate the sensitivities around these issues in Northern Ireland. I do not ask these questions to embarrass anyone or to cause difficulties for the Government, but clarity is needed and we need to know exactly how the appointments work. The Minister in the Commons, Mr Kris Hopkins, said:

> "Again, I will write to the hon. Gentleman about appointments to the commission and how appointees are selected, and will give him that information in full".—[*Official Report*, Commons, Delegated Legislation Committee, 2/11/16; col. 6.]

If these questions have been answered in writing by the Minister in the Commons, will the Minister repeat those letters?

Baroness Suttie (LD): My Lords, the Liberal Democrats also welcome the regulations. I thank the Minister for his clear explanation of them to the House.

As this is my first intervention from these Benches on Northern Irish issues—I think there are a few fellow Scots around this evening—I shall keep my remarks brief, but I start by paying tribute to my noble friend Lord Alderdice both in his role as a member on the fresh start panel and in his role as spokesman from these Benches for the past six years. His level of expertise and deep understanding of the issues make him an extremely daunting act to follow.

The Independent Reporting Commission is an important part of the fresh start agreement and its role in reporting annually on progress will be vital in shining a light on continued paramilitary activity in Northern Ireland. It will also play a crucial role in reporting the progress that the Northern Ireland Executive, the UK Government and the Irish Government make in implementing measures to reduce paramilitary activity.

In a democratic society there is no place for paramilitary groups and the violence and criminal acts that they perpetrate. A huge amount of time, energy and commitment has gone into sustaining the peace process in Northern Ireland, and that support needs to continue and be enhanced as we move to the next phase, not

least because of the extra pressures that the Brexit negotiations will bring. A permanently peaceful society with politically stable institutions and a strong economy in Northern Ireland are intricately linked. Strengthening the economy, tackling social exclusion, overcoming inequalities, delivering efficiency in public services and tackling violence are all essential elements in challenging the division that exists in Northern Ireland.

8 pm

The report of the fresh start panel discussed a number of these issues. It recognised that there are many barriers to tackling continued paramilitary activity, including lack of confidence in the rule of law, gender issues, difficulties in securing employment following a conviction, social deprivation and the slow pace of cultural change. I welcome the Northern Ireland Executive's response to the report, although it is perhaps disappointing that there was no indication of timescales for its implementation. Indeed, it was reported in October that the Government have not yet released money to tackle paramilitary activity because the Northern Ireland Executive need to agree a more detailed plan. Could the Minister update the House on his department's discussions with the Executive in this regard? Is progress being made in securing a more detailed strategy?

I welcome the Written Statement from the Secretary of State for Northern Ireland of 14 September confirming that the IRC has been established by an agreement between the UK Government and the Government of Ireland. Repeating the question from the noble Lord, Lord McAvoy, when does the Minister expect to announce the membership of the commission?

At this time it would be remiss not to take account of the importance of cross-border police co-operation in tackling criminal activity on both sides of the border. In this regard I welcome the developments we have seen since the fresh start agreement was signed, including the establishment of the Joint Agency Task Force and the updated cross-border policing strategy launched in September. Can the Minister assure the House that this co-operation will not be compromised during the Government's negotiations to leave the European Union? We on these Benches support the regulations before us this evening. I look forward to participating in many more debates on Northern Ireland in the coming months.

Lord Empey (UUP): My Lords, in welcoming the establishment of this body, I further emphasise that I am disappointed that it will have no sanctioning powers. In other words, it can deliberate and report but, unlike its predecessor, it cannot impose any sanctions on persons it deems to have participated in paramilitary activity.

It is 22 years since the ceasefires and 18 years since the Belfast agreement. One would have thought that, with the passage of that length of time, one could have foreseen a gradual diminution in paramilitary activity. However, while the terrorism is not on the scale it once was, it has reached a sort of plateau. As the Minister said in his opening remarks, there have been four deaths already this year. But that is not the only expression of paramilitary activity. If we take figures from the Northern Ireland Housing Executive, in the past 10 years 6,261 people have claimed they were intimidated out of their homes by paramilitaries and the housing executive accepted 3,720 of those claims. In the year up to April, 588 such claims were made and 414 were accepted. By any standards, paramilitaries continue on their path. We also had the tragic death of a teenager—last week, I believe—who was driven to his death by paramilitaries for non-payment of a fine they had imposed upon him. The idea that we are moving at pace towards the end of paramilitary activity is very misleading.

We welcome the noble Baroness, Lady Suttie, to the Front Bench. If she does not have a full working knowledge of Northern Ireland affairs at the moment, she does not know what wonder awaits her as we move forward. However, she made reference to the Government's promise—as the Minister reiterated—of £25 million over five years to help with the strategy to tackle paramilitary activity. Unfortunately, the Executive in Stormont have not yet been able to finalise these proposals. Consequently, and understandably, the Government have had no alternative but to withhold the funds because there is no strategy there, as there should be. Yet there is a continuing flow of funds from government to organisations populated by persons who have had paramilitary connections. That particular flow of funds is able to continue whereas the strategy to deal with this is paralysed by inaction. That is a very negative development.

We know this is deep-seated and there are a lot of social and economic reasons for it, as the noble Baroness referred to. We know that young people in areas with significant deprivation and a lack of education and job opportunities are easy prey to the elements around. It is still in some areas a badge of honour to be associated with some of these organisations. However, remember that it is only just over a year since the activities of some of these organisations almost brought down the Executive. That precipitated urgent talks but just over a year ago it almost brought down Stormont. The idea that this is resolved is misleading.

We seem to be still in the foothills. If after 18 years we cannot even agree a strategy for dealing with paramilitaries, what are we doing? What is the delay? Why is this not happening when there is a funding stream clearly available and promised? I would have thought anybody would have taken the opportunity to get on with that and it is regrettable that it has not happened. The longer we leave it, the more of these young people will be sucked into these organisations. They have their lives ruined and miss opportunities. With that level of funding available, it is outrageous that we are not able to get out there and spend it to avoid young people in particular getting sucked into this.

Of course, hardcore paramilitaries continue to try to kill members of the Prison Service and of the police—the PSNI—in particular. That is continuing. Thank God they have been intercepted in many cases. I must pay tribute not only to the PSNI but also to the Garda for the work and co-operation that exists there. They have prosecuted a number of cases successfully. But there is still a large number of people involved, bearing in mind that they are a generation past the

[Lord Empey]
agreement and when there was open paramilitary fighting with the Army. Still these organisations exist. Still weapons are being found. Still weapons are being acquired. It is very disappointing that it has not been possible to get behind a strategy to deal with this and spend the money already allocated. I do not understand why we have this continual paralysis.

I regret that there are no powers of sanction for this body. Nevertheless, perhaps it can shine a light on what is going on in its reports. If I remember correctly—noble Lords will correct me if I am wrong—it can produce a special report if requested. However, with the figures released on people who are still being intimidated out of their homes, it is time that this paralysis was ended. I hope the Minister will use all his influence with the Northern Ireland Executive to ensure that he is in a position to make those funds available, release them and get something happening on the ground that will keep young people away from these organisations.

Lord Bew (CB): My Lords, I support the implementation of this statutory instrument, and I note with pleasure the bipartisan support it received from the opposition Benches. I absolutely accept the problem that the noble Lord, Lord Empey, noted, that the Independent Reporting Commission will not have the power to deliver its own sanctions. None the less, it sends out a powerful signal that government, and even the Northern Ireland Executive, are not prepared any longer to sweep paramilitary crime under the carpet. That is of value in its own respect. For the rest, we must hope that the decision to devolve policing and justice will pay dividends in the next couple of years or so.

I will make a point about the £3 million that has been made available. This is not a criticism of what has been done; we have no choice but to go down this road. This body is part of the means by which Northern Ireland and Northern Ireland politicians extracted themselves from a near-fatal crisis of the Executive. A promise has been made, and it is quite right that Her Majesty's Government try to deliver on their side of the promise. However, is it not unusual that Her Majesty's Government are paying for all of it but have only one nominee, whereas the Assembly has two and the Irish Government have one, although the £3 million that is keeping the thing going is from Her Majesty's Government? In this case, it is right; it is an inevitable if difficult decision, although a defensible one. However, in the future we need to be careful about arrangements in which Her Majesty's Government pay the piper but do not call the tune, particularly with respect to arrangements that might be made about legacy issues in the future. It is slightly worrying from the point of view of the future, although it is the right thing to do at this time.

I will make another point about a positive part of the statutory instrument, which is the decision to have more transparency about the way the Executive display their finances and in particular the role played by the United Kingdom Exchequer. This is a positive development. One of the things those of us who live in Northern Ireland understand, in a way that perhaps those who do not live there do not, is that the discussion of the local finances goes on in an extremely airy-fairy world, without respect to the importance of the subvention from the UK Exchequer, which is vital to the survival of the Northern Irish economy. I totally support that—that is what the United Kingdom means, and the fact that Northern Ireland has been in distress and in difficult circumstances and has been helped by the United Kingdom is a tribute to the concept of the union and the United Kingdom. I totally support it, but the people of Northern Ireland have a responsibility to be realistic about these matters and to take their own role in this seriously. The decision that now the Executive must make clear what the financial relationships are is a positive one. The hero of the Troubles has always been the unknown British taxpayer, and it is right that he be respected at this moment. It is now 18 years since the Good Friday agreement, and the time has come and it is right for us to have this transparency about public funding.

8.15 pm

Lord Lexden (Con): My Lords, it is impossible to forget the widespread feelings of shock and outrage which were evoked by events in Northern Ireland in the summer of last year. They demonstrated, in the most stark and vivid manner, the continuing malign presence of paramilitary organisations 17 years after the signing of the Belfast agreement. The sheer extent of paramilitary malignity was most vividly illustrated for us by the noble Lord, Lord Empey, in his powerful and moving remarks a little while ago.

Some of us felt last year, and still feel, that it was unfortunate, to put it mildly, that the Independent Monitoring Commission, which could have continued to play a most useful role, had been wound up in 2011. It is so much easier to adapt an existing institution to deal with fresh challenges and difficulties than to establish an entirely new one, particularly when two sovereign Governments then have to reach a fresh agreement between them. But of course no sense of regret for what is past should inhibit full-hearted support for the new Independent Reporting Commission. It will have a most important contribution to make in strengthening the still fragile peace of Northern Ireland, which matters above all else.

Some important questions have been raised by noble Lords this evening, and I would like to raise three more. First, the fresh start agreement, signed a year ago this month, states that it,

"places fresh obligations on Northern Ireland's elected representatives to work together on their shared objective of ridding society of all forms of paramilitary activity and groups".

One year on, how much progress has been made in advancing these fresh obligations?

Secondly, will the Independent Reporting Commission have all the legal advice that it will need to ensure that its work does not,

"have a prejudicial effect on any proceedings which have, or are likely to be, commenced in a court of law",

in the words of the agreement signed in September between the two Governments?

Thirdly, when will the remaining regulations subject to the negative procedure be laid? The appropriate period will need to elapse before they become law,

which presumably means that they may not have been passed when the commission is established early next year, as my noble friend Lord Dunlop indicated in his remarks at the outset of this debate, although the Explanatory Memorandum issued with the regulations gives next month—December—as the date of establishment.

I hope that the first report of the commission will be forthcoming as soon as possible. We need to be clear that a successful working partnership has been forged between its four members. We need to be clear about the specific aims and objectives that the commission has set for itself in the first phase of its existence. Such matters need to be kept before this Parliament. Under the old Stormont regime, devolution in Northern Ireland meant indifference to the Province's affairs here at Westminster; that must never ever happen again.

Lord Hay of Ballyore (DUP): My Lords, first, I apologise to the Minister for not being here at the start of this debate. I see this very much as a further development of the political process in Northern Ireland. This can only help. I know that the Executive are dealing with some very difficult issues at the moment. I would hope that these provisions will help them to deal with those issues a lot sooner.

We should put on record the previous Secretaries of State who have worked tirelessly to get where we are in Northern Ireland today. We need to recognise that we have had almost nine years of fairly stable government; okay, there have been a few bumps along the way—some of them fairly serious—but they have managed to stay together. I think that we have a stable Government and a stable Assembly in Northern Ireland now. That is a huge achievement compared to where we came from 20, 25 or 30 years ago. We have all moved on in Northern Ireland. You have only to look at the pledge of office used by Ministers in the Assembly, and by Assembly Members, which is set out in Schedule 4 to the Northern Ireland Act. All this is moving Northern Ireland forward.

This all comes out of what was agreed by the political parties on 17 November in *A Fresh Start*. I hope that we will now have a commission which will report independently—"independently" is very important. The objective is of course to help end paramilitary and criminal activity in Northern Ireland. I do not believe that this commission can do that on its own; there has to be a collective approach from politicians, policing and the southern Government to bring this activity to an end. I know that some Peers have said, rightly, that it has been 20 years and we still have paramilitary organisations and criminality. They are almost leeches to their own communities; they beg from their own communities and create major problems there. We have to remember that they are happy enough to keep their own community in the way that it is because that helps their cause. For me, it was never about when they would leave the stage; for me, it is how they leave the stage that is vitally important.

I believe that we have paramilitaries who genuinely want to come into the democratic process. We should try to help to bring them in. The police and the justice system in Northern Ireland should deal with those who do not want to come into the process. When you talk to paramilitaries, there is a desire to leave it behind and come in. It is about how we get them in and deal with them, and then how they eventually leave the stage, but they must be part of the solution in Northern Ireland. We cannot isolate them totally and absolutely. Yes, as noble Lords have said, it is 20 years but that is 20 years too long. We need to find a way of dealing with this issue. They are a total curse in Northern Ireland. I believe that on some occasions they hold back our politicians who want to move forward even quicker. The legacy issue in Northern Ireland is a major issue. We must try to resolve that issue. I am hearing reasonably good soundings that they are moving forward on it. If it can be resolved, that will be better for the future of Northern Ireland and for all its people, so let us move forward. This is good news here tonight.

Lord Browne of Belmont (DUP): My Lords, I thank the Minister for his statement and I, too, apologise for missing the opening. I very much welcome the regulations relating to the setting-up of the Independent Reporting Commission. Does the Minister agree that good progress has been made in Northern Ireland since the signing of the fresh start agreement? A long list of issues has been agreed and all are being progressed and implemented. The situation in Northern Ireland today is much more positive and, as we have heard, there has been a long period of stable government.

However, the threat posed by paramilitaries from both the republican and the loyalist sides, unfortunately, still exists. Only last night, we witnessed the murder of Mr Jim Hughes at Divis flats. This has to be condemned by all right-minded persons. All parties must work together to rid society of all paramilitary activity.

I look forward to the Independent Reporting Commission beginning its work and to receiving its first report, which I trust will prove to be an important arm in helping to bring an end to all forms of paramilitarism in Northern Ireland, which for far too long has been a scourge to law-abiding communities in Northern Ireland. I very much hope that the next step in securing long-lasting peace is for all parties to agree a way forward to finding a solution for dealing with the legacy of the Troubles.

Lord Dunlop: I thank noble Lords for their contributions to this short debate and for their support for these regulations. In particular, I welcome the noble Baroness, Lady Suttie, to her new role and echo her warm words for the noble Lord, Lord Alderdice, who was part of the independent panel that made 43 recommendations on how we take dealing with paramilitary activity forward.

As I said earlier, this is another important step in the process of meeting the commitments entered into as part of the fresh start agreement. A number of points were raised during the debate, and I will try to address as many of them as I can now. If there are any points that I am unable to cover, I will, of course write to the noble Lords concerned.

First, on reporting, Regulation 3(1)(a) requires the Secretary of State to lay the reports of the commission before the House. If the noble Lord, Lord McAvoy,

[Lord Dunlop]
would like further detail on the process, I am, of course, happy to write to him.

On the cross-community nature of the commission, there will be four commissioners, one nominated by the UK Government, one nominated by the Irish Government and two appointed by the Executive who will be nominated jointly by the First Minister and the Deputy First Minister. That is to ensure collaboration and to provide cross-community credibility.

With regard to the appointment of a chairman of the commission, this is not required by the legislation or necessarily envisaged, but the IRC has the autonomy to appoint a chairperson if it so chooses. We hope that the commission will be in place in early 2017. We are aiming for January 2017.

I can assure the noble Baroness that the Government will not allow the negotiations on exiting the EU in any way to compromise the Government's determination to carry forward their commitments to Northern Ireland.

When we debated the primary legislation, my noble friend made the point about sanctions. It is open to the IRC to make recommendations to inform the Executive's programme for government.

With regard to the Executive's action plan, as has already been mentioned, the UK is providing £25 million to tackle paramilitary activity. The Government are working with the Executive to deliver a robust action plan. Before the UK Government can agree to release funds, we must see a prioritised and effective plan from the Executive, and we look forward to seeing more detailed plans from the Executive. It is essential that the Executive make urgent progress on this.

On the funding of the IRC, I note what the noble Lord, Lord Bew, said. It is important that the transparency of the Executive's finances is underpinned by an independent fiscal council.

My noble friend Lord Lexden asked a number of questions. The IRC may contract such legal services as it considers necessary. That is obviously part of why the Government are providing £3 million funding for the commission.

We hope that the further regulations will be laid soon. I hope that I have covered most, if not all, of the points that have been raised.

In conclusion, the continuing activities of paramilitaries are a blight on communities across Northern Ireland. The Independent Reporting Commission will have an important role in helping to rid Northern Ireland society of these heinous activities. I am sure the whole House looks forward to the IRC starting its work early next year.

8.30 pm

Lord Empey: My Lords, just before the noble Lord sits down, I am bit unclear about one thing—if he is not in a position to answer now, perhaps he could write to me. The £5 million a year has been promised, but the Government clearly have some issues over the lack of clarity on the part of the Northern Ireland Executive's strategy. Could he tell us whether there is any timetable for resolving that issue? Could he even share with us—if not now, perhaps by writing and putting the letter in the Library—what it is that is not sufficiently developed? We have been at this game for well over 20 years now, and it is very disturbing that there is money there while there are huge areas of deprivation and paramilitarism is still active. It would be most unfortunate if we cannot get that already-provided resource out there, making some positive contribution. If the Minister could help us in some way on that, I would be most grateful.

Lord Dunlop: As my noble friend will know, the Secretary of State has to persuade the Treasury to release funds. The House will know that the Treasury requires sight of detailed and measurable plans, and that is what is at issue here. I cannot give him a precise timetable tonight, but if there is further information that can be usefully shared, I am happy to write to him on that. The key point is that the Government are seized of the need to make urgent progress on putting in place an effective, detailed action plan that will start to tackle this scourge on society in Northern Ireland.

Motion agreed.

Wales Bill

Committee (2nd Day) (Continued)

8.32 pm

Clause 3: Legislative competence

Amendment 38

Moved by ***Baroness Morgan of Ely***

38: Clause 3, page 2, line 28, after "7A)" insert "and is not ancillary to another provision (whether in this Act or another enactment) that does not relate to a reserved matter"

Baroness Morgan of Ely (Lab): My Lords, many amendments have been put together in this group, but I will focus in the first place on the so-called purpose test. Here we come to the crux of the constitutional issues with the Bill, and an area which has been criticised by some of the top constitutional experts of this country. I will raise some general questions about how the so-called purpose test works, in order to determine the scope of the Assembly's legislative competence, because if we do not get clarity on this, the chances of ending up in the Supreme Court are extremely high.

The Bill appears to operate in a binary way. If a provision in an Assembly Bill is exclusively concerned with non-reserved matters, such as agriculture or health, it is of course within the Assembly's legislative competence. If, conversely, a provision in an Assembly Bill "relates to" a reserved matter, the Bill is outside the Assembly's legislative competence. Whether a provision relates to a reserved matter is, as the Bill has it, to be,

"determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances".

This is the purpose test that I would like to explore.

Of course, in the real world, matters can never be so black and white. Any Assembly Bill seeking to address the complications of modern life is unlikely to be able

to do so by making provisions exclusively about non-reserved matters. It may be necessary, for entirely sensible reasons, to touch on reserved matters as well as non-reserved matters.

The question that I am exploring is how far the Assembly can do that before stepping outside the scope of its competence. Does the fact that a specific provision in an Assembly Bill deals in some way with a reserved matter automatically take the Bill outside the Assembly's legislative competence? If so, that could present some major practical problems for the Assembly. The Minister will know that in the agricultural case, under the current devolution settlement the essence of the matter was that what the Assembly had done could be characterised either as relating to the conferred matter of agriculture or, as the Government contended, to some other matters entirely that were effectively reserved. The Supreme Court held that under the present settlement, provided that the provision fairly and realistically relates to a conferred matter, it makes no difference that it could also be described as relating to a matter on which the 2006 Act is silent—it would still be within competence. On that basis, a certain degree of flexibility is inherent in the current settlement.

Additional flexibility is also available under the present settlement as, where a provision falls within one of the exceptions to the Assembly's competence, it can still be included in an Assembly Bill where it is incidental to or consequential on another provision within the Assembly's competence. What flexibility is implicit in the settlement envisaged by the Bill before the House? I invite the Minister to address that question. In so doing, I simply make the point that, given the inordinate length of the list of reserved matters that the Assembly will face, this is far from being a theoretical matter. The Constitution Committee's valuable report on the Bill points out that,

"this test may have the effect of reducing the scope of the Welsh Assembly's legislative competence, and perhaps lead to further referrals to the Supreme Court. We would welcome"—

again, this is what the Constitution Committee of this House said—

"an explanation from the Government as to whether this was the intent of the legislation and, if not, what steps they intend to take to ensure that the competence of the Welsh Assembly is not inadvertently reduced".

I ask the Minister to address that issue. We need to know whether the Assembly could be hopelessly constrained from taking action on important social concerns by being unable in its legislation to touch on reserved matters in the course of addressing issues that otherwise would clearly be within devolved competence.

There are a whole load of other amendments in this group, and I would like to deal also with the issue of "ancillary". Section 108 of the current Government of Wales Act enables the National Assembly for Wales to pass legislative provisions that are ancillary to devolved matters—or, to use the exact terminology, provisions that are,

"incidental to, or consequential on",

devolved matters, or which,

"provides for the enforcement",

of such matters to make them effective. But no such express provision is made in the equivalent clause of the Bill, which, coupled with the overlapping issue of the necessity test imposed on modifying the law on reserved matters, is a cause of deep concern. The issue of enforcement is more allowable in the current system than in the one that the Minister envisages with the Bill.

When this issue was raised in the other place, a somewhat confusing response was given. On the one hand, it was said that making such a provision would,

"drive a coach and horses through the key principle underpinning the new model, which is a clear boundary between what is devolved and what is reserved".—[*Official Report*, Commons, Wales Bill Committee, 11/7/16; col. 87.]

On the other hand, it was claimed that the ability to make ancillary provision is "simply not needed" as it was already provided for. I find that response as confusing as the Bill itself.

Those promoting the Bill could also have said that it is in this respect merely following the precedent of the Scotland Act 1998, which has a similar provision. But blindly following those provisions in these very different circumstances is unwise. The approach taken in the Bill is uncertain and obscure. It is by no means clear that the National Assembly can make ancillary provision, as no express provision is made in the Bill; it is merely implied.

Why can the Minister not deal with this clearly by making express provision, as is done in the Northern Ireland Act 1998? If, as the Government claim, it is clear that the manner in which the purpose test operates means that ancillary provision is not reserved, why is there a need to state in Schedule 7A that it is not reserved where it,

"is ancillary to a provision of any Act of the Assembly or Assembly Measure"?

Such a provision should be unnecessary if ancillary provisions are not reserved.

The ability to make ancillary provision is vital for Welsh law because of the narrowness of the devolution settlement. The mechanisms necessary to enforce the law, such as police and the courts, are all devolved in Scotland, which they are not in Wales. Put simply, the obscure way in which this is dealt with in the Scotland Act and the attached necessity test is of little practical importance, while in the Government of Wales Act it is crucial to enable the National Assembly to legislate freely. Again, lessons can be learned here from Northern Ireland, where such matters as policing were not initially devolved. It is no doubt for this reason that clear provision is made to ensure that ancillary provision is within competence.

This is not a minor, technical matter worthy of debate only by lawyers and academics. This goes to the heart of whether the Welsh devolution settlement is workable. As has been alluded to by the Delegated Powers Committee and the Constitution Committee in their excellent reports, the particular reserved powers model adopted by the Government risks further reducing the legislative competence of the Assembly, and the failure to make express provision for ancillary matters and the constraint of the necessity test is in the same vein.

[Baroness Morgan of Ely]

Amendment 75 provides for an exception for ancillary provision on certain justice matters for the purpose of enforcing legislation on a subject matter that is not reserved, so that the Welsh Government can give effect to such legislation. Unless this is allowed, it may be difficult for the Assembly to enforce provisions in Assembly Acts.

Finally, I touch on Amendment 81, which restates the existing powers of the National Assembly to modify Minister of the Crown functions within devolved areas where doing so,

"is incidental to, or consequential on"—

another provision in an Assembly Act. I will give one example of how absurd the law could become if something is not done.

Wales was one of the first places to ban smoking in public places. Last year, the Welsh Government hoped to introduce a law under the Public Health (Wales) Bill to ban the use of e-cigarettes in the workplace in Wales. They planned to impose duties on workplace managers in Wales to police the new ruling. The problem is that the UK Government in London would be required to give their consent in workplaces under their authority, such as the DVLA and the Crown Prosecution Service. If the Government refused to grant consent, we could have legions of Welsh people traipsing over to the DVLA to smoke their e-cigarettes.

Can the Minister give us clarity on the situation and how we can resolve what I believe is a serious matter?

8.45 pm

Lord Elis-Thomas (Non-Afl): My Lords, my amendments in this group are all focused on attempting to ensure that the legislative competence of the Assembly is not reduced by the movement from conferred powers with exceptions, to reserved matters with even more exceptions.

I was always concerned about this matter when I had responsibility for presiding over the Assembly because I had to make decisions about the competence of legislation. I often found it difficult to assure myself that there was clarity about the boundaries, although I was advised by excellent lawyers. The current Presiding Officer of the Llywydd has published a series of amendments to enable us to study the question of the constitutional propriety of where we are heading. What particularly troubles me—I am sure the Minister will understand this—is that the UK Government seem to have no intention of publishing an explanation or rationale, if there is such a thing, across the whole 200 or so reservations that would help us to understand the constitutional principles at work here.

Although we were promised by a previous Secretary of State that the pause in the Bill would give an opportunity for these matters to be considered, and there would be a response, this does not seem to have happened. My amendments would restore or maintain the current competence of the Assembly by enabling it to legislate in an ancillary way in relation to reserved matters. I know the Minister will say that ancillary matters are a minority interest but they are of great constitutional import. In my view, this is a clear example of how the move from the current form of legislative powers to the new form is narrowing the Assembly's competence.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I am very grateful to the noble Baroness, Lady Morgan of Ely and to the noble Lord, Lord Elis-Thomas, for tabling the amendments. I am particularly grateful for the careful way in which they have spoken to them.

I understand the importance of the issues that have been raised, and I shall try to address them in general terms by giving some examples of how the purpose test should operate in practice. First, on the wording, I say to the noble Baroness that the legislative competence in proposed new Section 108A(3) is a dual test. It allows the Assembly to legislate if it,

"is ancillary to a provision of any Act of the Assembly or Assembly Measure or to a devolved provision of an Act of Parliament, and"—

so there is the additional requirement—

"(b) has no greater effect otherwise than in relation to Wales, or in relation to functions exercisable otherwise than in relation to Wales, than is necessary to give effect to the purpose of that provision".

So, it is a dual test. It is not simply ancillary but has to be "necessary", under proposed new subsection (3)(b) of the provision.

These are important issues but they are not novel. Exactly the same sort of questions arose in respect of the Scotland issue because both in Scotland and Wales we are relying on the so-called purpose test to help define the scope of the relevant legislature's legislative competence. We now have the benefit of guidance, as has been stated, from the Supreme Court, on the proper interpretation of these provisions. The guidance, although given in a Scottish case, will be highly relevant to the Welsh matters provided for in the Bill before us.

The starting point is that whether a provision in an Assembly Bill could be said to "relate to" a reserved matter is dependent on its purpose. As has been pointed out in the Supreme Court,

"the expression 'relates to' indicates more than a loose or consequential connection".

I stress that the application of the purpose test in a reserved powers model should be interpreted as meaning that a provision that merely refers to a reserved matter, or has an incidental or consequential effect on a reserved matter, will not relate to that reserved matter. In other words, to fail the "relates to" test, an Assembly Act provision must have a reserved matter as its purpose. The purpose of a provision must be established by having regard to its legal, practical and policy effects in all the circumstances. The Assembly Member bringing forward the Bill cannot simply assert a purpose for one of its provisions. The purpose must be assessed by considering how the provision has been drafted and what it actually does, as well as the wider context, including the other provisions of the Bill of which the provision under scrutiny forms a part.

It is also important to say that the move from the current conferred powers model to one based on reserved matters reverses the operation of the purpose test. It shifts the burden, which is important. Whereas under the current settlement an Assembly Act provision

needs to satisfy the purpose test by positively demonstrating that it relates to one of the subjects conferred in Schedule 7 to the 2006 Act, the reserved powers model instead requires that such a provision must not relate to a reserved subject matter. In other words, the case would need to be made that an Assembly Act provision is outside competence because its purpose relates to a reserved matter. As I say, it shifts the burden of proof. If such a case could be made, the provision would satisfy the requirements of the proposed new Section 108A(2)(c) and would be within competence, provided, of course, that it satisfied the other legislative competence requirements of new Section 108A.

To demonstrate how the purpose test ought to be applied in practice, I thought it would be helpful to give some examples. However, it is important to bear in mind in each of these hypothetical examples that it would depend on how the provision was drafted and what it actually did. As I have mentioned, the purpose test requires assessment of the effect of the provisions, including all the circumstances, in the round. An Assembly Bill which required tenants to insure their residence could relate to the devolved subject of housing and not to the insurance limb of the financial services reservation in Section A3. Rather than aiming to amend the law of insurance, the provision's purpose would be to ensure the quality of housing stock in Wales. I think that most people would appreciate that that was the purpose.

A further example is that an Assembly Bill provision creating competitive tendering requirements for local authorities would be to improve their efficiency and cost-effectiveness, and would therefore not relate to the competition reservation in Section C3. Furthermore, the jurisdiction of the Agricultural Land Tribunal is set out in the Agricultural Holdings Act 1986. This Act also specifically excludes certain matters from the jurisdiction of the ALT—for example, disputes between landlords and tenants of agricultural land. An Assembly Bill may seek to alter this position by bringing such disputes within the jurisdiction of the ALT and no longer subjecting them to arbitration. This would not engage the arbitration reservation in Section L4 because the purpose of the provision would be to facilitate the smooth and economic operation of the agricultural sector by providing a practical, accessible and cost-effective way of settling disputes about agricultural land. The effect on arbitration would be incidental to, or consequential on, that purpose.

Lastly, an Assembly Bill provision requiring information-sharing between schools and Estyn which supported more general provisions aimed at improving the operation of the education sector in Wales would not relate to the reservation for the protection of personal data in Section L6. I hope this explanation of how we see the purpose test working, and these hypothetical practical examples, are sufficient to reassure the noble Baroness and that she feels able to withdraw her amendment. It is not possible to go through every conceivable example. I think that lawyers would accept that, as drafted, this would serve to answer particular cases that may be brought forward.

Through his Amendments 39 to 41, the noble Lord, Lord Elis-Thomas, is seeking to broaden the circumstances in which the Assembly could legislate in relation to reserved matters, and in that respect he is probing similar issues to those raised in Amendment 38. I therefore hope that the explanation I have given is reassuring.

As I have said, unlike under the current settlement—where an Assembly Act provision needs to satisfy the purpose test by positively demonstrating that it "relates to" one of the subjects conferred in Schedule 7 to the 2006 Act—the reserved powers model instead requires that such a provision must not relate to a reserved subject, so that the burden is shifted. In other words, the case would need to be made that an Assembly Act provision is outside competence because its purpose relates to a reserved matter. If such a case could be made, the provision would satisfy the requirements of the proposed new Section 108A(2)(c), and would be within competence, provided, of course, that it satisfied the other requirements. I do not therefore see a need for the Bill to be amended in the way that these amendments propose. Indeed, a side effect of the noble Lord's amendments would be to prevent the Assembly being able to legislate otherwise than in relation to Wales for ancillary purposes—currently an important part of its competence that allows for enforcement provisions to apply in England. This is something that I know the noble Lord does not intend.

Government Amendment 42A is a minor change to ensure that the wording of the test in Section 108A(5) coincides with the wording in paragraph 12 of Schedule 7B. Both provisions ensure that, when considering the legislative competence of the Assembly in the context of an Act of Parliament, any requirements for the consent of, or for consultation with, a Minister of the Crown, are not relevant. This makes sense on the basis that it would be clearly inappropriate to require a Minister of the Crown to consent to, or be consulted about, an Act of Parliament. This is a technical amendment ensuring consistency throughout the Bill.

I turn to Amendments 47, 75 to 78 and 81 and 82. Paragraph 6 of Schedule 7A reserves the core elements of the single legal jurisdiction of England and Wales. These include the courts, judiciary and civil and criminal proceedings. Sub-paragraph (2) provides an exception to this reservation to enable the Assembly to provide for certain appeals or applications in relation to a devolved civil matter where it is ancillary to a provision of an Act of the Assembly or an Assembly measure.

Amendment 47 seeks to remove the ancillary requirement from this exception and allow the Assembly to directly place devolved functions on to civil courts. This ancillary requirement is crucial in that it enables the Assembly to enforce its legislation and to allow appeal decisions on devolved matters to be heard in a court on civil proceedings, yet it maintains the clear boundary that the single legal jurisdiction is a reserved matter. Paragraph 1 of Schedule 7B restricts the Assembly's ability to modify the law on reserved matters. This includes any enactment whose subject matter is reserved. Paragraph 2 sets out the exception to this restriction. It allows the Assembly to modify the law on reserved matters where the provision is ancillary to a provision on a devolved matter and has no greater effect on reserved matters than is necessary to give effect to the provision. This provides the Assembly

[Lord Bourne of Aberystwyth]
with the flexibility to legislate with regard to the law on reserved matters in a limited way to give effect to provisions that are within its legislative competence. However, such a provision cannot go further than required to achieve its objective.

Amendments 75 and 76 seek to remove the second limb of this exception—that the provision must have no greater effect than necessary—from Assembly provisions that seek to modify the law in relation to paragraphs 6 and 7 of the new Schedule 7A. These are the reservations for the single legal jurisdiction and tribunals. Amendment 77 seeks to remove the necessity element of this test altogether. This would allow an Assembly, through on Act, to amend the law on reserved matters without a requirement for it to act proportionally to meet its objective. The law on reserved matters is, by definition, not an area of the law that should be open to wide-ranging alteration by the Assembly in this manner. This is vital to effect a clear boundary between what is devolved and what is reserved.

The matters within paragraphs 6 and 7 to Schedule 7A specifically are fundamental to the maintenance of the single legal jurisdiction of England and Wales. The Government's position on the maintenance of the single jurisdiction is clear. Allowing the Assembly to modify these areas puts at risk the uniformity on which the single jurisdiction is based. Removing the requirement that Assembly modifications to the law on these matters should go no further than necessary would give the Assembly a significant increase in competence. The constraints represent an appropriate and balanced limitation on the Assembly's competence. This gives the Assembly the same powers to modify the law on reserved matters as the Scottish Parliament has in relation to Scotland.

9 pm

Amendment 78 seeks to omit the criminal law restriction in paragraph 4 of the new Schedule 7B and replace it with a restriction that would bring it in line with the private law restriction at paragraph 3. Paragraph 4 sets out a category of offences which the Assembly would be unable to modify. These include the most serious indictable offences, such as homicide and sexual offences. The Assembly would also be prevented from making modifications in relation to what might be termed the architecture of the criminal law, which includes matters such as criminal responsibility, the mental elements of offences, inchoate offences and the composition and definition of sentences.

This amendment would remove the restriction on modifying the law on these listed offences and the architecture of the criminal law. It seeks to enable the Assembly to be able to modify the criminal law as it relates to devolved matters. It would enable the Assembly to create its own serious criminal offences for devolved purposes and, in relation to those offences, provide different sentencing regimes, new definitions of criminal responsibility, change the law on inchoate offences and so forth. Again, these are fundamental elements that make up the criminal law in England and Wales, which should remain consistent across both countries. The criminal law restriction achieves the best balance between allowing the Assembly to make appropriate provision in relation to criminal law, while ensuring consistency on the most serious offences and important mechanisms of criminal law.

Paragraph 4 strikes the right balance by allowing the Assembly to apply the existing framework to its own enforcement provisions and to decide which aspects of the existing criminal law apply. It would allow the Assembly to create strict liability offences or the appropriate mental element to attach to the offence as well as choosing the sentences that apply to devolved offences.

Amendment 81 seeks to allow an Assembly Act to modify the Minister of the Crown functions listed in paragraph 11(1) of Schedule 7B without the consent of the relevant UK Government Minister if the modification is incidental or consequential to an Assembly Act provision. The Bill establishes a clear boundary between what is devolved and what is reserved. This includes making clear those devolved public bodies which are accountable to Welsh Ministers and the National Assembly for Wales, as distinct from reserved public bodies that are accountable to the United Kingdom Government and to this Parliament. It is only right that United Kingdom Government Ministers are asked to consent to any Assembly Act which seeks to modify their functions. I should be clear, however, that the consent of a Minister of the Crown is not required to subject reserved authorities to general duties imposed by the Assembly; for example, requiring planning permission or prohibiting smoking in public buildings.

Similarly, Amendment 82 would remove the requirement for the Assembly to seek the consent of United Kingdom Government Ministers for an Act of the Assembly that would modify the functions of a reserved authority, including a United Kingdom Government Minister, if such an Act related to a Welsh language function. We have taken a number of steps to minimise the impact of the Bill on the Welsh language. For example, paragraph 199 of Schedule 7A includes a specific exception to the particular authorities' restrictions in paragraph 198 to ensure that the restrictions do not apply in respect of those authorities' Welsh language functions. This means the Assembly will continue to be able to legislate, with consent, to modify the Welsh language functions of the named particular authorities. In addition, the consent requirements under the Bill are not retrospective and will therefore not affect the implementation of standards made under the Welsh Language Measure 2011. The consent of a United Kingdom Government Minister would not be needed for regulations made under that measure which relate to reserved authorities other than Ministers of the Crown.

Lord Wigley (PC): Amendment 82 was discussed in the other place and the Minister gave the same assurance to my colleagues there that the powers would not be exercisable on Acts of the Assembly that had already been passed, and therefore it was not a question of rolling back any existing legislation. However, is it not totally perverse that there should be a different set of circumstances relating to legislation that has been enacted in the past and identical legislation that may be enacted in the future, but they are handled in different ways?

Lord Bourne of Aberystwyth: I do not think I follow the noble Lord's point. It is obviously a hallmark of good legislation that it is not retrospective. Therefore, anything that we are doing here will not, as it were, undermine anything that has already happened. But I think what we are doing otherwise is fairly clear for the future, so I do not quite understand what he means by perverse in that context.

Lord Wigley: Perhaps we could discuss it further.

Lord Bourne of Aberystwyth: I shall be very happy to discuss it further with the noble Lord.

The inclusion of exceptions to the Minister of the Crown consent process would undermine the whole principle of providing clarity within the devolution settlement over who can legislate for what.

The remaining government amendments in this group—Amendments 78A to 78D and 80A—build upon Clause 13, which is an important part of the Bill. Through that clause we are devolving competence to the Assembly so that it can set up its own regime for the audit and accounting of the Welsh Government and its public bodies, similar to the arrangements made by this Parliament for the UK Government and by the Scottish Parliament for the Scottish Government. Clause 13 has been the subject of detailed discussions between the United Kingdom Government, the Welsh Government, the Assembly Commission and the Wales Audit Office, and these amendments are the result of those discussions.

Through Amendment 78A we are devolving competence to the Assembly to amend Section 146A(1) of the Government of Wales Act 1998. Amendment 78B replaces paragraphs 5(2) to 5(6) of new Schedule 7B, as inserted by Schedule 2 to the Bill, with simpler drafting without changing the effect of the provisions in any way. The effect of these two amendments is that the Assembly will be able to modify Section 146A(1) of the Government of Wales Act 1998, which allows the Welsh Ministers to delegate or transfer supervisory functions to the Auditor-General for Wales, provided that that amendment is a provision about the oversight of the Auditor-General for Wales.

Through Amendments 78C and 78D we are devolving competence to the Assembly to amend sections of Part 5 of the Government of Wales Act 2006, other than those that are already listed in paragraph 7(2)(d), without the consent of the Secretary of State provided the amendments are incidental to, or consequential on, provisions relating to budgetary procedures or devolved taxes.

Finally, Amendment 80A will put in place key safeguards in paragraph 7 of new Schedule 7B so that the Assembly will be able to amend Treasury functions in Sections 138(2) and 141(4) of the Government of Wales Act 2006 only with the consent of the appropriate Minister.

Section 138(2) allows the Treasury to appoint another member of the staff of the Assembly as principal accounting officer for the Assembly Commission if the Clerk is unable to discharge these responsibilities or the post of Clerk is vacant. There are already arrangements for dealing with the replacement of an Assembly Clerk in certain circumstances, such as incapacity, and the accounting officer appointment should follow from that process. If these arrangements are changed, it is only reasonable that the Treasury gives consent because it is the guardian of the overall accounting officer system in the UK.

Section 141(4) ensures that the Treasury may continue to determine the form in which the Welsh Government submit their returns for the whole of government accounts. Although we are content for this to change in principle, the Treasury quite rightly wants to make sure that any change aligns with the arrangements for the Scottish Government, and so a requirement to seek Treasury consent is sensible.

These are technical but important amendments that build upon the important provisions in Clause 13. I therefore commend government Amendments 42A, 78A, 78B, 78C, 78D and 80A to the Committee and I urge the noble Baroness to withdraw her amendment.

Lord Thomas of Gresford (LD): My Lords, the noble Lord, Lord Elis-Thomas, in introducing his Amendments 77 and 78, did not expand very much on what they mean. I support the Government on the necessary test for the law on reserved matters, and I think it is essential that it be confined in that way.

I would be extremely concerned if there were an attempt to have a different criminal law applying in Wales, save in matters concerned with the enforcement of regulations or Acts of the Welsh Parliament. However, any modifications to the criminal law that dealt with, for example, the meaning of intention, recklessness, dishonesty, and so on or "secondary criminal liability" would cause great conflict. I have to tell your Lordships that I was involved in the definition of "recklessness" in the House of Lords Judicial Committee 25 years ago. My argument was dismissed but 25 years later their Lordships overruled the previous decision. It was similar with secondary criminal liability. My argument about that many years ago was dismissed but in very recent times has been accepted. These are difficult concepts and they should not be interfered with in any way.

Baroness Morgan of Ely): My Lords, I thank the Minister for his comprehensive answer. There is a lot to digest.

It gives me a degree of comfort to understand that the amendment will fail the relate test if it has reserved matters as its purpose—that was clearly underlined by the Minister. The shifting of the burden of proof is also useful. I find that examples tell the story more readily than heavy legalese. However, it would have been useful to have heard examples of where it would have failed. We may be able to look at that in future. We need to be clear about where the lines are.

It was useful to understand that there will not be a need for consent by a UK Government Minister in relation to reserved bodies if it relates to general duties. I am again comforted by that.

As I say, there is a lot to digest and we will need time to look in detail at the Minister's answer to see whether it meets some of our concerns. At this point I reserve judgment on whether he has answered all of my concerns and beg leave to withdraw the amendment.

Amendment 38 withdrawn.

Amendments 39 to 41 not moved.

Amendment 42

Moved by ***Lord Wigley***

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

"(c) relates to the Welsh Government's provision of support for the furtherance of the Welsh language and culture in the Argentinian state of Chubut where the provision has the agreement of the UK Government and the Government of Chubut."

Lord Wigley: My Lords, Amendment 42 relates to the Welsh community in Patagonia, which is located entirely within the Argentinian state of Chubut. I declare an interest in that I was president of the 150th anniversary celebration committee, which last year stimulated a programme of events to mark the occasion, and in particular to create a legacy which will help stimulate and sustain Welsh language and culture in Chubut.

Over the past 50 years, there has been a growing interest in matters relating to Welsh culture in Chubut, and there are today about 7,000 Welsh speakers there, of whom about 1,100 are learners of the language. Over the past 20 years, practical help and support has been given by way of helping teachers from Wales to work for two or three years in Patagonia to assist with the teaching of Welsh. The Welsh language school Coleg Camwy has been teaching Welsh in Gaiman, the most Welsh of the towns in Chubut. There are schemes to expand this school currently under consideration. A new Welsh school, Ysgol yr Hendre, was opened in Trelew, the largest city in Chubut, some 10 years ago, and this year a new Welsh school has been opened in Trefelin in the Andes. Welsh language and culture is also taught in dedicated classes in the town of Esquel.

This is relevant to the Wales Bill because since the opening of the National Assembly, the teacher scheme, which was originally established by Welsh Office Ministers back in the 1990s, has been taken over by the Assembly. Indeed, two First Ministers have visited Chubut—first Rhodri Morgan and last year Carwyn Jones—and other links between the National Assembly and the Welsh community in Patagonia have been established. These activities and links are associated with the National Assembly's responsibility for Welsh language and culture. Although the Assembly and the Welsh Government have no direct responsibility for overseas activities and relationships, it has been recognised that such overseas links can be accepted as being within their competence because they are ancillary to safeguarding the broader interests of the Welsh language and culture.

However, with the new, tighter approach which seems to be taken by the UK Government in the context of this Bill, with "silent issues" being seen as reserved matters, words along the lines proposed in this amendment are needed to ensure beyond all doubt that these powers continue to be available to the Assembly and that nothing in this Bill should be seen as undermining such activity. I suspect I can carry the whole House with me in these aspirations. If the Minister can assure the House beyond peradventure that these powers will continue to be exercisable by the Welsh Government, the amendment may be unnecessary, but if there is any doubt whatever, such words should be added to the Bill. I hope the Minister can respond positively on this matter. I beg to move.

9.15 pm

Lord Crickhowell (Con): My Lords, a good many years ago I and my wife visited the Welsh settlement in Patagonia. We were greatly impressed and moved by what we found there. We met a large number of people with Welsh names. Indeed, we stopped to picnic by the roadside and an individual in a truck drove up and asked what we were doing. We told him why we were there. He said, "Oh, he's Welsh", pointing to the nearest farm, the owner of which had a Welsh name. He pointed at another farm and the owner of that one had a Welsh name. We found wonderful examples of Welsh culture and the Welsh language, and an enthusiasm for Welsh culture and language that I, for one, found greatly moving and was very impressed by.

I know that, a good time after our visit, the support described by the noble Lord began. It has continued and has been very successful and influential. I hope it can be continued. It may be that my noble friend will be able to tell us that the amendment is not needed, but if by any chance it is it has my warm and wholehearted support.

Lord Howarth of Newport (Lab): My Lords, while I share the aspirations of the noble Lord, Lord Wigley, I would like to ask him a couple of questions. The condition of his amendment is that the provision should have,

"the agreement of the UK Government and the Government of Chubut".

Can the noble Lord tell us that he has squared the Government of Argentina, or is that not necessary because competence in this matter has been devolved from Buenos Aires to Chubut?

Lord Wigley: Indeed. Education in Chubut is a wholly devolved matter in Argentina. The state legislature of Chubut has been very positive on these matters. It contributed to the opening of Ysgol yr Hendre 10 years ago, which I mentioned. It is now actively involved in the possibility of expanding the school at Gaiman. In other words, there is a good working relationship between the Government of Wales and the Government of Chubut. The central Argentine Government have been very supportive. Indeed, they have provided funds to safeguard all 16 of the Welsh chapels in Patagonia to ensure they all remain open, provided there is one service once a quarter in each of the chapels. In other words, whatever other dispute there may be—disputes do arise in Argentina on various matters—on this issue there is harmony that is well worth building on because of its interest not only in Argentina and to Wales but to the United Kingdom in our relationship with Argentina.

Lord Morgan (Lab): My Lords, what the noble Lord, Lord Wigley, said is totally correct. Y Wladfa, the Welsh community in Chubut, rather benefited from the Falklands War, because the Argentine

Government were rather anxious to show that they were solicitous of the needs of cultural minorities in their country. I feel, on behalf of Welsh historians everywhere, that I should support this. I have not been to Chubut, as the noble Lord, Lord Crickhowell, has, but I have taught Chubut students in Swansea. I twice published articles by historians from that community in the *Welsh History Review* when I edited it. They have a very living contact; it is not an antiquarian matter. All Welsh people should strongly support it.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord, Lord Wigley, for introducing the amendment and other noble Lords who have participated in the debate. Through the amendment, the noble Lord seeks to extend the Assembly's competence so that it could legislate otherwise than in relation to Wales to support the Welsh language and Welsh culture in the Argentinian province of Chubut.

Of course, the history of the Welsh settlement—"settlement" in a sense that I hope I will be allowed to use here—in Patagonia is one of the great stories of human migration and holds a special place in the hearts and minds of people in Wales. It is a story of typical Welsh tenacity and fortitude that led settlers to travel thousands of miles, driven by the desire for a better life and the dream of establishing a new Wales.

In Patagonia today, interest in the Welsh language and Welsh culture is flourishing, more than 150 years on from the first settlement. Members of the Welsh Affairs Committee in the other place saw this for themselves when they visited Patagonia in 2014, a year early, to mark the 150th anniversary of the arrival of the first Welsh settlers. Although the anniversary was in 2015, typical Welsh efficiency and promptness meant that they were there a year early. The settlement is of course a part of Argentina and, while Welsh culture thrives there, it is wonderfully intermixed with the rich culture of South America. I, too, have taken an interest in the settlement. When I was on the British Council committee, access to finance and help were certainly provided to Chubut.

When the amendment was tabled, my reaction was, "Surely, the National Assembly has the power to do this already"—and that is our conclusion. The common law-type powers that we are devolving to Welsh Ministers will ensure that they can continue to act in the way that they are doing in support of the Welsh language in Chubut. I will have another look at it to ensure that that is the case and will be happy to speak to the noble Lord if that is helpful, but I am sure that we would all want to see this continue. With that, I ask the noble Lord if he would kindly withdraw his amendment.

Lord Wigley: My Lords, I thank everyone who contributed to this short debate and am grateful for the positive spirit and in particular for the response of the Minister. I had hoped that he would say that the powers that already exist are not in any way diluted or diverted by virtue of the Bill. The Minister mentioned legislation. I should clarify that it was not my intention that the National Assembly should legislate for what happens in Chubut—obviously not—but there are Executive actions which support the language, and it is the continuation of those that I wish. Given the assurances that the Minister has given, and assuming that he does not find any snag that he has not seen so far, I beg leave to withdraw the amendment.

Amendment 42 withdrawn.

Amendment 42A

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

42A: Clause 3, page 3, line 3, leave out "paragraphs 8 to 11 of Schedule 7B" and insert "any requirement for consent or consultation imposed under paragraph 8, 10 or 11 of Schedule 7B or otherwise"

Amendment 42A agreed.

Amendment 43

Moved by ***Lord Elis-Thomas***

43: Clause 3, page 3, leave out lines 5 and 6

Lord Elis-Thomas: I have always believed that constitutional legislation in any state should be intelligible, or as intelligible as possible, not only to the practitioners of public life but to the general public. This is particularly the case with the constitution of Wales. The episode that we are now involved in is a further obfuscation of the constitution rather than its opening out to intelligibility, which is why these amendments on consolidation are important. I am grateful for the support of the noble Baroness, Lady Finlay, who will no doubt want to speak to them.

The question of how a constitution is made accessible was highlighted in the outstanding judgment of the High Court last week. In their judgment, their Lordships said:

> "The United Kingdom does not have a constitution to be found entirely in a written document. This does not mean there is an absence of a constitution or constitutional law. On the contrary, the United Kingdom has its own form of constitutional law, as recognised in each of the jurisdictions of the four constituent nations".

But because the constitution of Wales is currently spread over four pieces of legislation, it hardly meets the test of being intelligible to the population or to any of those active citizens who wish to participate in understanding their constitution.

This has been a persistent theme of the National Assembly's relevant committee dealing with constitutional matters. That is why the predecessor committee of the current one, of which I was also a member for a period, recommended that a clear commitment should be given to consolidating the constitutional legislation of Wales and to having this done in the current parliamentary term. If for good reasons of their own the UK Government did not feel able to undertake such consolidation, there should also be a clear provision—or at least there should not be any hindrance—in any Bill so that the National Assembly itself could undertake it. Amendments to this effect were tabled in another place and in the debate the UK Government said this was not necessary because the constitutional settlement for Wales is the Government of Wales Act 2006 as amended—a matter to which I alluded earlier. Quite simply, the urtext that is the basis for our understanding of the constitution of

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Wales is the Government of Wales Act 2006 as amended, but it does not meet the test of consolidation and intelligibility.

Is it not now time to give the people who are most concerned about this matter—those of us who must live and work through the constitution we are given by courtesy of the Houses of Parliament of the United Kingdom—responsibility to make that consolidation? It is not an attempt to amend legislation, merely to consolidate it. This approach should recommend itself to all who are concerned about constitutional clarity and democratic principles. All that Amendments 43 and 44 would do is permit the National Assembly to consolidate the devolution statutes relating to Wales in both its languages. This is not to blow my own trumpet because I happened to be born bilingual, but we are officially a bilingual legislature. We work actively and daily in two languages. To allow us to legislate and provide consolidation in this area would mean that we were able to serve our citizens much more effectively. I beg to move.

Lord Howarth of Newport: My Lords, I have huge sympathy with what the noble Lord, Lord Elis-Thomas, just said. Why have the Government not presented this legislation to Parliament in consolidated form? That would have greatly facilitated scrutiny and, more importantly still, as the noble Lord suggested, it would be for the benefit of the people of Wales and all our fellow citizens who are interested in and care about the development of our constitution, by enabling them much more readily to understand the Government's constitutional proposals. I cannot see why we must wade through these thickets of legislative obscurity to try to get the measure improved and an adequate and comprehensible piece of legislation presented to the world.

Lord Crickhowell: My Lords, I have every sympathy for what has been said about consolidation. My difficulty is more fundamental. I am not a lawyer, and I know I am a bear of very little brain, but quite frankly, I do not understand what lines 5 and 6 mean. I should be grateful if the Minister could tell me, in simple language, what on earth they mean, because it is far from clear to me.

9.30 pm

Baroness Finlay of Llandaff (CB): My Lords, I have added my name to the second of these amendments, but I should have added it to both. I have felt strongly that law should be accessible to the people to whom it applies. You cannot expect a population to understand the law that surrounds it and the way it lives unless it is intelligible and accessible. Ever since the Assembly came into being, divergence of the systems, particularly in education, health and social care and planning, has meant that we have an increasingly complex range of legislation. Cardiff University was where Wales Legislation Online first started as an attempt to provide some kind of solution to this. I was pleased to be part of the campaign at that time to get that instigated. That subsequently evolved into Law Wales and is now more formalised.

This requirement and request for consolidation came through quite clearly in the report of the Constitutional Affairs Committee, which made clear that we need consolidation. I cannot see that the Government in Westminster will ever feel particularly motivated to consolidate, but I can see that the Assembly would feel motivated to do so.

Lateral to that, this all fits with a quiet campaign I have had over the years. In 2004, I asked the Government to make sure that the Explanatory Notes accompanying each Bill provided a table listing all the provisions to give powers to the National Assembly. The response I had from the Lord President of the Council was that:

> "It will be suggested to departments that they present this in a tabular form where appropriate".—[*Official Report*, 11/10/2004; col. *WA 1*.]

During the passage of the Government of Wales Act 2006, I further pursued the need to be able to track legislation, particularly because of this effect of divergence. I stressed that solicitors and other professionals in Wales, such as healthcare professionals, educators and so on, need to know and understand the law which governs the way they function and live and their everyday activities such as their professional duties with regard to the rest of the population.

Can the Government therefore explain what they lose by giving such powers to the Assembly? I cannot see that they would lose anything at all. Why could they not seek to adopt this amendment, which might provide a solution to a problem which will probably get worse over the years, as further constitutional changes come through in other pieces of legislation?

Baroness Gale (Lab): My Lords, by now, after the contributions that have been made, the Minister will be quite clear that there is a need to consolidate the Welsh Acts of Parliament. We believe that the Wales Bill would be appropriate and without doubt could consolidate matters so that the Welsh constitution is accessible as a single piece of legislation.

The Bill as it stands constantly refers to or amends many previous pieces of legislation, in particular the Government of Wales Act 2006. As such, reading and understanding where power lies in relation to Wales can be needlessly complicated. As noble Lords have said, we should therefore aim to bring as much clarity as possible to what could be a landmark piece of legislation.

So far, however, the UK Government do not seem to want to consolidate the Welsh devolution settlement into one authoritative piece of legislation. I believe they have said—perhaps the Minister can confirm this—that it is "not necessary", because the constitutional settlement for Wales is in the Government of Wales Act 2006. We should strive for more than what is just necessary; rather, we should aim to produce a Bill that all of us in Wales will be proud of.

The Welsh Government have already drafted an alternative Wales Bill, drawing together many pieces of legislation into one self-contained whole. In that sense, the hard work has been done. Could the UK Government not simply follow the approach of the Welsh Government, and what I believe is the wish of noble Lords tonight? This would be an opportunity

for us to forge clear, accessible and ambitious legislation. I am sure that the Minister has been listening to what all noble Lords have said, and I hope that he will come forward with some positive responses.

Lord Thomas of Gresford: My Lords, I am a lawyer, but I have no idea what Clause 3(5) means. I look forward to the Minister explaining it because what is being referred to if,

"power to make laws other than that of the Assembly is disregarded"?

I have no idea at all.

On Amendment 44, I believe in consolidation but I do not know that I believe in this particular amendment. The law affecting Wales will be what one might call Acts of the Assembly, subordinate legislation under Acts of the Assembly and legacy law—that is to say, if in devolved areas the law in England moves on, the provisions which previously applied to Wales will continue. In devolved areas, the Westminster Government may decide to change the law as a result of policy, leaving Wales with the legacy. Proposed new Section 108B says on consolidation that:

"Nothing in this Act prevents the Assembly restating … the provisions of any enactment that provide for the government of Wales".

What does that refer to? Is it the legacy law and, if so, how does the Assembly restate it?

Subsection (2) of the proposed new section in Amendment 44 really makes me puzzle. It says that the Secretary of State—presumably, the Secretary of State for Wales—

"may by regulations repeal the provisions of any enactment … restated by the Assembly in accordance with subsection (1)",

so whatever mechanism restatement is supposed to be, the Secretary of State here in Gwydyr House can repeal it. The Assembly may make this pronouncement: "We are following the law that previously applied to England and Wales but England has moved on. We are continuing the law as it was previously stated in Wales". Then the Secretary of State for Wales comes along and repeals it, not by any legislation but simply by statutory instrument on an affirmative resolution by each House of Parliament. I really do not know what this consolidation means. I agree with my noble friend Lady—

Baroness Randerson (LD): Randerson.

Lord Thomas of Gresford: My noble friend Lady Randerson. I was getting my names mixed up for a moment. She said the other day that it is—as a matter of fact, I have forgotten what she said so I shall leave it at that.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords for their participation in this part of the Bill. Through these amendments, the noble Lord, Lord Elis- Thomas, is seeking to provide the Assembly with the competence to consolidate the law as it applies in Wales. Through Amendment 43, I think that he seeks to broaden the circumstances in which the Assembly could legislate other than in relation to Wales. However, the amendment as drafted would actually narrow the Assembly's competence to legislate otherwise than in relation to Wales by making the "no greater effect than necessary" test more restrictive. I am sure that this is not the noble Lord's intention.

Through Amendment 44, the noble Lord and the noble Baroness, Lady Finlay, seek to give the Assembly a wide-ranging power to restate without modification any law that provides for the government of Wales. I think the noble Baroness, Lady Gale, was referring to an alternative Bill that is not a consolidation measure. We would hesitate to accept an alternative Bill which is nothing to do with consolidation.

Nevertheless, let me answer the question about consolidation because it seems to me that the consolidation of United Kingdom legislation can realistically take place only in the United Kingdom Parliament, and no more could or should the United Kingdom Parliament consolidate legislation of the Welsh Assembly or, for that matter, the Scottish Parliament.

The noble Lord, Lord Howarth, asked why we have not consolidated previously. The reason is that we have been under continuous pressure—I think that probably applied to the previous Government as well—to change the laws in relation to Wales because it has been a fast-moving position. There has been understandable pressure to make amendments, and it is difficult to consolidate the law at the same time as the law is being changed. In relation to an area that I know something about—company law—before the consolidation in the Companies Act 2006, which was then and I think still is the largest piece of legislation ever to go through the UK Parliament, there had not been a substantial consolidation measure since 1948, although there had been consolidation to some extent in 1985. That is why these things get postponed.

Before we get too exercised by this, I remind noble Lords that this does not alter the law. The law is there. I would need to be convinced, as I think others would too, that people in Wales are hanging about for a consolidation measure and that they want the law somewhere neatly. I do not think they are particularly exercised about this. I would have to be convinced that this is something that is exercising people up and down Wales or, indeed, in England. There was a suggestion—I am characterising it slightly—that this primarily concerns Wales, but it concerns England too, and Scotland, because it carves out the constitutional position within the United Kingdom.

That is not to say that it may not be necessary at some stage, but when it is done, it is important that it is done in the UK Parliament. In the meantime, it is important that we get the law right. I appreciate that we have got some way to go on some of that, but it is more important to get the law right before we consider consolidating it, so I ask the noble Lord to withdraw the amendment.

Lord Thomas of Gresford: I apologise to my noble friend Lady Randerson. What she said on the first day in Committee, which I now recall, was that there should be an easy way of access to Welsh law, and so far nobody has put together any form of loose-leaf book or anything of that sort that shows the current law in Wales. That is the point she made, which I follow.

Lord Bourne of Aberystwyth: My Lords, there is a commercial opportunity there. I commend the noble Baroness, Lady Randerson, for her good idea.

Lord Crickhowell: I am sorry to intervene again, but I thought I was being pretty stupid at a late hour at night when I asked what subsection (5) meant. When a leading Welsh lawyer got up and asked exactly the same question, I decided that perhaps I was not quite as stupid as I thought. I would love to know what it actually means.

Lord Bourne of Aberystwyth: My Lords, I believe it means—and I will write to noble Lords if I am incorrect in this, as I may be—that, in determining what is necessary for the purposes of subsection (3), which relates to the test of ancillary and necessary, you cannot allege that it is necessary that the law is passed unless it is necessary that it is an Assembly law. It cannot be necessary for another legislative body. I think that is what it means. If I am wrong, I will write to the noble Lord and copy the letter to other noble Lords. I may be wrong.

Lord Elis-Thomas: I am, of course, disappointed by the Minister's response, but I should be disappointed at least once in a debate in this Parliament. I am grateful for the support from the noble Lord, Lord Howarth, and the noble Baronesses, Lady Finlay and Lady Gale, and for the interventions by the noble Lords, Lord Thomas of Gresford and Lord Crickhowell.

The consolidation of the law is about the intelligibility of the law and the transparency of political activity. I will continue to pursue this with greater vigour and will call upon my distinguished academic colleagues throughout the Principality and beyond to get on and do it. I beg leave to withdraw the amendment.

Amendment 43 withdrawn.

Amendment 44 not moved.

Clause 3, as amended, agreed.

9.45 pm

Amendment 45

Moved by ***Lord Elystan-Morgan***

45: After Clause 3, insert the following new Clause—

"Working group on constitutional development

The Secretary of State for Wales shall, within the period of three years following the principal appointed day referred to in section 55(3), establish a working group to study the possibilities for Wales, as a land and nation, of constitutional development within the terms of and consistent with the principles of the Statute of Westminster 1931, and developments thereafter, and shall within the said period of three years present a report of its study to Parliament with such recommendations as it deems appropriate."

Lord Elystan-Morgan (CB): My Lords, these two amendments, Amendment 45 and Amendment 46, are intended to stimulate thought—particularly the first of those amendments, which relates to dominion status—and to try and deepen and broaden the whole issue of the constitutional future of Wales. The second, which deals with the constitution of reserved powers, is intended to seek to repair and ameliorate some very serious flaws which, in my submission, exist in this part of the Bill.

Dominion status is not about a rigid pattern of government. The principle is enunciated in the Statute of Westminster 1931 and has developed politically, broadly and indeed fruitfully over the 85 years thereafter. It is full of possibilities for meeting different situations in different parts of the world. Obviously, when one is speaking of dominion status in the context of Wales, one is not speaking in any way of a replica of the constitutional situation of New Zealand or Australia. Nevertheless, the common refrain which runs through it all is that it involves a territory that was once under direct British rule and which still accepts the sovereignty and the titular authority of the Queen. Beyond that, the possibilities are almost illimitable. Indeed, my appeal in this situation, when we are thinking of the future of Wales, is to think big. If you think big, you will achieve something worth while; if you think small, what you will achieve will be small, or even perhaps smaller than that which you have set out to obtain. That is the situation that confronts us now.

The possibilities of dominion status are almost illimitable. It is an open secret that about 10 years ago the Government of the United Kingdom and the Government of Spain almost came to an understanding—this is hardly believable—about the future of Gibraltar, with a plan for some form of dominion status. In other words, the concept is so flexible, so malleable and so adaptable that it was possible for the ancient conflicts there to come very near to a friendly settlement. That is an illustration of exactly how pliable dominion status can be. It is in that context that I would ask for imagination to roam and for the spirit to be broad and liberal and inspiring in relation to the possibilities here. There are endless plans and changes that can be considered, but within them there is the possibility of Wales playing a full, dominant, honourable and splendid part in the life of the United Kingdom. Who knows what the situation will be in five to 10 years' time? It is a situation of total flux, and it is therefore incumbent upon us as Welsh people, and indeed upon all of us as British people, to consider exactly what this possibility should be, side by side with many other possibilities.

I turn to the second matter, the question of the creation of a reserved powers constitution for Wales. Normally I would jump with joy at this development because it places Wales upon the same constitutional basis as Scotland and Northern Ireland. It also tidies up a great deal of what is now in a state of confusion and, if I may so describe it, confetti. When you deal with a long period of transferring small powers, day in and day out, coming from hundreds of different sources, you create a situation that almost guarantees some constitutional neurosis on the part of many generations of Welsh lawyers. Avoiding that would in itself be utterly worth while.

However, I am far from happy with the situation because I believe it is deeply flawed and a blueprint for failure and disaster. The fact that there are 200 or more reservations—I am wrong, actually; it is about 198 or 199—and the very nature of the reservations

themselves makes the matter a nonsense. Consider the matters that are reserved, though I touched on this at Second Reading so I will not go into all the detail: licensing, something that Wales had devolved to it in 1881; dangerous dogs; sharp axes and knives; hovercraft; prostitution; charitable collections—one could go through dozens of examples here of what are mere trivia, matters that are clearly domestic in their nature. The inclusion of them by way of reservation is to my mind an insult to the people of Wales.

It is on that basis that I ask the House to consider very carefully whether in any way this can fit in with what I have described as the moral and constitutional geometry of the situation. By that, I mean that when you have a settlement such as we are now seeking in relation to Wales, one that one hopes should last for a long time or at any rate be a basis upon which further development can be built, there has to be mutual trust and some sense of balance. The subsidiary parliament states straight away, "We are not concerned with the question of succession to the Crown, defence or foreign policy and perhaps three or four allied questions of that nature, but we are concerned with matters that are purely and classically domestic in their character". If the current Parliament refuses to accept that, the whole moral geometry of the situation is affected.

How did this come about? Not, I think, on account of any mendacious conspiracy on the part of Ministers against Wales; I do not think there is any conscious machination at all in regard to it. It came from a long history of prejudice that has formed what you might describe as a permafrost of attitude towards Welsh devolution. I do not believe that the situation was anything different from this: the Secretary of State for Wales, perhaps rather deferentially, went to various colleagues and said, "What would you like reserved, my dear chap, from your department?". Each one said, in his mind and his heart if not indeed in actual words, "Practically everything. It doesn't matter how meagre, niggardly, small or utterly local it might be, we will reserve it if we possibly can".

Why? I believe that it has a lot to do with the fact that Wales was England's first colony. That was the situation in the 13th century. In the Act of Union of 1536, Wales was said to be part, inevitably and as it always had been, of the United Kingdom, and its affairs were to be assimilated, incorporated and included within the greater realm of England. We have not broken through that mould.

On Second Reading, I made this—I think, not invalid—point. When you think of some of these reservations—there are dozens which, to my mind, are utterly ludicrous—can you imagine the Colonial Office of the United Kingdom 60 years ago, particularly when James Griffiths was the head of that department, going to a British Caribbean or African colony and saying, "These are the reservations that I demand of you"? It simply could not happen.

It is against that template that one has to consider this matter. For that reason, I have drafted this new clause, which of course I shall not press to a Division tonight, but it could well be revisited before we finish with the Bill. It calls on the Secretary of State to be responsible for setting up a working party to report to Parliament within three years on the question of how the reserved powers are operating in each case. The purpose of that—allied, no doubt, with recommendations from the working party—would be, first, to narrow the gap between the situation now and that which existed on the very day in July 2014 when the Supreme Court gave its judgment in the agricultural workers case. The gap is immense. The powers that we have under the Bill are, strictly speaking, immensely inferior to what we had then, when it was discovered that silent transferred powers, which no one had ever appreciated, had given immense authority to Wales.

I think that the Government were reluctant to accept the reserved powers constitution that they had enforced on them; their hands were forced. I do not believe that there is even now a messianic commitment, and most certainly there is no incandescent enthusiasm for this reform. It is something to which they feel that they must surrender.

The effect will be, secondly, to get rid of many of these anomalies; and, thirdly, to set out a coherent pattern, for in fact there is no theme—no coherence—to this. For that reason, I beg to move.

Lord Wigley: My Lords, I support my friend, the noble Lord, Elystan-Morgan, on Amendment 45, which he moved so eloquently, and Amendment 46, which is coupled with it. The noble Lord has throughout his political life been a strong advocate of the merits of dominion status, as defined by the Statute of Westminster 1931. In his way, tonight, he has, even at this late hour, elevated the debate above the uninspiring contents of a rather unambitious Bill.

Since the United Kingdom became a member of the European Community in 1973 and now—at least for the time being—of the European Union, I must admit that I had tended to look at Wales's future in European terms more than in terms of the Commonwealth. I had no difficulty in regarding Wales as both an historic nation in its own right and a European region. As the EU grew to its present strength of 28 member states, with eight of them smaller in population than Wales, now including in their own right small countries such as Slovenia, Estonia, Latvia, Malta and Luxembourg, I looked on our legitimate aspiration as being a member state of the EU in our own right.

That was not in any sense a separatist argument. If England, Scotland, Northern Ireland, and indeed, the Irish Republic, were also member states, we could co-operate within a new relationship covering Britain and Ireland. We would have our own presence in Europe. It was indeed the converse of a separatist approach. I regarded a pooling of sovereignty on a European level, subject to the principle of subsidiarity, where decisions are taken as closely as possible to the community on which they impact, as being most appropriate to the modern world, in which the physical barriers between nations should be regarded as a thing of the past.

10 pm

The recent referendum means that the UK will now, most regrettably, leave the European Union—though goodness knows what new relationship we shall have

[Lord Wigley]
with our European neighbours, including the Irish Republic. In these circumstances we must all look again at what should be the appropriate place for Wales in the brave new world towards which we are, for better or for worse, heading. I suggest that it is also time for the London-centric political parties to start thinking in these terms, too.

For me, there are three guiding principles. First, the people of Wales should have the right to determine the degree of independence towards which they aspire, and what is appropriate to their developing circumstances. While it is right that no outside body or authority can set limits on the ambitions of a nation, as was once famously stated in an Irish context, it is up to the people of that nation how far and how fast they wish to travel. I say this deliberately, since I do not believe that in the modern world there is room for any such concept as absolute independence, as espoused by UKIP.

Secondly, any new constitutional settlement between the nations of these islands should recognise the practical reality that we must have open borders between all five nations. In that I include the Irish Republic. There must be free movement of people, goods, money and services between each of them, unhindered by customs posts or passport control. Anything else is totally impractical and those who advocated Brexit are now coming to realise that basic fact as they try to square an unsquarable circle with regard to the relationship between the Irish Republic, Northern Ireland and the countries of Britain.

Thirdly, Wales should be empowered to take every decision that can meaningfully be taken in Wales by our own Government in our own National Assembly, to the extent that the people of Wales so wish. Where decisions that affect Wales are taken by bodies outside our borders, we should have a strong, effective and direct voice in those forums.

That is the background against which I approach the two amendments on the constitutional development of Wales. Amendment 45 addresses the broad picture. What should be the degree of self-government and pattern of constitutional development in the new circumstances that are unfolding in Wales? I believe that the working group specified in the amendment should of course include representatives of the Welsh Government and the National Assembly, including perhaps its Presiding Officer, who might well argue that this is a question that needs to be addressed in the context of the democratic relationships between each of the four nations of these islands. That, however, is beyond the scope of this Bill. There needs to be a three-year timescale since the outcome of the Brexit negotiations will be an essential backdrop to any such considerations.

Amendment 46 is a more narrow and focused amendment to deal with the inevitable consequences of the Bill. The Bill as it stands has changed significantly from the ill-considered hotchpotch that it was at the start of its journey. There are still significant and far-reaching amendments that the Government themselves are realising to be necessary. I believe that this salutary exercise in coming to grips with the reality of devolved Wales will not end at Royal Assent—assuming the Bill gets that far. That must still be an open question, given the ongoing resentment in Cardiff Bay, and throughout Wales, at the Bill's implications of powers being retracted from the Assembly, on the principle that any silent power will certainly be automatically converted into a reserved power. This is the very converse of the intentions, as I understood them, of the Silk commission in putting forward a reserved powers model for Welsh devolution.

I believe that including an amendment to provide for an ongoing review mechanism can get the Government off being ensnared on a hook of their own making. Again, I believe that the working group should, of course, include representatives of the Welsh Government and the National Assembly. If the words of the two amendments are inadequate, let the Minister bring forward a government amendment or a new clause to that end on Report. I believe that a mechanism such as that proposed in Amendment 46 is necessary for the Bill to work when it is enacted.

Lord Murphy of Torfaen (Lab): My Lords, I yield to no one in my admiration for my noble friend Lord Elystan-Morgan, but although I agree fundamentally with one of his amendments, I disagree fundamentally with the first. Dominion status is about the shedding of British governance. The 1931 statute of Westminster gave the dominions power over their own affairs, effectively making them semi-independent. I do not want to give up British governance in Wales; I am glad that we have it—and I am also glad that we have Welsh governance in Wales. I like the two, which is why I believe that we are in the right position in the United Kingdom whereby we have devolved Governments in those places that require them—Wales, Scotland and Northern Ireland. I hope that we can extend the same system of government to parts of England, too. I have always believed that, and I think we are heading towards it.

I cannot agree with the first of the amendments, but I fundamentally agree with the second—that a working party should be set up to look at the operation of Schedule 1 to the Bill. The noble Lord, Lord Elystan-Morgan, is absolutely right and put his finger on it when he asked why this particular list has come to fruition. It has come to fruition because individual government departments have made a wish-list of what they wanted to keep. It was not about looking at the bigger picture of what should happen in this new dispensation for Wales. So to have a body that looks at the operation of the new situation in Wales, with the reserved power Assembly, with this schedule, is absolutely right and I support it.

Lord Thomas of Gresford: It is really heart-warming to hear my noble friend Lord Elystan-Morgan—and I call him that—go back to the dominion status which was the lodestar of the early days of Plaid Cymru. Saunders Lewis did not want total independence; he wanted dominion status. I have no doubt that 1931 was very much on his mind at the time, having regard to the date of the statute of Westminster. I have always regarded that as totally unrealistic, requiring as it does that Wales should look after its own defence, foreign

affairs, social security and so on. That is what dominion status means, and always has meant. So whereas I have always been a supporter of devolution, I rather go along with the Gordon Brown argument, which was so successful in the Scottish independence referendum, when he reminded his fellow countrymen that the United Kingdom is united because it shares risks and wealth. Those areas that are depressed at one time in history can be supported by those that are successful.

At the beginning of the 20th century, the highest wages were paid in the Rhondda valley, and as a result it attracted in the Irish and people from all over the United Kingdom. It was the Aberdeen of its day, if you like. Aberdeen has attracted people from all over and is currently suffering because of the fall in the price of oil and the possible diminution of oil resources in the North Sea. But it will be balanced by another part of the United Kingdom—and that is the important point. We are not really concerned with going back in history and talking about a British colony. I recall that Henry Tudor came from Wales and brought with him the Cecil family, who played a very big part not only in the proceedings in this House but in British history ever since. Although he had a Donald Trump attitude towards sex, he was nevertheless favourable towards Wales. His introduction into Wales of the assize judicial system and his formation of the counties of Wales was for their good, not in order to conquer them as his predecessors tried to do.

I do not go along with the idea of the English colony. As a Welshman, I do not feel, and never have felt, that I am in any way subject to the colonial oversway of the English. We have provided leadership in the United Kingdom over the years with our politicians—some great men who, as the noble Lord will no doubt recall, have held the highest offices in this country. For example, I will refer not to Lloyd George but to Aneurin Bevan. Many, many Welshmen have played their part in the governance of the United Kingdom as a whole. We have to stay with that and not go back to what I consider to be, with the greatest respect to my noble friend, the rather romantic aspirations of dominion status. I therefore support the basic proposition in the Bill that the Welsh Parliament—as I hope it will be—should have all the powers it needs but on a reserved powers model, not a conferred powers one. We should work towards that.

Although I have some sympathy for the second amendment which the noble Lord has put forward, it is our duty to try to deal with these issues here and now, as the Bill goes through, not simply kick them into the hands of a commission. That would, no doubt, be made up of great Welshmen but would sit in Cardiff or elsewhere and chunter over the provisions of the reserved powers set out in the Bill. In my Second Reading speech, I argued that we should not have 190 separate reservations. One effect of the Agricultural Wages Bill was that we became very interested in detail, whereas one could describe the powers which should be reserved to the Westminster Parliament in much broader terms, such as defence, foreign affairs and so on. I am very sorry: although I voted for the noble Lord in 1964 when he was a Plaid Cymru candidate, I cannot go along with his interesting and reminiscent arguments for dominion status.

Lord Elystan-Morgan: Will the noble Lord accept my word for it that I am not in any way advocating any jurisdiction for Wales over foreign policy or defence? The point I was seeking to make was that you can make dominion status whatever you wish it to be in the particular context and circumstances of that case. No doubt the noble Lord will, over the years, have studied the position of Newfoundland, which was a dominion for some years. It started off with direct rule, then became a dominion, then ultimately became part of the dominion of Canada. It is an illustration that you can make dominion status be whatever you wish it to be.

Lord Howarth of Newport: My Lords, I will not embark on a personal excursion into Welsh history. However, apropos the excellent Amendment 46, in the name of the noble Lord, Lord Elystan-Morgan, which would establish a working group to review the operation of Schedule 1, I hope that the members of that group would follow the example articulated by the Silk commission and the Welsh Affairs Committee, both of which recommended that, in determining what matters should be reserved and what not, principle guidance should be issued so that there are criteria against which all can judge whether a reservation proposed by a department in Whitehall could be justified. Unfortunately, that guidance as to principle, and the questions that departments should ask themselves, was not issued.

The consequence is that we have this ragbag of reservations which have been accumulated all around Whitehall, apparently on no better basis than what we have we hold or, if in doubt, we will hang on to. That is a very poor basis for the institution of a reserved powers model for devolution, so I hope that all of us welcome the proposition of the noble Lord, Lord Elystan-Morgan, that such a working group should be set up. I simply want to see added to its terms of reference as set out in his amendment that principle guidance should be provided for that working group, or that that working group itself should develop the principles. But we must have criteria against which judgments can be made on whether particular reservations are appropriate or not.

10.15 pm

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on this part of the Bill. I particularly thank the noble Lord, Lord Elystan-Morgan, for moving the amendment with such fluency and commitment, although he will know that I disagree with him fundamentally, particularly on the first of the two amendments in this group.

Through their Amendments 45 and 46, the noble Lords, Lord Elystan-Morgan and Lord Wigley, seek to place new duties on the Secretary of State for Wales to review the constitutional arrangements for Wales and the operation of the Wales Bill that we are putting in place. Indeed, through Amendment 45—at least on the wording, although I accept what the noble Lord, Lord Elystan-Morgan, has said—they seem to be proposing that the Secretary of State of State be required to review Wales's readiness for independence. I can act only on the basis of how the dominion status has operated in the past. The Statute of Westminster

[Lord Bourne of Aberystwyth]
1931 is expressly referenced in the amendment. There is no appetite for this proposal in Wales. Both noble Lords will know that that is shown in opinion polls and at the ballot box.

The Statute of Westminster established the dominions as sovereign states and enshrined in law the principle that no legislation made in this Parliament could apply to the dominions unless a dominion requested it. We cannot possibly agree to that. It also provided that the Parliaments of the dominions would have the power to amend or repeal any previous legislation made by this Parliament. Therefore, we cannot possibly agree to what is proposed. As a representative of a London-based polity, as it is called, I do not believe this proposal is wanted in England and it is certainly not wanted in Wales either.

Through Amendment 46, the noble Lords are seeking to place a new duty on the Secretary of State for Wales to establish a working group to review Schedule 1, which sets out the reservations, as soon as possible after it comes into effect and to report on reservations that should be removed within three years of the principal appointed day—the day on which the new reserved model comes into force under Clause 55.

Once again, we have a measure in front of us to set up yet another commission or working party to look at constitutional arrangements. I do not believe that would be welcomed in Wales. We have a duty to get on with the job on this Bill. I ask the noble Lord, Lord Elystan-Morgan, to withdraw his amendment.

Lord Elystan-Morgan: My Lords, on the question of dominion status, I was tempted to make the mischievous point that for many centuries Wales was a dominion in law. The actual wording of the Act of Union of 1536 refers to the,

"dominion, principality, and country of Wales",

so that wording has been there for many centuries. However, that is a mischievous point, probably made much too late at night.

Some years ago, a good friend said to me, "You could be a very nice chap if you did not tilt at the English so often". I am not sure what a nice chap was intended to mean in that context, or whether I would ever qualify within that definition. However, as far as the second part of his proposition was concerned, I have never tilted at the English. I have immense respect and, indeed, often, admiration for our neighbours. I conceive nationalism in the context of Wales as being a patriotism that knows not the hatred of any other nation. That is what Welsh nationhood and Welsh nationalism at their very best should be and are. I beg leave to withdraw the amendment.

Amendment 45 withdrawn.

Amendment 46 not moved.

Schedule 1: New Schedule 7A to the Government of Wales Act 2006

Amendment 47 not moved.

Amendment 47A

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

47A: Schedule 1, page 46, line 45, leave out from "reserve" to end of line 2 on page 47 and insert—

"(a) welfare advice to courts in respect of family proceedings in which the welfare of children ordinarily resident in Wales is or may be in question;

(b) representation in respect of such proceedings;

(c) the provision of support (including information and advice), to children ordinarily resident in Wales and their families, in respect of such proceedings;

(d) Welsh family proceedings officers."

Lord Bourne of Aberystwyth: My Lords, turning to the next group of amendments, I am pleased to speak, first, to government Amendment 47A, which was tabled as a result of discussions with the Welsh Government.

Paragraph 6(5) of new Schedule 7A provides for an exception from the reservation for courts and civil and criminal proceedings as part of the single legal jurisdiction of England and Wales. The exception is for the,

"provision of advisory and support services in respect of family proceedings in which the welfare of children ordinarily resident in Wales is or may be in question",

so that the provision of such services is not reserved by paragraph 6(1). This exception was intended to reflect the existing exception for what may be described as the functions of CAFCASS Cymru.

The Welsh Government have argued—in our view with some force—that the wording of the exception is too broad and does not sufficiently closely reflect the Assembly's current competence in respect of CAFCASS Cymru. Amendment 47A seeks to insert into paragraph 6(5) modified wording which, I understand, the Welsh Government support.

Government Amendment 47B would remove sub-paragraph (2) from the defence reservation. It would have no effect on the substance of the defence reservation but it would remove a tautology. Removing this sub-paragraph would not change the powers that Welsh Ministers have under the Marine and Coastal Access Act 2009 to appoint marine enforcement officers, who then enforce legislation in relation to sea fishing; nor would it change the automatic appointment of certain members of Her Majesty's Armed Forces as marine enforcement officers under the same Act. I am pleased to say that UK Government and Welsh Government officials have worked together closely to come to the conclusion that this sub-paragraph should be removed.

Government Amendment 52A is a technical amendment. It seeks to provide clarity in relation to Section C2 in new Schedule 7A by providing a definition of "business association". There is already such a definition in Section C1, but interpretation provisions in the schedule cannot be read across to apply to other sections.

Government Amendments 53A and 53C would make minor adjustments to the consumer protection and product standards reservations to ensure that the Assembly's competence in these areas remained unaltered from the current position.

Amendment 48, tabled by the noble Lord, Lord Wigley, proposes the devolution of policing. As the noble Lord will know, the Government have been clear that, in the absence of a consensus around the Silk commission's proposals in this area, policing is not being devolved. We believe that the current England and Wales arrangements for policing work well, and the proponents of devolution have failed to adequately address some of the risks that would arise if these arrangements were disrupted.

Lord Crickhowell: On this very point, at Second Reading I asked the Minister to explain why it appeared that powers over policing were being given to some English regions while they were not being given to the Welsh Government. I am entirely in favour of a general reservation and I would simply like an explanation of that apparent difference.

Lord Bourne of Aberystwyth: My Lords, I shall deal with that briefly before I resume. I recall my noble friend raising this at Second Reading and I will write to him. The devolved arrangements that I think he is referring to in relation to some of the city regions in the United Kingdom, specifically in England, do not involve devolution in the way that it is being talked about here. They do not establish separate lines of authority within national boundaries, for example. I will write to him with details on that but I think that the form of devolution is rather different in that respect.

There are factors that I think I should touch upon in relation to why policing is being retained within the England and Wales system under the Bill. First, policing is inextricably linked with the criminal justice system. It is a key component. The criminal justice system's priorities and ways of operating have a direct impact on other parts of the criminal justice system and vice versa. This can be seen, for example, through quality of evidence gathering and the mutual role played in crime prevention and reducing reoffending. Secondly, existing governance and partnership arrangements provide a significant level of integration and autonomy. The establishment of police and crime commissioners has already devolved policing to the local level. Thirdly, there would be cost and complexity in separating out the existing national structures and arrangements. Fourthly—although admittedly this is a factor that is more easily accommodated—police forces in England and Wales are responsible for tackling a range of crimes and other threats that go beyond the boundaries of a single police force.

At the national level, the strategic policing requirement which applies to police forces in England and Wales sets out the threats which are considered of particular national significance. These include terrorism, organised crime, public disorder, civil emergencies, cyberattacks and child sexual abuse. These threats can require a co-ordinated or aggregated response in which resources are brought together from a number of police forces. Devolution could lead to a weakening of both the regional and national response to these serious crimes. In short, the devolution of policing could lead to a disjointed criminal justice system, adding costs for both the people of Wales and the rest of the United Kingdom.

Amendment 49 would remove the reservation in relation to anti-social behaviour. This would remove our ability to legislate to prevent and address anti-social behaviour through coercive methods such as the tools and powers introduced by the 2014 Act. The subject matter in the Act is intended to reserve coercive responses to anti-social behaviour generally, whatever its form, rather than the detail of the specific orders contained in the Act. The whole approach to anti-social behaviour set out in the Act is intended to encourage the police, councils and other partners to work together to deal with problems quickly. The legislation provides local agencies with a range of different powers and measures and it is for front-line professionals to develop jointly solutions which address the causes of the behaviour and protect victims and communities.

I will listen carefully to the arguments made in this debate. The noble Baroness, Lady Morgan, and the noble Lord, Lord Wigley, seek through Amendment 50 to devolve responsibility to the Assembly for private security. I appreciate the view that private security should be a devolved rather than a reserved matter. I understand those who question why bouncers in, say, Merthyr, Swansea or anywhere else in Wales should be regulated on an England and Wales basis but there are sound reasons why private security is a reserved matter.

First, the security industry is regulated in England and Wales by the Security Industry Authority, an effective regulator which provides consistent standards across borders. In an inherently mobile industry it promotes consistency, maturity and professionalism through, for example, the approved contractor scheme. The licensing regime operated by the authority provides reassurance that those who work in the private security industry have the appropriate qualifications and training and have been subject to rigorous criminal records checks.

Secondly, there are close links between private security and the police, particularly in relation to the night-time economy. The Security Industry Authority has an investigative arm which, in co-operation with the police and other government bodies, tackles criminality in the private security sector, including organised crime. All Security Industry Authority-approved qualifications also include counterterrorism awareness, for example, in looking out for hostile reconnaissance, and the industry is playing an increasingly important role in being the eyes and ears to potential terrorist threats. These current arrangements work well.

Amendment 51 seeks to remove the reservation for the sale and supply of alcohol and the provision of entertainment and late night refreshment. These activities are regulated under the Licensing Act 2003 and the proposed paragraphs preserve the current devolution settlement in respect of all matters covered by that Act. Regulated entertainment includes live and recorded music, plays, films, indoor sporting events, boxing, wrestling and dance performances.

10.30 pm

"Late night refreshment" is defined in the 2003 Act as the sale of hot food and hot drink to the public between the hours of 11 pm and 5 am. The Act includes certain exemptions where the premises are

[Lord Bourne of Aberystwyth]
not used by the public, such as the provision of refreshments to guests staying at a hotel, or the provision of refreshments by an employer to an employee.

The 2003 Act provides a framework for licensing based on the promotion of four licensing objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. As such, alcohol licensing is inextricably linked to policing and the criminal justice system; while they remain reserved, alcohol licensing should also continue to be reserved. Maintaining consistency across England and Wales prevents cross-border issues that would be likely to occur as a result of opportunities to exploit differences in licensing laws either side of the border.

Alcohol licensing is devolved in Scotland and in Northern Ireland. The situation there is different because policing and criminal justice are also devolved, thereby allowing them to legislate to prevent and tackle any issues which may arise.

Amendment 55 would devolve responsibility for the Pubs Code and Pubs Code Adjudicator. The Pubs Code regulates the relationship between tied-pub tenants in England and Wales and the six pub-owning businesses that operate 500 or more tied pubs. The Pubs Code Adjudicator is in place to enforce the code. The adjudicator is largely financed by a levy on these six pub-owning businesses. The levy covers administrative overheads, as well as many of the operating costs of individual cases. The cost of setting up a separate system to regulate the tied pubs owned by these businesses in Wales would require either a levy set at an unaffordable rate or a very large public sector subsidy. It may also be possible to operate a levy on Welsh pub-owning businesses, such as Brains Brewery, that fall well below the threshold for the current statutory Pubs Code.

Amendment 56 seeks to remove the reservation that deals with the supply of heat and cooling. It is important to be clear that the reservation is concerned with policy on heat supply, which is analogous to the supply of every other type of energy. Heat is strategically significant and represents almost half of our energy use and around a third of carbon emissions. The reservation of heat supply is not about fuel poverty, energy efficiency or building regulations; it is about supplying heat through policies such as the renewable heat incentive, the heat networks investment project, the combined heat and power quality assurance scheme, and innovation support through initiatives such as the smart systems and heat programme.

Baroness Morgan of Ely: I think the noble Lord has decoupled that amendment. We will deal with heating and cooling at a different time.

Lord Bourne of Aberystwyth: I apologise. I am grateful for the intervention. In that case, I have dealt with our amendments. I am grateful to the noble Baroness for her timely intervention. I beg to move.

Lord Wigley: My Lords, I have great personal respect for the Minister, as he well knows, but it is absolutely outrageous that he should be replying to a debate before the arguments have been put forward relating to the amendments. Amendment 48 in my name, to which he has responded comprehensively before I spoke to it, was the lead amendment in this group on Thursday afternoon when I left Westminster. When I came down here at 1 pm today it had been tacked on to the government amendments, which means that the very substantive issue of devolution of police in Wales has been tucked away without an opportunity for a proper debate.

Lord Bourne of Aberystwyth: I apologise to the noble Lord. Had he got up at an earlier stage I would have happily given way to him, but our amendment was the lead one in the group. I certainly would have given way to him if he had asked.

Lord Wigley: I accept entirely the Minister's point that they have been grouped in this way, but when I realised they had been coupled in this way it was too late for me to get the decoupling done. That means that devolution of the police, which was a major issue for the Silk commission, is being tucked away at this hour of the night and has been responded to before the arguments have been put. I intend to put those arguments, even at this late stage of the night, and I shall not truncate what I had to say.

Amendment 48 would remove a reservation and subsequently devolve matters relating to the police in Wales to the National Assembly. As noble Lords will be well aware, the Silk commission, of which the Minister was a member, recommended unanimously the devolution of policing and related matters of community safety and crime prevention. Given that the Minister was so keenly in support of that in the Silk commission, it beats me how he was able to say what he said a few moments ago. It is my contention, shared by many people in Wales, that this Bill should have enacted the Silk recommendations—or at least the unanimous recommendations and in these matters in particular.

To put it simply, Wales, like the other nations of the United Kingdom, should have responsibility for its police forces. I cannot see any reason why police priorities in Wales should be dictated by the UK Parliament and not by the National Assembly. Given that policing is devolved to Scotland and Northern Ireland, I can see no reason why it cannot be devolved to Wales. What makes Wales an exception?

The four police forces are unique within the United Kingdom. They are non-devolved bodies operating within a largely devolved public services landscape. They are thus required to follow the dual and diverging agenda of two Governments. Additionally, all four forces in Wales accept the need to provide a service in Welsh and in English. North Wales Police does this with great effectiveness and is held up as a model among public sector organisations in Wales for its language training support and initiatives. This has largely broken down barriers which were at one time widely felt within Welsh-speaking communities in northern Wales and has created a new climate within which police and public co-operation have flourished.

All four police and crime commissioners, the Welsh Government, the Official Opposition in Wales and even the Welsh Conservatives are in favour of devolving

policing to Wales. In fact, the only elected body of people in Wales who share the view of the UK Government are the UKIP AMs elected in May—I am not sure whether they are now unanimous on this matter either.

Transferring responsibility to the Welsh Government would not be the tectonic plate shift that many in this Committee might be inclined to believe. Relationships between the Welsh forces and the UK services, such as the police national computer and the Serious Organised Crime Agency, would continue as at present, as is the case with Scotland. I remind the Committee that many of the public services which are directly relevant to policing work are already devolved. That is the case with regard to highway matters, social services, local government, the ambulance service, youth services, education and training. It makes practical good sense to devolve policing, so that a synergy can be developed with these other devolved services.

Why should the people of Wales not be given the same democratic freedom enjoyed by the people of Scotland? Doing so would lead to greater clarity and efficiency by uniting devolved responsibilities, such as community services, drug prevention and safety partnerships, with those currently held by the UK Government.

The Silk commission was established by the Tories and comprised all four main political parties in Wales, including the Conservative Party. Its members spent two years consulting the public, civil society, academia and industry experts on the powers necessary to strengthen Wales. It received written evidence, heard oral evidence and visited every corner of Wales. It heard evidence from the police themselves and from the Police Federation calling for the devolution of policing, and the report recommended accordingly.

Budget cuts to Welsh police forces have been severe. We have seen a reduction of 1,300 in police officer numbers in Wales since 2010. It is true that these cuts have been across the board, but, as Plaid Cymru has recently discovered, they may well have been more manageable had the formula used to fund the police in Wales been according to population and not to crime figures.

A policing grant consultation launched in July 2015 by the then Home Secretary, Theresa May, was abandoned earlier this year after Policing Minister Mike Penning admitted that there had been a "statistical error" on which several police and crime commissioners threatened legal action. Last year's formula would have resulted in a £32 million cut to Welsh forces, which. as everyone can imagine, would have caused the Welsh police severe difficulties.

The 43 police forces of Wales and England often have different needs and challenges. Policing is a field for which sophistication and complexity are needed in the funding formula to properly account for the relative needs of each force. The review last year sought to place greater emphasis on socioeconomic data and more general crime figures. Such a formula does not properly consider the workload differences in each constabulary. Figures provided by Dyfed-Powys Police indicate that funding our forces in line with population would result in an additional £25 million for the four forces in Wales. That is the Dyfed-Powys Police figure, not mine.

Of course, if policing were devolved to Wales—a position supported by all four police and crime commissioners—the overall Barnett formula would be applied as for the funding of all devolved public services and based on our population. So by retaining police as a non-devolved service controlled from Westminster, Welsh forces face the prospect of these very significant cuts. This is particularly relevant when we consider that policing is devolved to Scotland and Northern Ireland. Consequently, that new formula will not apply to them. Policing is the only emergency service not to be devolved. I am yet to come across any convincing argument, even after listening to the Minister tonight, for not doing so.

Even at this late stage, I beg the Government to think again and show that they are sensitive to widespread feelings in Wales on the issue, particularly within the police forces themselves, and add this provision to the Bill. It would then start to garner a critical mass which parties in the National Assembly would see as a significant step forward and create a logical framework of devolved services that could better serve Wales. There is no point in me adding more now: the reply has already been given. I write that into the record and I emphasise that I am very unhappy about the way this debate has been handled.

Baroness Randerson: My Lords, I greatly regret that we are discussing one of the key features of the Bill at this very late hour but there are things that certainly need to be said on this issue.

I share the concerns of the noble Lord, Lord Wigley, about policing. My party has been firmly committed to the importance of devolving policing to the Welsh Assembly for many years. That is simply a recognition of the reality of the situation. If you talk to senior—and junior—police officers in Wales, you see and hear their feeling of identity with the Welsh Assembly. It is to the Assembly that they look for the structures within which they work on a day-to-day basis. Devolving policing would not prevent them from linking in with, for example, training facilities or on rules and regulations across Britain. I have observed the way in which the police force in Northern Ireland manages to do that very successfully in a very difficult situation, and at a much greater distance from England. It works well.

In addition, it is very important to remember that the funding of policing in Wales comes predominantly from local sources within Wales one way and another. Therefore, it is important that the Welsh Assembly has more than a guiding hand on that.

In addressing the amendments in my name, I also share the Assembly's serious concern about the impact of reservation 37 on the prevention, detection and investigation of crime. That illustrates the complexity of this situation and the way in which these issues are interwoven. For example, think of the ability within the Assembly's power to deal with domestic abuse and sexual violence. The Assembly passed its own violence against women Act so clearly has competence within that area. However, it seems that the reservation I just referred to would make it very difficult for the Assembly

[Baroness Randerson]
to act in that area. It is important that we bear in mind the responsibilities of local government in this area as well as those of the police. The whole thing is an interlinked whole, and by not devolving these responsibilities you make it difficult for work to be done as effectively as possible.

10.45 pm

I will refer briefly to the issue of dangerous dogs. Earlier, the Minister referred briefly to the issue of heat and cooling—which I now realise is in a different group of amendments—and its strategic importance. I fail to see the strategic importance of control of dangerous dogs or the confusion there could be over devolving the control of dangerous dogs to the Assembly and hence to local authorities in Wales. The dogs themselves will not be confused by the border, and I dare say their owners have other things on their minds when they find themselves in owning of a dangerous dog.

Amendment 53B—I am slightly puzzled about why it is in this group—inserts fares and ticketing systems as an exception to the reservations on consumer protection. I put forward this amendment because the Bill contains a more detailed description of what the reservation called "consumer protection" means than the current Schedule 7 to the Government of Wales Act.

When the Assembly's relevant committee looked at this, it was concerned that it is not clear whether the,

"supply of … services to consumers",

referred to in the Bill applies only within the context of the Sale of Goods Act or whether it is intended to apply to the wider supply of services to consumers generally. If so, it seems that the Assembly would possibly not be able to exert powers on regulation of bus fares or the introduction of smart ticketing, for instance. I suggest that this cannot possibly be described as strategic either and that it is properly part of the Assembly's powers over the control of bus services. The Assembly already has powers over transport and will have more in future, and it is important that it is given the full armoury of those powers. I would be grateful if the Minister could look at that and say whether clarity can be brought to this issue. It is important that it is confirmed that the Assembly would have powers over bus fares and ticketing systems as well as over other aspects of bus services.

Finally, I cannot sit down without drawing the Minister's attention to the harsh judgment of the Delegated Powers and Regulatory Reform Committee of this House. It says on the vast list of reservations in the Bill:

"In our view, the dividing line between certain reservations and exceptions is very fine and gives rise to difficult questions".

It refers to nine pages of detailed restrictions, even with regard to matters that are not reserved. It says that some restrictions are "dauntingly complex". I note that the Government themselves have tabled eight amendments to the reservations, so they are clearly finding this dauntingly complex as well. The committee also says:

"It is unclear whether the combined effect of the changes will result in the Assembly gaining legislative competence … or losing competence",

and suggests that all this will therefore be left to the courts to decide. We were trying to get away from all that. I believe that the Bill makes the fatal error of mirroring the current settlement, which was complex, flawed and imprecise.

By trying to mirror the current settlement and failing to give more powers—indeed, to go in reverse on pensions by taking the opportunity to tighten up on those powers—the Government are not going to provide with the Bill the certainty and long-term settlement referred to in the St David's Day agreement. I therefore urge the Minister not just to look specifically at the amendments I have addressed here but to take a long look at many of the detailed reservations that could never be described as strategic.

Baroness Finlay of Llandaff: My Lords, I know that the hour is late. I want to endorse the sentiment expressed so clearly just now by the noble Baroness, Lady Randerson. Although it is late, we have to cover these topics because there is no other opportunity to do so and I am concerned. I have already heard that the Minister is not going to accept the amendment looking at alcohol licensing but I hope that he will at least listen to what I say and agree to meet me after this, because it is terribly important. The noble Lord, Lord Elystan-Morgan, eloquently described the moral geometry and the problem of an utterly local issue being held in a reserved power. I suggest that that applies exactly in terms of alcohol licensing because the health and well-being of the Welsh population require some control over the way that alcohol is sold and supplied. It is widely acknowledged that that is one of the most effective ways of tackling alcohol harms.

The wording of the Bill would appear to be even more restrictive than the current exemption, which would mean that the proposals in the draft Public Health (Minimum Pricing for Alcohol) (Wales) Bill would be a reserved matter, and therefore outside the legislative competence of the Assembly itself. It would seem only sensible to add the protection of health and well-being to the four points listed by the Minister in relation to licensing.

Alcohol remains a major cause of preventable death: the Public Health Wales Observatory has reported that:

"Every week in Wales alcohol results in 29 deaths; around 1 in 20 of all deaths".

This impact of alcohol puts enormous pressures on health systems. Every week, hospitals handle as many as 1,000 admissions related to alcohol. Emergency departments are straining. When people in Wales go into those emergency departments and see them full of alcohol-fuelled harm and its effects, they ask: "Why isn't the Assembly doing something about it?". The answer is that it cannot because the thing that it wants to do—to look at the sale and supply of alcohol—comes outside its powers.

We know, sadly, that alcohol consumption in Wales remains a problem. In the latest Welsh Health Survey, 40% of adults still reported drinking more than guideline amounts in the previous week. There is a pressing need to tackle alcohol misuse, using every tool available to government. That means policies that control the licensing and supply, which are the only way that we

can promote sensible drinking. It would also require licence holders to offer a ratio of non-alcoholic drinks to alcoholic drinks on their premises to give people a wider choice—to be social but not to get completely destroyed by the adverse effects of alcohol.

The Bill should provide an opportunity to address health and well-being. The sad thing is that Wales bears the costs of the alcohol abuse, particularly in expenditure on health and social care, yet it is not being allowed to have control over licensing and supply as part of its national strategy. When tackling alcohol harms in Wales, the Assembly is operating with more than one hand tied behind its back. It just seems a completely inexplicable state of affairs.

Lord Howarth of Newport: My Lords, it is simply demeaning for Wales that public order and policing should not be devolved. Why should Wales, which has a mature Assembly and is a nation anxious to take more responsibility for its own affairs, not be allowed the same level of responsibility as Northern Ireland and Scotland? I have not heard a good reason. I do not believe that there is any greater necessity to have a single system embracing England and Wales than there is for other parts of the United Kingdom.

If the Government would be a little bolder and allow devolution of responsibility in such matters as drugs and alcohol, everybody might benefit because Wales would have the opportunity to experiment with policy. In the field of drugs and alcohol, for example, we know very well that the existing orthodoxies, practices and policy are not working particularly well. Often they are working downright badly. We have huge problems with regard to drugs and alcohol. Surely it would be better to allow Wales to pioneer and develop policies of its own. Wales would obviously have to take responsibility and a degree of risk, but it is surely better that it should be able to take responsibility and to experiment than that we should simply carry on in Wales with orthodoxies that have failed in the United Kingdom as a whole. No harm has been done by Wales having a degree of independence in education policy—in schooling, for example—so surely that is the right principle.

There will, of course, be questions of resources if more responsibilities, particularly the major responsibility for public order and policing, are to be devolved. In consideration of that we have again to go back to the question of the devolution of income tax-varying powers. We debated that issue earlier this afternoon. I shall very gently make a point to the noble Lord, Lord Crickhowell, who disputed whether a manifesto commitment was being broken by the Government. If he looks at the Second Reading debate in the House of Commons on 14 June, at col. 1653 he will see his Conservative colleagues Mr David Jones, the former Secretary of State, and Mr Chris Davies, the Member of Parliament for Brecon and Radnorshire, bemoaning the fact that the Government have, in fact, broken a manifesto commitment in that regard. I do not want to labour the point, but it ought to be corrected for the record. Certainly we have to consider, in conjunction with the question of what reservations are appropriate and what reservations the Government may decide after all to abandon, the associated question of resources—because it is no good willing the end without enabling the Government of Wales to have the means.

Baroness Morgan of Ely: My Lords, I know it is very late, but this a critical group of amendments. This is the first time we have discussed the reservations, and it worth pausing a moment to think about them and the way the Government have approached this issue.

There are a number of reasons why I think the Government's approach to how they have included certain reservations is lacking. I shall refer to some key quotations. The first comes from a letter from the First Minister to the then Secretary of State for Wales after the Secretary of State announced in November 2014 a programme of work designed to produce a new devolution settlement for Wales. The First Minister expressed his support and said that,

"previously, under administrations of both political colours, the development of a clear and robust settlement has … been hindered by a nit-picking reluctance on the part of particular Whitehall Departments to acknowledge the case for further transfers of responsibilities. It will be important that that reluctance should not re-emerge".

However, I am afraid we have seen it again.

11 pm

Secondly, there is the paragraph from the report published the week before last by the Constitution Committee of this place, which says that,

"further devolution should take place on the basis of appropriate principles, to ensure that the devolution settlements evolve 'in a coherent manner', rather than 'in the reactive, ad hoc manner in which devolution has been managed to date'".

Again, there is no response to that from the Government. There is no evidence of a clear rationale underlying the scope of the powers devolved by the Wales Bill. We would welcome an explanation from the Government of the principles that underlie and underpin the devolution settlement set out in this Bill—principles that are nowhere to be seen in the Explanatory Notes. The noble Baroness, Lady Randerson, referred to the excellent report by the Delegated Powers Committee, which also noted that there were no such principles and no reason why the Government had done it in this way.

Finally, there was the comment by the then Secretary of State when announcing that his initial draft of the Bill was to be paused. He said that during the pause period the number and scope of the listed reservations would need to be reviewed, and that the case for each one remaining in the Bill would need to be explained and justified. We have not seen that justification.

The difficulties with this schedule of reservations largely result from the failure to act in accordance with those observations. We see that nit-picking reluctance on the part of Whitehall departments to accept the case for transfers of legislative competence to the Assembly, and we see a failure on the part of the Government as a whole to provide an obvious rationale for the inclusion of certain reservations. The detailed explanations of why each reservation is appropriate are almost entirely lacking.

As I said in the Second Reading debate, I did not and do not want my noble friends on these Benches to challenge each and every reservation—even though we could have, because of the lack of a rationale. Many of

[Baroness Morgan of Ely]
them—for example those on the constitution, defence, foreign affairs, immigration—of course make perfect sense, as we all recognise, but there are many others that do not make sense. I have put down amendments in respect of some of the oddest of them, but I could have chosen many more.

For advocates of devolution, the argument is often made that devolved Administrations can provide a laboratory of innovation and of experimentation from which other Administrations can learn. The legislation to discourage the use of plastic carrier bags originated in the Welsh Assembly and has now been faithfully copied by all three other legislatures in the United Kingdom. That gives us a great example. But how can innovation flourish if the Assembly is bounded on every side by reservations jealously asserted by Whitehall departments determined to preserve their little empires of control?

We have before us amendments spanning a vast range of topics. We will come to a few tonight, but there are more ahead of us in future days. Many in this group pool the theme of anti-social behaviour, and I will move on to address these topics now. We have not decoupled a lot of them, because we recognise that we are under time constraint, but I will just make it clear that even if we do not speak to all the amendments tonight, we still want explanations on these issues. If we do not have them on the Floor of the House tonight, we want them in writing to the issues that are under review this evening. I reserve the right to return to all the amendments in this group on Report if necessary, as I feel that we have not given them justice at this time of the night. Why on earth are matters such as ticketing and bus services being reserved at a UK level?

To begin with, let us consider alcohol. As we have heard, the Bill as drafted would reserve the sale and supply of alcohol and the licensing of the provision of entertainment and late-night refreshments. The amendments tabled by the noble Baroness, Lady Finlay, propose deleting these reservations and allowing the Assembly to legislate on these matters. The noble Baroness covered this issue, and I agree with everything she said. Let us remember the connection between alcohol and the devolved responsibilities of the Assembly on public health and the NHS. There is a pressing need to tackle alcohol misuse in Wales, and the Government there need the tools to do it.

I shall touch on the issue of the Pubs Code. It is important to note that since its implementation in 2016 the code has attempted to improve relationships across the industry, helping tied tenants to get a fairer deal, providing prospective pub operators with information and enabling better decisions about the business and the agreements they are considering entering into. While the code provides welcome protection, we must recognise that the pub sector in England is different from that in Wales; what works in pubs in England does not necessarily suit the industry in Wales, especially in rural areas. The Minister has given us his answers already, which is quite useful, but we need—and I hope that between now and Report we will get—a better understanding of how the levy that the Minister mentioned works, so we can understand why it would not be appropriate. I did not have a clear understanding of how that levy will work but we will have an opportunity to look at that in the next few weeks.

Policing remains a sensitive issue. At present, policing is the only major front-line public service not currently under the responsibility of devolved Welsh institutions. There is a lack of consensus on this question. Whatever the outcome on policing, though, it is imperative that the Assembly's existing competence for dealing with anti-social behaviour in the devolved context is not reduced. This is why we think that an amendment relating to anti-social behaviour should be introduced. As drafted, the Bill would reserve matters currently within the Assembly's legislative competence, such as anti-social behaviour issues relating to nuisance and housing. This would represent a significant reduction in the Assembly's existing competence. Will the Minister state that he is prepared to narrow the reservation to reflect the current devolution settlement?

The Minister talked about private security—the bouncers of the nightclubs of Swansea. I thank him for his explanation but I just do not buy it. What is all this about needing common standards and regulators? We have common standards for doctors across the whole EU, but health is still a devolved issue. There is no logic to the idea that these common standards cannot be recognised across borders. I contend that reservations such as this undermine the case for the Bill and reveal the Government's underlying intention to constrain the Assembly's powers in a way that they would not dare to attempt with the Scottish Parliament. This does not serve the Government's case well, and I invite the Minister to agree that he should reflect on the many, many reservations we have set out in this group that we think should be deleted. I thank the Minister for setting out those ideas earlier, but I hope he will reflect on what everyone has said tonight because the Government have gone too far on most of these issues.

Lord Bourne of Aberystwyth: My Lords, once again I apologise to the noble Lord, Lord Wigley, in particular. I was a victim of the way in which the grouping was set out; because the government amendments were put first, that was the way I felt was appropriate to tackle it. I shall try to respond to points that have been made on these various amendments.

First, no noble Lord should have been taken by surprise by the Government's attitude on policing. We made it very clear that we have a set agenda, which I have set out. I do not accept that this was somehow a surprise.

I am happy to meet the noble Baroness, Lady Finlay, about the alcohol reservation, to see whether we can meet her concerns. I have spoken to the noble Baroness, Lady Morgan, about the Pubs Code levy—so it did not just come up this evening—and explained that one reason why we do not think it appropriate for devolution is that the way that the levy operates would not be affordable in Wales. I said when speaking to those amendments that that would be to the detriment of Wales, but I am happy to look at it further with her if she wants to revisit it. I am very happy to speak to the noble Baroness, Lady Randerson, about the issue of ticketing and bus services that she raised, to see what we can do.

I accept that a lot of issues are involved here, from bouncers to alcohol the Pubs Code and so on. I accept that it is late at night and that we have covered a lot of territory, although there was considerable discussion on an issue where I think that virtually the whole House was united. We spent a great deal of time discussing that on an earlier amendment, which was certainly not of my choosing, although I was happy to respond for the Government on it.

I hope that noble Lords will feel able not to press their amendments in the group—which is, I appreciate, a considerable number of amendments. The reason for some of the government amendments is that we have been listening and are responding—on teacher's pay, the community infrastructure levy and so on. I hope that noble Lords accept when they say that the number of government amendments indicates that it is a fluid area that that is because we have been listening. I am happy to indicate that we will listen further, and I hope that that has been my approach, but I am duty bound to let noble Lords know what are regarded as red lines for the Government, where we are unable to meet the wishes of some—perhaps a majority—of noble Lords. However, where we can help and where powerful arguments are being made—as I have indicated have been on a number of amendments this evening—we are happy to move.

With that, I ask noble Lords who have tabled amendments in this group not to press them.

Amendment 47A agreed.

Amendment 47B

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

47B: Schedule 1, page 48, leave out lines 21 to 23

Amendment 47B agreed.

Amendments 48 to 51 not moved.

House resumed.

House adjourned at 11.12 pm.