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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

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

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House of Lords

Tuesday 10 January 2017

2.30 pm

Prayers—read by the Lord Bishop of Birmingham.

Brexit: Economic Impact on North-East England *Question*

2.36 pm

Asked by Lord Beith

To ask Her Majesty's Government what assessment they have made of the potential impact on the economy of north-east England of the outcomes they are seeking from the negotiations on the United Kingdom's exit from the European Union.

The Commercial Secretary to the Treasury (Baroness Neville-Rolfe) (Con): The Government are carrying out a range of analyses which will help to inform our negotiating strategy and have provided a guarantee for all European structural and investment fund projects signed before the Autumn Statement. We have also guaranteed all European structural projects signed after the Autumn Statement and before the UK's departure from the European Union, provided that they pass the value for money test and are in line with domestic strategic priorities.

Lord Beith (LD): My Lords, I thank the Minister for the detailed information in her reply. The north-east of England has consistently had the most positive trade balance of any region of the United Kingdom, but 58% of its exports are to European Union countries. If the Prime Minister is no longer even trying to secure the fullest possible participation in the single market, what does the Minister think will be the effect of post-Brexit tariff and other barriers on exporting industries, which they will face long before any new deals with non-EU countries can be reached? Who is speaking up on our behalf in the Government?

Baroness Neville-Rolfe: My Lords, we want the deal we strike to give British companies the maximum freedom to trade, as the noble Lord has highlighted, and to operate across the single market. We are going to make the most of the opportunities that our departure presents, getting out into the world and doing business right across the globe, while at home, including in the north-east, building a Britain that works for everyone.

Lord Davies of Oldham (Lab): My Lords, I welcome the noble Baroness to her new responsibilities and I look forward to a number of engagements across the Dispatch Box. Let me begin with a straightforward question. Was the Government's approach to Nissan and the assurances given to that company the only shaft of light for the north-east at present in terms of Government policy? Was it just a spasm on the

Government's part or do they have a policy for the car industry and manufacturing generally—in fact, for the economy of the north-east? The region has so much to lose because of its commitments to exports to Europe unless the Government get some of these issues right.

Baroness Neville-Rolfe: As noble Lords will know, I am a glass half full person and I think that the arrangements for Nissan and the automotive sector were a very good day for the north-east. The answer is that our door is always open to talk to the sector to give it the long-term assurances and strategy it wants, and that is what we have said.

Lord Dobbs (Con): Has my noble friend noted the courageous and insightful speech apparently given today by the current leader of the Labour Party in which he has said that Britain can be better off outside the EU? But we do not have to take his word for it because we can ask the heads of Nissan, Toyota, Honda and Ford, all of whom since the referendum have recommitted themselves to this country. Indeed, one can add Apple, Google and Facebook to that list. Were not the people of the north-east absolutely right and can they not be congratulated on voting to clear us out of the sadly failing internal market of the European Union?

Baroness Neville-Rolfe: I would add Snapchat to my noble friend's list. The British people are clear that Brexit means Brexit and we on this side are determined to make a success of it. The list that my noble friend has shared with us shows the positive news that we have had since that surprising day, 24 June.

Baroness Armstrong of Hill Top (Lab): My Lords, does the Minister recognise that there are very different economies in the different regions of this country? The economy of the north-east is fundamentally different from that of the south-east and London. There are also social challenges that are not found elsewhere in the country. Does she recognise that many people in the north-east feel that the divisions in this country now are as bad as they were in the 1980s and the early 1990s when we lost our industrial base of shipbuilding, coal mining and steel making? What are the Government going to do to address properly the differences in our country, given that they have got rid of regional policy? They have to be addressed, otherwise the people that she has been lauding will feel very betrayed.

Baroness Neville-Rolfe: I recognise the special strengths and differences of the north-east, and I am glad we have this debate about them because I believe in the strengths of Newcastle, Teesside, Northumberland, and so on. The sort of investment we have made in the north-east recently shows how determined we are to try to help. The local growth fund awards have been significant. There is the further £556 million for northern local enterprise partnerships in the Autumn Statement, on top of the existing north-east funding. We are creating enterprise zones; I really welcome those in Teesside and in Newcastle. We are investing in transport, because you cannot improve an area of the country

[BARONESS NEVILLE-ROLFE]

without improving that. Changes to the A1 and so on are absolutely crucial. We need to get on with those and to improve skills in the area. We are doing all that, and I am as determined as the noble Baroness.

Lord Shipley (LD): My Lords, the Minister has referred to a number of organisations which are relocating to the United Kingdom. How many of those are relocating to London, and how many are relocating elsewhere in the United Kingdom? I draw her attention to the fact that figures produced by her department in the past year show that one-third of all new jobs created by foreign direct investment went to London.

The Minister said in her initial answer that her department is undertaking a range of analyses about the implications of Brexit. Will she consider creating Brexit resilience committees for each of the nations and regions of the UK, so we have real information rather than a London-based analysis?

Baroness Neville-Rolfe: I am surprised that the noble Lord talks about a London focus because I think this Government have actually changed. We have had the northern powerhouse document, which I hope he has read, which we published at the time of the Autumn Statement. We are undertaking an industrial strategy which I look forward to discussing in this House. The importance of place will come through strongly in that strategy. I note the other points that he has made.

Viscount Ridley (Con): My Lords, would my noble friend consider looking at a proposal from the North East Chamber of Commerce to create a free trade zone in the north-east to build on the continuing success of the north-east economy?

Baroness Neville-Rolfe: I am glad to hear from my noble friend, who introduced me to some of the joys of the industry of the north-east. I have indeed seen the North East Chamber of Commerce's manifesto, which makes very interesting reading. In terms of the future on trade and on Brexit, we are carrying out a range of analysis to inform our negotiating strategy, and I shall certainly bear in mind the points that he made. But I think that you need to look at the United Kingdom as a whole.

Social Enterprise Question

2.45 pm

Asked by **Lord Bird**

To ask Her Majesty's Government what assessment they have made of the value of social enterprise to the United Kingdom economy.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, this Government have a long history of supporting social enterprises as part of building an economy that works for everyone. Social Enterprise

UK estimates that there are 70,000 social enterprises in the UK, contributing £24 billion, gross value added, and employing nearly 1 million people. Just under one-third of social enterprises work in the most deprived communities in the country, and 59% employ at least one person who is disadvantaged in the labour market. We are currently refreshing our own government estimates of the nature and size of the social enterprise market in the UK, and we will publish our research early in 2017.

Lord Bird (CB): Thank you, my Lord. I was very pleased to hear in the speech yesterday by the Prime Minister on the sharing society that she mentioned social enterprise on 10 occasions—so it looks as though we are in for a bean feast in the future of social enterprise. Unfortunately, the whole system is moving rather slowly. If you carry on at this rate, somewhere towards the end of this century we might be able to have a social enterprise industry that actually gets to the parts of society that big business cannot get to. Is it possible maybe to imitate the Scottish Government's idea of having a 10-year strategy to look at ways in which to do social enterprise in every conceivable way? I myself look forward to the day when they can offer me a prison, because I would love to run one and I would do it better than Group 4.

Lord Ashton of Hyde: Well, I know that the noble Lord has experience, and I would be interested to see him one day when he is doing that. As for social enterprise, we are strengthening it—and we are doing a lot to do that, including the Chancellor, who has increased the social investment tax allowance. I do not think that you can say that it is moving slowly when 1 million people work for social enterprises.

Lord Watts (Lab): Do the Government have any plans to try to support social enterprise to employ ex-prisoners? This is an area where they fall down in terms of job opportunities. Is this not a unique opportunity? Should not the Government give financial support to setting up such enterprises?

Lord Ashton of Hyde: That is a very good idea. The whole point of social enterprises and mission-led businesses, which are not quite the same thing, is to have a particular social purpose such as that one. I agree with the noble Lord that that would be an excellent thing. The Government are trying to enable more private, local authority and charity investment by setting up things such as incubators to do exactly the sorts of things that the noble Lord has suggested.

Baroness Barker (LD): Does the industrial strategy referred to by the noble Baroness, Lady Neville-Rolfe, include a section on social enterprise?

Lord Ashton of Hyde: I have not seen the White Paper or the Green Paper. I am sorry, but I cannot answer that at the moment.

Lord Stevenson of Balmacara (Lab): When the Minister made his first response, I think he was quoting from *Social Enterprise: Market Trends*, a publication from BEIS on issues relating to social enterprise. He dwelt on all the good news, but I draw his attention to the bad news, which is that social enterprises,

“continue to struggle with accessing the finance they need”, relative to SMEs and other businesses. It says that, “Forty-nine per cent had difficulty ... obtaining finance from the first source they approached”, and that, overall,

“Thirty-one per cent of social enterprises got none of the finance they required”.

What is he going to do about that?

Lord Ashton of Hyde: In order to increase the flows of capital to social enterprise in the United Kingdom we are strengthening the infrastructure of the market; for example, by setting up organisations such as Access that bridge the gap between social enterprises and social investors. We are working to open up social investment products to individuals by setting up an advisory group made up of senior representatives of the investment industry.

Lord Newby (LD): My Lords, will the Minister consider extending the scope of the social value Act so that social enterprises could bid more successfully for public sector contracts in goods, as well as for services?

Lord Ashton of Hyde: Of course the noble Lord is correct to mention the social value Act. We are undertaking measures to improve that—for example, social value awards, implementation and measurement projects, and a cross-Whitehall paper to demonstrate our commitment to that Act. A panel of external social value experts is providing constructive challenge on the findings and I can tell the noble Lord that final drafting is under way and will be out soon.

Lord Tomlinson (Lab): My Lords, is this panoply of measures we have heard the Minister speak about within the ambit of shared responsibility, is it social enterprise or is it shared enterprise? Which one of the many things we have had given to us by the Government is it supposed to be?

Lord Ashton of Hyde: I am not quite sure that I get the drift of that question.

Lord Tomlinson: Is it big society or shared society?

Lord Ashton of Hyde: I think the best thing to do is to read the Prime Minister’s speech to the Charity Commission yesterday.

Lord Blunkett (Lab): My Lords, it may be that the Minister is not able to answer this question this afternoon, but it would be very useful for your Lordships’ House to have an update on what has happened to the substantial pool of unclaimed assets which originally assisted social enterprise but which now seems to have been put on the back burner.

Lord Ashton of Hyde: Yes, I will have to write to the noble Lord on that because I cannot give him a detailed answer today.

Syria: Refugees Question

2.51 pm

Asked by **Lord Roberts of Llandudno**

To ask Her Majesty’s Government what actions they are taking to help resolve the refugee crisis in Syria.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the UK has pledged more than £2.3 billion to help millions of people affected by the Syria crisis. This includes more than £1.1 billion to support refugees in the region by addressing their humanitarian needs. The only way to resolve the refugee crisis is a political settlement that ends the conflict and enables refugees to return voluntarily.

Lord Roberts of Llandudno (LD): My Lords, does the Minister agree with me that Britain has a responsibility to lead in the resolution of this crisis in Syria? If so, why has Britain, with GDP per capita of more than \$40,000, only received fewer than 4,000 refugees since March 2014 while it is content for Lebanon, with less than half our GDP, to accept 1.6 million refugees? With civilian bombing still continuing, does the Minister think we could send more humanitarian aid at this time to Syria?

Lord Bates: Let me say first that I absolutely agree that the United Kingdom should lead by example, and that is exactly what it is doing. It is the second largest donor in cash terms to the region, with £1.83 billion having been given there, helping more than 2 million people. We have given a pledge that we want to bring 20,000 people from Syria to the UK over the lifetime of this Parliament, and we are doing that. At the same time we hosted the London Syria conference in February last year, which was the biggest fundraiser that has happened for Syria and the needs there, raising more than \$12 billion. So I believe that on all those counts, including our activity at the UN Security Council, we are taking the leadership that the people of this country expect us to take.

Lord Alton of Liverpool (CB): My Lords, will the Minister reassess the arbitrary distinction that is made between those fleeing ISIS in northern Syria and those fleeing the same genocide in northern Iraq, who are excluded from the vulnerable persons scheme? Can he explain why, in a Written Answer given yesterday, the Government said that the affiliation of those resettled under the scheme is,

“monitored but not routinely reported”?

Would it not help the House, and help us all, to understand whether proper priority is being given to victims of genocide if such reporting were to take place?

Lord Bates: We certainly agree that there ought to be wider access from the region. That was of course exactly the outcome which came from the Immigration Act which we passed, and we have set up a scheme to broaden it to the Middle East and north Africa and to bring more children from there. People fleeing genocide are in fear and in need of protection: that is the definition by which they qualify for protection under international humanitarian law and, with the UNHCR, that is what we are working to deliver.

Baroness Lister of Burtersett (Lab): My Lords, given the ongoing Syrian crisis, will the Government reconsider their decision not to grant refugee status to resettled Syrian refugees so that they can enjoy the full rights and security of refugee status?

Lord Bates: We give them humanitarian protection, which is broadly the same thing. I know what the noble Baroness will say, but what we have is people in acute need and we want to get them here as quickly as possible. Humanitarian protection is the vehicle by which we can do so. If we first have to go all the way through the route of establishing refugee status for a lot of people who have no identification papers, it means they are at risk for longer. That is why we have chosen to take that particular route, to ensure that we can get people here and give them the help they need as quickly as possible.

Lord Marlesford (Con): My Lords, do the Government recognise the regrettable fact that there is no way in which the EU, with or without the UK, can absorb permanently the total number of people who have already arrived as refugees and would-be immigrants, and that the answer must be what two senior members of Mrs Merkel's cabinet are now exploring? That is to have somewhere else outside Europe—they suggested north Africa—where people can go to be assessed, processed, helped and cherished as far as possible, to resolve the problem. The costs which would be imposed would otherwise be politically wholly unacceptable to the electorates of the countries inside Europe.

Lord Bates: As my noble friend will be aware, this was looked at and examined, but it would require a level of international agreement in this sphere which has simply eluded us in the core area of trying to reach a solution in Syria. We remain absolutely of the opinion that the best way to deal with movement and migration is to get a political settlement. That is why we are hopeful and supportive of the UN Security Council resolution which brought about the current ceasefire, but we believe it needs to work beyond that to provide a lasting peace under the Geneva communiqué.

Lord Collins of Highbury (Lab): My Lords, the most important thing which the Minister has referred to is the host countries in the region and their sustainability under the weight of such numbers of refugees. Can he reassure the House that the Government will commit further support and aid to those economies, as well

as to the refugees, which are under such pressure through the violence that has been occurring in Syria? Unfortunately, international development has a bad press at the moment, but this is such a strong case and we should support it.

Lord Bates: The noble Lord is absolutely right, and £1.1 billion of the money which I mentioned has gone to areas in the region—most notably, Turkey, Lebanon and Jordan. That money is being focused on economic development, by helping people to find work, and on schools, by helping children who are currently out of school to get into it so that their learning does not suffer. The noble Lord is absolutely right that we should focus on that.

Baroness Sheehan (LD): My Lords—

Lord Tebbit (Con): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Liberal Democrat Benches.

Baroness Sheehan: My Lords, may I ask the Minister for an assurance that, should the Kazakh peace negotiations take place, the Government will do their utmost to make sure that Syrian refugees and internally displaced persons are fully considered? While I am on my feet, can I ask him whether he could outline what role the Government hope to be able to play in the peace negotiations?

Lord Bates: We hope to play an active role through the International Syria Support Group, which has the two strands of humanitarian aid and conflict resolution. That meets weekly in Geneva and we are still playing a part in it. We wish the negotiations all success and will of course support them in every way we can.

Lord Tebbit: My Lords, would it not make more sense if we and the other western European nations offered to take as many as could come here of the Christian refugees from these troubled areas, leaving it to the Muslim countries such as Saudi Arabia, which are immensely wealthy and have immense amounts of space, to take their fellow Muslims?

Lord Bates: My Lords, we have said that we recognised that Christians and other minorities face a level of persecution in the region. In fact, my noble friend will be pleased to note that there was a commitment to protect Christians, particularly in the Middle East, in the 2015 Conservative manifesto. We are very mindful of that commitment; of course, anyone who is persecuted, as I said to the noble Lord, Lord Alton, is eligible for international protection—the type of protection that this Government have been offering.

Southern Rail Question

3 pm

Asked by Baroness Randerson

To ask Her Majesty's Government what measures they have taken to deal with strikes affecting services by Southern Rail.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, although the current dispute is a matter for the unions and the train operator to resolve, the Secretary of State has been doing everything he can to try to resolve the dispute and limit the impact of the strikes on passengers. Additional measures have been put in place to help people get to work and there is still a huge amount of work taking place behind the scenes to try to get this long-standing dispute resolved for the benefit of all passengers.

Baroness Randerson (LD): My Lords, there is chaos on our railways. It is estimated that the Southern dispute alone has cost the Government £65 million and counting, with huge costs, of course, to the economy as a whole. But it is the passengers who are taking the real pain on this, with their daily struggle to get to work. Does the Minister accept that this simply cannot be allowed to go on, and that things are now so bad that it would be very difficult indeed to restore trust between Southern and its workforce? Does he therefore agree that Southern should be relieved of its franchise—which, I suggest, should be passed to Transport for London, which has a very good, proven track record?

Noble Lords: Oh!

Lord Ahmad of Wimbledon: I am sure that the noble Baroness can read something into the reaction of your Lordships' House on that final comment. Let us put the dispute into context. There is no basis left for the dispute. In the case of the conductors who have become train supervisors, 222 of the 223 have signed new contracts. The one remaining one is leaving—so that is 100% compliance. As far as the drivers are concerned, they are worried—rightly, as we all are—about safety on the railways. The Office of Rail and Road—the independent office—has adjudicated that driver-only-operated trains are safe in the context of the Southern network. It put out a report on 5 January. I ask the unions—as the Secretary of State has done, not on one occasion but twice—to come and meet him and call off the dispute. Let us resolve this dispute; it has gone on far too long.

Lord Morris of Aberavon (Lab): My Lords, while the general rule is that Governments should not intervene in industrial negotiations, would the Transport Minister care to research what was done to resolve the impasse that my Minister, Barbara Castle, faced in 1967, when the investment of her predecessor, Ernest Marples, in liner trains was lying idle because of the fears of the NUR about operating them? Mrs Castle went to the

NUR's headquarters without any officials, prepared to talk to the union until the matter was resolved, however long it took. Three full days later, agreement was reached. Will the Minister consider this?

Lord Ahmad of Wimbledon: While lessons of history in your Lordships' House are always valued—I particularly value them—the situation with the railways was markedly different at that time. Here, as I have said before, the dispute is between the train operator and the unions. However, the Secretary of State and the Rail Minister—indeed, the whole Government—have ensured that they are doing all they can in terms of helping passengers and compensation. As I said—I have contextualised the dispute now—there is no basis for this dispute to continue. The Secretary of State has asked both unions to come in and meet him and call this dispute off. It is about time that they complied.

Lord Rosser (Lab): My Lords, it is clear that, as a result of poor performance and days of industrial action, passengers, staff and—because of the nature of the franchise contract—the taxpayer are incurring financial costs. What is not clear, in the light of the nature of the franchise contract in which the operator is paid for running the service but does not retain the fare income, is what financial penalties have been incurred by Govia, the train operator of Southern, as a result of poor performance over a lengthy period of time and days of industrial action. What financial penalties have so far been incurred by the train operator Govia as a result of, first, poor performance and, secondly, days of industrial action? If no financial penalties have been incurred by the operator, what is the incentive, first, for the train operator to address issues of poor performance and, secondly, to resolve the current industrial relations issues if neither matter is affecting it financially?

Lord Ahmad of Wimbledon: As the noble Lord is acutely aware, he is quite right that train operators are paid a fee, with the remaining revenue coming to the Government. But the basis of the dispute, which is what we are focused on today, is very much a matter for the train operator. I note that the noble Lord refrained from commenting on the two pertinent issues that I outlined. As far as the issue of the company itself is concerned, as I said, the Government have stood behind it in ensuring that it can provide compensation when necessary. We have called upon and implored both the franchisee and the unions to come together to resolve this dispute.

Baroness Prosser (Lab): My Lords, as a commuter on Southern Rail—

Lord Bradshaw (LD): My Lords—

Earl Attlee (Con): My Lords, did I hear the Minister correctly?

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Conservative Benches.

Earl Attlee: My Lords, did I hear the Minister correctly? Did he say that the vast majority of drivers have already signed up to the new contract to operate the doors?

Lord Ahmad of Wimbledon: My Lords, I was referring to the conductors. There are no job losses. The conductors have now signed new contracts to become train supervisors. Yes, my noble friend heard correctly: all but one have signed up, and that one is leaving. As far as the drivers are concerned, the dispute with the drivers' union is based on the safety of driver-only-operated trains, and the independent regulator has said that in the context of the Southern franchise they are safe to run. Some 50% of trains, including those on London Underground, are driver-only-operated trains. Trains of a driver-only-operated nature run in Canada and elsewhere in Europe. We are not alone in this. The basis of the dispute is therefore undermined; there is no basis to it. The unions need to get their people back to work and help to resolve this. The noble Lord opposite raised long-standing issues. The Government are also addressing those. As he may have followed in the press recently, there is also going to be £300 million focused on the Southern rail franchise to address the long-standing problems on the track and the issues around Network Rail.

Clerk of the Parliaments

Announcement of Successor

3.07 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, I wish all noble Lords a very happy new year. We have a busy one ahead.

I informed the House on 1 November of David Beamish's intention to retire from the office of Clerk of the Parliaments with effect from 15 April 2017. The recruitment process for David's successor as Clerk of the Parliaments, as well as any vacancies arising consequentially in the posts of Clerk Assistant and Reading Clerk, has now concluded.

There were six applicants, all of whom were interviewed by a board consisting of myself, the Lord Speaker, the Leader of the Opposition, the Leader of the Liberal Democrats, the Convenor of the Cross-Bench Peers and Dame Janet Paraskeva, a former First Civil Service Commissioner. The unanimous recommendation of the board is that Ed Ollard should succeed David Beamish as Clerk of the Parliaments. I am sure that all noble Lords will join me in congratulating Ed on his appointment. We will have an opportunity to pay tribute to David Beamish's career in the House nearer the point of his retirement. In the meantime, on behalf of all noble Lords, I congratulate him on being made a Knight Commander of the Order of the Bath in the recent New Year Honours.

With Ed's appointment, the post of Clerk Assistant will fall vacant. The board unanimously recommended that Simon Burton should succeed Ed as Clerk Assistant. Simon's appointment also means that the post of Reading Clerk will fall vacant—we had a busy day. The board unanimously recommended that Jake Vaughan should

succeed Simon as Reading Clerk. The Lord Speaker will move Motions to appoint both Simon and Jake to those posts at the appropriate time.

Technical and Further Education Bill

First Reading

3.09 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Wales Bill

Report (2nd Day)

3.10 pm

Relevant documents: 5th and 10th Reports from the Delegated Powers Committee

Lord Taylor of Holbeach (Con): My Lords, in the absence of my noble friend Lord Bourne, I propose that the House do adjourn for five minutes during pleasure.

3.10 pm

Sitting suspended.

3.15 pm

Amendment 72A

Moved by Lord Bourne of Aberystwyth

72A: After Clause 17, insert the following new Clause—

“Lending for capital expenditure

In section 122A of the Government of Wales Act 2006 (lending for capital expenditure), in subsections (1) and (3), for “£500 million” substitute “£1,000 million”.”

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, first, I apologise humbly and unreservedly to the whole House for not being here when the business was called.

In moving government Amendments 72A and 143B, I remind the House that I wrote to noble Lords before Christmas to set out the details of the United Kingdom Government's and Welsh Government's agreement of a historic new fiscal framework which sets out how the Welsh Government will be funded alongside further tax devolution. This agreement ensures that the Welsh Government have a fair level of relative funding in the long term which is fair to both Wales and the rest of the United Kingdom. This is the view of the United Kingdom Government and it is also the view of the Welsh Government, whose Finance Secretary, Mark Drakeford, has said that he regards this agreement as ensuring,

“fair funding for Wales for the long term by implementing the funding floor recommended by the Holtham Commission”.

This agreement also sets out that the Welsh Government's overall capital borrowing limit will be increased to £1 billion, thereby doubling the existing limit as set out in the Wales Act 2014. This increase is

in line with the commitment made by the Government during the passage of the Wales Act 2014 that we would increase the capital borrowing if the Welsh Government took on income tax powers.

The fiscal framework agreement sets out that Welsh rates of income tax will be devolved in 2019, and so government Amendments 72A and 143B seek to put this agreed increase into statute and provide for its commencement two months after Royal Assent, alongside the provisions in Clause 17 that provide for the removal of an income tax referendum. Alongside the statutory increase to the overall capital borrowing limit, the Welsh Government's fiscal framework also sets out that the non-statutory annual capital borrowing limit will be increased to £150 million a year from 2019-20, which is equivalent to 15% of the overall cap. This limit aligns with that agreed in Scotland as part of the Scottish Government's fiscal framework. As is also the case in Scotland, there remain no restrictions on how the Welsh Government can use their borrowing powers to deliver their devolved responsibilities.

The noble Baroness, Lady Morgan, and the noble Lord, Lord Wigley, have, through their Amendments 73 and 144, which were tabled before the two Governments had made this historic announcement, sought to increase the Welsh Government's capital borrowing limit to £2 billion. I look forward to hearing the arguments that the noble Baroness and the noble Lord have in support of their amendments shortly.

Amendment 143A in the names of the noble Lords, Lord Hain, Lord Kinnoch and Lord Murphy, seeks to make the majority of this Bill conditional on the Secretary of State providing an assessment of the impact of the Welsh Government's fiscal framework and the effect this will have on differential tax receipts in Wales. Ahead of hearing what the noble Lords have to say, I would point out that as part of the Wales Act 2014 there is already a requirement on the Government to provide an annual report to both Houses on the implementation and operation of the finance elements of that Act. The Government have published two such reports already, the most recent just before Christmas, and the fiscal framework agreement restates this commitment to these reporting arrangements. The next report is expected to be published in December of this year, which I expect to be before the reserved-powers model is brought into force.

In the light of the amendments that have been put forward, I have ensured that as far as the Wales Office is concerned we will seek to provide the information that is being sought here. I remind noble Lords that there is a requirement that Government Ministers in Wales also report on this separately. That would be part of that annual report. We have sought to provide an agreement that is fair for Wales and for the rest of the United Kingdom, as I indicated, so I hope that noble Lords are reassured by what I am saying. I will of course await the contributions that are to be made.

I turn briefly to Amendment 74 in the name of the noble Lord, Lord Wigley. In advance of his comments, let me indicate that the Government's thinking is that it is important to have a standard approach throughout England, Wales, Scotland and Northern Ireland—across

the whole of the United Kingdom. As things stand, because contributions from the private sector in Wales are limited to larger employers, they are smaller than those from the rest of the country, so Wales is a net beneficiary of the way this is organised.

I turn briefly to the amendment of the noble Lords, Lord Rowe-Beddoe and Lord Wigley, and the noble Baronesses, Lady Randerson and Lady Finlay, on air passenger duty, which we also considered in Committee. The Government's view remains that there can be no separate powers as things stand in relation to the devolved arrangements for Cardiff Airport. Obviously, I wait to hear what the noble Lords will say on that issue. In due course I will also formally move government Amendments 72A and 143B. I await contributions from the noble Lords on the other issues. I beg to move.

Baroness Morgan of Ely (Lab): My Lords, I wish the Minister a happy new year. It is extremely good news that the Welsh Government were able to come to an agreement with the UK Government on the impact of partial income tax devolution to Wales and the other taxes due to be devolved as a result of the Wales Act 2014. We were all aware that there was no chance that this Bill could be passed if there were no agreement.

As financing of the Assembly is central to this Bill, it is worth pausing on the matter for a while, as it is crucial to the deliverability and provision of services in Wales. I turn first to the effective change in the method of financing Wales as a result of partial income tax devolution. It has long been argued that due to its relative degree of poverty, Wales has been short-changed over a relatively long period, in particular when compared to Scotland, on the basis of the Barnett formula. In this new deal Wales will have access to around £2.5 billion in new tax revenues from the people of Wales. The Treasury will of course be anxious to cut the Welsh block grant to an equivalent amount.

If income tax receipts were to stay constant in both Wales and the UK over the long term, this would not be a problem. However, the fact is that in future years this block grant adjustment will go up or down depending on what happens to revenues in the rest of the UK. Unless Welsh taxes are to grow as quickly as England's, we could be in trouble in future years. I am afraid that the chances of this happening are quite remote, not because Wales is incapable of raising its game but because it starts off with much lower incomes and does not have the tools to change the situation if the UK Government implement certain policy decisions which may make sense in England but do not make sense in Wales. Fiscal responsibility on the whole remains at the UK level.

To take as an example the UK Government's policy of increasing the level at which taxpayers start to pay income tax—the personal allowance—this is great news for people on low incomes. But, because proportionately more Welsh taxpayers than English taxpayers are taken out of paying tax altogether, less tax will be collected in Wales to pay for our schools and hospitals, and Wales will have no control whatever over this decision. To be fair to the Treasury, and to its credit, it has

[BARONESS MORGAN OF ELY]

recognised this and has agreed to make separate block grant adjustments for each of the three bands of income—so that was a good win for Wales.

I will heap even more praise on the Treasury—which I assure noble Lords does not occur often. It has been agreed that the Barnett floor will be made permanent, which means that Wales should not lose out under this deal either now or in the future. In the past, the system has worked because, ironically, the more public funding is spent in England, the worse off Wales becomes in terms of expenditure relative to England. This led Gerry Holtham to claim in his report that Wales was being short-changed to the tune of around £300 million a year.

However, the fact is that in recent years we have had an extended period of austerity. Wales has also had relatively slower population growth, which means that for every £100 per head spent in England, the Welsh Government now receive approximately £120 per head—higher than Holtham's suggestion that Wales needs around £115 per head to respond to the needs of the Welsh people. Of course, we are not dancing in the streets in Wales, because this really reflects a reduction in the role of the state—a principle to which we are opposed, not just in Wales but across the UK. We will start believing Theresa May's rhetoric on the shared society when she stops shrinking the state and starts expanding it. That is worth noting. We are also aware that this situation is likely to change at some point in the future, and we need to focus on this issue.

In accepting that the Barnett floor will be made permanent, Wales will always be assured of 115% funding for its devolved public services. This is extremely welcome news, and I hope that it will go some way towards alleviating the concerns that my noble friend Lord Hain and others expressed in Committee. The slight concern I had in relation to the impact of population change, over which of course the Welsh Government have little say, has been addressed by the Barnett bonus that has been agreed to, which is a 105% multiplier to any Barnett consequentials from 2018.

On the amendments which relate to borrowing powers—my Amendment 73 and government Amendment 73A—we made it clear at Second Reading and in Committee that one of the key requirements, if there should be a partial income tax devolution to Wales, was that there should also be an increase in the amount the Welsh Government are allowed to borrow. We, along with the Welsh Government, are intensely aware of the restrictions that austerity, along with the potential serious loss of European funding, will put on our ability to invest in infrastructure in particular. We are aware that, despite having the lowest unemployment rates in the whole of the UK for the first time ever, low productivity rates are a real curse on the Welsh economy, and that infrastructure investment would go a long way towards improving the situation and increasing the GVA of Wales.

In our amendment we request that the amount allowed to be borrowed should be £2 billion. This is based on the Holtham recommendations, which take into account the fact that Wales has borrowed very

little under the PFI initiative compared with other parts of the UK. The amount offered by the Treasury is £1 billion. This is £500 million more than the current amount but £1 billion less than we had hoped.

I have spoken to the Finance Minister in the Assembly and he suggested that, in the current circumstances, as we have to use revenue from the Welsh budget to support any capital borrowing, the amount we can borrow is limited because we would have to divert money from the regular running costs of the NHS, education et cetera to support that borrowing. This underlines how flawed and self-defeating the policy of austerity being pursued by this Government is.

3.30 pm

My other concern with the agreement is what happens if Wales needs a reassessment in terms of its higher spending needs. What is good in 2017 may not look so good in 2030, particularly in the light of Brexit. Can the Minister confirm that the framework allows for a review of all its arrangements at least once in any parliamentary term, and that it could include an adjustment to the level of the Barnett floor if necessary?

I am also concerned about the Treasury being judge and jury in terms of financing the Welsh Government. Can the Minister give us some kind of assurance on this matter—for example, that some independent advice could be secured by the Welsh Government that will be respected? On this issue, there is an amendment that requires an impact assessment to be carried out and laid before both Houses of Parliament before this section comes into effect. As there has been so little time for us to scrutinise the details of the agreement, I urge the Minister to agree to this, as we should always ensure that impact assessments are made prior to any change in policy.

I turn briefly to the amendment that will be proposed by the noble Lord, Lord Wigley. I am of the view that the Government have made an absolute dog's breakfast of the apprenticeship levy and have made no effort whatever to consult with the Welsh Government prior to the announcement. Since apprenticeships fall very clearly into the remit of the Welsh Assembly Government, that is an absolutely travesty. I bow to the superior knowledge of my noble friend Lord Rowlands, who demolished the Government's approach to this in Committee.

I am not sure that I agree with the entire amendment of the noble Lord, Lord Wigley, as I do not believe that it is appropriate to ask any person in Wales to be charged the levy if they have a pay bill. However, I urge the Government to rethink their whole approach to the levy in Wales and to make a commitment to work with the Welsh Government to implement a more practical solution. If this is not possible, I suggest that this is an area that would need to be devolved to Wales in future.

Finally, I would like to address the issue of the devolution of air passenger duty for long-haul flights. We know that this was a recommendation made by the Silk commission. The devolution of air passenger duty for long-haul flights would not only benefit Wales but enable more efficient use of the UK's existing airport capacity. Devolving the fiscal responsibility to

Wales for long-haul flights could help to drive economic activity to Wales—although it is worth underlining that it would need to clear EU state aid rules.

I do not buy the argument that this would impact adversely on Bristol Airport. Currently there are no long-haul flights from Bristol. Bigger planes, such as Boeing 747s, are not able to use the runway. The last direct flights across the Atlantic from Bristol to New York were scrapped six years ago. So a reduction in air passenger duty would help air passengers, support growth and jobs, and cut costs for business. I ask the Minister to consider these points when he makes his response.

Lord Wigley (PC): My Lords, I am glad to follow the noble Baroness in addressing these questions. First, let me say how glad I was to see the Minister arriving in the Chamber. I was fearful that we might be losing all the last few months' work if we stumbled at this last stage.

Before I address the amendment in my name, I would like to comment that everyone must be glad that progress is being made on the fiscal framework and that there has been some agreement, but only time will tell whether that agreement is adequate. One problem is that, over the past 17 or 18 years since the establishment of the National Assembly, there has been a shortfall of more than £5 billion due to the effect of the Barnett formula on the Assembly's funding, and therefore we are starting from a position where we will have to work very hard indeed to make up that loss. Clearly, the formula now forthcoming may or may not work in the future, but it does nothing to recoup that loss. Also, a central question in relation to the capital programme, which I will talk about in a moment, is the availability of a revenue stream to fund the interest on capital borrowing, and I suspect that that has not been adequately dealt with within the framework.

Amendment 73, which was spoken to by the noble Baroness, Lady Morgan of Ely, seeks to raise the Welsh Government's capital expenditure limits to £2 billion, in line with other devolved settlements. The arguments on this issue are well rehearsed. We know that, as in many other areas, the UK Government have failed to honour the wording of the Silk commission and have given Wales a settlement that is less than adequate when compared with those of the other devolved nations. Therefore, perhaps I may once again outline precisely what we seek in these amendments.

The independent Silk commission, on which the Minister sat, agreed that the Welsh Government should have borrowing powers comparable to those of their Scottish counterparts. As outlined by the noble Baroness, Lady Morgan, taking into account considerations relating to PFI, this would take us to around £2 billion. As noble Lords will know, the recently agreed fiscal framework, which sits alongside the Bill, is seen by some as making progress on this issue, but under the framework £1 billion will be the Welsh Government's capital expenditure upper limit. The lead amendment in this group—government Amendment 72A—incorporates this figure into the Bill. However, it is difficult to see how that represents anything like adequate progress. The Welsh Government will be short-changed

by £1 billion compared with what they should have, and Plaid Cymru Members, both in another place and in the Assembly—regard this as totally unacceptable.

Although the parsimony of the UK Government on this matter is staggering, I am afraid that some of the blame must be laid at the door of the Government of Wales. If the noble Baroness, Lady Morgan of Ely, who spoke to the amendment, really believes in what it says—that the limit should be £2 billion—why did her Labour colleagues in the Assembly settle on the figure in the fiscal framework? Surely we should be fighting for £2 billion from the Assembly end as well.

That said, I shall conclude my remarks on this amendment by highlighting some rather remarkable comments made by the Minister on Report. He urged us not to push an identical amendment to a vote on the basis that,

“we do not want to constrain the figure in case the discussions lead to it going higher than that”.—[*Official Report*, 7/11/16; col. 927.]

Was the Minister deliberately leading us down the garden path, or had he himself been led down that path by Treasury officials promising to write cheques which they knew they would never cash? Perhaps he knew that a higher figure was never going to be delivered as part of the fiscal framework—a carrot that in his heart he knew could not be delivered. If that was the case, it was somewhat reprehensible, although I might say out of character. If he himself had been misled into believing that the money was there, he has surely been put into a totally impossible position. Some explanation is needed and some Treasury heads should roll. However, if he was indeed right that such money was available but the Welsh Government made an inadequate case to secure it, then Wales needs to know. Whichever it was, it seems that Wales will not get the resources it needs to stimulate investment-led economic growth and, compared with Scotland, it is getting second-class treatment.

I now turn to Amendment 74, which stands in my name and concerns the apprenticeship levy. The amendment relates to the devolution of the funds generated through the apprenticeship levy and the way in which it will be implemented. It seeks complete transparency surrounding the levy and how it is rolled out in Wales by making separate provision for the levy in Wales in consultation with the Assembly. We debated this issue in Committee and, although I got the impression that the Minister recognised that there were some problems, particularly in cross-border circumstances, he does not appear to have brought forward any proposals to tackle the issue. The amendment seeks greater clarity regarding the implementation of the levy in Wales and how the Government intend to work with the Assembly to ensure that this tax, which straddles not only national boundaries, but also both devolved and non-devolved areas of policy, works in practice. Greater clarity is essential so that the levy works effectively in both countries to provide high-quality, effective apprenticeships.

I am grateful to the noble Lord, Lord Bourne, for his letter, which he sent to all noble Lords on 14 November, attempting to shed some light on the Treasury's intentions. This confirmed that the agreement would,

[LORD WIGLEY]

“provide the devolved Administrations with a population share of the Office for Budget Responsibility’s latest apprenticeship levy forecast”,

meaning that the Welsh Government will receive £128 million in 2017-18, £133 million in 2018-19 and £138 million in 2019-20.

“Beyond 2019-20, once the levy is embedded, the normal operation of the Barnett Formula should provide a similar outcome”.

It went on to say that the Welsh Government would then,

“decide how to allocate this funding to their devolved responsibilities”.

I thank the noble Lord for this note confirming the Treasury’s intentions, although this has left it rather late for the Assembly to consult widely and to formulate an apprenticeship policy in tandem with the commencement of the charges being imposed on organisations when it comes into force in April.

However, in the previous debate, the noble Lord, Lord Bourne, when questioned regarding the Barnettisation of the levy to Wales, conceded that he was,

“not sure that Barnett would present the right answer”.—[*Official Report*, 7/11/16; col. 904.]

If the intention of the levy is for companies to be able to “get out” what they “put in”, then this should have been communicated from the start. Now we are left in a position where organisations in Wales are waiting for the Welsh Government to play catch-up and announce how they intend to allocate their revenue in a race against time before April. Due to this lack of communication, several organisations in Wales which will be eligible to pay the levy are still in doubt as to whether or how they will benefit from the levy. There is a danger that some organisations may wish to relocate their training operations over the border to England, where they may have greater certainty and where they will be more certain of securing direct benefit from the levy that they pay.

I acknowledge that some of the blame lies at the other end of the M4, with Ministers in the Welsh Government dragging their feet as to how they intend to use the funds. In a letter to the Assembly’s chair of the Economy, Infrastructure and Skills Committee in November 2016, the Welsh Retail Consortium expressed concern that,

“Levy-payers in Wales will not have any opportunity to see a direct return from their contribution to the Apprenticeship Levy”.

The consortium contrasts the situation in Wales with that in Scotland, where the Scottish Government have consulted extensively with stakeholders, whereas the Welsh Government have given very few assurances. It is clear that the UK Government are introducing legislation that has been England-centric in its planning and implementation and as the noble Lord, Lord Rowlands, eloquently put it during the last debate,

“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”.—[*Official Report*, 7/11/16; col. 903.]

I hope that our experience with this levy will serve as a salutary lesson about the need to formulate clear and distinct devolution, where it is transparently clear as to where responsibility lies and not to be fudged, as

in this instance. This half-devolved, half-reserved policy is an example of how the UK Government should not conduct their business in future.

Finally, I turn briefly to Amendment 80 on air passenger duty. I support Amendment 80, which is tabled in my name and the names of the noble Baroness, Lady Randerson—I am not sure whether she will be moving it—the noble Lord, Lord Rowe-Beddoe, who as I understand is indisposed and unable to take part in this debate which is so close to his heart, and the noble Baroness, Lady Finlay, who I am glad is here with me to support it. On the third day in Committee, we had a vigorous debate on this issue, in which an amendment previously tabled by my party colleagues in the other place was moved by the noble Lord, Lord Rowe-Beddoe. I am glad to see that he has put his name to this slightly narrower amendment. I say narrower because, whereas the previously tabled amendment on APD sought to devolve the whole tax, this amendment, as the noble Baroness, Lady Morgan, stated, would devolve powers over air passenger duty only for long-haul flights. Although I would like to see power over the whole tax devolved, as is the case in Scotland, I can appreciate that this narrower form of devolution for APD was the recommendation of the Silk commission.

3.45 pm

I will not restate what has already been said so expertly in previous debates on this matter, but I would like to take the opportunity to respond to some of the Minister’s comments in Committee. As I am sure the Minister will be aware, it comes as a surprise to many that the Wales Office also seemingly has jurisdiction over Bristol. I fail to see how the Minister is putting the Welsh economy first when he asserts that the devolution of APD should not go ahead as it may damage the commercial interests of Bristol Airport.

The other repeated protestation of the Minister was that this would simply benefit south Wales and do little for the north of the country. I am sure the Minister himself knows that this is a bit of a red herring. The economic benefits of a competitive international airport would benefit the economy of the whole country. Inevitably, policies have greater and lesser effects in different regions. Would he refuse to invest in the M4 because it is irrelevant to the north or to upgrade the A55 because it does not help the valleys? Let us apply the Minister’s logic to a directly comparable circumstance—that of expanding Heathrow, or Gatwick for that matter. Clearly, such projects directly benefit the south-east of England much more than any other region. But I expect that the Minister, like most of his party colleagues, will be making the case for airport expansion in the south-east on the grounds of its wider benefits to the whole economy.

At a time when Wales must show that it is open to the world, when international links are arguably more important than in any period in recent history and when the speed of globalisation has created a necessity for goods and people to travel by air, in these circumstances the need to ensure that Wales has all of the levers necessary for creating an effective international airport is patently obvious. I therefore ask the Minister to heed the calls of Members across parties, both here and in another place, and support this amendment.

Lord Hain (Lab): My Lords, I will address Amendment 143A standing in my name and that of my noble friends Lord Kinnock and Lord Murphy of Torfaen. The amendment expresses concern about, and seeks an impact assessment on, the problem of differential tax receipts. Over the past few years, as the Minister will know, tax receipts in the UK have increased at a rate three times that of those in Wales. A gulf is opening up and Wales needs to be protected.

After the concerns on these and other matters that I and fellow Labour Peers have repeatedly expressed about the dangers to Wales of being short-changed by the devolution of income tax, I nevertheless congratulate the Secretary of State and the First Minister of Wales on reaching agreement on a new fiscal framework. It seems that they may have found a pragmatic path forward, one which both rejects the status quo and assures Wales of fairer funding for the future—though perhaps not quite as far over the horizon as the noble Lord, Lord Bourne, claimed when he announced the agreement. The new framework prolongs the life of the 115% funding floor for Wales, guaranteed in 2015 for the current Parliament. It accepts the assessment of Welsh needs relative to England made by the Holtham commission, while deftly sidestepping Holtham's recommendation to adopt an entirely new formula for linking funding to relative needs across all parts of the UK. Instead, it embraces our old friend the Barnett formula, and thereby delivers the latest instalment in a long success story. By injecting a new needs-based factor into the Barnett formula and setting a welcome floor under the Welsh budget, the new fiscal framework goes a long way to protecting Welsh needs. I welcome that and I welcome the Minister's role in it.

The Holtham Commission on Funding and Finance for Wales found the unvarnished Barnett formula distinctly unfit as a means for matching the funding allocated to Wales with Welsh relative needs. It judged it to be unsustainable over the medium term, but it also acknowledged that Barnett, with its modifications, gets the job done, as it is done again in this new fiscal framework. In his covering letter announcing the agreed fiscal framework on 19 December 2016—and we were grateful for notification of that—the noble Lord, Lord Bourne, claimed that the agreement,

“provides Wales with a fair level of devolved funding for the long term”.

Only time will tell whether that ambitious claim proves true. If by “the long term” the Minister means the 40-plus years that the Barnett formula in its various manifestations will have lasted by the time this new fiscal framework comes up for its first review, that will mean that the annual block grant to Wales in the 2020s will be derived from what it was at the end of the 1970s. I wonder how many Members of this House feel comfortable at such a prospect—basing budgets on spending patterns set 40 years ago, albeit with some adjustments along the way.

Let us hope that the Barnett formula, with this new 115% Welsh floor, does not set in stone the definition of Welsh needs regardless of how things change in the years that lie ahead. For example, we welcome the many new residents settling in Wales from parts of England, but they tend to be of a certain age and will

create increased burdens for Welsh social care and the health service in the future. Let us hope that the Barnett formula, therefore, does not set this situation in stone.

For all its positive features, the new framework has its limitations. I will mention four. First, I acknowledge that it does respond to the call that I made seven weeks ago, when this House last debated these issues, for clarification about how any funding floor would interact with income tax devolution and block grant adjustments. While it lasts, the 115% funding floor limits the damage that the differential growth in tax receipts that we have seen between Wales and England can do to the Welsh budget. That is a bit like having third-party fire and theft insurance; it is valuable but falls short of comprehensive cover and is subject to change on renewal in the 2020s. The claim in paragraph 32 that the framework applies the same population figures to both tax and spending in calculating changes to the Welsh block grant does not persuade me that the ongoing threat from differential tax growth after the transitional period has been met.

I was also troubled and not a little bemused by the Written Answer given on 5 January by the noble Baroness, Lady Neville-Rolfe, to my Question:

“To ask Her Majesty's Government what assessment they have made of the extent to which the agreement on the government of Wales' Fiscal Framework published on 19 December compensates for the lower percentage increase in income tax receipts in Wales compared to the UK since 2010–11”.

I remind the House that the UK has seen a 6% rise in tax receipts since 2011. Wales has seen a 2% rise, which is a significant difference. The noble Baroness's Answer was opaque, to say the least:

“As set out in the Welsh Government's fiscal framework, the UK and Welsh governments have agreed to apply a block grant adjustment for each band of income tax separately. Doing so will fully account for the different proportions of basic, higher and additional rate income tax payers in Wales and the rest of the UK. This means that the Welsh Government will hold an appropriate set of risks and opportunities regarding their new income tax powers, as part of a wider funding agreement that the UK and Welsh governments agree is fair for Wales and fair for the rest of the UK”.

To be frank, that is Treasury-speak for not answering the Question. Does that mean that the lower percentage increase in income tax receipts in Wales compared with the UK will be specifically compensated for or not? Perhaps the Minister can enlighten us on this crucial matter, which could otherwise see Wales short-changed in this Bill.

Secondly, the framework does not deliver on the grand claims that have been made about tax devolution increasing financial empowerment and enhancing accountability—which is supposed to be what it is all about. The initial baseline adjustment to the block grant in 2019–20 will be set at the receipts that would have been generated by Welsh rates at 10%, whatever rates the Welsh Government actually choose to set. That is what Annex B of the agreement states. If the Welsh Government choose in that year or subsequent years to raise income tax rates by more than 10% and to spend the extra revenue, the effect would be to boost Welsh GDP via the standard Keynesian balanced budget multiplier. But it would distort rather than enhance political accountability, just as central government

[LORD HAIN]

manipulated council tax for years to deter local authorities from raising council tax to fund extra spending on local priorities.

Thirdly, the new framework shows no sign of having given any consideration to indexing block grant adjustments in Wales to changes in comparable regions in England rather than to England as a whole. Holtham found that the two English regions Wales came closest to in 2010 were the north of England and, perhaps surprisingly, London. Wales's needs were around 15% above the England average while the south-east of England excluding London had needs that were nearly 15% below the England average. Comparing Wales to England as a whole, including its better-off regions rather than to the closest equivalent English regions, does a disservice to Wales.

Fourthly, the only provision the new fiscal framework makes for updating estimates of relative needs at some future point is to say that things will be looked at again by both the UK and Welsh Governments when Welsh funding begins to reach 115% of equivalent spending in England, expected to be at some point in the 2020s. This will be towards the end of a transition period during which Welsh funding will be deliberately driven down towards 115% from its current 120% level. By the way, it has reached 120% only because Westminster-driven cuts in public spending have converged in line with the Barnett formula imperatives after years of Labour Government public spending rises, and should a future UK Government increase spending, that convergence would resume; hence the need, I believe, for an impact assessment. The Minister helpfully mentioned in his opening remarks that this could be provided in the annual report to which he referred. If he can reassure us on that point, that would give me some encouragement in terms of whether to press this amendment or not.

Baroness Finlay of Llandaff (CB): My Lords, I want to speak briefly to Amendment 80 in the group, to which I have added my name. There are two specific categories, the first being the structure of Cardiff Airport itself for taking long-haul flights and secondly its relationship to other airports and the benefits for the region of south Wales.

The Cardiff Airport runway is particularly long, so it is often used as a diversion runway for flights that cannot land at other airports for a variety of reasons. For many years it has received the largest aircraft when they need to come in for servicing. Another advantage is that Cardiff does not have a major crosswind problem because the airflow around the Sully cliffs is not severe enough to cause any difficulties when landing large aircraft. The airport is therefore particularly suited to long-haul aircraft. This narrow amendment poses a question that is different, in that it would allow Wales to determine its future in this area.

The other aspect is Cardiff Airport's relationship with other airports in the region. It is extremely convenient for people in west and south Wales who face problems in conducting commercial relationships in other parts of the world, so the development of the airport would certainly be invigorating. It would also help areas around Bristol and Hereford. Moreover, the skies over

London are very crowded. Anyone who has been on an aircraft going round in circles as it stacks to land, and seeing other aircraft both above and below, knows that that can feel scary. One is aware of just how crowded the skies can be. Aircraft coming in to land at Cardiff Airport do not pass over populated areas because the approach is over the Bristol Channel, thus there are no problems with noise affecting residential areas. Because of Cardiff Airport's position, passengers can travel away easily along roads that are not prone to congestion or major traffic jams. People can move on to other destinations or approach the airport with relative ease.

I hope that the Minister will think again and I wonder if we could come back to this issue at Third Reading, even if the amendment has to be made narrower still, so that we do not miss a really important opportunity to do what is right for the region and right for air travel, and would meet what was a core recommendation of the Silk commission.

4 pm

Lord Thomas of Gresford (LD): My Lords, I apologise for the absence of the noble Baroness, Lady Randerson, who is heavily engaged in the Moses Room on the High Speed Rail Bill. I therefore stand in her place.

My experience with Cardiff Airport is somewhat limited. I have flown into it only once, in an eight or twelve-seat plane from Harden, in north Wales. In those days there was no gap between the passengers and the pilot. As we came over the hills and the valleys and headed into Cardiff Airport, the co-pilot said to the pilot, "Do you think we will make it?" This did not fill his passengers with a great deal of confidence.

I support, as I always have, the concept of devolving air passenger duty in order to improve the use of Cardiff Airport and to provide a facility for the people of south and mid-Wales. I did a little research this morning on Bristol, because Bristol seems to be the problem, and discovered that it has only one flight that goes any distance: a weekly flight to Cancun, in Mexico, which is not one of the major long-haul trips. As the noble Baroness, Lady Finlay, pointed out a moment ago, the major airports in the south of England are overflowing. We are looking for solutions to the planes that are stacked and the passengers who fill the terminals in Heathrow and Gatwick. Here we have the possibility of a facility which will take long-haul traffic. If a proper incentive were given by a reduction in air passenger duty, then I am quite sure that the people of south Wales and indeed of the borders would flock to Cardiff Airport. It is common sense that this possibility should be allowed to develop. Bristol Airport, on the other hand, does not have any longer flights and does not have the capacity for such regular long-haul flights.

We have always supported air passenger duty devolution and I hope that the Minister, even at this stage, will give further thought to it. I do not think we have heard a positive rationale for not devolving it, save its impact on Bristol Airport. Its impact would be nil.

We very much welcome Amendment 22A. The increase in borrowing powers is one of the key points in the agreed fiscal framework. I congratulate the Government

and the Welsh Government for coming to a sensible agreement on this before the Bill reaches its conclusion. It seems a reasonable basis for Wales to be ambitious in its capital projects. As for Amendment 73, it is ambitious—perhaps a little bit too ambitious, because, although you can pluck a figure from the air, debts do have to be repaid, and interest on them is a heavy burden and a drag on current expenditure. Therefore, a balance has to be struck. We believe that, for the moment, the Government and the Welsh Government have struck the right balance.

Lord Crickhowell (Con): My Lords, I had not intended to intervene but I am prompted to do so by one or two things that have said. I particularly want to have a word about the much tighter amendment on Cardiff Airport, which shifts my position.

First, I congratulate the Government on the way they have dealt with the fiscal framework. Acknowledgment has been given from around the House to the real progress that was made in reaching what inevitably is a compromise deal but one which represents a very considerable step forward. Yes, things do change with time. When I was Secretary of State of State, long ago, it just happened that the Barnett formula was rather favourable to Wales, so I avoided criticising it. But of course it has changed—and we have heard how things change over time—and the Government, and the Welsh Government as well, deserve some credit for the deal that has been done.

I turn to this more restricted amendment about Cardiff Airport. I suppose that I should declare two matters. Long ago, at Second Reading, I supported the Government and declared an interest as a frequent flyer from Bristol. I did not declare another, even more remote interest—that long ago I was part of a consortium that bid for the management of Cardiff Airport. We did not bid enough, but I like to think that, if we had won, we would never have allowed that airport to be pushed downhill as rapidly as its subsequent managers did. That is the past history, which is very regrettable. I am sad that my noble friend—I always regard him as my noble friend, because he is a very good friend of mine—Lord Rowe-Beddoe, is not here, because he did great work in trying to rebuild the airport from the state in which it has been.

The new amendment would change things. Long haul is a very different matter, and the airport is not in my view a competitor with Bristol, as I feared that it would be in the past. So I hope that the Government will be sympathetic to this much narrower amendment. I withdraw the hostility that I previously expressed for the wider amendment and the wider campaign that was originally fought.

Lord Rowlands (Lab): I shall speak to Amendment 74, proposed by the noble Lord, Lord Wigley, to continue to clarify the issue of the apprenticeship levy. I express my gratitude to the Minister for his letter on this issue in November, which was extremely informative and helpful. It spelt out how the Treasury was going to Barnettise the levy, which was very helpful, but I would like to press him a little more on the mechanics of this arrangement. I put this in the form of a question,

because it has been hard to get anything factual. Under the Barnett formula before the levy, am I right in thinking that it was the budget of the department for business that was responsible for expenditure on apprenticeships? Are we now going to see an exchange—a replacement of BIS with Revenue and Customs—which is not an addition but just a transfer of responsibility for organising the Barnett formula in relation to apprenticeships? Am I right in thinking that that is the mechanics of this case?

Of course, the apprenticeship levy came out of the blue and without consultation—a point that we made very forcefully in an earlier debate—when the Assembly had already devised a very positive and constructive apprenticeship policy, envisaging no fewer than 100,000 places over the Assembly period and a budget of some £110 million. Now I understand that—and I am grateful if this is the case—as a result of the announcements and the fact that the Assembly knows that some of the apprenticeship levy money is going to be Barnettised, it has increased the present budget from £110 million to £125 million. That is a significant and important additional contribution to the Welsh economy. So on that side, I can welcome what has happened. But alongside that, we still do not know what the cost of the levy will be to the companies, public bodies and major utilities operating in Wales and how much of it they will be able to recover, one way or another. Yet again, I put the point in the form of a question because I have heard of some of these figures only at second hand. I hope the Minister, when he comes to reply, will be able to give us a much more authoritative account.

As I understand it, one assessment has been that the apprentice levy is going to cost the public sector in Wales some £30 million. In fact many organisations, public utilities, public bodies and companies, frankly, are treating the levy as an employment tax. They cannot see how they can retrieve the sorts of sums they are going to be levied with in any form of apprenticeship scheme that is going to be available. For example, what is the cost of this levy going to be to our 22 local authorities? Am I right in thinking that a county such as Pembrokeshire is going to pay some £750,000 a year as a result of the levy, and Powys about £600,000 a year? Multiply that by the 22 local authorities and you wonder how those authorities can possibly reclaim, through the levy, anything like the amounts of money they will pay. Can the Minister clarify and identify for us what the cost will be to a whole range of public bodies, utilities—I am going to refer to utilities in a minute—local authorities, the National Health Service and the Welsh Government themselves, which are all going to pay this levy? I fail to see how, somehow or other, we are going to be a beneficiary of this arrangement.

I raise one other major anomaly. We have very large national utilities that stretch across Scotland, Wales and England. According to one figure I have seen, some 75% of the employees of these major utilities—the energy companies, et cetera—are in the devolved Administrations. That means they can claim only 25% of the apprenticeship levy that they are going to pay through the English voucher system. Again, I would like to know how this is going to be

[LORD ROWLANDS]

sorted out. The situation is muddled and lacks the transparency the noble Lord, Lord Wigley, spoke about. We are flushing out greater transparency but it is still not sufficient, and I hope that we can use the opportunity of debating this amendment to seek much greater clarification.

Lord Kinnock (Lab): My Lords, I shall follow on from my noble friend Lord Rowlands on the issue of the apprenticeship levy and very briefly and simply make the case for reconsideration of the policy being implemented now by the Government in both the public and private sectors.

I believe that within the formulas currently being employed—and this applies very particularly to Wales because of our substantial local government and public sector, for various historic and structural reasons—there should be better treatment for both private and public employers who are already proven good trainers. There is insufficient discrimination in the way the system is intended to operate now to give higher rebates or greater inducements to improve apprenticeship training, numerically and in qualitative terms, because those who are already good trainers, who have the custom and habit of making substantial provision for the training of new generations of skilled personnel, are simply not getting rewarded as they should for good performance, and for their strong intention to continue with that good performance, by comparison with employers who are and will be levy payers who have a much weaker record of the employment and development of apprenticeship skills. I make that plea in the context of this Bill because it has direct relevance.

There was a time, a very long time ago, in the early 1990s, when I had various obligations in my mid-life crisis of being leader of the Labour Party. We developed an apprenticeship levy scheme that was deliberately constructed in order to reward public and private sector companies and institutions with good records of apprenticeship performance and to finance their bonus, as it were, out of the levy on those with weaker performances. So there was a dual spur of inducement to improve apprenticeship performance in rewarding those who had good records—and intended to improve upon them—and in the minor penalty, but nevertheless a penalty, on those who had no such record of good performance. There was an inducement for them to reduce their levy obligations by improving their performance.

4.15 pm

I am certain that if that principle were to be installed as part of the improved but in some respects questionable new system of apprenticeship levies, there would be greater rewards. It would have a particular application for some of the employers mentioned by my noble friend, for example, because these local authorities are very substantial employers in the areas that they serve. The obligations resulting from the levy will not be offset by the rewards that they can derive from it, and therefore by a great perversity the people of those areas and the authorities themselves will be disadvantaged by having established good apprenticeship training

performance. Surely that cannot be the purpose underlying this change and in their own interests, as well as those of employers who provide a good model, I hope that the Government will give it some reconsideration.

Arising from other points made thus far in the debate, I again refer briefly to the possibility of changing arrangements and devolving powers relating to air passenger duty to the Cardiff Government. I make this argument to provide devolution in order to exercise absolution. The whole purpose of devolving responsibility for air passenger duty on long-haul flights from Cardiff Airport would surely be to give the devolved Government in Cardiff the right not to make the levy. There are lots of reasons for supporting such an argument, including that of the disproportionate cost inflicted on long-haul passengers on very modest or low incomes, who for a variety of social and family reasons need to travel on long-distance flights. But that is not the argument I offer this afternoon; I would provide Cardiff Airport with an advantage that could add attracting long-haul trade to its very substantial existing advantage of really speedy transfer times.

To a certain extent, I refer to the fortunate experience of the publicly owned Manchester Airport—a very successful airport which continually secures profitable operation and very high standards of efficiency. What the enterprising local authorities that own Manchester Airport did, a couple of decades ago now, was to undertake an initiative seeking deliberately to attract long-haul flights. They hoped that by so doing they would attract a degree of short-haul flights from other European destinations. And so it came to pass—so much so that it now has a substantial trade in long-haul which attracts inward and outward flights from and to other European destinations.

I do not suggest for one second that Cardiff would, over a short period, be able to achieve a rapid transition to Manchester's throughput of passengers, which is now huge. The expansion there over the last 25 years has been remarkable and entirely commendable. But if Cardiff could distinguish itself by offering a holiday on air passenger duty and seeking to attract long-haul flights, it could have a special convenience and passenger attractiveness for a great arc of the population of the UK, running from Bristol right through Gloucester to Oxford and up to Birmingham, where it would obviously be in competition with long-haul flights from Birmingham's excellent international airport.

Nevertheless, by offering that additional inducement, it would be attracting the attention of global passengers to the fact that Cardiff is a very convenient destination for a large segment of the UK population. And it would have the added inducement of offering cheaper travel costs as a result of not having to make the passenger levy. I just hope that the Government will think in enterprising terms of trying to facilitate the competitive operation of long-haul flights both as a way of relieving pressures on hub airports in the London area—which is an advantage in itself—and as a way of stimulating the potential for a different level of aviation business out of Cardiff Airport.

My other point echoes—as one would expect, as my name is on my noble friend Lord Hain's amendment—the central point that my noble friend

made with great effectiveness. It is that such is the disparity of growth in tax revenues between the all-England average and the Wales average that there is a very direct need in terms of economic justice as well as the facilitation of good government and properly financed activities for compensating for the difference in the rate of increase of tax revenues, where blame to no one is an established fact of life.

Just as I would make the argument that we work continually for the day when Wales has no right to claim European regional funding—that is the ambition that we have had throughout the whole time that we plotted and planned and campaigned to secure Objective 1 status for Wales—I would also make the argument for direct guaranteed annual compensation for the different rate in growth in tax revenues, which is structural and not the fault of anyone, and for it to be an advantage for Wales, or at least the provision of economic enablement to Wales, that we would seek to work to end, simply because Wales had become so fortunate and so rich and so effective in its tax gathering that it was experiencing prolonged periods of economic growth, and therefore revenue growth, and so at some time in the future would not need such compensation.

In the meantime, however, because of the structural disequilibrium between Welsh tax growth and all-England tax growth, the very least that we should be seeking is fair comparisons between areas in England of similar industrial and economic structure and history to those in Wales, or, even more directly—and much more simply—we should make the comparison between Welsh rates of income tax growth and the English rate. Unless this basic equilibrium is addressed structurally and constitutionally, the disparities will continue to grow and, with them, the great disadvantages and some of the economic disincentives. So I ask the Minister, who I know is deeply committed to the basic well-being and future development of Wales, to give the most positive consideration to the proposal made by my noble friend.

Lord Murphy of Torfaen (Lab): My Lords, as a co-signatory to my noble friend Lord Hain's amendment, I support everything that my noble friend Lord Kinnock just said about the need to review the operation of devolving some income tax to Wales.

I congratulate the Minister and the Welsh Government on producing the fiscal framework. I defy anyone to understand it on their first or indeed second reading of it, but by the time you get to the third you get the general impression that it is an improvement in the finances for Wales over the last number of years. An improvement indeed: I have been living with the Barnett formula for three decades, and there is no question in my mind that the fiscal framework now before us is an improvement. However, there is no point in improving on the block grant if you then start losing out because of the income tax side of it, and that is the point that my noble friends have put. The important issue, as I am sure the Minister would agree, is that in the annual review of financing for Wales the impact assessment of this change will be very seriously examined. I am convinced that the comparisons between Wales and the whole of England mean that Wales could be disadvantaged unless we redress that in some way.

I support noble Lords who have dealt with the issue of Cardiff Airport. My noble friend Lord Kinnock, a former European Commissioner for Transport, put it distinctly: if we could give some advantage to Cardiff with regard to long-haul flights, that would not just be a benefit for Wales; it would benefit a whole swathe of England as well. I cannot for the life of me understand why the Bristol versus Cardiff argument applies in this case. Bristol has no runway capable of taking these long-haul flights. Cardiff has, and it is a very good runway. That could help the rest of the country as well as Wales, and I think the Minister must be persuaded that right across the House today people have said that this is a reasonable amendment that would not affect the Government's position with regard to air passenger duty generally. I think the Government are wrong on that, by the way; if you devolve it to Northern Ireland and Scotland, you should devolve it to Wales too. Still, if Bristol is blocking this proposal, in the case of long hauls there is no block that the Government can actually agree to.

I hope the Minister will look favourably on all the different points that have been made today because they are made with the knowledge that over the last weeks and months the Government have accepted different points that have been put by Members of the House across the political spectrum. The Government have conceded on many issues, and I see no reason why they could not concede on this small but important point.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on the amendments in this group. Much of their contribution has been persuasive and helpful.

I thank those who have acknowledged the progress made in relation to the fiscal framework and the agreement. I stress that the agreement has been made between the UK Government, by the Treasury, and the Welsh Assembly Government, via the Finance Minister and the Welsh Ministers in the Welsh Government. To that extent, this is something that the Welsh Government have welcomed. The noble Lord, Lord Hain, in a very fair analysis, said I had welcomed this agreement for the long term, which indeed I have. More importantly, perhaps, it was welcomed for the long term by Mark Drakeford, who said he regards the agreement as ensuring there will be,

"fair funding for Wales for the long term by implementing the funding floor recommended by the Holtham Commission".

Those are his words. He is yet to give a full analysis, to be fair, but that is the press statement that he put out and it is notable that that is the view of the Welsh Government. I also stress that the Welsh Assembly will of course be having a say on the legislation in general when it considers the LCM, so no doubt we will be giving a view on this important part of the legislation, as well as the rest of the legislation, when it delivers that view. That is something that we anticipate.

I turn to Amendment 143A in the names of the noble Lords, Lord Hain, Lord Kinnock and Lord Murphy, which all three noble Lords have spoken to very persuasively. As I have indicated, we have a requirement under existing legislation, which we will

[LORD BOURNE OF ABERYSTWYTH]

take forward in relation to this new legislation, of an annual report that happens in November/December each year. We will seek to ensure that the impact assessment—the information that the noble Lords are seeking—is incorporated in that report. As I have indicated, it is partly the Treasury, partly the Wales Office and partly the Welsh Government; all three contribute separately to that report. I will seek to ensure that that information is there because noble Lords have made a very fair point. The Government have already published two such reports, so there is a template. Of course, I appreciate that the significance of the new income tax powers makes the next report somewhat different in nature.

4.30 pm

I turn to Amendment 74 on the apprenticeship levy, in the name of the noble Lord, Lord Wigley. I have also spoken to him separately about this issue. To fund the step change needed to achieve 3 million apprenticeships starts by 2020 and to improve their quality, the Government are introducing an apprenticeship levy so that, by 2019-20, spending on apprenticeships in England will be double the 2010-11 level in cash terms. As has been indicated during the debate and in the letter I sent to noble Lords, the population share of the levy funding for the Welsh Government which will apply in the first three years is up on the present spending, as the noble Lord, Lord Rowlands, indicated. In the first year it will be £128 million; in the second year, £133 million; and, in the third year, £138 million.

The development of this policy on apprenticeships is entirely a matter for the Welsh Government. In England, those who put in money will get it back. It is entirely a matter for the Welsh Government or the Welsh Assembly as to how it is rolled out in Wales. Persuasive arguments have been put as to how the money should be spent but it is a matter for them. This is not something that the Government here would want to second-guess nor, clearly, are they in a position to do so. In response to the noble Lord, Lord Rowlands, the Barnettisation of the funding will be taken forward via the training budget of the Department for Education.

Noble Lords have perhaps gained the impression that officials are not speaking to each other and that there is no discussion on this. This is not the case. Discussions are certainly going on, for example in relation to cross-border arrangements where there will be employees in Wales benefiting from apprenticeships in England and vice versa. Discussion is happening because there clearly needs to be some dovetailing of arrangements. I am sure that things could have been done better—that is nearly always the case—but I certainly do not want noble Lords to think that nothing is happening in a cross-government way, because it is.

Lord Rowlands: I apologise for interrupting the Minister but can he publish exactly which public bodies, which local authorities and which companies are going to pay this levy and what amounts they will pay?

Lord Bourne of Aberystwyth: I am sure I can and I will make endeavours to do so. Clearly, this is related to the way in which the levy operates. This is a matter being conducted from Westminster, so I will endeavour

to get this information for noble Lords. What I cannot do is indicate how it will be spent. This is a matter for the Welsh Government and the National Assembly for Wales.

I turn now to Amendment 80 on air passenger duty. In doing so, I wish to say how sorry I am that the noble Lord, Lord Rowe-Beddoe, is not in his place because of indisposition. I am sure we all wish him a speedy recovery. I know that he has very strong views on this issue; I have discussed it with him on many occasions. The amendment was spoken to formidably by the noble Baroness, Lady Finlay, with other noble Lords speaking in support.

The Government have considered the case and options for devolving APD to the Assembly, as we committed to do in the 2015 St David's Day agreement. From extensive debates in Committee, noble Lords will be aware that there is an issue about state aid, particularly in relation to but not limited to Bristol. The noble Lord, Lord Kinnock, correctly indicated a competitive element with Birmingham. There is a competitive element with airports in the United Kingdom which is obviously accentuated with those that are geographically proximate. While we remain members of the European Union there is clearly an issue with regard to state aid rules that cannot be lightly ignored. I assume that that will not be the position once we complete the Brexit discussions and implement it, but that is some way into the future. I put that important issue on one side.

Lord Murphy of Torfaen: Is it not the case, though, that the state aid argument would apply equally in Scotland and Northern Ireland?

Lord Bourne of Aberystwyth: The rules certainly apply equally throughout the EU but you have to establish that there is a competitive element. The distance from Edinburgh to Newcastle, which would be the next nearest airport where there is no devolution of APD, is considerably longer—and, I think, is a considerably tougher journey—than that between Cardiff and Bristol. I think noble Lords would accept that. I suspect that it is longer than the distance from Cardiff to Birmingham as well, so there is that difference. In Northern Ireland there is a different issue. The issue there concerns the presence of an airport in a different member state rather than within the same member state. Therefore, the rules are the same but obviously the geographical issue is somewhat different.

Lord Kinnock: I say to the Minister as a matter of record that I would gladly continue with the situation of the UK being subject to the state aid rules of the European Union, and retain membership, than have any other kind of relationship. That being said, however, the point made by my noble friend is absolutely valid; namely that within the United Kingdom a disparity of treatment is allowed under state aid rules because the authorities concerned have been able successfully to argue—rightly, in my view—that the market is not distorted by having arrangements in Scotland and Northern Ireland which differ from those in the remainder of the United Kingdom. Given the argument to which I referred in passing about the area to be served

particularly by Cardiff if it were able to dispense with the passenger levy, I believe that under the current state aid rules it could certainly be argued that there is no distortion of the market because the form of competition that exists between international airports is not such as to be distorted by the operation of a different levy system in Cardiff.

Lord Bourne of Aberystwyth: My Lords, I hear what the noble Lord says. I think he would accept that it is a case of defining where there is a competitive market. The point I was making is that I think it would be much more difficult to suggest that there is a single market between Edinburgh and Newcastle in relation to air travel than there is between Bristol and Cardiff. I think that, factually, that must be the case. If you live in a suburb of Edinburgh, I do not think you would lightly consider going to Newcastle to catch a flight whereas, if you live in a suburb of Bristol, you might consider going to Cardiff and vice versa.

However, as I say, that is not the only argument that I am deploying. The point about giving a special tax status to Cardiff is the issue here. The Government cannot subscribe to that. However, we acknowledge that we will revisit air passenger duty at some stage. It may be appropriate to do so and decide how we approach it across the whole country as Brexit approaches, and in the light of decisions made on Heathrow and Gatwick. However, in relation to the specific issue, I am afraid that I cannot give any comfort to noble Lords who want me to move further than I have indicated.

Baroness Finlay of Llandaff: It sounds as if the Minister, in winding up on the airport aspect, is dismissing the arguments we have made that the type of flight going into Cardiff would be quite different from the type of flight going into Bristol. They are not competitive but compatible. Given that, and the arguments we have made, will the Minister undertake to meet a few of us before Third Reading? Listening to the arguments, I do not quite understand why the Government are saying anything other than that they do not want to do it and that that is it—that is what I am hearing—rather than that there is true competition between the two.

Lord Bourne of Aberystwyth: My Lords, if I may say so, that is a somewhat unfair caricature of what I am saying. I am saying that we want to look at this in the round. We do not want to look at it just in terms of Wales, because there is a broad issue about what we do with air travel throughout England and Wales, and that is part of a much broader consideration. So I am not dismissing it out of hand and saying that this is something that the Government do not want to look at. We want to look at it in the round and not, in this legislation, in isolation, which we cannot undertake to do.

I believe that that has dealt with the mass of the issues here. I thank my noble friend Lord Crickhowell for his contribution, and particularly for what he said about the fiscal framework and the hard work that has been put in by officials from the Welsh and UK Governments, and indeed the work of the Welsh Treasury

as well as of the Treasury here. It is a signal achievement that has been welcomed in the United Kingdom and in Wales—and, noting that we have Governments of different complexions, that is no small achievement in itself. So while it may not be perfect, it is a way forward. Of course, it is subject to review. Some noble Lords perhaps hinted at what happens now. The noble Lord, Lord Hain, indicated that there would be a review once there is convergence to 115%, which is the case, but thereafter there would be one no more than once in every Parliament; we anticipate that that would be looked at within every Parliament. That is important as well, and is something that has not happened previously.

With that, I ask noble Lords and noble Baronesses not to press their amendments.

Amendment 72A agreed.

Amendments 73 and 74 not moved.

Clause 3: Legislative competence

Amendment 75

Moved by Baroness Morgan of Ely

75: Clause 3, page 2, line 31, after “7A)” insert “and is not ancillary to another provision (whether in the Act or another enactment) that does not relate to a reserved matter”

Baroness Morgan of Ely: My Lords, there are a number of huge and very different amendments to be considered in this grouping, so I hope that the House will be tolerant as I address the many key issues that need to be discussed under the broad heading of reservations.

Much of the debate on and scrutiny of the Bill have focused on whether particular subject areas should be devolved and form part of the legislative competence of the National Assembly for Wales. The tussle over exactly what the responsibilities of the UK and the Welsh Governments are is the focus of this Bill. Nevertheless, I am keen not to lose sight of the slightly more abstract and structural issues in the Bill, and of the lack of underlying principles—underlined by the Constitution Committee in the Lords—as to what should be reserved. The failure to have a Bill based on sound constitutional principles has created further complexity rather than simplifying and clarifying the approach, which is what the move from a conferred powers model to a reserved powers model was meant to deliver.

The Delegated Powers Committee and the Constitution Committee in the Lords have drawn attention to the broad interpretation that the courts have taken to the “relates to” test. The committees suggested that applying this test to a lengthy list of reservations—far longer than for other regional parliaments—could have significant implications for devolved competence. At best this will lead us back again to the Supreme Court and could reduce the competence of the National Assembly, often in areas where it already holds that competence.

The Minister sought to reassure the House of the impact of the purpose test, which determines whether a matter relates to a reserved matter, but we have no

[BARONESS MORGAN OF ELY]

way of knowing how effective this will be. Never before have we seen a reserved powers model with as many reservations as we have in this Bill. My fear is that while many thought that the shift to the reserved model would facilitate the progress of devolution, it might turn out to have the opposite effect.

4.45 pm

I will press the Minister on a specific issue, which relates to the purpose test and the way the Bill addresses whether the Assembly can make what is referred to as “ancillary” provisions. The fact is that the Welsh Assembly needs to have the facility to make laws, but just as importantly it needs to be able to enforce those laws. This enforcement role clearly would impact on the reserved area of justice. The Assembly would need the ability to step on the toes of the England and Wales justice system, despite not having the clear legal right to do so under the reserved system, in order to see through laws which come under its area of legal competence. Without this, the Assembly’s Bills will not work. This is not a new facility but one that already exists.

The Wales Bill follows the Scotland Act, but we have a very different situation from Scotland because so much more is devolved there, including the justice system. This restriction in Scotland has very little impact on the devolution settlement, but that is simply not the case for Wales. So the Bill remains complex and unclear. The Government have amended their Bill to remove the wording that makes the ancillary provisions so confusing, but this has led to a further problem because conferring functions on a court in civil proceedings would now become subject to a necessity test, which was not the case before. This necessity test has significant repercussions, because it will curtail the Assembly’s ability to enforce its own laws. When making provision to enforce the law, we believe that only one option would be available, and that is the one that has least effect on the law on reserved matters. The danger here is that defendants in a court case could routinely be able to raise in their defence the question of whether the relevant Assembly Act went beyond its powers. They might question whether the law really was the option that had least effect—whether it was “necessary”.

In response to this concern, the noble Lord, Lord Bourne of Aberystwyth, defended the UK Government in Committee by contending:

“Allowing the Assembly to modify these areas puts at risk the uniformity on which the single jurisdiction is based”.

He also said:

“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”.—[*Official Report*, 7/11/16; col. 987.]

Here is where the fundamental flaw in the Bill lies—a flaw which runs through its spine and which has been there from the beginning of its drafting. It derives from 20th-century, pre-devolution thinking. How can it be said that, in a jurisdiction that has two legislatures, there is uniformity? There is not, there will not be and there cannot be. The justice system is not a subject that can be reserved with a clear line; it is a mechanism

that a legislature needs in order to frame and enforce its laws. Until the Government accept that, the Welsh devolution system will be flawed.

I wonder whether the Minister might agree to a modification based on the words he himself used to describe the necessity requirement—a word I understand has been repeated by the UK Government in correspondence—namely, a change from the use of the word “necessary” to “proportionate”. It has been said that the intention here is to ensure that any relevant provision in an Assembly Act is proportionate, and that the Welsh legislature should have “options” in this respect. If that is the case, and if the UK Government truly believe that the Welsh legislature should have options, the test that should be applied should be one of proportionality and not of necessity. I would be grateful if the Minister could address that issue in his reply.

That is the heavy constitutional bit over. Let us turn now to issues that are much easier to relate to. I thank the Minister for listening to our concerns on a whole range of matters. The Government have agreed to our points that reservation on a whole raft of areas was simply unjustifiable and have recognised that in many areas in the Bill there was a push-back from powers that the Welsh Government already possess. I am very pleased that we have managed to come to an accommodation on so many areas, and that the following matters—I think it is worth listing the areas where we had particular concerns and where we have seen movement—will now no longer be reserved to the UK Government: water and sewage; heating and cooling; an involvement for the Welsh Government in maritime search and rescue; exceptions for social security in terms of financial assistance; adoption; planning of railways that start and end in Wales; the community infrastructure levy; compulsory purchase of land; and building regulations. We have to give credit where it is due. We are very grateful to the Minister for listening to our concerns on these matters and we are grateful that he has tabled his own amendments on those issues. They are not all where we want them to be, but the Government have listened and we are grateful.

The Lib Dems have submitted an amendment on the devolution of anti-social behaviour and dangerous dogs. We understand that there are times when it makes absolute sense to deal with anti-social behaviour at a local level. This is particularly relevant on some of our more difficult housing estates. We would, on the whole, support the narrowing of anti-social behaviour reservation, but not its removal altogether. We welcome the fact that the UK Government have already conceded to remove the housing element. However, the blanket nature of the Lib Dem amendment would devolve Parts 1 to 6 of the Anti-social Behaviour, Crime and Policing Act 2014, which is huge in scope. The amendment would mean devolving, among other things: the power of arrest, arrest without warrants, rules of courts and special measures for witnesses. We think that is probably going too far at present.

While the Government have, once again, not given a reason for not devolving powers over dangerous dogs, I can foresee many practical reasons against implementing two separate policies on this issue between

Wales and England. Are we going to stop every tourist coming into Wales and check their dog's DNA to see whether it complies with the Dangerous Dogs Act? Until we are satisfied that there would be a practical way to enforce issues surrounding dangerous dogs and narrowing the scope of the amendment, I am afraid we cannot support this suggestion.

I turn now to Amendment 82. There is no doubt that alcohol misuse is a major public health issue and a principal cause of preventable death and illness in Wales. It can lead to a number of health and social harms, particularly for a significant minority of people who drink to excess. Given these impacts and the direct links with devolved responsibilities for public health and the NHS, there is a pressing need to tackle alcohol misuse. The Assembly and the Welsh Government must therefore be equipped with a vast range of tools at their disposal. Policies that control the way in which alcohol is sold and supplied are widely acknowledged to be among the most effective mechanisms for tackling alcohol-related harms. The current reservations place unnecessary and inappropriate constraints on action to tackle alcohol availability in Wales. As of October, UK courts have declared in favour of the Scottish Government in this respect. There is no real justification in principle for why this matter should not be devolved to Wales.

Finally, I should like to focus on a particular area where we still have very real concerns. This relates to allowing the Welsh Government to have power over employment and industrial relations in the public sector. I refer to Amendment 90. Some have suggested that the whole purpose of the Wales Bill is to close off the ability of the Welsh Government to legislate on trade union matters relating to public services. We are aware that, during consideration of the Trade Union Bill in this House, a letter was leaked which confirmed that the Welsh Government had a strong legal case for resisting the attempt by the UK Government to curtail the power of trade unions in Wales in relation to public sector services which have been devolved under the conferred model. Government lawyers were aware of the previous Supreme Court judgment which suggested that Wales was in its rights to legislate on farmworkers' pay, despite employment law being a reserved matter for the UK Government, as agriculture was and is a devolved matter. If that logic were carried through to the issue of trade union rights in relation to public services, then, under the current conferred powers system of government, it is clear on which side the Supreme Court would be likely to come down.

The Minister has been generous in recognising that in many areas there has been a pushing back of the Welsh Government's current powers through the introduction of the new reserved powers model, and he has agreed to bring in an accommodation and to introduce exceptions in the new system to maintain the status quo in terms of the Assembly's responsibilities. However, on the matter of trade union rights in relation to public services in Wales, the Government have been deaf to our concerns.

I make it clear that we are not asking for employment rights to be devolved wholesale. However, we are asking the UK Government to recognise that they

have little, if any, understanding of how public services such as health and education are provided in Wales. They have demonstrated little recognition of the fact that the partnership approach to trade unions adopted by the Welsh Government has meant that we have not had a strike by junior doctors in Wales as there has been in England, and that the health boards and others who are responsible for the delivery of services think that imposing methods which may or may not be appropriate for England should not be imposed on Wales. Indeed, they think that doing so could be damaging and counterproductive.

However, I am concerned about a wider discussion here. The Secretary of State has said time and again that he would like to see this as the definitive Bill in terms of setting out the relationship between the Welsh Assembly, the UK Parliament and both Governments for the foreseeable future. The noble Lord will be aware that the Welsh Government will imminently introduce their own Bill on trade unions, which will overturn last year's attempt by the UK Government through the Trade Union Bill to interfere in a devolved area of competence—namely, the provision of public services devolved to Wales. This will be introduced and accepted under the conferred powers model of government, and it will set the Welsh Government on course for a constitutional battle with the UK Government. If the UK Government insist on resisting the amendment, the only option open to them will be to refer the matter to the Supreme Court or introduce new legislation to overturn the new Welsh law. Far from putting to bed the issue of the relationship between the Welsh Government and the UK Government, not accepting the amendment will open up another constitutional front which will likely run for years and cost taxpayers millions of pounds.

If we do not receive assurances on this issue from the Minister, I advise him that we will be moving that amendment to a vote. I respectfully ask him to reconsider his attitude towards all the amendments that we are proposing but towards this one in particular to avoid a constitutional punch-up—something that we are all anxious to avoid.

Lord Wigley: My Lords, we are again dealing with a very disparate group of amendments. Amendments 76 and 77, which stand in my name, seek to ensure that the National Assembly can continue to legislate on ancillary matters. My amendments have a similar objective to that of the amendments tabled by the noble Baroness, Lady Morgan of Ely, about which she has just spoken and which I certainly support. They are based on amendments recommended by the National Assembly Llywydd, or Presiding Officer, Elin Jones. In Committee similar amendments were tabled and forcefully supported by the former Assembly Llywydd, my noble friend Lord Elis-Thomas.

This is undoubtedly a hugely complex, intricate and fundamentally confusing area of legislation. It is so confusing that, as was outlined earlier, we have seen a whole range of answers from a variety of Government Ministers on the issue. In the Commons, my colleagues were initially told that including a provision to legislate in an ancillary fashion would,

[LORD WIGLEY]

“drive a coach and horses through the key principle underpinning the new model”.—[*Official Report*, Commons, Wales Bill Committee, 11/7/16; col. 87.]

Later they were told that their amendments were simply not needed as they were already provided for.

5 pm

Perhaps the closest we got to clarity was when we last debated this issue. In Committee, the Minister helpfully gave an extensive list of examples of where the Assembly's legislative competence would not be hampered by the fact that it would no longer be able to legislate in an ancillary fashion. His hypothetical examples drew parallels with existing legislation in an attempt to enlighten us—but in all honesty I think that many of us were left scratching our heads. Why, if the Minister's extensive list of examples is to be believed, is a provision allowing the Assembly to continue to legislate in an ancillary fashion not included in the Bill? This would give a level of consistency and clarity that is lacking in the current drafting.

The reason the current Llywydd and former Llywydd have called for this amendment is simple. The Llywydd of the National Assembly for Wales—indeed, the Presiding Officer or Speaker of any such legislative body—needs, first and foremost, clarity with regard to the powers and limitations of the body in question. Why, in this highly opaque area of legislation, in what is a hugely technical Bill, is the Minister choosing to instigate even further complexity and confusion?

As the Minister and his Welsh Office colleagues have reiterated so many times, we need a clear devolution settlement and not one that will further muddy the water. I can only assume that the Minister's list of examples was an attempt to allay fears that his rejection of the Assembly's ability to legislate in an ancillary fashion constituted a rollback of powers. However, I ask the Minister this simple question: if he does not seek to restrict the Assembly's lawmaking powers, why oppose this amendment?

Sadly, I fear that restricting the Assembly's powers is exactly what the Government are trying to do. For this reason, my party colleagues in Cardiff Bay requested that the Assembly's research service should examine what Assembly legislation would have been outside competence if the Bill had been in place. Based on the work of Welsh Government lawyers, the research service found that at least five pieces of legislation already on the statute book, and one Bill, would be outside the Assembly's competence. This includes the Education (Wales) Measure 2009, Control of Horses (Wales) Act 2014, as well as flagship Welsh Government policies such as the Human Transplantation (Wales) Act 2013 and the Environment (Wales) Act 2016, which introduced the carrier bag charge.

Undoubtedly, the seemingly unending list of reservations was in part to blame for this. However, the removal of the Assembly's ability to legislate in an ancillary fashion was the underlying factor which led to the uncertainty over whether these pieces of legislation would henceforward have fallen outside the Assembly's competence.

As we know, the provisions of this Bill are not retroactive, so these Acts and measures will continue to hold true following the passage of this unwieldy Bill. However, the Minister surely can do little to defend himself against claims that his refusal to accept these eminently sensible amendments is nothing but taking control away from the National Assembly and placing it in the hands of Westminster and Whitehall. I have to say that my colleagues in Cardiff Bay are incandescent about this and that a Bill facilitating such a reduction in powers is frankly unacceptable. I therefore support the amendments.

Many of the arguments also impinge on matters covered by Amendment 78, standing in my name and the name of my noble friend Lord Elystan-Morgan, but I shall keep myself in order as it has not yet been moved, and leave it to my noble friend to make the case in a few moments' time.

I will allude also to Amendment 82, standing in my name and in the name of the noble Baroness, Lady Finlay of Llandaff, relating to enabling the Assembly to address alcohol-related issues. I shall leave it to the noble Baroness, who has a very impressive track record on such matters, to speak to that amendment, on which she has my full and enthusiastic support.

Amendment 85, standing in my name, should in fact have been grouped with the earlier amendments dealing with water, which have already been debated. Therefore, I shall not now speak to that amendment.

That brings us on to Amendment 92 standing in my name, which I do intend to speak to—but only to note that the compulsory purchase of land was on the list of reservations in the Wales Bill. However, I see now, at this late stage, that government Amendment 92A has been tabled and will achieve the devolution of this important function. The compulsory purchase of land is an essential facet of an array of devolved areas, including highways, planning, education services, housing provision and the health service. I welcome this move by the Government and thank the noble Lord, Lord Bourne, for listening to our concerns. I will therefore, having made those points, not press my amendment.

In conclusion, it is important to realise that, although some very worthwhile progress has been made, the Government must shift their ground on the issue of legislating on ancillary matters. Otherwise, they are heading for bitter confrontation—and that is not something that any of us want.

Lord Elystan-Morgan (CB): My Lords, I rise to speak to Amendment 78. However, before so doing, I want to say first how delighted we are that the Minister is safe and sound with us. I must say that a doleful bell rang in my memory. In 1968, I was a Minister in the Home Office and on that particular day had Question 77 to answer. I was assured by somebody who might have known better that there was no prospect whatever of it being reached. However, in my nonconformist ignorance, I had not realised that it was Epsom week and that a large swathe of a particular party was disporting itself at Epsom. I still regard other persons as having some responsibility for that. On the other hand, there was a high degree of contributory negligence on my own part. However, we are very delighted that the Minister

is with us. I doubt whether any Minister has ever attended a Bill with greater integrity, enthusiasm and candour as has the noble Lord, Lord Bourne, in this matter.

I wholeheartedly support everything that the noble Baroness, Lady Morgan of Ely, put forward as a background to the matter my proposed amendment deals with, which is demarcation. It is an attempt to try to draw a clear and understandable line between the authority of this Parliament and the authority of the Cardiff Assembly. As one brought up in the countryside, I have always espoused the adage: good fences make good neighbours. I have no doubt that there is massive truth and realism in that in relation to constitutional matters.

Devolution is both an end in itself and a means to an end. Essentially, what it means to me is that it is possible for a number of communities within the same kingdom and the same sovereign state to be able to share responsibilities of an administrative and, more particularly, legislative nature. That can be done only if there is a clear understanding of where the equitable point of balance—the watershed—exists in relation to the division of the two bodies. How do you find that? You do not find it in any criteria set down by a court of law or in an Act of Parliament; nor, if I may say so, do you find it in the learned writings of eminent jurists. You find it in each case by using instinctive common sense and an understanding of the justice of the situation.

If we look at European sub-Parliaments, there is no clear, consistent rule as to exactly where the boundary is drawn, but they have all espoused a common approach to the problem. It has been an approach that they accept, historically and socially: that there is what might be called a watershed and that certain matters flow inevitably to the general sovereign Parliament, while others inevitably and physically flow to local decision. That is the way that we should approach this matter in relation to Wales.

Of course, that has simply not happened. It is not as if the Government had set out their criteria for deciding what was local and what was general. As far as the outside world is concerned, it is a wholly haphazard ragbag of reservations—197 of them. I have looked carefully at the situation in Scotland and Northern Ireland and there is nothing approaching that concentration of reservation in either of those countries. Indeed, it is not just a question of the number of reservations, but the sheer triviality. One could spend many doleful hours going through those lists.

I shall not repeat what I have said on more than one occasion in the House on that, but I will say that the Minister, as an able and distinguished professor of law, will know full well that under certain local public health Acts and local government Acts over the last century and a half, it was possible for local authorities of a modest nature to adopt certain modest rules. They effectively became local law. That happened on scores and scores of occasions. The Minister is probably in a better position to advise the House than anybody else, but interestingly, many of the 197 exceptions that we have would have been included in those very provisions. Is that not a massive irony?

My case therefore is this. The Government, intentionally or unintentionally, have managed to make a thorough and chaotic mess of this situation. There is no rationale as to why certain matters are reserved and others are not. No criteria are suggested at all. In so doing, a very great disservice has been done both to the principle of devolution and to the principle of subsidiarity, if there is a difference between the two. One may very well argue that one is talking about the same central principle. But as the matter now stands Her Majesty's Government have devalued the whole principle of devolution and trespassed on the noble principle of subsidiarity, cynically reducing it to something wholly ineffective.

The purpose of the amendment is to seek not so much to cure the situation in which we now find ourselves, because that would take something much more fundamental, but to start a process of examining it in detail. The amendment would impose on the Secretary of State for Wales the obligation to set up a working party to report within three years on the operation of each and every one of the reserved matters, and to report to Parliament regularly on such progress. That would not answer the question altogether, but it would be a helpful way of approaching the problem. That working party should represent as broad a social and political spectrum as is humanly possible.

Perhaps I may make a suggestion to the Minister. If the Secretary of State wants to use something off the shelf to address this matter, he could do far worse than ask the Silk commission to sit again and consider this point. The Minister knows more than anyone else in the House about the commission, having for many years been one of its most distinguished members. The commission has reported on two occasions in a mature, diplomatic and thorough manner on Welsh constitutional matters, and it could do so again. On that basis, I urge the House to consider that this amendment is of real constitutional importance. It does not completely cure the problem but it is a hopeful way of setting about resolving it.

5.15 pm

Lord Thomas of Gresford: My Lords, it is always a great pleasure to follow the noble Lord, Lord Elystan-Morgan. As I have told your Lordships before, I voted for him in 1964 when he was a Plaid Cymru candidate. I know that he has recovered from a serious illness to play an important part in this Bill and we are all very pleased to have him with us today. When he talked about the advantages of building a fence between neighbours, I wondered whether he was proposing to build one between England and Wales. I would support him in that—particularly if the English have to pay for it.

In preparation for this debate I spent the new year viewing five or six episodes of S4C's excellent series "Y Gwyll"—"Hinterland"—kindly provided by S4C at its Christmas party before the break. It is a somewhat grim picture of policing in a rural Welsh community. I had some interest in that because my first five years were spent in Llangollen police station where my father was the station sergeant. His territory covered a large area of rural Denbighshire.

[LORD THOMAS OF GRESFORD]

In one of the episodes of “Y Gwyll”, Chief Inspector Matthias has to confront a man armed with a shotgun in a remote cottage high up in the hills. It rang a bell since my father had to do precisely that. As my father approached him, the man shot himself rather than my father. In the denouement of the series, broadcast over the Christmas season, the retired chief superintendent turned out to have murdered the policeman investigating his past while his replacement, the current chief superintendent, murdered his predecessor in turn—which did not accord with my memory of the Denbighshire constabulary of those days.

The series depicts the Welsh language, the people, the way of life, the rural remoteness and the stretched facilities, emphasising the different society and community in which we live. It is not surprising that a significant majority of Welsh people, when asked for the purposes of an opinion poll in connection with the Silk commission, were of the view that the Welsh Assembly and the Welsh Government should have responsibility for policing in Wales. Indeed, devolution of policing was supported by the Welsh Government, the chief constables, the majority of police commissioners, the Police Federation and other professional police bodies.

The Silk commission reported in favour, although it was careful to say that the devolution of the governance and administration of the police would not involve the devolution of legislative competence for police powers or the criminal law. It also did not recommend devolution of matters dealt with at the UK level by the National Crime Agency—serious and organised crime, fraud, cybercrime and child protection. However, proposed new Section B5 of Schedule 1 to the Bill reserves policing to the Home Office—and that is an argument for another day.

My Amendment 81 deals with subsidiarity, leaving out the reservation of anti-social behaviour to the Westminster Government which the Bill proposes. Anti-social behaviour is essentially a matter for the local community. That is what is reflected in all the parts of the Anti-social Behaviour, Crime and Policing Act 2014 that are specifically reserved in proposed new Section B6 of Schedule 1 to the Bill.

Under Part 1 of the 2014 Act, which deals with injunctions, applications for an injunction may be made by a list of bodies, the first of which is the local authority. The next one is a housing provider, and only third on the list is the chief officer of police. Other bodies which may apply for an injunction include the Natural Resources Wales body and Welsh Ministers exercising security management functions.

Similarly, under Chapter 1 of Part 4, community protection orders, the initiative to issue a community protection order against an individual or a body lies with the local authority, where it is satisfied on reasonable grounds that the conduct of that person is having a detrimental effect of a persistent or continuing nature on the quality of life of those in the locality, and that the conduct is unreasonable. It is for the local authority to apply for the order and to take action if the individual or body fails to comply with the notice.

Your Lordships will see that anti-social behaviour is already dealt with at the local authority level. In Chapter 2 of Part 4, it is the local authority alone

which may make a public spaces protection order if it is satisfied on reasonable grounds that activities carried out in a public place within the authority’s area have had a detrimental effect on the quality of life of those in the locality and that the activities are unreasonable and of a persistent or continuing nature. Again, the local authority applies for the order, the local authority enforces it.

Under Chapter 3 of Part 4, power to make and exercise a closure notice for premises associated with nuisance or disorder rests with either a police officer of at least the rank of inspector or the local authority.

Part 5 gives power to landlords to recover possession on anti-social behaviour grounds, and Part 6 is headed “Local involvement and accountability” and lays down requirements for the police to consult with local authorities and community leaders in the preparation of community remedy documents, the purpose of which is to require an individual to carry out certain specific actions.

The whole of Parts 1 to 6 of the 2014 Act is concerned with what a local authority, in the main, or a local policeman does in relation to problems within the community. It indicates how localised the legislation is. It is only sensible because other agencies which are concerned with the same sort of thing are devolved—the health service, education, ambulance and fire services, and so on.

The other powers reserved to Westminster in Section B6 refer to dangerous dogs or dogs out of control. It is a perfect example of why this should be devolved—devolution works. I am sure that many of your Lordships will recall the Dangerous Dogs Act 1991. It was regarded as an example of knee-jerk legislation and has always been thought to be utterly unsatisfactory. After toying with the idea of pet anti-social behaviour orders, an idea first put forward in the satirical political show “The Thick of It,” the Government passed Part 7 of the 2014 Act, which made some patchwork reforms. It is still not satisfactory.

Meanwhile, up in Scotland, the Scottish Parliament passed the Control of Dogs (Scotland) Act 2010, which dealt with the whole question comprehensively and sensibly. The initiative in Scotland lies not with the police but with an authorised officer who is defined as an officer appointed for that purpose by a local authority. Each local authority in Scotland must appoint at least one such officer, skilled in the control of dogs and with the capacity to instruct and advise others in matters relating to the control of dogs. The Act deals with the control of dogs and with the prosecution and punishment of owners of dangerous dogs in Scotland. Why does Westminster want to reserve to Westminster power over dangerous dogs and their control when Scotland has legislated so effectively? We have passed—or, rather, the Welsh Assembly has passed—the Control of Horses (Wales) Act 2014. If the Assembly can be allowed to legislate for the control of horses, why not dogs?

When I was living in the Llangollen police station, we had a Pembrokeshire corgi called Rex who, having been reared by my aunt, only understood Welsh. He was not one of those brown and white royal jobs—he was a proper dog, black and white with a long tail. During the last election, my wife, the noble Baroness,

Lady Walmsley, and myself were canvassing near Pistyll Rhaeadr, the famous waterfall in Montgomeryshire, one of the seven wonders of Wales. She came to me rather disturbed and said that there was a dog in the next farm and that it was a bit snappy. I patted her rather condescendingly on the head, said leave it to me and went through the gate. Sure enough, there was a black and white Welsh collie, which kept jumping up at me. I said, remembering my youth, “Steddych”, which means “Sit”—and the dog bit me. Surely, that was an issue not for Whitehall but one for Cardiff.

Lord Hain: My Lords, how to follow that? I shall speak to Amendment 90 in my name and in those of my noble friends Lord Murphy, Lord Kinnock and Lady Morgan. I begin by expressing my disappointment that the Minister has not been able to persuade the rest of the Government to think again on this issue and that they continue to press ahead with their transparent move, not simply to go beyond overriding decisions that the Welsh Government have taken since 2011, but deliberately to claw back powers from the National Assembly. From everything the Minister has told your Lordships, and much of what the Bill contains, this is supposed to be a pro-devolution, not an anti-devolution, Bill. But in the way in which devolved public services are configured, and especially their staff relations organised, it is repatriating powers that are already the preserve of the Assembly. Surely, that cannot be right.

When we considered this amendment in Committee, the Minister acknowledged our shared belief that employment law is, and should remain, a reserved matter. He said that,

“the underlying legislative framework concerning rights and responsibilities in the workplace must be reserved”.

I agree with that. He went on to say that the,

“system we have allows workers to be clear on their rights, whether they are in the public sector or the private sector”.

Again, I agree. However, he then said that this,

“is a fundamental principle and I cannot accept that the law underpinning the terms and conditions of public sector workers should be different from the law that underpins the rights of other workers”.—[*Official Report*, 15/11/16; col. 1384.]

On that point, we diverge.

My noble friend Lady Randerson spoke previously about the fact that the Welsh Assembly has long had considerable powers—for example, over doctors’ pay, terms and conditions. The principle has been conceded and accepted by the Government, ironically, as it has been in this very Bill in another respect. A government amendment to give the Assembly legislative competence over teachers’ pay and conditions has been accepted as part of this Bill. For the Minister to somehow then argue that it is impossible to disentangle fundamental employment rights from the terms and conditions of employees in the devolved public services seems somewhat irrational and contradictory, to say the very least. For the sake of clarity, I hope the House will permit me a short time to highlight the four different elements of this and to unpick a number of aspects that have been conflated during previous debates.

5.30 pm

The four interrelated and interconnected but unique things that we are discussing are: first, employment rights and duties; secondly, industrial relations; thirdly, employment terms and conditions; and fourthly, collective bargaining. As we have already established, I do not believe that employment rights and duties—industrial action, unfair dismissal, equal pay, paternity and maternity rights, for instance—should be devolved, but as the earlier illustrations about doctors and teachers show, employment terms and conditions are a separate issue. I am talking about employment terms and conditions, not rights and duties.

The amendment before us today does not undermine the basis for England and Wales’s collective bargaining arrangements, something which is outside the scope of this Bill. Nor does it erode employment rights by creating a situation where differential rights will be available to workers in different parts of the United Kingdom. This, by the way, is of considerable importance to all of us in the context of the Brexit negotiations. None of these scenarios would be welcome to me, to the Welsh Government or to the Wales TUC. Instead, the amendment permits the National Assembly for Wales and the Welsh Government to continue managing and adapting the social partnership arrangements they have painstakingly established over many years to strive to deliver the world-class public services in Wales that the public deserve and expect.

I remind your Lordships and the Government that many of the public sector disputes afflicting England have not happened in Wales. As my noble friend Lady Morgan said, the doctors’ strikes come immediately to mind; they did not happen in Wales because the Welsh Government, with the backing of the Assembly on a cross-party basis, have had the powers to organise its employment terms and conditions differently—exactly what this amendment addresses. I do not have time today to rehearse many of the arguments we considered at Second Reading and in Committee. Needless to say, I have not been convinced by any of the arguments put forward by the Minister in response to those debates. It is clear to me that the UK Government are intent on clawing back the competence from the Assembly in relation to the delivery of public services and believe they have found a way to ensure that the flexibility offered by the unanimous Supreme Court ruling in 2014 can be removed by this Bill. That is unacceptable.

We have all appreciated the way that the Minister has generally responded in a conciliatory manner to arguments on the Bill from Opposition and Cross-Bench Members. We know he has Wales’s interests at heart, as we all do. I plead with him to think again. If there is some technical drafting issue, then by all means let the Government now offer to bring forward a redraft of this amendment, possibly at Third Reading. Otherwise, I will have no option but to divide the House over a very important matter that is very likely, without a government reconsideration which I hope he will, even at this late hour, address, to provoke a dispute with the Welsh Government and end up in the Supreme Court again. What a sad epitaph that would be for an otherwise well-intentioned Bill and an otherwise well-intentioned Minister.

Lord Morris of Aberavon (Lab): My Lords, I will confine myself to Amendment 78 in the name of the noble Lord, Lord Elystan-Morgan. I am not going to repeat my Second Reading speech, in which I complained vehemently of the inclusion of such a huge number of reservations. I welcome the words of my noble friend Lady Morgan on the announced changes by the Government so far in, as I understand it, limiting them. The Wales Office has only limited experience in legislating, in drafting and in fighting its own corner to get its own way with other departments in Whitehall.

In drafting the original Welsh devolution proposals in the 1960s, I faced the same dilemma of how to deal with the self-interest of many departments in Whitehall, for which, “Devolution is all right provided it does not encroach on my back yard”. What we did then was to set up a Cabinet committee, meeting twice a week under the chairmanship of deputy Prime Ministers, and to have seconded to it rising stars from the Cabinet Office to guide it through and ensure that the Minister got his own way. In the fullness of time each of these two gentlemen became Permanent Secretaries in major departments in Whitehall—that indicates the weight of the input. The combination of such people as Ted Short and Michael Foot in turn knocked heads together. We knew what we wanted and got our Bills into shape. My advice on this occasion is for the Wales Office to enlist someone from the Cabinet Office to knock heads together. Regrettably, this Bill has the finger marks of every department in Whitehall trying to preserve its own corner.

It takes a combination of the resolve of a Secretary of State and his advisers to get the right Bill and not succumb to the blandishments of other departments in Whitehall, enumerated by the great number of reservations in the Bill. I fear that the first result will be a field day for litigants, particularly if we have again a trigger-happy Attorney-General. It will not be the end of the matter. The noble Lord, Lord Wigley, illuminated at least one of the instances where we can face litigation. The second result, as sure as God made little apples, is that we will return to this issue time and again in order to seek a permanent settlement, which we all wish for, for Welsh devolution. Hence, the best line of defence for the Government is a committee, as proposed in Amendment 78 in the name of the noble Lord, Lord Elystan-Morgan, to report on the functions and powers and see how we are getting on; whether I and others are right or whether the Government are right. At least, within a period of three years, we shall know and report to the House, possibly for a debate on the developments that have taken place. Then perhaps, after that cooling-off period, as it were, we might have a more mature and resilient approach to Welsh devolution, which will then be a permanent one. That is my hope.

Baroness Finlay of Llandaff: My Lords, I have Amendment 82 in this group. It is a question, as my noble friend Lord Elystan-Morgan said, of flow. The problem for Wales is the flow of alcohol: Wales does not have the ability to control how that flow starts and how that supply chain moves. We in Wales are lumbered with the costs of alcohol abuse, both direct and indirect. There are direct costs in health and social care and

indirect ones in damage to other people, either directly to another person or secondarily, through bereavement and so on. There is a real problem of culture around alcohol consumption in Wales. We should remember that while Scotland has the same culture of drinking, it has been given a degree of control. I fear that it is not always a pretty sight. Things have improved greatly but the Welsh Government does have to have the powers to do something about it.

There is another aspect of this that needs to be considered. We understand very little, really, about the way that alcohol interacts on the brain and on the reward centre, on people developing cravings. It is quite possible that the epigenetics mean that when you have a background culture of a family where there has been drinking, an individual's reward centre responds differently. It may just be that people in Wales, having been born into a culture of drinking are more predisposed, more likely to develop an addictive tendency towards alcohol. It seems bizarre, when this is such a social problem and when the costs are really all borne at a local level, that the ability to control it is not given to the very Government that have responsibility for dealing with those problems.

Lord Balfe (Con): My Lords, I would like to say a few words about Amendment 90. I will not stray into the internal affairs of Wales but this matter came up in debating the Trade Union Bill last year. The noble Baroness, Lady Morgan, mentioned the need for sound constitutional principles. I think that supporting sound constitutional principles should lead us to resist Amendment 90—which, to use a term of the noble Lord, Lord West, represents mission creep.

The amendment looks fairly innocuous and can be split into two parts. On “Terms and conditions of employment”, we keep hearing how Wales has managed to escape difficulties with doctors and has an excellent education system—although I am not sure whether the recent OECD figures bear that out—thanks to its ability to deal with terms and conditions. But, when you move on to the next bit of the amendment, “and industrial relations”, you open up a Pandora's box. Given the Explanatory Notes accompanying the Bill, once you admit that industrial relations in Welsh public authorities are a devolved matter, you open up a huge area of debate as to what constitutes a public authority or industrial relations. For instance, could you have a different minimum wage for public servants in Wales or would you then get disputes between the private and public sectors?

Lord Hain: I acknowledge that the noble Lord represents Conservative trade unionists, which must be a noble and valiant role to play, but the definition of public services is in the legislation passed by this House. It is set in statute; there is no question of redefining it or inventing new public bodies. It is all defined and the amendment repeats that.

Lord Balfe: I thank the noble Lord for his intervention, but I am sure that there would be plenty of room for disputes; this would not end the dispute. Perhaps the Supreme Court is needed to rule on this, but the

proposed clause would not help us to go forward in any way. It is a slippery slope. We have a difficulty and clearly it needs to be defined. If this clause were passed and added to the Bill, it would not be the end of the matter; it would actually complicate matters and make them more confused. I make a practice of reading absolutely every scrap of paper that comes to me from the TUC—not a week goes by without something arriving—and, if this were such an important matter, I wonder why no one has asked me to support or even consider supporting this clause. It is sheer opportunism.

Baroness Morgan of Ely: My Lords, the point is that, under the conferred powers model of governance at the moment, we already have this power. It is in the move to the reserved powers model that we are losing this power. That is why we are so outraged by this move.

Lord Balfé: Well, some see it as that. I see it as a clarification that was needed—something that became quite clear last year. I suggest that we resist this amendment. It will not take us anywhere further forward and I am not sure that it is useful. It will open up many further legal cases and I hope that the House will reject it.

Lord Elis-Thomas (Non-Affl): My Lords, I will make clear my strong support for Amendment 90, for the reasons that have been made clear on both sides of this debate, and from my own experience as a trade union member and a manager in the public sector in Wales at different periods of my life. I will confine myself, as I have during the course of the Bill, to the constitutional principles—if I may use the term again—rather than discussing specific subjects.

This is where I have to disappoint three of my noble friends. The noble Lord, Lord Elystan-Morgan, is a very old friend—I mean old in terms of our association, since I believe I first met him in a Crown Court in Ruthin in the very early 1960s. I hasten to add that I was not the defendant; my father was a witness there. With the noble and learned Lord, Lord Morris of Aberavon, I had the pleasure of discussing issues as soon as I arrived in the other place as a very young Member of Parliament. The noble Lord, Lord Wigley, of course came in with me at that time. I shall disappoint all three by expressing my considered view that we no longer need working groups chaired by Secretaries of State—although I recognise that a Secretary of State is present at the Bar of the House today, along with one of his ministerial colleagues.

5.45 pm

After the time that I have spent on devolution legislation in this House, and particularly on this Bill, my view is that we have come to the end of a chapter in the making of devolved legislation as it affects Wales. It has been the chapter of the handing-down of powers, whether in a conferred model or a reserved model. The key issue to me was not how much was conferred or would be reserved, but how much was and will be exempted. That has been the model that has been operating. It is one that I operated for three terms as

the presiding officer in Cardiff and it was never easy, although I had to deal with some Secretaries of State—two of whom are sitting here on these Benches—who always sought to accommodate my constitutional concerns. I am grateful for that, but it should not be about Secretaries of State having to make accommodations with the National Assembly in future. It should be about the National Assembly and the Government of Wales being an equal partner in constitution-building in the United Kingdom.

This view has been expressed strongly by the Welsh Government in their recent submission, before Christmas, to the Supreme Court. We have of course yet to see the results of those deliberations, but the definition of the United Kingdom as an association of equal nations impressed me very much when I first read it in the Welsh Government's case, as it ties in with the way that I have approached politics and my role in this House. It is now incumbent upon us to argue that any future discussions about the development of the constitution—indeed, any criticism of the existing constitution—should be conducted on a basis of equality between the legislature in Cardiff and the legislature at Westminster.

I know what the Minister will say: he will refer to the sovereignty of Parliament. Of course, as some sort of constitutionalist, I understand what is meant by “the sovereignty of Parliament”, but, with all due respect to this House and the other House, in reality that sovereignty is the legislative aspiration on the part of the Parliament—because, clearly, the sovereignty of Parliament, by its own decisions, has been delegated in different areas. This is the nature of devolution and we are now in a situation where the Parliament at Westminster has devolved powers to Wales and created a legislature that has had primary legislation since 2011. That legislature should therefore be treated as an equal partner in any future discussions.

Lord Elystan-Morgan: Does my friend, the noble Lord, Lord Elis-Thomas, accept that whatever might be said about the purity of the principles that he puts forward—principles which the late Professor Dicey might very well have approved of—there is nevertheless a huge gap to be made up between the situation that existed on the day in July 2014 when the judgment was given in the agricultural workers' cases, and the consequences of the Bill? To my mind, the gap in terms of actual devolution might be 20%, 30% or 40%. It is massive and until that gap is made up the noble Lord's theory, for all its general attractiveness, does not really apply.

Lord Elis-Thomas: I appreciate being given the authority of Professor Dicey but the real situation is that these issues will be resolved through the public political debate that will continue about the constitution of Wales and all other constitutions, because that is the sign of a vibrant democracy. It is therefore not an appropriate subject for a working group, led by a Secretary of State or whomever—and I would say the same thing about a working group led by the First Minister of Wales or the Presiding Officer of the Welsh Assembly or the Lord Speaker or the Speaker

[LORD ELIS-THOMAS]

of the House of Commons. The issue is not about how that debate takes place: it is whether we need to place in statute, on the face of the Bill, the creation of a working group that would somehow have responsibility for delivering Wales from any constitutional weaknesses that it has as a result of the Bill.

Baroness Finn (Con): My Lords, I speak against Amendment 90 in the names of the noble Lord, Lord Hain, the noble Baroness, Lady Morgan, and other noble Lords. The purpose of this amendment is to devolve in part legislative competence for employment and industrial relations to the Welsh Assembly. The noble Lord and others argue that this is consistent with the Supreme Court judgment in respect of the Agricultural Sector (Wales) Bill. In this instance, the court held that the case related to multiple subjects, and thus fell within the competence of the Welsh Assembly. It should be pointed out that the Supreme Court ruling concerned a situation where the devolved subject of agriculture was specifically in play. Indeed, in another Supreme Court case involving the Welsh Government's competence in relation to recovery of medical costs, the court followed the same approach as in the agricultural sector but came to a completely different conclusion, deciding that the area in play was not devolved.

It would be unworkable to have different employment laws applying in different jurisdictions in Great Britain. As we have previously pointed out, the Smith commission in Scotland recently considered this issue and concluded that employment and industrial relations law should remain reserved. I appreciate that the noble Lord, Lord Hain, has argued that the amendment is not intended to change the reservation of employment law, and we all agree that employment and industrial relations law must remain reserved matters. However, in principle, "terms and conditions" derive from all aspects of employment law—for example, the national minimum wage, parental leave, and dismissal laws—and I believe that there is sufficient flexibility under the statutory framework of employment law for employers to configure their own terms and conditions.

The purpose of bringing in a reserved powers model for Wales to replace the conferred powers model is to bring greater clarity to the respective responsibilities of the UK Parliament and the Welsh Assembly. It is therefore somewhat dismaying that the noble Baroness, Lady Morgan, has told the House that the Welsh Assembly intends to pursue a Bill under the conferred powers model that will only diminish such clarity and cause legal wrangling. My fear is that Amendment 90 will reduce the very clarity that this Bill seeks to achieve. In effect, it could also create a two-tier system, with different employment and industrial relations legislation applying to public, as opposed to private, services in Wales, and, indeed, the whole public and private sectors in England and Scotland. I therefore support the Government in opposing the amendment. There is already a lot of flexibility for employers, but employment and industrial relations law must remain reserved matters to ensure clarity in the free flow of labour across Great Britain.

Lord Kinnock: My Lords, there are many issues on which I find myself in agreement with the noble Lord, Lord Balfe. There used to be more, it must be said, in a different political lifetime, but I greet with some dismay the fact that I have to diverge from him on this issue, simply because he is wrong. I particularly pursue the point made in her intervention by my noble friend Lady Morgan. The noble Lord, Lord Balfe, used the term "mission creep" to describe Amendment 90. Of course, that can be employed as a derogatory description of any development. If we put it in the context of devolution, however, we could categorise devolution entirely as "mission creep" because the whole proposition on which it has been based in this country—and perhaps, indeed, in biology, from which it derives—is that there will be an accretion of competences as time passes and the sophistication of devolved Administrations and legislatures takes place.

Lord Balfe: I wonder if the noble Lord recalls our jointly campaigning on the Welsh referendum in the 1970s. We were on the same side, of course, but presumably where he is now is the definition of mission creep.

Lord Kinnock: No, it is the definition of the fact that when confronted with reality, I try to make it work. Consequently, while I retain some reservations about the whole way in which devolution is taking place in the United Kingdom, I am utterly in favour of decentralisation of administration and decision-making, which any democrat must be, but would quarrel with the sectional and selective form of devolution that is taking place. I would argue on another occasion that, had we undertaken in 1979, let alone in the 1990s, the form of devolution that I and some of my colleagues, including my noble friend from Pontypool, were then advocating, there would have been devolution throughout the whole of the United Kingdom. Perhaps we would not be confronted with the constitutional mismatches and disequilibria that confront us now, especially when we are faced with the prospect of the disaster of Brexit. I will return to that on a different occasion.

I say to the noble Lord, Lord Balfe, that the accretion of competencies that has taken place is in the nature of devolution. Indeed, the Minister could take justifiable credit for producing a Bill that assists in the clarification and strengthening of the whole devolution process. I hope that the noble Lord, Lord Balfe, will welcome the redemption of the Conservative Party, which, back in 1979, took a view that was almost as enlightened as mine on the issue. The most important point—and it is fundamental to this amendment and this Bill—is that the argument in favour of Amendment 90 is that those powers currently exist and they manifestly work. I am therefore employing, in a sense, a conservative argument in saying, "If it works, don't fix it".

What happens in Wales—and has happened for several years past—is that the powers advocated for retention in this current set of arrangements for devolution should remain: not that there should be mission creep, but restoration of the status quo. I say to the noble Lord, Lord Balfe, that surely, in his changed political prism, he would recognise and wrap his arms around

the principle of the maintenance of the status quo that works. It is on that basis that I hope the Minister will give further consideration to these arguments and retain a set of arrangements that work, that are warmly endorsed by everybody involved in Wales, and that do not constitute the difficulty of definition suggested by the noble Baroness, Lady Finn, in discriminating between public and private employers. The terms on which this measure, if accepted, would be retained, properly describe where the responsibilities and obligations would lie and be exercised. It works now; do not fix it.

Lord Bourne of Aberystwyth: My Lords, I thank all noble Lords who participated in the discussion on these amendments. I will begin with Amendments 75 to 77 and 79, which seek to broaden the circumstances in which the Assembly could legislate in relation to reserved matters. I will first deal with an issue that was raised by the noble Lord, Lord Wigley, concerning the phrase,

“ancillary to a provision of any Act”.

I took him to mean that this was not provided for in the Bill. It is in fact expressly provided for in Clause 3, in subsections (3)(a) and (b) of new Section 108A. It says,

“subsection (2)(b) does not apply to a provision that —

(a) 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

(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 there is express provision in relation to “ancillary to” and how that would operate, and I hope he finds that of some comfort.

Lord Wigley: I am grateful to the Minister. He will see that my amendment in fact applies to subsection (2)(c) of new Section 108A, in Clause 3, and therefore extends the provision.

6 pm

Lord Bourne of Aberystwyth: I appreciate that, but I think the noble Lord made a broader point about “ancillary to” not being provided for. I shall move on, if I may, to deal with some of the issues that noble Lords raised about this part of the Bill.

The amendments tabled are similar to those debated in Committee where, as has been acknowledged, I provided noble Lords with a detailed explanation of how the purpose test in the new model is intended to operate. As I made clear then, for a challenge of ultra vires under the reserved powers model to succeed, a case would need to be made that an Assembly Act provision was outside competence because its purpose related to a reserved matter. I think it is common ground among noble Lords that that much is appropriate. If such a case could not be made, the provision would satisfy the requirements of new Section 108A(2)(c) and would be within competence, provided that it satisfied the other requirements of new Section 108A.

In response to the noble Baroness, Lady Morgan, I want to clarify the important issue of how the Assembly can legislate in a way that is ancillary to a non-reserved provision but affects the law on reserved matters. As I

set out in Committee, the purpose test is crucial to determine whether a provision in legislation is within the Assembly’s competence. Only once a provision’s purpose has been determined as not relating to a reserved matter would an assessment need to be made of whether it modifies the law on reserved matters and, if so, whether it is ancillary to a matter that is not reserved. If a provision is ancillary, it will also, as I have indicated, be subject to an additional test of having no greater effect on reserved matters than is necessary to give effect to the provision’s purpose in order to be within the competence of the Assembly.

In Committee I gave the House some examples of how the purpose test might be applied, and in particular how a provision that could engage reservations would be within competence if it had a devolved purpose and was ancillary to that purpose either by being appropriate for the enforcement of such provision or otherwise to give effect to it, or was consequential or incidental. Those examples were hypothetical but included: a requirement for tenants to insure their residence; the creation of competitive tendering requirements for local authorities; an extension to the jurisdiction of the Agricultural Lands Tribunal for Wales; and information sharing between Welsh schools and Estyn. In each case we argued that, as the purpose of the provision was devolved and the provision could be characterised as ancillary, it was within devolved competence if it had no greater effect than necessary on the reserved matter. Potentially any provision in Assembly Bills about enforcement would engage the reservation for the courts and their jurisdiction, or that for civil or criminal proceedings, but provided that it is required to enforce or give effect to a devolved purpose, such provision will be within competence even though it impacts on the law on reserved matters, subject always to the test that it has no greater effect than necessary on the reserved matter.

Comparisons have been made with the settlement in Scotland and how this “greater effect than necessary” test applies to it but, when considering that, it is important to note that the restriction on legislating about the law on reserved matters in paragraphs 1 and 2 of new Schedule 7B gives the Assembly wider scope to modify the law on reserved matters than the Scottish Parliament is afforded under paragraphs 2 and 3 of Schedule 4 to the Scotland Act 1998. That is because issues such as private law and criminal justice are reserved in Wales, but we recognise that the Assembly needs to be able to enforce its laws by amending the law in relation to these and other reserved matters.

We have used the same definition of “ancillary” throughout the Bill. If a provision falls within that definition then the Assembly can legislate about England by virtue of the exception to the competence test in Section 108A and can modify the law on reserved matters if it complies with the restriction in Schedule 7B. The Government do not accept the argument that the test of “no greater effect on reserved matters than is necessary to give effect to the purpose of the provision” is of less consequence in Scotland. It is true that Schedule 7A in the Wales Bill contains more reserved matters than Schedule 5 to the Scotland Act 1998, but in Scotland this test nevertheless provides an important but proportionate limitation on competence. The large

[LORD BOURNE OF ABERYSTWYTH]

number of orders made under Section 104 of the Scotland Act 1998 is in part a result of the UK Government and the Scottish Government recognising how far modification to the law on reserved matters can go in Acts of the Scottish Parliament, and that modifications to the law on reserved matters that fall outside the definition can and should be made only by the UK Government and this Parliament.

Concerns have been raised that defendants will always be able to challenge the validity of Assembly Act provision as a basis for an enforcement action on the basis that this has a greater effect than necessary. We believe that, provided that the response is proportionate, this will not be the case. The frequency of such challenges and their merits will of course depend on how the Assembly chooses to legislate in future, and indeed the view of the courts if these matters were subject to challenge. Nevertheless, we consider that the legislative competence constraints set out in the Bill give the Assembly sufficient latitude to create and enforce devolved policies within the shared legal system of England and Wales.

I turn to government Amendment 78B, which is technical and is proposed in the light of issues raised in particular by the First Legislative Counsel for Wales. Sub-paragraphs (2) and (3) of paragraph 6 of the new Schedule 7A to the Government of Wales Act 2006, as inserted by Schedule 1 to the Wales Bill, sought to clarify that the Assembly is able to provide for devolved decisions or orders to be appealable to a court or to require a court order or be made by a court on application. These were included in order to provide helpful clarifications about the Assembly's powers in respect of the courts, following the removal of the so-called necessity test and the subsequent application of the purpose test. Having examined these provisions in more detail, the First Legislative Counsel has argued that the reservation for courts, including their jurisdiction, might have the effect of restricting the ability of the Assembly to legislate for the procedural effectiveness of a new sort of order, or decision, related to a devolved matter.

The First Legislative Counsel's analysis identifies paragraph 6(2) and, with it, paragraph 6(3) as unnecessary. Although the provision was intended to address a specific problem, I am persuaded by that very helpful analysis provided that it does not in fact require bespoke provision to address it. I accept the argument that the purpose test would encompass the sort of legislative provision that would otherwise be captured under paragraphs 6(2) and (3) and that, accordingly, they would arguably cast doubt on the breadth of the purpose test. I am satisfied by the First Legislative Counsel's argument, and government Amendment 78B therefore proposes their removal. In light of that amendment, I think Amendment 79, proposed by the noble Baroness, Lady Morgan, becomes unnecessary, but of course that is a matter for the noble Baroness.

Amendment 78 is an opposition amendment seeking to place a new duty on the Secretary of State for Wales to establish a working group to review Schedule 1 in relation to reservations. I am most grateful for the comments and guidance on that from the noble Lord, Lord Elis-Thomas, who has very broad experience of

this as Llywydd and as a Member of this House. We have had bodies a-go-go looking at the area of devolution. I served with the noble Baroness, Lady Morgan, some 20 years ago on the National Assembly advisory group, and since then there have been other bodies: the noble Lord, Lord Rowlands, sat on the Richard commission; there has been the Emyr Jones Pary review; the Holtham commission; the Silk report and the St David's Day agreement. I agree with the noble Lord, Lord Elis-Thomas, that at the very least we have reached the end of this chapter and now is the time for us to concentrate on the things that I am sure the people of Wales, and indeed its Assembly Members, want to concentrate on—the delivery of public services and a sound economy. Some powerful arguments were put forward by the noble and learned Lord, Lord Morris of Aberavon, and the noble Lord, Lord Elystan-Morgan. I thank the noble Lord for his kind comments and hope that I would be half as charitable if someone else should appear late as he was to me. I am most grateful for his comments.

I turn to government amendments to Schedule 1, which establishes a clear boundary between the devolved matters that are the responsibility of the National Assembly for Wales and the Welsh Government and those that are the responsibility of this place and the UK Government. I can confirm, however, that I intend to bring forward amendments at Third Reading to change the status of the Open University. The noble Baroness, Lady Randerson, is not in her place at the moment, but I thank her in particular for her assistance on this issue. I acknowledge and recognise the important role that the Open University plays in Wales and therefore propose that it is dealt with in relation to devolved areas in the same way as universities and higher education institutions in Wales.

I turn to amendments to reservation M4 on developments and buildings. I will deal first with an issue raised by the noble Baroness, Lady Morgan, in Amendment 91 on the legislative competence relating to railways. I thank the noble Baroness for her comments. We propose that planning in relation to railways that start, end and remain in Wales should be devolved. I should also like to bring forward Amendment 91B giving the Assembly legislative competence in relation to the community infrastructure levy. The noble Baroness also kindly acknowledged this. Turning to Amendment 92A—I understand that the noble Lord, Lord Wigley, did not speak to Amendment 92, so I will not spend too much time on it—we are proposing that such compensation should be devolved, except in relation to the calculation of the compensation, which I think the noble Lord appreciates.

The noble Lord also indicated that he would not speak to his amendments on water and sewerage, so I will not deal with that area.

Regarding changes to the reservation in Part 1 on Crown property, I will just formally move those amendments, as I do not think they were the subject of debate.

On the issue of anti-social behaviour orders and the provisions of Part 5—which the noble Lord, Lord Thomas of Gresford, indicated he felt should be devolved—I was persuaded by the noble Baroness,

Lady Morgan of Ely, in relation to this and to the Dangerous Dogs Act and so on, and by the more general comment from the noble Lord, Lord Kinnock, that, where something is working, one should not to seek to overturn it unnecessarily. I think this area is working very well. We are proposing to devolve ASBOs in relation to housing. This has been acknowledged. Elsewhere—and I regret that some noble Lords will be disappointed—we shall not be going further.

The noble Baroness indicated that there has been movement on heating and cooling, so I will formally move those amendments.

The opposition amendment from the noble Baroness, Lady Finlay, seeks to remove the reservation for the sale and supply of alcohol regulated under the Licensing Act 2003. Section B17 of new Schedule 7A to the Government of Wales Act 2006 in the Bill preserves the current devolution settlement in respect of all matters in the 2003 Act covering the sale and supply of alcohol, the provision of regulated entertainment and of late night refreshment. 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 are reserved, alcohol licensing should also continue to be reserved.

The police have a crucial role in the licensing system, including in decisions to grant or refuse applications for licences, to review licences and to close problem premises. The police and criminal justice system bear a significant proportion of the costs associated with alcohol consumption—£11 billion of the £21 billion overall annual cost to society. That said, the noble Baroness is widely, and quite rightly, recognised for her campaigning on the effects of alcohol misuse. Of course, these affect people in England too—in parts of England in a very similar way to parts of Wales. I should like to place on record my enormous respect for the work she does and express the hope that she will continue to campaign on this issue. However, we feel that this is something that should be reserved to the Westminster Government.

6.15 pm

On Amendment 90, I think there is a serious difference of opinion. We had an extensive debate on this amendment on day 3 in Committee. It seemed to establish some common ground that employment and industrial relations law must remain reserved matters. The noble Lord, Lord Hain, explained that the amendment did not intend to change the reservation of those Acts of Parliament currently listed in Schedule 1. If I may quote the noble Lord on Second Reading—and I think he has effectively restated this—he said,

“let me be clear that I am not asking for employment law as a whole—including strikes, unfair dismissal, health and safety, maternity and paternity rights and so on—to be devolved. I agree that the core issues of employment law should be a reserved matter”.—[*Official Report*, 10/10/16; col.1689.]

It is not my business to be putting forward opposition amendments but, as drafted, the amendment would explicitly provide for the devolution of terms and

conditions and industrial relations in relation to the public sector in Wales and potentially also for contractors with the public sector. It is the Government's firm belief that we have one system of employment law in England and Wales dealing with the public and private sectors and we do not want to have a division where we have one form of employment law and industrial relations for the public sector and another for the private sector. To say the least, this would be highly incendiary and undesirable, likely to split employees and is not something to which we could subscribe. We are firmly of the view that, just as in Scotland, this should not be devolved but retained to the Westminster Parliament.

Other government amendments were not contentious, so I will formally move those and respectfully ask noble Lords and noble Baronesses who put forward opposition amendments to withdraw them.

Baroness Morgan of Ely: My Lords, I do not wish to detain the House for too long. We have spent a lot of time on this group, so I will focus on just two issues.

The first is the matter of ancillary provisions. I thank the Minister for stating on the record that the ability to enforce Welsh laws should be proportionate and not just be the minimum necessary. We need a suite of options to be able to deliver policy. However, that is not what it says on the face of the Bill, and I am sure that lack of clarity will lead in future to problems and references to the Supreme Court. I ask the Minister not to dismiss the ideas of the noble Lord, Lord Elystan-Morgan, and reassess the impact of that move to being a reserved matter in the future.

We are also disappointed that the Government have not listened on the matter of devolving industrial relations in public services to Wales. We believe that the Welsh Government currently have the power to act in this area under the conferred model and the Government have attempted to claw back this power in the move to the reserved model. This is not acceptable. We have a good track record on partnership working in Wales. We have not had a junior doctors strike and Whitehall has no idea of how health, education and many other public services are run in Wales. It is a great shame that the Minister has not moved on this issue. We shall be pushing this matter to a vote at the appropriate time. With regret, I beg leave to withdraw Amendment 75.

Amendment 75 withdrawn.

Amendments 76 and 77 not moved.

Amendment 78

Moved by Lord Elystan-Morgan

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

“Working group to review reserved powers and functions

- (1) The Secretary of State for Wales shall, within three months of the day on which this Act is passed, set up a working party to report upon the operation of each and every power and function reserved to Parliament under Schedule 1 to this Act.
- (2) The working party established under subsection (1) shall, within three years of its establishment, report to the Secretary of State upon the operation of each and every power and function reserved under Schedule 1 to this Act, and make such representations as are

[LORD ELYSTAN-MORGAN]
appropriate as to whether the continued operation of such reservations is appropriate in the current context of devolution.

- (3) The Secretary of State shall publish the report and recommendations made under subsection (2)."

Lord Elystan-Morgan: My Lords, I shall beg leave to withdraw the amendment, but at the same time I want to—

The Deputy Speaker (Lord Brougham and Vaux) (Con): Are you withdrawing the amendment, or do you want to speak to it?

Lord Elystan-Morgan: With the leave of the House, I beg leave to withdraw the amendment.

Amendment 78 withdrawn.

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

Amendments 78A and 78B

Moved by Lord Bourne of Aberystwyth

78A: Schedule 1, page 52, line 30, at end insert—

"2A(1) Paragraph 1 does not reserve property belonging—

- (a) to Her Majesty in right of the Crown,
- (b) to Her Majesty in right of the Duchy of Lancaster, or
- (c) to the Duchy of Cornwall.

(2) Paragraph 1 does not reserve property belonging to any person acting on behalf of the Crown or held in trust for Her Majesty for the purposes of any person acting on behalf of the Crown.

(3) Sub-paragraphs (1) and (2) do not affect the reservation by paragraph 1 of—

- (a) the hereditary revenues of the Crown,
- (b) the royal arms and standard, or
- (c) the compulsory acquisition of property—
 - (i) belonging to Her Majesty in right of Crown;
 - (ii) belonging to Her Majesty in right of the Duchy of Lancaster;
 - (iii) belonging to the Duchy of Cornwall;
 - (iv) held or used by a Minister of the Crown or government department.

2B_(1) Paragraph 1 does not reserve property held by Her Majesty in Her private capacity.

(2) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the subject-matter of the Crown Private Estates Acts 1800 to 1873."

78B: Schedule 1, page 53, leave out lines 26 to 39

Amendments 78A and 78B agreed.

Amendments 79 and 80 not moved.

Amendment 81

Moved by Lord Thomas of Gresford

81: Schedule 1, page 59, leave out lines 11 to 15

Lord Thomas of Gresford: My Lords, I have already spoken to this amendment and do not intend to say anything further except to state, in reply to the Minister, that an important principle of subsidiarity is involved here. Comments have been made from the very moment this Bill came before the House that the reservations in Schedule 1 are a ragbag of items collected from various government departments. I have commented on this issue of anti-social behaviour, which should really be dealt with at a local level. Accordingly, I seek the opinion of the House.

6.21 pm

Division on Amendment 81

Contents 90; Not-Contents 223. [The Tellers for the Not-Contents reported 223 votes; the Clerks recorded 222 names.]

Amendment 81 disagreed.

Division No. 1

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 Farmer, L.
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 Fookes, B.
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 Fraser of Corrieargath, L.
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Gadhia, L.
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 Lupton, L.
 MacGregor of Pulham
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 Renfrew of Kaimsthorpe, L.
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Sheikh, L.
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 Stroud, B.
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6.35 pm

*Amendment 81A**Moved by Lord Bourne of Aberystwyth*

81A: Schedule 1, page 59, line 13, after “to” insert “4 and”

Amendment 81A agreed.

Amendment 82 not moved.

*Amendment 83**Moved by Lord Bourne of Aberystwyth*

83: Schedule 1, page 61, line 3, at end insert—

“Exception

In the case of a betting premises licence under the Gambling Act 2005, other than one in respect of a track, the number of gaming machines authorised for which the maximum charge for use is more than £10 (or whether such machines are authorised).”

Amendment 84 (as an amendment to Amendment 83) not moved.

Amendment 83 agreed.

Amendment 85 not moved.

*Amendments 85A to 85E**Moved by Lord Bourne of Aberystwyth*

85A: Schedule 1, page 67, line 11, after “licensing” insert “and the regulation of works that may obstruct or endanger navigation,”

85B: Schedule 1, page 67, line 24, at end insert—

“Marine licensing and the regulation of works that may obstruct or endanger navigation, so far as relating to searching or boring for or getting petroleum under such a licence.”

85C: Schedule 1, page 68, leave out lines 10 to 13

85D: Schedule 1, page 68, line 13, at end insert—

“Exceptions

Heat and cooling networks, but not the regulation of them.

Schemes providing incentives to generate or produce, or to facilitate the generation or production of, heat or cooling from sources of energy other than fossil fuel or nuclear fuel.”

85E: Schedule 1, page 68, leave out lines 18 to 21

Amendments 85A to 85E agreed.

Amendments 86 and 87 not moved.

*Amendments 87A and 87B**Moved by Lord Bourne of Aberystwyth*

87A: Schedule 1, page 70, line 34, at end insert—

“The reference to maritime search and rescue does not reserve participation by Welsh fire and rescue authorities in maritime search and rescue responses.”

87B: Schedule 1, page 70, leave out line 39

Amendments 87A and 87B agreed.

Amendments 88 and 89 not moved.

*Amendment 89A**Moved by Lord Bourne of Aberystwyth*

89A: Schedule 1, page 72, line 25, at end insert—

“The deferral of payment due to a local authority from an individual in respect of costs of, or financial assistance for, meeting that or another individual’s needs for care or support.”

Amendment 89A agreed.

*Amendment 90**Moved by Lord Hain*

90: Schedule 1, page 76, line 3, at end insert—

“Terms and conditions of employment and industrial relations in Welsh public authorities and services contracted out or otherwise procured by such authorities.”

Lord Hain: I beg to test the opinion of the House.

6.36 pm

Division on Amendment 90

Contents 222; Not-Contents 222.

The Deputy Speaker: My Lords, there being an equality of votes, in accordance with Standing Order 56, which provides that no proposal to amend a Bill in the form in which it is before the House shall be agreed to unless there is a majority in favour of such amendment, I declare the amendment disagreed to.

Amendment 90 disagreed.

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 Cope of Berkeley, L.
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 Dixon-Smith, L.
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NOT CONTENTS

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 Astor, V.
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 Baker of Dorking, L.
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 Bates, L.
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 Carlile of Berriew, L.
 Cathcart, E.
 Cavendish of Furness, L.

Shephard of Northwold, B.
 Sherbourne of Didsbury, L.
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 Smith of Hindhead, L.
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 Sterling of Plaistow, L.
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 Stroud, B.
 Sugg, B.
 Suri, L.
 Taylor of Holbeach, L.
 [Teller]
 Tebbit, L.

Trimble, L.
 True, L.
 Tugendhat, L.
 Ullswater, V.
 Vere of Norbiton, B.
 Verma, B.
 Wakeham, L.
 Warsi, B.
 Wasserman, L.
 Waverley, V.
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 Williams of Trafford, B.
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6.50 pm

Amendments 90A to 90C

Moved by Lord Bourne of Aberystwyth

90A: Schedule 1, page 81, line 25, at beginning insert “Services and facilities relating to adoption,”

90B: Schedule 1, page 81, line 27, at end insert—
 “Parental discipline.”

90C: Schedule 1, page 82, leave out lines 3 to 13 and insert—
“M1 Registration of land
 180_ Registration of—
 (a) estates, interests and charges in or over land, and
 (b) associated actions, proceedings, writs and orders.
 Exception
 Fees for the registration of local land charges.”

Amendments 90A to 90C agreed.

Amendment 91 not moved.

Amendments 91A and 91B

Moved by Lord Bourne of Aberystwyth

91A: Schedule 1, page 82, line 25, after “railways” insert
 “other than railways that start, end and remain in Wales”

91B: Schedule 1, page 82, leave out line 28

Amendments 91A and 91B agreed.

Amendment 92 not moved.

Amendment 92A

Moved by Lord Bourne of Aberystwyth

92A: Schedule 1, page 82, leave out line 29 and insert—
 “185_ Compensation in respect of—
 (a) the interference with rights in land by exercise of a
 statutory power;
 (b) depreciation in the value of land as a result of
 works or land provided or used in the exercise of a
 statutory power.”

Amendment 92A agreed.

Amendment 93 not moved.

Amendments 93A to 104B

Moved by Lord Bourne of Aberystwyth

93A: Schedule 1, page 82, line 34, at end insert—

“but only in relation to specified Crown land and
 specified undertaker land.”

93B: Schedule 1, page 83, line 12, at end insert—

““Specified Crown land” means land—

- (a) belonging to Her Majesty in right of the Crown;
- (b) belonging to Her Majesty in right of the Duchy of
 Lancaster;
- (c) belonging to the Duchy of Cornwall;
- (d) held or used by a Minister of the Crown or a
 government department.

“Specified undertaker land” means land held or used
 by a statutory undertaker in the exercise of a
 statutory power that relates to a matter in
 paragraph 94, 95(f) and (g), 97, 115, 119 or 123.”

94: Schedule 1, page 83, line 21, leave out “Wales public” and
 insert “devolved Welsh”

95: Schedule 1, page 83, line 26, leave out “Wales public” and
 insert “devolved Welsh”

96: Schedule 1, page 83, line 27, leave out “Wales public” and
 insert “devolved Welsh”

97: Schedule 1, page 83, line 29, leave out “Wales public” and
 insert “devolved Welsh”

98: Schedule 1, page 85, line 9, leave out “Wales public” and
 insert “Devolved Welsh”

99: Schedule 1, page 85, line 11, leave out “a public” and insert
 “an”

100: Schedule 1, page 85, line 22, leave out “Wales public” and
 insert “devolved Welsh”

101: Schedule 1, page 85, line 24, leave out “a “public authority”
 is” and insert ““authority” means”

102: Schedule 1, page 85, line 36, leave out “a public authority
 is a Wales public” and insert “an authority is a devolved Welsh”

103: Schedule 1, page 86, line 1, leave out “Wales public” and
 insert “devolved Welsh”

104: Schedule 1, page 86, line 20, leave out “Wales public” and
 insert “devolved Welsh”

104A: Schedule 1, page 86, line 41, leave out “paragraph 198”
 and insert “paragraphs 198 and 198A”

104B: Schedule 1, page 87, line 8, at end insert—

“Council tax precepts

198A_ This Schedule does not reserve council tax
 precepts.”

Amendments 93A to 104B agreed.

Schedule 2: New Schedule 7B to the Government of Wales Act 2006

Amendments 104C to 106

Moved by Lord Bourne of Aberystwyth

104C: Schedule 2, page 88, line 23, at end insert “but does
 include the compulsory acquisition of property”

104D: Schedule 2, page 89, line 23, at end insert—

“Energy Act 2008

Section 100 and regulations
 under that section.”

104E: Schedule 2, page 90, line 28, after “3(1)” insert “, (1B)”

104F: Schedule 2, page 90, line 29, leave out from “to” to “20” in line 30

105: Schedule 2, page 90, line 43, at end insert—

“() section 51;”

106: Schedule 2, page 92, line 35, leave out “Wales public” and insert “devolved Welsh”

Amendments 104C to 106 agreed.

Northern Ireland: Political Developments

Statement

6.53 pm

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop) (Con): My Lords, with permission, I will repeat a Statement made by my right honourable friend the Secretary of State for Northern Ireland in the other place. The Statement is as follows:

“Mr Speaker, with permission, I would like to make a Statement about the political situation in Northern Ireland.

As the House will be aware, yesterday Martin McGuinness submitted his resignation as Deputy First Minister of Northern Ireland. This also means that the First Minister, Arlene Foster, also ceases to hold office, though she is able to carry out some limited functions. Under the terms of the Northern Ireland Act 1998, as amended by the St Andrews Agreement Act 2007, the position is clear. Should the offices of First and Deputy First Minister not be filled within seven days from Mr McGuinness’s resignation, then it falls to me as Secretary of State to set a date for an Assembly election. Although there is no fixed timetable in the legislation for me to do this, it needs to be within a reasonable period.

In his resignation letter Mr McGuinness said:

“In the available period Sinn Féin will not nominate to the position of Deputy First Minister”.

I am very clear that in the event of the offices not being filled, I have an obligation to follow the legislation. As things stand, therefore, an early Assembly election looks highly likely. I should add that the rules state that, once an election has been held, the Assembly must meet again within one week, with a further two-week period to form a new Executive. Should this not be achieved, as things currently stand I am obliged to call another election. So right honourable and honourable Members should be in no doubt: the situation we face in Northern Ireland today is grave and the Government treat it with the utmost seriousness.

It is worth reflecting for a moment on how we have reached this point. The immediate cause of the situation we now face is the fallout from the development and operation of the Northern Ireland renewable heat incentive scheme. Under the scheme launched by the Northern Ireland Department of Enterprise, Trade and Investment in 2012, which is equivalent to a scheme in Great Britain, businesses and other non-domestic users were offered a financial incentive to install renewable heat systems on their premises. The

scheme was finally shut to new applicants in February last year when it became clear that the lack of an upper limit on payments, unlike in the GB equivalent, meant the scheme was open to serious abuse. In recent weeks there has been sustained media focus and widespread public concern about how this situation developed.

The renewable heat incentive scheme was, and remains, an entirely devolved matter in which the UK Government have no direct role. It is primarily the responsibility of the Northern Ireland Executive and Assembly to take the necessary action to address the concerns that have been expressed about it. But I do believe it is imperative that a comprehensive, transparent and impartial inquiry into the development and implementation of the scheme needs to be established as quickly as possible. In addition, effective action needs to be taken by the Executive and Assembly to control costs. While the RHI might have been the catalyst for the situation we now face, it has however exposed a number of deeper tensions in the relationship between parties and within the Northern Ireland Executive. This has led to a breakdown in the trust and co-operation that is necessary for the power-sharing institutions to function effectively.

Over the coming hours and days I will continue to explore whether any basis exists to resolve these issues prior to my having to fulfil my statutory duty to call an election. I have been in regular contact with the leadership of the DUP and Sinn Féin and with the Justice Minister, Clare Sugden, an Independent Unionist. Yesterday evening I had a round of calls with the main opposition parties at Stormont. I am in close touch with the Irish Foreign Minister, Charlie Flanagan. Immediately after this Statement I will return to Northern Ireland, where I will continue to do whatever I can to find a way forward. Both the UK and the Irish Governments will continue to provide every possible support and assistance to the Executive parties. We do, however, have to be realistic. The clock is ticking. If there is no resolution then an election is inevitable, despite the widely held view that an election may deepen divisions and threaten the continuity of the devolved institutions.

Mr Speaker, over recent decades Northern Ireland’s politicians have rightly earned plaudits from across the globe for their ability to overcome differences and work together for the good of the whole community. It has required courage and risk on all sides. We are currently in the longest period of unbroken devolved government since the 1960s. This political stability has been hard gained and it should not be lightly thrown away. In the 14 months since the fresh start agreement, significant advances have been made in areas such as addressing paramilitarism, supporting shared and integrated education and putting the Executive’s finances on a sustainable footing. This summer’s parading season has passed off peacefully, and the long-running dispute in north Belfast has been resolved. We have also been working intensively to build the necessary consensus to bring forward the bodies to address the legacy of Northern Ireland’s past, as set out in the Stormont House agreement.

I am in no doubt that what Northern Ireland needs at this time is strong, stable devolved government, not a collapse of the institutions. Northern Ireland deserves

[LORD DUNLOP]

fair, accountable, stable and effective government. It needs to continue to implement the Belfast agreement and its successors, to strengthen the economy, to ensure that Northern Ireland responds to the challenges and opportunities presented by the EU exit, to build a stronger, shared society in which there is respect for everyone, and to address the legacy of the past in a way that enables Northern Ireland to move forward. We must not put all this at risk without every effort to resolve differences. We must continue to do all that we can to build a brighter, more secure Northern Ireland that works for everyone. I therefore urge Northern Ireland's political leaders to work together and come together to find a way forward from the current position in the best interests of Northern Ireland. I commend this Statement to the House".

7 pm

Lord McAvoy (Lab): My Lords, I thank the Minister for repeating the Statement. This is, as he said, a grave situation, and it is not where any of us want to be.

This House has a long memory and much expertise on its Benches, and we can remember a time when people across Northern Ireland did not know the peace that we see today. There has been a huge amount of progress that inspires hope in Northern Ireland. This was built on the hard work and compassion of the Northern Irish people throughout the community and a great many people across the political divide.

I pay tribute to Sir John Major for his role in a previous Conservative Government in kicking off such discussions. I also pay tribute to the noble Lords, Lord Trimble and Lord Alderdice, for their contribution to the position we have arrived at today. I also thank the many Members of your Lordships' House who have contributed daily to the good will within the communities and to the peace we have achieved.

For the Labour Party, the Good Friday agreement is one of the greatest legacies of our Labour Government, and the contribution that we made to it was substantial. I am glad to see that my noble friend Lord Murphy of Torfaen is here, because we all remember his terrific contribution to the maintenance of peace in Northern Ireland.

The situation today is a threat to the institutions that peace and reconciliation are based on. The Labour Party has no hesitation in offering its full support and any help that it can give the Secretary of State and the Government in seeking to maintain political stability in Northern Ireland.

We welcome the fact that the Secretary of State is in touch with all the major parties, as well as the Northern Ireland Justice Minister, and that he is in discussion with the Irish Government. We support the aim to facilitate talks and seek a resolution to this impasse before another election becomes inevitable. It may be regarded as a last throw of the dice—as a last resort—but surely, before the seven days is up, the Secretary of State must consider convening a round table of some import with the individuals concerned to have a final go at seizing this situation. However, I totally accept that many people feel that we may be past that point, as the Minister's Statement made clear.

What discussions has the Secretary of State had about the work that will need to be done to support and stabilise the devolved institutions after the election, if one is called? The Minister referred to the widely held view that an election will change nothing on its own, so what preparation is being made to deal with that set of circumstances and the challenges that might lie ahead?

The Northern Ireland renewable heat incentive scheme was the final catalyst for the events that have brought us here, but the Minister is right to recognise that the situation occurred in the context of existing and far deeper tensions. That context includes a wider failure to resolve issues in dealing with the legacy of the past.

There has been the impression of a political vacuum on this issue in recent months, which has fed instability. I know what goes on behind the scenes, which is not broadcast, but life is about perceptions as well, and the legacy issue has been like a poison feeding into the well of public consciousness in Northern Ireland. I would like to see that work made more visible. What work is under way and what more does the Secretary of State plan to do to earn agreement on a path forward for those coping with the legacy of the past in Northern Ireland?

On the renewable heat incentive scheme, what estimate have the Government made of the cost to the Northern Irish economy of the scheme's failure? Has the Secretary of State spoken to the major parties in Northern Ireland specifically about setting up a comprehensive and impartial inquiry?

We all want Northern Ireland to look forwards to the future, to prosperity and to an enduring peace agreement. Division gets us nowhere. There are modern challenges facing Northern Ireland, not least of which is ensuring the best deal for the Northern Irish people in the UK's exit from the European Union. We are at a crucial time for negotiation planning, so I must ask the Minister what impact the Government believe this instability, and a possible election period, will have on the representation of Northern Ireland in talks regarding the UK exit?

The world is watching. As has been said, there is widespread admiration for people on both sides of the community in Northern Ireland, who have come together to ensure peace. The successes after decades of hurt and violence have earned admiration throughout the world. Any damage to the process of peace and reconciliation on our collective watch would be a great discredit to us and a great disservice to the people of Northern Ireland, who I am sure do not relish the thought of a possible election.

Baroness Suttie (LD): My Lords, I, too, thank the Minister for repeating the Statement to your Lordships' House this evening.

As the Secretary of State has said, the truly peaceful society that we all wish to see in Northern Ireland is intricately bound together with politically stable institutions and a strong economy. It is therefore essential that the people of Northern Ireland have confidence that there is a coherent and collective Government in

Stormont—a Government who are open and accountable and working in the best interests of the whole of Northern Ireland.

The stability of the devolved institutions in Northern Ireland is more important now than ever, given the particular challenges that will be presented by Brexit in the coming months. It is clear that cool heads and calm leadership are needed in order to resolve the current difficulties. It is also clear that the crisis reveals deeper problems than the specific issues that have come to the fore in recent weeks. To that end, will the Minister confirm that the Secretary of State will convene immediate talks with all the political parties in Northern Ireland? Will he also ensure that such talks do not just focus on the immediate issues in relation to the RHI scheme but look at measures to improve openness and transparency in the Executive, the Assembly and politics, including transparency in party funding in Northern Ireland?

Although I welcome the Secretary of State's support for a comprehensive, transparent and impartial inquiry, can the Minister confirm that the Government will ensure that the establishment of this inquiry is not delayed by yesterday's announcement, and that, if the Executive fail to establish an inquiry, this Government will consider doing so?

Lord Dunlop: I am very grateful to the noble Lord and the noble Baroness for their remarks and, in particular, for all the thanks that the noble Lord expressed to all those who have played such an important part in the peace process over the years. I am also very grateful for the support they have given the Government in seeking a resolution to very difficult issues.

This is a time to come together and work together. Everyone in this House wants the devolved institutions in Northern Ireland to succeed. I have no doubt that this is the view of the overwhelming majority of people in Northern Ireland and what they want to see. I have seen for myself, as I have travelled around Northern Ireland over the last six months, the huge progress that is being made and the many positive developments that are happening in all parts of Northern Ireland. The Government want to build on that progress and that is why the Secretary of State and the Government will strain every sinew in the short period ahead to work with all the parties in Northern Ireland to see if we can find a way forward. As the Secretary of State has made clear, he stands ready to assist in any way he can.

A number of specific points were raised. The noble Lord asked about an issue that is clear in the Statement I have just made—that an election may deepen the divisions and may not provide a solution. That is why the Secretary of State is so focused in the coming hours and days on finding a solution to the immediate issues. Regarding legacy, clearly it has been a priority for the Secretary of State to build a consensus on how we move forward from the current, very unsatisfactory situation where we do not have a balanced process in place. We must recall that 90% of the deaths that occurred over the period of the Troubles were the result of terrorist activity. He is absolutely committed to building a consensus on a more balanced and

proportionate way forward, building on the Stormont House agreement legacy bodies, and he has articulated the priority he wants to give to that because he would like to move quickly to a public phase.

On the cost estimates of the renewable heat incentive scheme, the Northern Ireland Executive itself has estimated a figure of £490 million over 20 years if there is no mitigation. Clearly, one of the issues we need to deal with in the talks that are taking place with the parties over the next few days is how we mitigate those costs. As for the inquiry, that is absolutely something the Secretary of State is talking to the parties about. We need to establish the facts, accountability and ensure that we have a process that can command confidence. On the implications for the UK's exit from the EU, the Secretary of State and other Ministers in the Northern Ireland Office, including myself, have been engaging widely to identify the issues that need to be front and centre of the discussions as we proceed towards the negotiations on exit from the EU, and those discussions have included the Northern Ireland Executive. We want to make sure that we get a good deal for Northern Ireland and the UK as a whole, and the Secretary of State is very clear that the voice of Northern Ireland needs to be at the heart of those discussions. Clearly, that would be assisted if there was a fully functioning Northern Ireland Executive.

7.13 pm

Lord Kilclooney (CB): My Lords, first of all, in what way does the Minister think that an election, and indeed the suggestion of a second election, could in any way overcome the impasse caused by the RHI scheme? Secondly, I welcome very much his Statement that the Government will make every effort to support the Belfast agreement, because that is fundamental. I also welcome the Statement that they would like to see an impartial inquiry, and I am delighted that the First Minister in Northern Ireland also wants to see this. Finally, can the Minister confirm that, should these things fail, the Government will in no way repeat the errors of 1985 and go behind the backs of the people of Northern Ireland to reach an agreement with the Dublin Government? That would lead to the chaos which my colleague, the noble Lord, Lord King, well recalls and which the late Lady Thatcher subsequently said she very much regretted had occurred. The failure of the Anglo-Irish agreement must not be repeated.

Lord Dunlop: Regarding the election, I think the Statement makes it clear that there is a risk that that does not provide the solution we are looking for and that it would deepen the divisions. That is why the Secretary of State's immediate priority is to use the period that we have in the coming hours and days—the seven-day period—to see, in active discussion with all the political parties, whether we can find a way through this. However, the legislation is clear. If the posts are not filled within a seven-day period, the Secretary of State has to call an election. It would obviously be premature today to speculate on the precise timing, but he is clear that he has to do that within a reasonable timeframe. With regard to the Irish Government, clearly

[LORD DUNLOP]

there has been close contact with the Irish Government Foreign Minister, while of course respecting the constitutional proprieties.

Baroness O’Loan (CB): My Lords, it has been nearly 19 years since the Good Friday agreement and two years since the fresh start agreement. We have had an Assembly, but it has been a very dysfunctional Assembly. Part of the reason for that are the matters alluded to by the Minister in the Statement—the increased, deep tension and the breakdown of trust between the parties. Having listened to what the Minister said about the past, what are the Government going to do to enable mechanisms for dealing with the past—mechanisms devised years ago by Eames/Bradley—which would enable and encourage devolved government? I say to the Minister that the absence of mechanisms for dealing with the past leaves a reservoir of distrust, and that in part, I am quite sure, has contributed to that tension and breakdown in trust to which the Minister referred.

Lord Dunlop: The legacy bodies that were envisaged by the Stormont House agreement do potentially provide a viable, balanced and proportionate way forward, recognising, as I said, that the status quo is very unsatisfactory. I am sorry for repeating this again, but the reason why the Secretary of the State is so focused on using this period to talk to all the parties to see whether there is a way through these very challenging issues is precisely that we need a functioning Executive to deal with these issues such as the legacy of the past, which has proved so difficult in allowing Northern Ireland to move forward. It has been a priority for the Secretary of the State and he has been in intensive discussions with all the parties to see whether we can build that consensus. He is very conscious that we will get only one chance to do this properly and we need to build that consensus.

Lord Hain (Lab): My Lords, as a former holder of the post, I give my full support to the Secretary of State in every step that he takes to try to ensure that this does not end in the sad and tragic way that it could. It is almost by default, through political incompetence, Civil Service bungling and party posturing in Northern Ireland, which has led us to a situation where 10 years of devolved government since the historic settlement we negotiated in 2007, and 10 years of Good Friday negotiations prior to that, could be destroyed. As he has mentioned Brexit, will the Minister tell us how, if the Supreme Court rules that the devolved legislatures should, as they all requested, be consulted on Article 50, that can be complied with if there is no Northern Ireland Government?

Lord Dunlop: At the risk of repeating myself again, that is the focus of the activity that the Secretary of State will be involved in over the coming hours and days during this seven-day period, to see whether we can find a way through. The noble Lord is absolutely right: we need a functioning Executive to deal with all the very pressing issues that will be of huge importance to Northern Ireland. Yes, there are challenges with Brexit, but there are opportunities as well, and we need to ensure that we exploit those. But be in no

doubt that the voice of Northern Ireland will be heard loud and clear and will be at the heart of preparations for these negotiations. The Northern Ireland Office, the Secretary of State and myself have been engaging widely in Northern Ireland to pin down the key issues that need to be at the forefront of our minds as we approach those negotiations. However, as I said, the noble Lord is absolutely right: a fully functioning Executive will be of assistance in that process.

Lord Empey (UUP): My Lords, the crisis at Stormont has been precipitated by gross ministerial incompetence, arrogance, greed and opportunism. I regret to say that the seeds of this debacle were sown in 2006, when the Government unilaterally changed the terms of the Belfast agreement on the appointment of the First and Deputy First Ministers. Does the Minister agree that, had the Government allowed proper parliamentary scrutiny of devolution instead of this wretched policy of “devolve and forget”, which we call the Sewel convention, we might not be facing the potential return of direct rule with all the risks that the noble Lord, Lord Kilclooney, has outlined—on which I entirely identify with and support him?

Lord Dunlop: I note what the noble Lord says about the change in the method of selecting the First and Deputy First Ministers, and I acknowledge his long-standing position on this. However, as the Secretary of State made clear in the other place, the focus now must be on exploring whether there is any basis for resolving the current issues. There is huge support in Northern Ireland for devolution. The point about devolution—a point I have made in this House before—is that when powers are devolved to institutions, we need to support those institutions in discharging their responsibilities. The renewable heat incentive scheme is a fully devolved matter and we believe that the solution to that—with of course the support of the Secretary of State and the Government—needs to come from within the Northern Ireland institutions.

Lord Hay of Ballyore (DUP): My Lords, I also welcome the Statement by the Minister. All this started with the renewable heat incentive scheme in the Assembly. But this is not about playing the blame game anymore. I welcome the continuing partnership between the Government, the Labour Party and the opposition parties on how we might resolve this issue, because there is no doubt that it needs to be resolved.

Unfortunately, in Northern Ireland it is not about the renewable heat initiative any more. As the former Secretaries of State for Northern Ireland will know, this will grow legs—and I understand that other issues are now coming into the melting pot. They, too, will have to be resolved. The issue is being compounded by other political parties and individuals in and around this. The only way forward is for the politicians of Northern Ireland to come together and resolve the matter once and for all—because here we are again, and we will be here again next year.

I remember the early 2000s; the Assembly fell three times in almost four years when the SDLP and the Ulster Unionists were in charge. So let us stop the

blame game and get to a point at which, eventually, all these issues—legacy issues and current issues—can be resolved. Will the Minister tell us whether there are any further initiatives or measures that the Government can bring to the table to resolve this? We have only one opportunity to resolve this and Assembly elections will not do it. We will come back after an election with the same situation, but worse. The Government must redouble their efforts to bring further measures to the table.

Lord Dunlop: I am grateful to the noble Lord. I am sure he is absolutely right that, in this situation, we want the parties working together. The Secretary of State is very focused on doing that over the coming period. The noble Lord opposite made the suggestion that the Secretary of State might issue a formal invitation to a round table, and I am sure that initiatives of that sort will be considered by the Secretary of State as he continues his discussions with the parties.

Lord Murphy of Torfaen (Lab): My Lords, I was a direct rule Minister for five years in Northern Ireland, and it seems to me that the last thing Northern Ireland wants is a return to direct rule. Clearly, there has been a serious breakdown of trust and confidence between the political parties in Northern Ireland. I also agree with other noble Lords that an election, frankly, would be disastrous. There is one week in which to avoid that. Does the Minister agree that the guarantors of the Belfast agreement and the others that followed are the British and Irish Governments, and that they should work together very closely and carefully over the next week—even to the point at which the Prime Minister and the Taoiseach get involved?

Lord Dunlop: I absolutely agree that we must, as I said in earlier remarks, strain every sinew to find a way forward. Clearly, there is contact with the Irish Government, but we must respect the constitutional priorities. What has given rise to this situation is the RHI scheme, which is a devolved matter. The constitutional position of Northern Ireland is clearly set out in the Belfast agreement and we need to respect that.

Lord King of Bridgwater (Con): My Lords, sufficiently provoked by the noble Lord, Lord Kilclooney, I will make one comment on my noble friend's Statement. While I perfectly understand the importance of keeping the Irish Government informed, this is the responsibility of the United Kingdom Government, as it has always been—there has never been any question, at any stage, of joint authority, even during some of the most difficult issues and times.

Coming to my feet on this occasion, I cannot help reflecting on that awful couplet:

“To Hell with the future,
Thank God for the past”.

I will not repeat the last two lines, but I can see how easily we could go back to that unfortunate situation. I recall, tragically, that Northern Ireland has been an example to the world of how you can resolve long-standing difficulties. People have been invited from all over the

world to visit Northern Ireland to see how competing traditions have managed to work together. That is the particular tragedy of this situation.

I understand that there is no immediate imperative and that if an election is to be called, there is no particular time within which it has to be called. That may allow for a certain opportunity to see whether some agreement can be reached to carry the country forward. It is the responsibility of all those in Northern Ireland. They can have a better future, and everybody in this House hopes that they will achieve it.

Lord Dunlop: I thank my noble friend. As I said, obviously there has been close contact with the Irish Foreign Minister—but, as he rightly points out, we need to respect the constitutional proprieties, and the constitutional position of Northern Ireland is clearly set out in the Belfast agreement. As for the timing, there is a seven-day period, after which the Secretary of State is obliged to call an election. There is no specified time period for that, but he has to do so within a “reasonable” period of time. Tonight it would be premature to speculate on a specific date.

Lord Cormack (Con): My Lords, as one who was chairman of the Northern Ireland Affairs Committee throughout the 2005 Parliament, working closely with the noble Lord, Lord Hain, and his successor, one thing that impressed me enormously was the priority and time given by Prime Minister Blair and Prime Minister Brown. They frequently paid tribute to the wonderful spadework of Sir John Major.

This should now be at the top of the parliamentary agenda in the United Kingdom. The Prime Minister should be involved. I was often in the company of the late Lord Bannside, Ian Paisley, and sometimes in the company of Mr McGuinness. I am sorry that he is so ill at the moment. We should appeal to him as well to play a part in getting everyone together. Will my noble friend convey to the Prime Minister that many of us in this House feel that she would be neglecting no duty in putting this at the top of her agenda for the immediate future? She should go to Northern Ireland and sit down with the political leaders there and explain to them what priority we attach to continuing what has been a very remarkable decade since 2007. I appeal to my noble friend to convey those sentiments to the Prime Minister.

Lord Dunlop: Certainly, the sentiments of this House will be heard loud and clear. I hope that it is clear from the Statement that I have repeated today the gravity and seriousness that the Government attach to these matters and therefore the priority that we will give to them. In the discussions that the Secretary of State will have, he will obviously explore all avenues to see what might be helpful in resolving the current situation. We must not rule anything out in trying to seek that resolution.

Lord Hylton (CB): My Lords, for more than 20 years I was a very regular visitor to Northern Ireland and I currently have an exemplary Northern Ireland son-in-law. Why does the Statement assume that an election will

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change nothing? We all know that power sharing is a very difficult concept to work out in practice, no doubt because of the lack of trust in a still deeply divided society. But, if the electorate wants to persevere with power sharing, they should penalise those who fail to deliver it. In theory, there could be a new coalition between official Unionists and the SDLP, but long-term thinking is also required beyond the present situation. A county council or GLC model might be more appropriate than what we have. At any rate, less emphasis is needed on legacies from the past and far more on positive and co-operative work for the future, based on civil society and local community relations.

Lord Dunlop: I thank the noble Lord for his contribution. One can never predict the implications of elections. The Statement simply sets out the widely held view that an election may deepen divisions and threaten the continuity of devolved institutions. Clearly, we need to work and redouble our efforts to find a resolution, as I have already said.

Wales Bill

Report (2nd Day) (Continued)

7.33 pm

Amendment 106A

Moved by Lord Bourne of Aberystwyth

106A: Schedule 2, page 93, line 20, at end insert—

“() Paragraph 8(1)(c) does not apply to a provision to which paragraph 8(1)(a) applies or would apply but for sub-paragraph (2) of this paragraph.”

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the first amendment in this group, Amendment 106A, is a technical one. It responds to a concern raised by the Welsh Government about the way in which the restrictions on the Assembly legislating on reserved authorities in paragraph 8(1) of new Schedule 7B apply to the seven reserved authorities listed in paragraph 9 of the new schedule.

The Assembly is prohibited from legislating to confer or impose functions on a reserved authority without consent by virtue of paragraph 8(1)(a), and from legislating to confer or impose functions that are specifically exercisable in relation to a reserved authority without consent by paragraph 8(1)(c). Paragraph 9(2) excepts a small number of reserved authorities from the paragraph 8(1)(a) restriction, but there is no similar exception in relation to paragraph 8(1)(c). That could create an anomalous situation where the Assembly could impose functions in devolved areas on any of the authorities listed in paragraph 9(2), but could confer a power on Welsh Ministers to do so only with consent.

To think of a tangible example, the Assembly could confer on Welsh Ministers a power to issue guidance to any of the seven reserved authorities listed in paragraph 9. The authority would be subject to a duty

to have regard to any such guidance when exercising its devolved functions. As the Bill stands, the ministerial consent requirement would not apply to the provision in so far as it concerns the duty on the reserved authority to have regard to the guidance. But the ministerial consent requirement would apply to the provision in so far as it concerns the conferring of a power on Welsh Ministers to issue the guidance. The effect of the amendment is that the requirement for UK ministerial consent does not apply if the relevant provision has the effects described in both paragraphs 8(1)(a) and 8(1)(c) of new Schedule 7B. Following our example, the Assembly would not require consent to create a power for Welsh Ministers to issue guidance to an authority listed in paragraph 9 or create a duty on such an authority to have regard to the guidance.

Government Amendments 136 to 141 extend the application of paragraph 6 of Schedule 7 to a public authority. Paragraph 6 currently preserves the validity of, and provides continuity for, actions taken by a Minister of the Crown in respect of functions which are transferred to Welsh Ministers by the Bill. This includes actions taken by a public authority exercising delegated functions of a Minister of the Crown. However, there are functions currently conferred directly on rather than delegated to public authorities such as the Oil and Gas Authority and the Marine Management Organisation which are being transferred to the Welsh Ministers in the Bill. Such functions are not currently covered by paragraph 6. At the point of transfer of these functions to the Welsh Ministers, there may be actions in progress which will need to be continued and completed post-transfer. The amendments made to paragraph 6 preserve the validity of actions taken by a public authority before the date of transfer and provide continuity for anything that is in the process of being done by a public authority at that point.

I look forward to hearing from the noble Baroness, Lady Morgan, and the noble Lord, Lord Wigley, on their amendments in this group. I beg to move.

Lord Wigley (PC): My Lords, I listened with great interest to the rationale given by the Minister. I will need to read it again in *Hansard* to comprehend it fully, but I am sure that it does what he hopes it does.

My Amendment 108 was tabled following concerns expressed to us by the Welsh Language Commissioner, Meri Huws, regarding the Bill's potential effect on the National Assembly's power to legislate on matters pertaining to the Welsh language. It was raised in Committee, but I am concerned that there appears to be a lack of appreciation of the points put to us by the commissioner, and which have been addressed by the amendments put forward by my colleagues in Plaid Cymru. The commissioner herself is frustrated that the Government do not seem to have engaged with the substance of the case, which she has made to them as well as to us.

The possible effect of Schedule 2 to the Bill is that, when the National Assembly wishes to legislate for the Welsh language, it will require the consent of the relevant UK Minister to confer, impose, modify or remove within that legislation the Welsh language functions of Ministers of the Crown, government

departments and other reserved authorities. Under the current settlement, ministerial consent is required only when legislating to impose Welsh language functions on Ministers of the Crown. The ministerial consent provisions of the Wales Bill in relation to the Welsh language apply to a wider range of persons than is currently the case. The new legislation is therefore more restrictive on the Assembly's powers than is the status quo and this represents a retrograde step.

Let us consider a practical example. The Welsh Language Commissioner is already engaged in the statutory processes that would result in placing a duty on bodies such as Her Majesty's Revenue & Customs, the Crown Prosecution Service, Ofcom and the BBC to adopt Welsh language standards. This amendment removes the requirement for ministerial consent for Acts of the Assembly affecting functions of reserved authorities, public authorities and Ministers in circumstances where the Act of the Assembly relates to a Welsh language function. I am sure that the House will agree that such a provision is fair and reasonable, given that the Welsh language is quintessentially a devolved issue. Allowing Ministers and public authorities based outside Wales to second-guess National Assembly policy on the Welsh language in Wales, a policy area on which they have little if any informed opinion, is a formula for acrimony and dispute and would reopen language tensions which have abated to a significant extent over recent years.

In the House of Commons debate on the Bill, the Government claimed to offer some clarity and reassurance on the issue by saying that there is nothing in the Bill which affects the Welsh language retrospectively, and that of course is true. However, the Minister went on to confirm that if a future Welsh language measure were to be proposed, it would have the effect which we have pinpointed. Consent would be required to add new public authorities other than Wales public authorities. It would therefore affect any future Welsh language legislation applicable to those areas. The Minister's words offered no reassurance or indeed any justification as to why this Bill should include such a retrograde step.

A briefing paper produced by the National Assembly for Wales research service confirms our fears and outlines that, under the Bill as it currently stands, there will be a loss of legislative power relating to the Welsh Language (Wales) Measure 2011. My colleagues in the National Assembly are furious about this, and it is not only Plaid Cymru AMs who feel strongly about the matter. I shall quote from that briefing paper: "Part 4 of the Welsh language measure allows Welsh language standards to be imposed upon public bodies. Some of the bodies captured by Part 4 would be reserved authorities under the Wales Bill. This means that UK Government consent would be needed before Welsh language standards could be imposed upon them". There is a consensus that this is yet another blatant rollback and a significant reduction in the ability of the National Assembly for Wales to be able to legislate on its own language—a subject matter that is, for very obvious reasons, devolved.

Perhaps I may say in conclusion that on item after item that we have raised today, including the industrial relations amendment moved earlier by the noble Lord,

Lord Hain, and lost in a tied vote, the Government have not been willing to move one inch to reduce the powers rollback being instituted by this Bill. The Bill started its passage with a lot of good will, in the belief that the Government would seek to find common ground. Failure to do so has led to a growing bitterness across the parties, which I greatly regret. I urge the Minister to reconsider the Government's position even at this late stage and to rid the Bill of this devolution rollback and to accept our amendment today, even if they need to amend it themselves when the Bill returns to the Commons.

Baroness Morgan of Ely (Lab): My Lords, my Amendment 109 provides for the transfer of all functions currently exercisable by Ministers of the Crown—UK Government Ministers—in relation to areas which are within the devolved legislative competence of the Welsh Government to be transferred to Welsh Government Ministers. Let me start by saying that, given the Government's intention of producing a Bill that will 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.

In providing evidence to the Silk commission, the Welsh Government made clear that a move to a reserved powers model should be accompanied by a blanket transfer of all executive functions within the devolved areas. The Silk commission agreed and recommended:

"In order to reduce complexity and increase clarity, we believe that a future Government of Wales Act should include a general transfer to the Welsh Ministers of Minister of Crown functions in devolved ... areas".

I thank the Minister for writing to me and setting out his understanding of the situation and for clarifying the three categories of executive functions. I will start with the area about which I am most concerned: the pre-commencement functions.

7.45 pm

It is worth pointing out that the development of devolution in Wales has resulted in a deviation from what is standard practice in other devolved legislatures in the UK. In 1999, a series of transfer of function orders transferred executive functions to the National Assembly for Wales, which had no primary legislation-making powers. Now that the Assembly does have primary legislative powers and the intention of this Bill is to expand to a certain point Assembly responsibilities, surely it is appropriate to ensure that the Welsh Assembly secures complete responsibility for both executive and legislative matters that come under its remit in all areas that are not reserved. Anything other than this will cause confusion and create lack of clarity in terms of where responsibility lies.

The Minister has kindly stated that the UK Government will devolve as many of these functions as possible. In September he wrote to interested Peers with a draft of transfer of functions orders listing which pre-commencement Minister of the Crown functions were to be transferred to Welsh Ministers. As I remember—I am sure that the Minister will correct me if I am wrong—the number of orders to be

[BARONESS MORGAN OF ELY]

transferred was around seven. I am aware, however, that the Welsh Government have identified at least 35 other orders that they believe should be transferred. Can the Minister clarify the situation in relation to these and explain again why it would not be easier to have a principled, blanket handover of this responsibility to Wales?

We are told that some pre-commencement functions will be exercised jointly or concurrently by Ministers of the Crown and Welsh Ministers. I would ask the Minister whether the issue he cites in his letter in relation to the ability to pay grants and work together across the devolutionary boundary is something that has been done in the Scotland Bill. The UK Government have never explained to our satisfaction why the principle of the wholesale transfer applied in Scotland should not apply to Wales. This is something which has also perplexed the Constitution Committee of the House of Lords, which said:

“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”.

I would further ask whether the Minister will make a commitment in principle that any further powers that are “discovered” in future which should have been transferred because they fall within devolved competence will indeed be transferred—and whether he can report, as he promised to do, on whether he sees the scope to limit the number of functions listed in paragraph 11 of Schedule 2 to the Bill.

I have a degree more sympathy with the UK Government in the two other categories listed by the Minister in his letter: namely, where legislative and executive boundaries are not coterminous and in areas where competence does not match geographic extent. But I ask him to outline how Scotland deals with a similar situation. The general principle should be that executive powers in devolved areas should be exercised by Welsh Ministers. Again, I ask why the Government have such difficulty with this simple proposition.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord, Lord Wigley, and the noble Baroness, Lady Morgan, for speaking to their amendments, which I shall deal with in turn. I therefore turn first to Amendment 108 tabled in the name of the noble Lord, Lord Wigley. In beginning my response I should say that I did not recognise the caricature of the Government not listening and not responding during the course of this legislation; I think that that was uncharacteristically unfair of the noble Lord. We have listened very carefully and in many areas have given ground, as he himself has previously acknowledged. Perhaps I may also say in opening that we are certainly happy to engage with the Welsh Language Commissioner, Meri Huws, for whom I personally have massive respect. I do not think that we have failed to engage, but if there is any issue that she wants to discuss further, I will be more than happy to talk to her about it.

The amendment seeks to remove the requirement for an appropriate Minister to consent where the Assembly seeks to amend, remove or impose new

functions on a reserved authority or a Minister of the Crown where those functions relate to the Welsh language. I think that there is agreement between us on the intent of the clause in the Bill.

Throughout the development of the Bill, we have given careful thought—absolutely correctly—to the Welsh language and taken steps to minimise the effects of the new reserved powers model on the Assembly’s legislative competence for the language, but obviously there are issues in relation to reserved bodies. For example, while paragraph 197 of new Schedule 7A reserves the functions of authorities named or described in that schedule, we have inserted an exception for Welsh language functions in paragraph 199. This means that, under the new model, the Assembly will be able to legislate to confer Welsh-language functions on particular authorities, such as the BBC and police and crime commissioners, as the noble Lord, I think, indicated in his speech, subject to the consent of a Minister of the Crown.

We would anticipate that this is not going to be unreasonably withheld, but I think the noble Lord will understand that, where we have a process of reserving issues, and in relation to every other area, we have a provision that devolved areas are quite distinct, so we need to make provision for the Welsh language to make sure that reserved authorities are not put in an invidious position. The noble Lord’s amendment would cut across one of the underlying core principles of the Bill: the Assembly should not be able to impose burdens on non-devolved bodies without agreement. This goes to the core of the legislation. To add a specific exception to the consent process for the Welsh language would undermine that principle.

The noble Lord is absolutely right in relation to the Welsh Language (Wales) Measure 2011. It does not affect matters that are already settled, but he is right that in so far as there were to be new regulations under the measure, they would be subject to the new provisions of the clause if it is part of subsequent legislation.

Lord Wigley: Am I understanding correctly that the Minister is in fact confirming the fact that, compared to the position when the 2011 measure was passed, there is a rollback of powers as far as the Assembly is concerned in relation to imposing Welsh language conditions on such bodies?

Lord Bourne of Aberystwyth: My Lords, we are not comparing like with like. There is a significant amount of legislation here that is actually devolving new powers to the National Assembly. As I have indicated, the noble Lord’s analysis of what the legislation is seeking to do is correct; I am not seeking to deny that.

Amendment 109, moved by the noble Baroness, Lady Morgan, again seeks a blanket transfer of pre-commencement Minister of the Crown functions and prerogative functions exercisable in devolved areas to the Welsh Ministers, an issue we debated in Committee. I hope noble Lords have read my letter of 12 December to the noble Baroness which explained the Government’s approach on this issue. This has not changed.

I will give an outline of what happens next, which I think may provide some reassurance to the noble Baroness. In preparing the Bill we have undertaken substantial work with departments across Government

to identify the remaining functions exercised by Ministers of the Crown in devolved areas. Noble Lords will appreciate that most such functions have already been transferred by transfer of functions orders made since 1999. In the light of the existing transfer of functions orders and the outcome of this work, we have concluded that the blanket transfer proposed would not deliver the clarity that we are looking to deliver through the Bill. New Schedule 3A to the Government of Wales Act 2006, inserted by Clause 20 of the Bill, sets out the Minister of the Crown functions in devolved areas that will in future be exercised concurrently or jointly with the Welsh Ministers.

A handful of pre-commencement functions will continue to be exercised by a Minister of the Crown solely. These are set out in paragraph 11 of new Schedule 7B. I agreed in Committee to take a further look at these functions, and as a result we have, through Amendments 107B and 107C, narrowed the range of functions in the Marine and Coastal Access Act that require consent for modification. As a corollary to this, in Amendment 114A, we have added some functions under this Act and regulations made under it to the list of functions jointly exercisable by Ministers of the Crown and Welsh Ministers, reflecting the interconnectedness of decision-making in the Welsh zone.

The remaining Minister of the Crown functions in devolved areas will be transferred to Welsh Ministers by order, and we intend to make that order once this Bill has been enacted. I shared a draft list of the functions that will be included in this order with noble Lords before Second Reading, and we are continuing to discuss this list with the Welsh Government so that we can include any further functions that we identify. Any such order will be subject to the affirmative procedure in both Houses of Parliament, so noble Lords will be able to debate the content in more detail at that stage.

Once we have made this order it will be absolutely clear which functions have been transferred to Welsh Ministers, something that a blanket provision would not achieve. In addition, a blanket provision would not provide the benefits of concurrent exercise of some powers—for example, enabling Ministers in both Governments to give grants. I will write to the noble Baroness about the issue she raised concerning Scotland, about which I am uncertain, and copy that to other noble Lords who have participated in the debate.

The amendment also includes prerogative functions in so far as they are exercisable in devolved areas. On examining the range of those functions, we concluded that none applied to devolved matters, and therefore have not acted on that.

The noble Baroness talked about the 35 more functions identified by the Welsh Government. As I said, we are looking at additional functions as identified by the Welsh Government and discussing those with them. We will consider them in light of the order that will need to be made. As I said, this will be subject to debate.

In conclusion, regarding the Welsh language, I am very happy for the Wales Office to engage with Meri Huws and perhaps provide her with more certainty

about how this would be carried forward. I can assure the noble Lord, who knows my approach to the Welsh language, that there is no malign intent here at all. The language is central to everything that happens in Wales, and thank goodness it is no longer the party-political football it once was. The Wales Office, as you can imagine, is at the moment very much wedded to that view.

I will endeavour to update the noble Baroness on the Scotland issue, but I will also write to her and to noble Lords more generally about how the discussion with the Welsh Government is going regarding those functions. With that, I ask the noble Lord to withdraw the amendment.

Baroness Morgan of Ely: Before the noble Lord sits down, may I be clear? There is going to be this transfer after the Bill, but what if we find some more things down the back of the sofa later on? Is there a facility for us to transfer later on the things that we may not have found in this initial sweep-up? It is a big place, the Civil Service.

Lord Bourne of Aberystwyth: My Lords, I am trying to speculate what the noble Baroness might be finding behind the sofa at that stage. I hope that the process would have delivered most of the important issues, but in so far as something is discovered later on, I am sure we will be able to engage with the noble Baroness—or whoever else discovers it behind the sofa—and come to some measure of agreement. It is difficult to anticipate what that issue would be, but if it clearly should be the subject of an order, then I do not see any problem.

Lord Wigley: If in fact there is something that has not been foreseen, do we have the order-making facility that can cover matters that have not been specified in the Bill?

Lord Bourne of Aberystwyth: My Lords, I am not sure whether the noble Lord is referring to the specific order that would come forward, in which case there would be the ability—subject to affirmative procedure, presumably—to withhold consent, unless we were in listening mode, if that should happen in an extreme position. But if it happens after that procedure, as I have indicated to the noble Baroness, I would be very happy to engage and discuss how we could deal with that. I am uncertain whether there is a particular procedure, but I would anticipate that there is. There must be a way to transfer functions by order, which we have done during the course of successive Governments. So I think the procedure is there, and if I can give that undertaking, I am very happy to do so.

Amendment 106A agreed.

8 pm

Amendments 106B to 107C

Moved by Lord Bourne of Aberystwyth

106B: Schedule 2, page 93, line 27, at end insert—

[LORD BOURNE OF ABERYSTWYTH]

“() Paragraph 8(1) does not apply in relation to the funding of police and crime commissioners through council tax precepts.”

107: Schedule 2, page 93, line 30, leave out “Wales public” and insert “devolved Welsh”

107A: Schedule 2, page 94, line 13, at end insert—

“() This paragraph does not apply in relation to the funding of police and crime commissioners through council tax precepts.”

107B: Schedule 2, page 94, line 27, after “under” insert “Chapter 1 of Part 3, or section 58, of”

107C: Schedule 2, page 94, line 28, leave out from “2009” to end of line 30

Amendments 106B to 107C agreed.

Amendment 108 not moved.

Clause 20: Transfer of Ministerial functions

Amendment 109 not moved.

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

Amendments 110 to 114A

Moved by Lord Bourne of Aberystwyth

110: Schedule 4, page 100, line 36, leave out “restrictions on time spent at sea—appeals” and insert “licensing of vessels receiving trans-shipped fish”

111: Schedule 4, page 100, line 39, leave out from “15(3)” to end of line 41 and insert “(order by Ministers as to powers of British sea-fishery officers for enforcement of the Act)”

112: Schedule 4, page 101, line 6, leave out from “section” to end of line 8 and insert “5(1) and (2)(a) (regulation of conduct of fishing operations)”

113: Schedule 4, page 105, line 37, leave out from beginning to end of line 14 on page 106 and insert—

“(a) functions of a Minister of the Crown under the following provisions of the Sea Fish (Conservation) Act 1967—

- (i) section 1(3), (4) and (6) (size limits for fish carried by fishing boat);
- (ii) section 3(1), (3) and (4) (regulation of nets and other fishing gear);
- (iii) section 5 (power to restrict fishing for sea fish);
- (iv) section 15(3) (order by Ministers as to powers of British sea-fishery officers for enforcement of the Act);

(b) functions of a Minister of the Crown or the Marine Management Organisation under the following provisions of the Sea Fish (Conservation) Act 1967—

- (i) section 4 (licensing of fishing boats);
- (ii) section 4A (licensing of vessels receiving trans-shipped fish);
- (c) functions of a Minister of the Crown under the following provisions of the Sea Fisheries Act 1968—
- (i) section 5(1) and (2)(a) (regulation of conduct of fishing operations);
- (ii) section 7(1)(g) and (2) (appointment of British sea-fishery officers);

(d) functions of a Minister of the Crown under the following provisions of the Fisheries Act 1981—

- (i) section 15 (schemes of financial assistance);
- (ii) section 16 (administration schemes by Sea Fish Industry Authority);
- (e) functions of a Minister of the Crown under section 30(2) of the Fisheries Act 1981 (enforcement of Community rules).”

114: Schedule 4, page 106, line 15, leave out “that Act” and insert “the Sea Fish (Conservation) Act 1967”

114A: Schedule 4, page 106, leave out lines 39 to 42 and insert—

“4 Functions specified in the table below are exercisable jointly with the Welsh Ministers.

<i>Act or instrument</i>	<i>Functions</i>
Crime and Disorder Act 1998	Functions of the Secretary of State under section 6 in relation to strategies for combatting crime and disorder or re-offending in areas in Wales.
Marine and Coastal Access Act 2009	Functions of the Secretary of State under sections 45, 46 and 47 (preparation, review and amendment of marine policy statement) in relation to a marine policy statement prepared by the Secretary of State and the Welsh Ministers acting jointly (or by the Secretary of State, the Welsh Ministers and one or more other authorities acting jointly). Functions of the Secretary of State under Schedule 5 (preparation or amendment of marine policy statement) that are exercisable jointly with the Welsh Ministers by virtue of paragraph 2(2)(b) of that Schedule.
Marine Strategy Regulations 2010 (S.I. 2010/1627)	Functions of the Secretary of State under subsection (6) of section 70 (inquiries) that are exercisable jointly with the Welsh Ministers by virtue of subsection (7) of that section. Functions of the Secretary of State under regulation 19 (directions to, and assistance from, public authorities) that are exercisable jointly with the Welsh Ministers by virtue of paragraph (5) of that regulation. Functions of the Secretary of State under regulation 20 (guidance) that are exercisable jointly with the Welsh Ministers by virtue of paragraph (5) of that regulation.”

Amendments 110 to 114A agreed.

Schedule 6: Minor and consequential amendments

Amendments 114B to 135

Moved by Lord Bourne of Aberystwyth

114B: Schedule 6, page 114, line 26, at end insert—

“8A_ In section 158 (interpretation), in subsection (1), at the appropriate place insert—

““property” includes rights and interests of any description,””

114C: Schedule 6, page 114, line 32, at end insert—

“property	section 158(1)”
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115: Schedule 6, page 114, line 34, leave out “Wales public” and insert “devolved Welsh”

116: Schedule 6, page 114, line 35, at end insert—

“10A_ In Schedule 3 (transfer etc of functions: further provision), in paragraph 3(2), for “section 58” substitute “section 58(1)”.”

117: Schedule 6, page 126, line 5, leave out “Welsh waters” and insert “generating stations in respect of which they are the appropriate authority”

118: Schedule 6, page 126, line 12, at end insert—

“(8B) The Welsh Ministers may by regulations make provision for applications in respect of which they are the appropriate authority to be determined by a person appointed by them for that purpose.””

119: Schedule 6, page 126, line 12, at end insert—

“45A_ In section 36C of the Electricity Act 1989 (variation of consents under section 36), after subsection (5) insert—

“(5A) Regulations may provide that, where the Welsh Ministers are the appropriate authority, applications under this section are to be determined by a person appointed by the Welsh Ministers for that purpose.””

120: Schedule 6, page 127, line 25, leave out “Wales public” and insert “devolved Welsh”

121: Schedule 6, page 127, line 27, leave out “Wales public” and insert “devolved Welsh”

122: Schedule 6, page 129, line 32, leave out “Wales public” and insert “devolved Welsh”

123: Schedule 6, page 132, line 10, leave out “Wales public” and insert “devolved Welsh”

124: Schedule 6, page 132, line 15, leave out “Wales public” and insert “devolved Welsh”

125: Schedule 6, page 134, line 12, leave out “Wales public” and insert “devolved Welsh”

126: Schedule 6, page 134, line 15, leave out “Wales public” and insert “devolved Welsh”

127: Schedule 6, page 134, line 18, leave out “Wales public” and insert “devolved Welsh”

128: Schedule 6, page 135, line 4, leave out “Wales public” and insert “devolved Welsh”

129: Schedule 6, page 135, line 11, leave out “Wales public” and insert “devolved Welsh”

130: Schedule 6, page 135, line 14, leave out “Wales public” and insert “devolved Welsh”

131: Schedule 6, page 135, line 19, leave out “Wales public” and insert “devolved Welsh”

132: Schedule 6, page 135, line 29, leave out “Wales public” and insert “devolved Welsh”

133: Schedule 6, page 135, line 32, leave out “Wales public” and insert “devolved Welsh”

134: Schedule 6, page 135, line 37, leave out “Wales public” and insert “devolved Welsh”

135: Schedule 6, page 135, line 40, leave out “Wales public” and insert “devolved Welsh”

Amendments 114B to 135 agreed.

Schedule 7: Transitional provisions

Amendments 136 to 141

Moved by Lord Bourne of Aberystwyth

136: Schedule 7, page 137, line 15, after “Crown” insert “or other public authority”

137: Schedule 7, page 137, line 17, after “Crown” insert “or other public authority”

138: Schedule 7, page 137, line 22, after “Crown” insert “or other public authority”

139: Schedule 7, page 137, line 33, leave out ““Minister of the Crown” includes the Treasury” and insert ““public authority” means a body, office or holder of an office that has functions of a public nature”

140: Schedule 7, page 138, line 33, leave out sub-paragraph (1)

141: Schedule 7, page 139, line 3, leave out sub-paragraph (5)

Amendments 136 to 141 agreed.

Clause 62: Commencement

Amendments 142 to 143A not moved.

Amendment 143B

Moved by Lord Bourne of Aberystwyth

143B: Clause 62, page 50, line 22, leave out “section 17” and insert “sections 17 and (Lending for capital expenditure)”

Amendment 143B agreed.

Amendment 144 not moved.

Amendment 145

Moved by Lord Bourne of Aberystwyth

145: Clause 62, page 50, line 24, at end insert—

“() section (Water and sewerage)(2);

() sections (Water protocol) and (Reciprocal cross-border duties in relation to water).”

Amendment 145 agreed.

Amendment 146

Moved by Lord Wigley

146: Clause 62, page 50, line 32, at end insert—

“ Before making regulations under this subsection, the Secretary of State must consult the Welsh Ministers and the Presiding Officer of the National Assembly for Wales.”

Lord Wigley: My Lords, this is the last amendment on our list today, Amendment 146 in my name, which seeks to ensure that UK Ministers may use regulations to commence a number of provisions of the Bill only after consultation with Welsh Ministers and the Presiding Officer of the National Assembly for Wales. Incidentally, harking back to what we were talking about a moment ago, order-making capacity, I understand that unless

[LORD WIGLEY]

there is a specific order-making capacity in primary legislation it is not possible to bring forward orders. However, we can look at that outside the Chamber.

From the outset, I concede that this amendment would not, in isolation, achieve what I am seeking to do. It is, broadly speaking, part of a series of amendments that I have tabled at earlier stages, which aim to stop UK Ministers riding roughshod over the National Assembly for Wales by using secondary legislation to commence, amend or repeal legislation affecting our national Parliament without its consent. It is that question of establishing a system of prior consent that is central to this amendment.

The issue that triggered my concerns, and the concerns of many Peers across these Benches, was the inclusion of Henry VIII powers within this Bill. Since the Minister has felt the full force of the former Chief Justice of England and Wales, the noble and learned Lord, Lord Judge, not once but twice on this issue, I know that he is well aware of the arguments. I will therefore keep my comments on this matter to a minimum. However, I want to use the amendment to call on the Minister to hold true to his word, and the word of his colleagues, to create a permanent devolution settlement, which means that the democratic Parliament of Wales in Cardiff Bay has the absolute authority over the laws that it makes.

I shall not press the amendment to a vote, but I remind the Minister of the comments made regarding Henry VIII powers in our previous debate. In particular, I remind him of the response of the noble and learned Lord, Lord Judge, to the Minister's two assurances—that any regulations would be discussed by officials well in advance of coming into force and that the Secretary of State would write to the First Minister and Presiding Officer notifying them of the intention to bring forward regulations. Undoubtedly, these are welcome concessions, although they will not appear in the Bill. However, this Bill, in the Government's own words, is meant to be about creating a clear, working, legal settlement between two Parliaments. As the noble and learned Lord, Lord Judge, noted during our last debate, the Minister's so-called solutions to our concerns regarding Henry VIII powers are,

"legally ... completely irrelevant".—[*Official Report*, 14/12/16; col. 1350.]

I shall shortly ask leave to withdraw this amendment but, before doing so, I ask the Minister to consider once again removing or amending all clauses in this Bill which allow Westminster to take steps that can be interpreted as riding roughshod over the democratically elected Parliament of Wales—in other words, the need for consent, discussion and agreement prior to using powers that can have quite a draconian effect. I beg to move.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord, Lord Wigley, for moving the last amendment for business today. First, on the point that he made in relation to orders, I believe that there is an order-making power in Section 58 of the Government of Wales Act 2006 that can be used—but I shall cover that in writing to noble Lords if I might, because there are a variety of issues on which I want to write to noble Lords.

I understand the point that the noble Lord made on the need for partnership working between the two Governments, which, if I may say so, has been exemplified in relation to the fiscal framework, where there has been a very successful partnership which may have confounded expectations. But yes, of course, we need to extend that across the piece so that it does not apply just in relation to that issue, important though it is. It needs to be done on a broader front. The other point is, when we have had parties of different political complexions in government here and in Wales, it has been illustrative of the fact that we have been able to move things forward in a demonstrable way—not always agreeing on everything, clearly, but agreeing on an awful lot, and the way forward in relation to the legislation.

I take to heart very much what the noble Lord said about Henry VIII powers, which certainly need to be limited in scope. I think that the noble and learned Lord, Lord Judge, said that it was politically astute but legally not worth the paper that it was going to be written on, to be absolutely fair. That was his judgment—and of course he has great authority and knowledge on these matters, as I regularly acknowledge.

The amendment seeks to require the Secretary of State to consult the Welsh Ministers and the Assembly's Presiding Officer before making regulations to commence provisions under Clause 62(4). Clause 62 provides for those provisions which need to be brought into force quickly after the Act is passed to come into force on the day the Act is passed, through subsection (1), or two months after it is passed, through subsection (2). The Assembly will, for example, early on, if it wants to do so, be able to change its name at any time after two months from Royal Assent.

Of course, Clause 62(3) already imposes a duty, which the noble Lord did not mention, on the Secretary of State to consult the Welsh Ministers and the Assembly's Presiding Officer before commencing the new reserved powers model—that is already in the clause—on the "principal appointed day". That is already there and of course there are good reasons for that. The new devolution model will fundamentally alter the landscape within which the Welsh Government make policy and the Assembly makes legislation. It will require policymakers and legislators to get to grips with a new settlement, framed in a very different way from the current one. It is only right, therefore, that the Bill places a statutory duty on the Secretary of State to consult both the First Minister and the Presiding Officer before bringing the new model into force.

For other provisions in the Bill, we will of course work closely with the Welsh Government, as we are doing, and the Assembly Commission to ensure that the transition is as smooth as possible as the Assembly takes on the important new powers that the Bill will deliver. Of course, the majority of these provisions devolve further powers to the Assembly and Welsh Ministers and are intrinsically linked to the new reserved powers model. I anticipate—although clearly this will be subject to discussion with the Welsh Government—that most if not all of them, other than those limited ones I

have indicated, will come into force on the same day as the reserved powers model. But that is a matter for discussion.

I believe that a separate consultation on the commencement of these provisions would be unnecessary as it is something that is either provided for, as it is in relation to the important issue of reserved powers, or will be included in that discussion in practice between the two separate Governments as things progress. On that basis I ask the noble Lord, Lord Wigley, to withdraw his amendment.

Lord Wigley: My Lords, I am grateful to the Minister for that considered response. I accept entirely that there are broad-brush consultation provisions in the Bill for when the first steps are taken to bring in the new order that will follow the Bill coming into force. There will, however, be cases that arise from time to

time when new orders are forthcoming and when there will be a necessity for there to be at least a notification—I hope there will be a consultation—before that happens. I hope, therefore, that in the initial consultation to which the Minister referred a moment ago, there might be established a procedure—a protocol, if you like—for the way in which such orders will be handled in future, and, built into that procedure, an agreement that there will be advance warning and consultation and that views can be taken on board. That would be a very helpful move forward. Having said that—I note that the Minister is thinking carefully about it, judging by the look on his face, and I will be very grateful if he does—on that basis I beg leave to withdraw the amendment.

Amendment 146 withdrawn.

House adjourned at 8.11 pm.

Grand Committee

Tuesday 10 January 2017

High Speed Rail (London-West Midlands) Bill

Committee (1st Day)

3.30 pm

Relevant document: 7th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Lord Geddes)

(Con): My Lords, it is now 3.30 pm and, as is usual at this time, I must advise the Grand Committee that if there is a Division in the Chamber while we are sitting the Committee will adjourn as soon as the Division Bells are rung—or as soon as your Chairman sees that they are being rung—and resume after 10 minutes.

Clause 1: Power to construct and maintain works for Phase One of High Speed 2

Amendment 1

Moved by **Baroness Randerson**

1: Clause 1, page 1, line 10, after “with” insert—

“(a) a spur from Old Oak Common in the London Borough of Hammersmith and Fulham to a junction with the West London Line south of North Pole Road on the boundary between the London Borough of Hammersmith and Fulham and the Royal Borough of Kensington and Chelsea; and

(b) ”

Baroness Randerson (LD): My Lords, I shall speak to the amendments in my name in this group. I start by assuring the Minister that we are not seeking to rewrite the Bill. These are very much probing amendments, which I want to use to reveal some of the reasoning behind the government decisions on links between HS1 and HS2 and, most importantly, to gain some assurances on future plans.

Amendment 1 reinserts into Clause 1 the concept of the link between HS1 and HS2, which was dropped during the Commons debates. We acknowledge that there are practical difficulties associated with providing that link which would make it difficult and therefore costly. There are, however, huge practical difficulties associated with the proposed—and very costly—Euston development but that does not seem to have deterred the Government or HS2 Ltd. Ideally, when HS1 was built a box should have been built at Stratford. The idea was there originally but it was abandoned to save what was actually a small amount of money and it would be very difficult to do that now with an operating system.

I acknowledge, too, that surveys some years ago showed that the number of passengers wanting to travel directly from the north of England to the continent was not really large enough to justify major investment. Things have changed since then, however. Rail passenger numbers have soared and the Government have committed

themselves to the development of the northern economy. Nevertheless, I recognise that Brexit, particularly a hard Brexit, will probably impact on passenger numbers to the continent, which will be lower than they would be in other circumstances. Surely, however, whatever those circumstances, the numbers will be considerable, so their needs should be considered.

The West London Line Group has proposed a short double-track link between Old Oak Common and the West London line north of Shepherd’s Bush. This would provide more choice all round of routes across London and further afield. There is an important point of principle: this would reduce the number of changes that people have to make. More than one change and you probably go by car instead, rather than choose to take the train. The proposed link would not only connect areas north of London to the continent but improve links with southern England generally. We are interested, therefore, to hear the Minister’s explanation of exactly why the idea of a direct HS2-HS1 link was dropped. As a result of that decision, one assumes passengers will now have to walk from Euston to St Pancras. I say that one assumes they will walk rather than be carried in any sort of transportation, but maybe the Minister can provide that information.

Euston Road is already very congested and if you have walked along it recently you will know that it is quite difficult to get down. I believe the committee’s report said that 61,000 passengers are now arriving at Euston per day. We are talking about only a proportion of those passengers but that is still a significant number and those travelling from HS2 to HS1 will, almost by definition, have luggage. Factoring in the points at which you alight from the HS2 at Euston and get on to the HS1 at St Pancras, the distance is more than a mile. The distance between the front entrances is 0.6 miles. Although my noble friend Lord Bradshaw will speak more about this issue, our point is that without a clear, comfortable, speedy and weatherproof interchange, the use of HS2 and HS1 as a route from north to south, or from the north to the continent, will be seriously undermined. So, I ask the Minister to provide us with details of the plans.

My noble friend will also say more on the use of Old Oak Common as an interchange into London but I want to underline its strategic importance, and thus the importance of developing it in a robust and flexible manner that will ensure it withstands the test of time. Many passengers will decide to leave their HS2 train at Old Oak Common rather than travelling on into Euston, and they will be able to take Crossrail from there, for instance. Indeed, it will be situated in a spider’s web of railway lines and will be very intensively used, so it needs to be up to the job and its regenerative potential for the area in which it is situated must be maximised. I ask the Minister: why were the original plans to link HS1 to HS2 dropped and, importantly, could they be taken up again if demand was at such a level that that would be justified; what firm plans exist for the trek along Euston Road; and can he assure us that Old Oak Common will be built with maximum capability and flexibility for expansion? I beg to move.

Lord Bradshaw (LD): If I may just follow up a few of the points made by my noble friend, we have discussed before the question of a link between Euston, St Pancras and King's Cross. When I was deputy general manager at Euston back in the far-off days, it was being discussed—it is one of these projects that seems always to be under discussion but is never carried out. I am looking for something like the link you get between terminals in airports; that is, a wide, well-lit way of getting between the two stations with a travelator or similar device for your luggage. I am not looking for some form of futuristic railway, just a convenient, out-of-the-weather way for moving you and your luggage between the two places.

There will be a lot of time to think about this, because there will be a long period when Old Oak Common will be the London terminal for HS2. There can be dispute about how Old Oak Common could be used, but there will be six platforms there and the trains from Birmingham, which will take only 38 minutes, can almost be described as commuter trains. They will not require huge amounts of servicing at Old Oak Common, it will be possible to turn trains back there very quickly, and Euston may well not be needed until after phase 2A of HS2, so there is plenty of time to think about it and get it in place.

My noble friend commented on connections to HS1. I know that people in the south of England feel that it is very difficult for them to use it: they have to make a big journey. That will be alleviated if the Government could—again, they could work on this contemporaneously with the work on HS2—strengthen the link along the south coast between Brighton and Ashford. There are bits of that railway that need sorting out. I hope we can get some sort of assurance about what the Government intend to do.

Those are questions, not things that we will have disputes on, but we want to know what the Government envisage that they will do, in the long term, about the problems here.

Lord Berkeley (Lab): My Lords, my Amendment 9 is grouped, although I am not sure it is closely connected to what the two previous speakers have been discussing. It would delete one of the amendments that the Select Committee proposed in its report. Let me make it quite clear: I do not criticise the Select Committee on this issue; I am sure its amendments are just what is needed. I ask the Minister, however: is it not a bit unusual for a Select Committee's amendments to be incorporated in a Bill without debate? I had assumed that they might have been tabled for debate today, and we could have debated and no doubt approved them, but it was surprising that a new issue of the Bill was published in the past week as a result of the amendments being included. This may not be a question for the Minister—it may be a question for the Chairman of Committees or someone else—but it is something that we should debate. Perhaps it will be different next time, if there are to be more committees such as this.

While I am on my feet, the Minister kindly briefed us on progress just before we broke up for Christmas. One question that many asked him was: were the Government going to respond to the excellent report from the Select Committee? It would have been nice to

have their response before Committee today. We have not had it, but can he assure me that we will receive it in good time for Report?

Lord Snape (Lab): I support the amendments tabled by the noble Baroness, Lady Randerson, and her colleagues. There are few benefits in old age but I am told that one is that one's long-term memory improves, sometimes at the cost of one's short-term memory. I suspect that I am the only Member present here today who served on the original Channel Tunnel Bill, and I well remember the promises made at the time about the connection between HS1 and HS2. Even back in those days, there was lots of criticism about the apparent devotion to expenditure on railway and transport in the south of England at the expense of the rest of the country. Assurances were given at that time that there would be genuine benefits from the Channel Tunnel and the associated high-speed lines that would spin off to both the Midlands and the north.

3.45 pm

Indeed, we went further. Trains were ordered to provide a service between provincial cities in England and into Scotland, and depots were built. If noble Lords take a Pendolino train to Manchester from Euston, they will see on the downside of the track at Longsight, just outside Manchester, an enormous depot marked "Eurostar Depot North-West" or something equivalent to that—certainly, "Eurostar" still appears on the depot signage. There was a genuine intention on the part of government at that time to deliver on the promises made that the Channel Tunnel Bill and associated high-speed rail links would benefit other parts of the country. Perhaps the Minister could tell us when decisions were made to rescind those promises and whether it is still possible at this late stage to reinstate that link so that it would be possible, for example, for those of us who live in Birmingham to get to Paris by train if we so desired.

Noble Lords on both sides of the Room will need no reminding of how unpleasant air journeys are between our respective countries. It is difficult to envisage the business of getting undressed for security purposes as one passes through airports lessening in future years, so there would surely be an attraction for passengers from cities such as Manchester, Birmingham and Leeds to travel directly to the continent if it was possible. As the noble Baroness, Lady Randerson, reminded us, the only way of doing that under the existing proposals would be to make that journey into Euston—whether the rebuilt Euston, which we will hear about in due course, or the existing one—and then the journey to St Pancras. I do not think noble Lords on either side of the Committee would consider that journey of a few hundred yards attractive if one is to spend any time away from the United Kingdom. Neither the Victoria line nor Northern line are immediately accessible from the mainline platforms if one is carrying luggage when one arrives at Euston, and the journey between the King's Cross St Pancras combined Underground station and the international terminal is not one that one would embark on with lots of luggage unless one was particularly keen on that mode of travel.

So there is surely an argument still, as there was 30 years ago, for through trains between this country and various capital cities in Europe. I again put it to the Minister that those promises were made, much expenditure was embarked on, trains were ordered and depots built, yet we have this farcical situation where the only way one can get, for example, from Birmingham to Paris by train is by negotiating the distance between Euston and St Pancras International by London Underground. No other country in the world would say that that was a sensible way to travel. Indeed, I believe we are becoming the laughing stock of the railway world—Europe-wise at least; there is a slight contradiction between the world and Europe, but the Committee will know what I am aiming at when I say that if this is the best we can do as a nation, most other countries would say that it is not good enough. The Minister should look again at a proper connection between the two high-speed lines and justify the amount of taxpayers' money from the Midlands and the north being spent on the completely new stretches of railway line. For reasons that the Minister can no doubt outline to us, that would be money wasted without the connection as outlined earlier by the noble Baroness. I give way to my noble friend.

Lord Berkeley: My noble friend did not mention the chord that received permission under the HS1 Bill, built between the London end of High Speed 1 and the North London line. It is there, with tracks and electrification. It has no signals, so it would need a couple of those. We could run trains on the west coast main line from HS1 to Birmingham tomorrow. I do not know how much it cost, but it was a lot as it is quite a complicated piece of construction. It was built as a result of lobbying from the north-west in particular, led by a man called Ken Medlock, who is still alive aged 102 and still very interested. The problem is someone needs to run trains on it.

Lord Snape: I bow to my noble friend's expertise on the geography of this stretch of railway line. I was aware that it was a single track; there was much mocking at the time because it was and it led to the North London line, with the consequential speed restrictions and additional traffic. There was concern that this was not an adequate link, but it is a link nevertheless. I am not blaming the Minister for having the line built—I might blame him for various other decisions he has taken—but perhaps he could tell us whether it is feasible to add signals to this line and give us some connection. Surely the Midlands, the north-west and north-east of England, and perhaps Scotland, deserve better for their taxes than to be told when they arrive in Euston, "Put your bags under your arm and catch the Northern line if you wish to proceed further towards Europe by train". Surely the Minister and the country can do better than that.

Lord Adonis (Non-Afl): My Lords, I declare an interest as the Secretary of State who started HS2, and as a member of HS2 Ltd. I apologise to the noble Baroness, Lady Randerson, for missing the beginning of her remarks. I know the whole Committee will want to pay tribute to the Select Committee, which put an astonishing amount of work into the Bill. I cannot

think of a more onerous duty than Members of your Lordships' House take on than being members of hybrid Bill Committees. At the very least they require some kind of parliamentary medal for endurance, which I hope will give them some special form of extended life that ensures they will definitely see the opening of this line all the way through to Manchester and Leeds in 2033. That is the least they deserve.

There are two different issues here and it is important not to mix them up. The first is through trains from Paris to the great cities of the Midlands and the north, which my noble friends Lord Snape and Lord Berkeley rightly said was envisaged in the original scheme for the Channel Tunnel Rail Link. The trains were built, but the services were never run. The second is the lamentable connections between Euston and St Pancras. The two issues are separate for this reason: with the best will in the world, the economic case for running through services from Paris and Brussels to Birmingham, Manchester and Leeds is very weak indeed.

If I may detain the Committee with a story, when I was Secretary of State I tried to persuade Eurostar to run services to Birmingham once the upgrade of the west coast main line had been completed, which would have made it possible to run a service once that and the High Speed 1 line to St Pancras had been completed. It ought to have been possible to run a service from Paris to Birmingham in three and a half hours, which I thought would have been competitive with the plane and played a very big part in changing the whole mentality of people in respect of high-speed rail and connections with the continent. I simply could not persuade Eurostar to run even one service a day without public subsidy because the traffic projection figures were so low.

If noble Lords stop and think about what has happened on that line, it is not so difficult to fathom. Although HS1 has been a great success in engineering terms and has played a useful part in linking two of Europe's great cities, it is way off all the projections of traffic between London and the continent. I do not think it is yet even at half the level of the projections of what the traffic should have been. There is still only one service an hour between London and Paris for most of the day. Often those services have quite light loads. The London to Brussels service, which is also about hourly, is often barely half-full. Eurostar told me that there was not enough traffic to fill even one train a day between London and Birmingham and it would do it only if I was prepared to give it a very large subsidy. I had so many other parts of the railway I was seeking to subsidise, including many of the parts that my noble friend Lord Snape has mentioned because the lines in the Midlands and the north require great subsidies to be maintained, that I simply could not justify a public subsidy to do it.

It is important to be frank about this because everybody pays lip service to the benefits of linking HS1 and HS2. On the face of it, it seems absurd that there is not a connection between the two but because the service would be so intermittent—with the best will in the world, only a few trains a day would run on that service—I very much doubt it would be taken up in any big way. While we have cheap airlines that offer

[LORD ADONIS]

very frequent services to Manchester and Birmingham—both are highly successful airports, which are expanding and have significant capacity that they can make available to flights to the continent—it is unlikely that such a line would be viable.

As a footnote, it is always the unexpected in life which changes the course of events, including in transportation. The big unexpected event of HS1 was the massive development of domestic services on the high-speed line—all those Javelin trains—which has made the whole thing much more viable than it would otherwise have been and was not expected on anything like that scale. The other great unexpected gain of HS1, which nobody projected at the time—and who knows what the unexpected gains of HS2 will be?—was the Olympic Games. When the decision was taken to give the Olympics to Stratford, a critical part of the decision was the connectivity that the Javelins provided going out of St Pancras. I am not criticising the decisions to build HS1 or the Channel Tunnel, which were visionary and historic decisions, but unfortunately a link between HS1 and HS2 would be hugely expensive—running into many billions because it would have to be tunnelled. The economic benefit would be limited without massive subsidies. Given the huge costs already in the HS2 scheme, it would be hard to justify those expenses.

My noble friend Lord Snape referred to the plan for a kind of patch-and-mend link between HS1 and HS2 using the North London line. There was a plan for that in the original HS1 scheme, linking to the conventional lines. There was also initially from HS2 Ltd a plan for it in respect of the HS2 line. It has to be said that nobody much liked this. It would have been a very slow connection, weaving its way up to the North London line, across and down, which would have made the line even less competitive with the airlines. When the trains were running, it would have used a lot of capacity on the North London line, which, as noble Lords will know, is now an integral part of the Overground service and a major freight artery. That would have been highly inconvenient. Even that required the building of a substantial single-bore tunnel at a cost of more than £1 billion. The view was taken that rather than expend a large sum of money on a very unsatisfactory patch-and-mend link between the two, which would barely be used in any event, it would be better to wait until some point in the future when our relations with Europe reach a new and glorious period, in which traffic between the major European cities flourishes on a scale never seen before and might then make it economically viable to construct a link between HS1 and HS2.

However, only a tiny fraction of those people who wanted to connect between Euston and St Pancras would have been using direct services to the continent in the first place so the issue of connectivity between Euston and St Pancras, which I think everyone will accept is still highly unsatisfactory, is there in any event. There is a long-term solution: Crossrail 2, which will have a single station serving Euston and King's Cross St Pancras, and will connect the two underground. That will make it much easier to get to them; it will give big dispersal capacity at Euston when phase 2 of

Crossrail is completed in 2033, which is hugely important; and, as I say, it will connect the stations because the entrance at one end will be at Euston and the entrance at the other will be at King's Cross St Pancras.

Although this degree of work has not yet been done, my assumption with the planning of Crossrail 2 is always that it will be possible to use it also as a pedestrian tunnel with a travelator for getting from Euston to St Pancras. The transport planners are not wildly keen on that idea because it will add to the cost of Crossrail 2 and they want a more limited scheme that has access only for transport users. But it looks patently obvious that if you have a Crossrail 2 station serving the two stations, and you have this underground link, putting in a simple travelator and making it possible for people to connect between the two stations underground must be sensible.

4 pm

However, that is still a long way away, and does not deal with the first phase of HS2—the period between 2026, when the service to Birmingham is opened, and the construction of Crossrail 2. There will be very significant further traffic flows coming into Euston, including passengers who will want to transfer to St Pancras—for example, to the Eurostar and Javelin services—but there is no adequate link. A lot of discussions have taken place about—and plans been put forward for—a travelator between the two of the kind that I think the noble Lord, Lord Bradshaw, had in mind, which would offer an airport-style connection. However, that is very difficult to do because of space constraints on the Euston Road itself. It would have to be done on streets further in, and it is not easy to do there either, because of the Crick centre and the other uses that that land has been put to.

It has to be said that, at the moment, this issue still does not have a satisfactory resolution. It would be well for the Committee and the wider House to note that by the time we get to 2026—of course something less than a travelator does not require years of planning—there will at least need to be an improved walking link between the two. Passengers cannot be expected to put up with the current state of connectivity between Euston and King's Cross St Pancras. It should be incumbent on the Government, the mayor, TfL and HS2 to see that there are better links for that period between the opening of HS2 at Euston and the completion of Crossrail 2. As I say, that is the only long-term solution to this issue.

Lord Rosser (Lab): I will just make one or two relatively brief observations. I add my thanks to those already expressed by the noble Lord, Lord Adonis, to the Select Committee for the work that it did. I know it took up a considerable amount of its members' time, and I was extremely grateful that I was completely disqualified from sitting on it, for more than one reason, and so was never faced with any request that I should do so.

Clearly, the discussion that we have had, and the amendments that we are considering, have homed in particularly on whether, at some stage, there will be a link between HS1 and HS2. I hope when the Minister comes to respond that he will address the specific

terms of the amendment that has been moved by the noble Baroness, Lady Randerson. It has a specific proposition in relation to the creation of a link between HS1 and HS2 which is different from it simply going as far as Euston and St Pancras, in that it provides opportunities for interchanges in south London. I hope the Minister will address that point when he comes to respond.

Most speakers, including the noble Lord, Lord Adonis, in a sense raised this point. The noble Lord, Lord Adonis, made the case that there would not be sufficient demand to run through trains—or that was the basis of one of the key points he made—but under the proposals as they stand we face having not only no through services but also no easy interchange between HS1 and HS2, precisely because one is coming in at one station and departing from another, further down the Euston Road. It would be helpful to hear from the Minister in his response what the Government's intentions are on improving the interchange link between HS2 and HS1, if they are not looking at going down the road of running through services.

In London transport in recent decades—it is has not happened overnight—we have seen an increase in the number of lines going through and across London, which we used not to have. We have seen Thameslink and the West London line; Crossrail is coming in and Crossrail 2 is projected; the DLR manages to cross the river and go from one side of London to another; there are improvements on the London Overground and the East London line. Improving transport links between one side of London and the other has been a feature of recent decades. It does not appear that this will be repeated with high-speed services.

I have one or two questions about Old Oak Common, which will clearly play a pivotal role in HS2. There are some proposed links to what one might describe as the classic network but, as has been said, there are quite a large number of suburban lines around the Old Oak Common area. Presumably, one of the advantages of HS2 in improving transport links would be good connectivity between those suburban services and HS2 at Old Oak Common. Are the Government looking at improving connections between HS2 and other suburban lines in the vicinity to improve access to HS2 for people in a much wider area of London as a result? As has rightly been said, one thing that attracts people to a service is either not having to change at all—you can run through from A to B—or, if you do have to change, it is straightforward and easy. Will the Minister comment on that aspect as well?

Finally, the noble Lord, Lord Adonis, referred to the Javelin trains—I hope I am not misinterpreting what he said—and the commuter network that has built itself up around HS1. I have always thought that one of the reasons for so much opposition to HS2 is that there are no proposals whatever for any stations in a large number of the areas it runs through. People therefore see the line as a fairly negative factor. It runs through their suburban area or part of the countryside but they do not get any access to it. I appreciate that the Government are not contemplating it at the moment but, in the longer term, do they intend even to consider whether in time there may be a case for additional

stations on the HS2 route? I do not profess to be an expert on this, so I may be wrong, but my understanding is that since the high-speed line opened in Taiwan, more stations have opened on the line. I am not starting from the stance that the Minister should be standing up now and announcing new stations all over the place, but is this something the Government will be looking at in the longer term, in the light of what is happening with Javelin trains and what is happening in another part of the world which has seen a relatively recent development of high-speed services?

I appreciate that the Minister has already been asked this question by my noble friend Lord Berkeley, but I too would like to know precisely when we will get the Government's response to the report. There are recommendations and urgings—if I may use that expression—in it and it makes debate and discussion a lot easier if we know which of those the Government are picking up and which they are not. The sooner we know, the better it is.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, I thank all noble Lords who have taken part in this debate. Before I go any further, on behalf of the Government I join the noble Lords, Lord Adonis and Lord Rosser, in thanking the Select Committee. Members of the Select Committee did some incredible work and showed great dedication and devotion to the cause in terms of the petitions that were heard. I want to put on record my thanks and those of the Secretary of State and the Government as a whole for their work in that respect. I tuned into some of the sessions from afar, from my office at the DfT, and some very robust discussions took place in the committee.

The amendment in the name of the noble Baroness, Lady Randerson, goes to the very heart of the Bill. I thank the noble Baroness and acknowledge that these are probing amendments, seeking further clarification. As she rightly articulated, at Second Reading in the other place the principle of the Bill was agreed, and that did not include a spur such as the one being proposed. I empathise with her views and the views of those who support the amendment. I know that this is not the intention behind the amendment but if it was carried, it would have the result of re-hybridising the Bill. I am sure that is not the intention of the noble Baroness or those who spoke in support of the amendment.

Lord Berkeley: The question of hybridisation and additional provisions came up many times in the committee. The promoter wrote to me several times—this is one of the things I will talk about later—saying, “You cannot have an additional provision because it would have to go back to the Commons”. We knew all that but what nobody said was that there is a precedent for adding small works using the Transport and Works Act approval process. The argument that you cannot do something because it would turn it into a hybrid and send it back with additional provisions should not be used. If Ministers wanted to make a change, as they did with the HS1 Bill, when they added Stratford station under the Transport and Works Act, that would be a perfectly acceptable way of doing it. I hope the Minister will agree.

Lord Ahmad of Wimbledon: I was alluding to the intent behind the noble Baroness's amendment. I agree with the noble Lord inasmuch as the detail is something that we have debated before. I am sure that we will return to this this afternoon and, if we continue, on Thursday.

Turning to the nub of the proposals, the noble Lord, Lord Adonis, separated the issues very well. I would separate them further. There is the issue of having a rail link between HS1 and HS2, and then the link between Euston and St Pancras. The noble Lord, Lord Bradshaw, and the noble Baroness, Lady Randerson, articulated some ideas. The noble Baroness is correct that there were considerable practical details and environmental impacts in linking HS1 and HS2. However, notwithstanding the recent growth, the benefits of such a link, compared with the costs and impacts, were not considered to make the proposal viable. I will come back to that point in a moment.

There are some international comparisons. In France, for example, the TGV network functions effectively without direct links between the high-speed rail lines in Paris. I was a bit perplexed when the noble Lord, Lord Rosser, started talking about Taiwan; for a moment I thought we were going to get a very imaginative proposal for linking it to Euston—thankfully it did not come to that, but who knows what the future holds? Our perspective on the building of HS2 is certainly that all solutions for linking it to HS1 were considered. Indeed, an international connectivity study was also conducted on improving the potential rail links. One of the issues that arose was around cost. Some of the proposals ranged from about £610 million to £6 billion and it was therefore felt that they did not provide value for money.

4.15 pm

The issue of the link to the North London line, which was also in the contributions of the noble Lords, Lord Berkeley and Lord Snape, and that of the noble Lord, Lord Adonis, who commented specifically on this, was again looked at and I have alluded to some of the costs. Construction costs would have been around £610 million and our analyses showed that this would not have offered good value for money. We also looked at providing passive provision for a link but this was also associated with significant challenges. Noble Lords may well be aware that TfL have also undertaken a study of a range of options for an enhanced walking route between Euston and St Pancras, which are currently being actively considered by the London Borough of Camden. The Government have, I believe, already offered the borough £3 million for enhancing that link.

The noble Lord, Lord Berkeley, also asked specifically about the Select Committee's proposals to amend the Bill. My understanding is that it is entirely normal procedure for a Select Committee to amend a hybrid Bill; indeed, it is a key part of its function and when setting it up we granted it that particular power. The noble Lord also asked, as did the noble Lord, Lord Rosser, about the Government's plan to publish their response to the Select Committee's recommendations. Noble Lords will recall that just prior to the Christmas Recess I convened a pre-briefing on HS2 at which I said that while we would not be able to respond before

Committee, we would endeavour to do so in advance of Report—indeed, I very much hope we will do so next week. While it may not be within the formal procedures of the Bill, I would also like to re-emphasise my offer, if it would be helpful, to hold a briefing session on the Government's response to the Select Committee's recommendations in advance of Report. If schedules and diaries allow for it, I am keen to facilitate such a meeting.

Coming back to the London Borough of Camden, let me assure noble Lords, and the noble Baroness, Lady Randerson, in particular, that we are working very closely with it on provisions for linking these two key stations while not ignoring the practical difficulties that presents. As I said, the Government have put money behind exploring these proposals further.

The noble Baroness also suggested a junction between the West London line and Old Oak Common. As she may well be aware, the West London Line Group appeared in front of the Select Committees of both Houses to talk through the benefits of its proposals. Neither committee saw fit to grant the group locus to have its petition heard, but at the locus standi hearings it was able to set out the merits of the proposals. Additionally, DfT officials have met with the group to discuss its proposals further, and those discussions will continue.

Several noble Lords, including the noble Lord, Lord Snape, and the noble Lord, Lord Adonis, who shared his experiences of HS1, asked about the future. I fully accept that HS2 will create a host of opportunities for additional connections to other parts of the rail network, and I am sure that over time many of those will be capitalised on.

As we have heard from the noble Lord, Lord Adonis, opportunities arose after the building of HS1 that were perhaps not envisaged at the time of its construction. HS2 opens up new opportunities, but we must be focused and not look to this Bill to be a panacea to all such proposals, whatever their relative merits may be. By opening up such doors, I fear we would delay the construction of this vital project.

The noble Lord, Lord Rosser, asked about future provision, particularly TfL proposals. I have already alluded to the proposals from TfL for additional stations on the West London line, which would improve interchange possibilities and I hope that those proposals are brought forward in due course. The noble Lord asked specifically about additional stations on the route of HS2. We need to proceed with the current proposals but, as I have said, what the future holds in terms of opportunities opened up after the HS2 line is constructed perhaps cannot be forecast at this time.

I again put on record my appreciation that the noble Baroness's amendments were intended to be probing. While we evaluated various proposals, we felt them to be too costly and not to offer value for money. However, we are looking at how we can effectively link Euston and St Pancras to assist pedestrians. Several noble Lords have spoken of the importance of connections which ensure that every passenger can go from point A to point B in the most efficient manner. As a father of three children who are 10 and under, I know all too well the challenges of interchanges, whether here in

the UK or elsewhere in the world. However, having outlined some of the challenges, I hope the noble Baroness accepts the assurance I have given that we are working on the ground with Camden to come forward with solutions and that she is therefore minded to withdraw her amendment.

Lord Snape: Before the Minister sits down, may I press him for on connectivity between HS1 and HS2? I presume he agrees with my noble friend Lord Adonis that there are problems with envisaging the number of passengers—let us say passengers between Birmingham and Paris—who would use such a link, but is there not something uniquely English about us having an existing link between the two lines that is not used? My noble friend's argument was that there is no market for passengers between Manchester or Birmingham and Paris. How do we know that if there is not a direct link? The Minister has made it plain that he has three children. The last thing he wants to do is change between different modes of transport. I have every sympathy with him; I have only two and they are adults, but the last thing I would want to do is take them on such a trip. We have an existing link that is not signalled and not used, yet my noble friend, to whose work on this scheme I pay tribute, says that there is not a market for those passengers. If we do not run the services, how will we ever know? Only in England could we have a link, unsignalled, between two high-speed lines—one of them a prospective high-speed line—and say that we are not going to use it. On the economic arguments in respect of passengers taking a through journey, if the Minister moved from the wilds of Wimbledon to Birmingham, would he not find it more attractive to take his three children to Paris on a through train rather than using Euston and St Pancras, no matter how the two were connected?

When were the economic arguments made that there is not a market for the sort of travel that I am envisaging? They obviously did not occur until we had ordered the trains and built the depots. There must have been some feeling that there was a market when trains were built. If I recollect rightly, the Nightstar trains were virtually given away to the Canadian railways. I know that there is a big difference between Canada and our country, but they managed to find a practical use for them—so they should; they got them at cut price; the British taxpayer paid for them all. When did those economic realities first impinge on the decision not to have a link between the two? Will the Minister at least consider looking again at signalling that single line just to test the water and see whether we can have through trains connecting those taxpayers in Birmingham and Manchester, who are contributing to the cost of this whole thing, with Paris and Brussels—to name but two destinations?

Lord Ahmad of Wimbledon: I appreciate the sentiments behind what the noble Lord says, and as I have already articulated, the Government did look at connectivity. The noble Lord, Lord Adonis, made a very valid point that before you build something, you have to look at the business case and the viability of it. I do not know what the future demand may be for links from other parts of the UK to the continent, and that may well be looked at on a future date. As I have already alluded to,

building HS2 opens up doors of opportunity, in terms of the infrastructure connectivity and of course the speed of the link that it provides. I am sure that at some future point those will be looked at again. However, various reports have been conducted. I believe the Higgins report in 2014 advocated abandoning the link between HS1 and HS2, specifically on the issue of costs. That really underlines the Government's thinking.

Finally, I thank the noble Lord for suggesting that I go from the wilds of Wimbledon up to the Midlands and that perhaps my children would want to go to the continent from Birmingham rather than from London. If I relied on the intention of my two younger boys, we would be chugging along on the Thomas the Tank Engine, which would not provide the kind of high-speed rail link the country desires, but I note what the noble Lord said. As I said, the Government have explored this during the various processes behind the planning of HS2 links, and various reports have been conducted. I have already indicated that the different links that were looked at were deemed not to provide sufficient benefits and not to be viable in terms of cost. I hope that provides, if not total reassurance, at least some answer to the noble Lord's concern. With that, I ask the noble Baroness to withdraw her amendment.

Lord Adonis: I just intervene to correct the record. I did not say there was no market—there clearly is a market, as Birmingham, Manchester, Paris and the other great cities of northern Europe are substantial cities. The problem is that the market at the moment is almost entirely taken up by the cheap airlines, and there is simply no way, unless there is a significant change in the economics of the transport sector—which may happen at some point in future—that you could justify the investment, based on the return from a very limited rail service. A wildly optimistic figure of £600 million has been mentioned, but once you start to tunnel around Euston and St Pancras and build connections with the North London line, you are really looking at many billions. I cannot emphasise enough that the single biggest threat to this project is cost overruns in building the core of it, between cities where there is massive traffic—namely, Birmingham, Manchester, Leeds and London. It would not be a sensible use of public resources at the moment to add in—on a wing and a prayer, because for sentimental reasons we think it would be nice to have one or two trains a day that start off from Manchester and have “Paris” on the front—the commitment to many billions further of public spending.

My noble friend may be able to make a case for it if something dramatic happens to the cheap airlines. I know that through his other connections he is very close friends with many of the operators of those airlines. If they cease to operate their services between Birmingham and Paris, or between Paris and Manchester, where they are offering seats for £10 or £20—sums which we are not remotely going to be able to offer by high-speed rail—then of course the whole thing may change, and at some stage we may be able to build these services. Meanwhile, this is why connectivity is so important. Provided that you have a good connection between Euston and St Pancras, you will get some passengers who do not want to fly who will connect between the two. What the Minister said about investment

[LORD ADONIS]

in resources to get a better walking connection was very welcome. As I say, at some stage there will need to be a fixed connection, and when that comes, it will also facilitate traffic between HS1 and HS2.

4.30 pm

Baroness Randerson: My Lords, this has been a very interesting debate. As well as the fount of most of our information, the committee's excellent report, we have had the benefit of background information from the noble Lord, Lord Adonis, as well as the Minister's response.

I will briefly refer to a couple of issues. The noble Lord, Lord Snape, referred to the fact that promises were made about HS1 and HS2 links. That was fundamental to the case for HS2. Plenty of people still think those links will happen. When you tell them that they will not, they are very disappointed. I appreciate all the practical issues; I couched my comments to make that clear. Notwithstanding the comments about cost by the noble Lord, Lord Adonis, I fear that our successors, sitting here in 30 years' time, if this House continues to exist that long—I bear in mind we have been trying to reform it for more than 100 years—will probably sit here and say, "Of course, it would've been much cheaper if they'd made that link at the time".

We now have to accept that that link will not take place in the short term. Therefore, we have to concentrate on the obvious link—the trek down Euston Road. I am disappointed that the Minister did not come up with a full answer, but I appreciate entirely why he did not: there is no full answer. My fear is that people are saying that it is too early and this is something for later on. That has been said this afternoon. The trouble is, decisions made about the purchase and demolition of buildings and the reconstruction of Euston Station will be made without factoring in the answer to this problem. They will be based on the principle that people will walk up and down Euston Road.

I have real concerns about disability issues here, not just families with children and a lot of luggage. I have real concerns about how people with disabilities will make the link between the two stations. I also fear that because, as the noble Lord, Lord Adonis, pointed out, a number of players have responsibility for this, we could end up with a group of organisations none of which will shoulder the responsibility alone, quite understandably. Therefore, it might be difficult to make progress.

I remain dissatisfied on the link between the two stations. I look forward to the Crossrail station, which it appears will provide the tunnel at some point in the future, but in the short term there certainly will not be a satisfactory thought process to produce a really good link. I will continue to show an interest in this. Having said all that, I beg to ask leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by Lord Berkeley

2: Clause 1, page 1, line 11, at end insert—

(") Construction work otherwise authorised by this Act may not begin until—

- (a) the nominated undertaker has published an up-to-date estimate of costs for works authorised by this Act, broken down into geographical and system elements;
- (b) that estimate has been examined, reported on and approved by an independent expert panel appointed by the Secretary of State for that purpose; and
- (c) the report of the panel has been published."

Lord Berkeley: My Lords, in moving Amendment 2 in my name and that of the noble Lord, Lord Bradshaw, I will speak to Amendments 3 and 4, which are in my name. I am getting very concerned about the costs of HS2. The reason for that is, as many noble Lords will know, that I with two experts, Jonathan Roberts and Michael Byng, came up with a scheme to provide a cheaper and more effective station at Euston for the end of HS2. I appeared with them in front of your Lordships' Select Committee and, along with colleagues, pay tribute to the way that the members of the committee listened and took an interest. Frankly, I congratulate them on staying the course. If we ever get further such committees in both Houses, I hope that the House of Commons committees will learn something from the way that your Lordships' committee operated, because it was really good.

I will not go into the detail of the scheme. We had a lot of support from people privately within HS2, Network Rail, TfL and Camden, but many of them are restricted from saying publicly what they felt. I believe it would work. We could never get a cost for the HS2 scheme out of HS2, so we ended up costing it ourselves with Michael Byng, who is a real expert in railway costing and has written the textbook on costing railway works for Network Rail, which is being implemented—not before time, I would say—and has a lot of credibility. We ended up demonstrating that we could probably save the Government £1.8 billion by putting all the trains into Euston and giving the west coast main line services a new station on top, so to speak, alongside the HS2 station. On a like-for-like comparison, the saving was £3 billion to £4 billion. Interestingly, HS2 never challenged any of the costs in the committee, which surprised me.

The reason I tabled Amendment 3 was to suggest that, before the Government embark on construction work on the ground, they need a comprehensive, up-to-date and independent cost estimate of the section between Old Oak Common and Euston. Having got some further information from HS2 since we appeared in front of the committee, we understand that it will cost £8.25 billion at 2014 last-quarter prices. This includes contingencies, risk compensation and everything else one might want.

The problem for me, and perhaps for the Minister, is that in a Written Answer he gave me on 21 December, the equivalent cost for the whole phase 1 scheme was £24.3 billion, on the same basis. That means that the section from Old Oak Common to and including Euston is about 34% of the total cost. That leaves £16 billion for the remaining 200 kilometres of line.

I am sure that this is not how it has been thought about, but one sometimes gets the feeling that, "Well, London's expensive to build in, but when you get north of the countryside in Northamptonshire and Buckinghamshire, it is quite easy". The Committee should be aware that this is a line connecting the two

major cities in this country. A tunnel has been proposed through the suburban areas in London, but not for the Birmingham area, from Water Orton to Curzon Street. It has to cross three motorways and several major railway lines and rivers. In fact, 40% of the total length is in either tunnel or viaduct, so it is a complicated structure. It will probably need new signal boxes and more power supply: my colleagues have calculated that the power needed for these high-speed trains is equivalent to half a Hinkley Point, when phase 2 is finished. It is a very big project.

We have got £16 billion to build 204 kilometres of line. Mr Byng has priced this, on the same basis that he presented to the Select Committee, pointing out that the cost of land acquisition, permanent and temporary, and disruption in the open areas is very expensive. We talked once to Professor McNaughton about the amount of compensation that was needed around Euston alone exceeding £1 billion—that was just the compensation. The costs are obviously very high. Mr Byng has now come up with an estimate, on the same basis, that the total cost of phase 1 of HS2 would be £53.6 billion, which is about double the figure that was in the Written Answer. Jonathan Roberts, who is a very experienced railway man, has compared those. I am not a cost engineer, but I respect the view of these two people. The costs when we started off at Euston have never been challenged. I want this scheme to happen, but I worry that there is no way that any bit of phase 1 can be completed at the price of £24 billion quoted in that Written Answer.

I believe that HS2 has spent about £1 billion on consultancy since it started, but why have they not done any credible costings on it? It is a very complicated route, but why have they not done it. We get back to the issue of value for money and business case, which my noble friend Lord Adonis mentioned earlier. Noble Lords will be aware that the chairman of the House of Commons Treasury Select Committee, Andrew Tyrie, wrote to Chris Grayling in the last week or so asking why they had increased the passenger number estimate, and whether it was just to improve the business case. I have not seen any answer, but I expect there is one. If one is going to increase the capital cost by anything approaching the figure I have given, that does not do a lot of good for the business case, because it goes down the other way. What can be done, because I do want this to happen? The first thing is to get a credible estimate by independent experts. I hope that Ministers will avoid the temptation of shooting the messenger, because it is important to get the figures right.

What can be done in a more positive way? As noble Lords have already said, one thing is to slow the trains down a bit, because the running costs of going at 400 kilometres an hour, or even 360, are extremely high, as are the capital costs of the trains and the track. Does it really matter if it takes two minutes longer to get to Birmingham? My view is that it does not, especially when you have got to walk 20 minutes from the new Curzon Street station to New Street, though that is a separate issue. You could leave out everything from Old Oak Common eastwards, as the noble Lord, Lord Bradshaw, mentioned earlier. He said it would work and I agree. Or we could adopt the cheaper scheme that we proposed for going to Euston.

You could leave out the Handsacre link, which is not so expensive—maybe £1 billion—which links the top end of phase 1 to the west coast main line. It is a particularly worrying design because you have got six tracks coming together into three.

Beyond Handsacre, going towards Stafford, there is a section of the west coast main line that is not four tracks but three. I am not quite sure why it is only three; I think that somebody who had a large estate did not want his land built on. Anyway, it has a serious effect on the capacity of the line. If you did not put in the Handsacre link and you carried straight on to Crewe, which is where it is needed, people in Stafford and Stoke-on-Trent might not be so happy; on the other hand, if the west coast main line is to operate well, as it does, they might be happy. That is another way of perhaps saving £1 billion.

4.45 pm

We will talk about the Wendover tunnel under a future amendment, but I am told that that could save about £750 million. If that does not happen, the only solution is to stop the line at Crewe or Nottingham, not to do phase 2 at all or for the Treasury to give double the money, although I cannot see that happening. Politically, if we stopped the line at Crewe or Nottingham, what would our friends who live north of that in the northern powerhouse think? They are already feeling pretty miserable about all the expense in the south.

I will not go on. I think that I have set out the reasons for tabling these amendments, but I urge the Minister to undertake this independent cost analysis and everything else that goes with it before the construction starts. Otherwise, in a couple of years, whoever is the Minister will say, “Sorry. It’s going ahead and we’ll need more money”. I can see Ministers in this Government and probably in any other Government saying, “Well, if you want more money, you’d better find it from the other railway budget”. That would be a complete disaster. I beg to move.

Lord Bradshaw: I support what the noble Lord, Lord Berkeley, has said. The scheme as envisaged is extravagant, and this is not a time when we can afford extravagance. There is a good case for having an independent assessment of the costs, particularly to consider such things as how long this railway can terminate at Old Oak Common, which would set aside a considerable sum of money. If a connection has to be made to Euston, how can that be done in the most economical way? I do not believe that that issue has been addressed. We are not talking about small sums of money; we are talking about billions of pounds.

One thing that I was told about the Bill was that people had made assumptions about the time it took to turn round a train from the north that was heading in the direction of London. I have run a lot of London stations. I can assure noble Lords that, with the number of trains that it is proposed to run from Manchester to Old Oak Common, it would be quite easy, given the six platforms there, to turn the trains round. What one has to factor in is the capacity at Old Oak Common. That means that there has to be a sufficient number of people to service the trains. Special attention also needs to be given to the access to and from the platforms.

[LORD BRADSHAW]

I rather agree with the noble Lord, Lord Berkeley, about the Handsacre link, which seems to cost a lot of money. I certainly agree on the issue about speed. There is a complete misapprehension of the value of journey time savings when we talk about savings of two minutes or less, yet that structure holds up the whole of our transport evaluation, whether in road, rail or anything else—the biggest factor to be taken into consideration is the value of the small time savings, which are all added together and form a colossal sum. However, people making a journey do not take into consideration whether they are going to be two minutes quicker, because in lots of modes of transport unpredictability is a much bigger factor than the journey time saving.

I also want to probe—to push very hard—on the time savings. We should be very careful about speeds which go much above 125 miles per hour, possibly up to 150. It costs a lot once you push speeds towards the upper end of the limit. I am happy to join the noble Lord, Lord Berkeley, in his call for independent costings, but there is also a need for re-evaluation of the economic basis on which the line is to be built.

Lord Framlingham (Con): My Lords, we have dealt with only two amendments so far, and any member of the public sitting listening to the Committee will be asking themselves: “Why on earth are you going ahead with this project?”. All we have are problems, which seem to me almost insurmountable; we have no answers to them. When we ask about the trek from St Pancras to Euston, the answer is, apparently, offer £3 million to the local authority as a prize if it can come up with the answer. That does not sound to me like much of a solution.

I know that this is not Second Reading, but we must ask ourselves whether there is any sense in going ahead with this whole project. We have not yet dealt with the environmental problems, which will be huge and last for years. We have heard from the noble Lord, Lord Berkeley, whose amendment I support, that the whole scheme is not properly costed and nobody knows what will happen in the long run.

The Minister described it as a vital scheme. It is not. The money could be much better spent on all sorts of things: hospitals, schools, or Liverpool-to-Hull transport. If we pursue it, I think we will regret it for a long time. As this matter proceeds, I hope that your Lordships’ House will think it through very carefully and perhaps have second thoughts about proceeding with the whole scheme.

Baroness Mallalieu (Lab): My Lords, I support all the amendments in this group, particularly Amendments 5 and 6, tabled in the name of my noble friend Lord Stevenson who, I understand, cannot be here today but will be here to make some remarks if Committee continues on Thursday. These amendments call for further things which need to be done before work starts on the project, the first being the cost-benefit analysis of the environmental impact of the work and the second being the traffic management requirements.

I apologise to the Committee: I was unable to speak at Second Reading and should therefore declare my interests. I lived in the Chilterns for 36 years, not in an

area directly affected. Further along the proposed line, I know personally every one of the villages mentioned in the amendments on the Marshalled List today. Quainton, Twyford, Chetwode, Mixbury and Barton-Hartshorn—I know them all and have known them for 50 years. I do not just know the villages, their names and the roads; I know the farms, fields, the woodlands and some of the people still living there, and I have seen the devastating effect that the Bill is already having on their lives and their communities. The environmental, not to mention the social impact, is enormous. I know that I am not allowed to make a Second Reading speech, although I did not make one before, and I shall strain every sinew not to do so.

The Government tell us that the public have a right to require value for money, and I totally agree. The cost changes each time I see a figure, but £57 billion is the latest one, and no one with the slightest grasp of reality believes that it will stop there. This House, in the detailed report of the Economic Affairs Committee, chaired by my noble friend Lord Hollick, has already drawn attention to the need for a number of the central questions to be answered. Those questions were posed and not adequately answered by the Government’s very flimsy response in July 2005; nor do I believe they have been since, although I know the Minister said at Second Reading that he thought they had been. Where is the answer to a key question in that list, as to whether HS2 is the best way to spend £50 billion—although I up that now to £57 billion—to stimulate the UK economy?

One thing that has not been done is that the environmental impact has not been subject to any cost-benefit analysis. Surely the public, who are going to have to pay for this project in so many ways and relatively few of whom will see any actual benefit, are entitled to a proper cost-benefit analysis before our countryside is destroyed. As for the pressure to carry on with this project without a cost-benefit analysis, I will come to how it was conceived in a moment, but I understand from the noble Lord, Lord Mandelson, when he spoke in this House on an earlier debate on this topic, that the Labour Cabinet was searching for a legacy project and someone suggested that China and France had high-speed railways. I do not think the pressure for it comes from the rail users on Southern, from the commuters standing on trains day after day coming into London or even from those whose businesses in the north of England are hampered by the absence of a good trans-Pennine rail link. We are told there is going to be a lack of capacity, but it is not visible to me as I stand on the excellent Chiltern line stations and see an excellent service at present—not overcrowded—from London to Birmingham. What about spending money on capacity which is really urgent right now, as we have all been seeing in the last few weeks and indeed right up to today?

The reality is that, in choosing that legacy, scant consideration was given to the devastating environmental damage which will inevitably result to a very special piece of English countryside. My noble friend Lord Stevenson was going to talk about the Chilterns, and I will just say a few words about it. It is a unique area of beech wood but has also become, in the 36 years I have lived there, the lungs of London. Anyone who goes

down to the Chilterns on a weekend will see people pouring out of London to walk and enjoy the peace which reigns over most of it. Beyond that, Buckinghamshire, Oxfordshire, Northamptonshire and Warwickshire—the area I know well—is not tourist country. It is not even really walkers' country but it is old England—the England that we ought to preserve and celebrate. If we destroy those things and take them away from the public, at vast expense and for relatively little benefit to very few people, without making a proper cost-benefit analysis of what we are doing, I do not think we will be forgiven. Indeed, not having such a cost-benefit analysis would be pure vandalism, and I hope the Minister will say that the Government will address all the things set out in the five amendments in the group before anybody starts work with the bulldozers and the concrete and does damage that can never be repaired.

Lord Snape: My Lords, my noble friend who has just sat down started her speech by saying she was not going to make a Second Reading speech and then, if I may say so, did exactly that. We can all make the sort of Second Reading speech that the noble Lord opposite made too, but we are supposed to be talking about particular amendments to the Bill. Thirty-something years ago, I made a speech in the other place in favour of the Channel Tunnel. The response, largely from my own side of the Chamber, was that there were lots of other priorities that we should spend our money on, such as housing, social services, hospitals, et cetera—the sort of speech that the noble Lord opposite has just made. It was Dennis Skinner who objected to my advocacy of the Channel Tunnel, so the noble Lord opposite has now become the Dennis Skinner of the Conservative Party—not a label I would have thought that he would go out to seek normally.

5 pm

Lord Framlingham: I understand that this is not the place to make a Second Reading speech but we are entitled to talk about the value of these amendments in the whole scheme. What is being highlighted is that there are no solutions and that is very important.

Lord Snape: Again, with respect to the noble Lord, I do not mind him speaking about the amendments; procedural matters are not for me, anyway. But he said, in effect, that the money being spent—whether that is £50 billion as my noble friend said or whatever—would be better spent on other things. That, I have to say, is a Second Reading speech, and the question, “Why are you spending money on this rather than that?” could be asked in either Chamber in relation to any matter under the sun. As for my noble friend's contribution, while I had better be careful that I do not make a Second Reading speech myself, I am somewhat sick of hearing about the enormous damage that is being done to an area of natural beauty by a two-track railway line.

Lord Jones of Cheltenham (LD): What about the tunnels?

Lord Snape: I will come to the tunnels in later amendments—my noble friend should not distract me just yet; I will deal with them in a moment or two.

As it was said, the garden of England, Kent, was not destroyed by High Speed 1, although I sat and listened for months on end to petitioners telling me that it would be. I am glad to say that was the last hybrid Bill I served on; I do not want to do another one after that experience. The destruction never happened, and, indeed, the economy of various parts of Kent has been boosted enormously by HS1, as we heard earlier. I do not know where my noble friend was when the M40 was being built. There are of course no tunnels on it, but I presume that it is a great asset to the Chilterns. I would have thought that objections to it, such as they were, would have been somewhat muted by the convenience to the objectors of getting their motor cars back to London from the lovely parts of the Chilterns in which they lived or were visiting.

Lord Framlingham: I accept what the noble Lord says about the building of a two-track railway, but surely given the size of this project he will concede that every possible effort should be made to ensure it has a minimum impact on the countryside. Given that huge size—£55 billion—even reasonable amounts of money should be given, without much discussion, to make sure the damage is kept to a minimum.

Lord Snape: I am immensely sorry to refute the noble Lord's assertions but we spent a long time looking into this project and a considerable amount of money has been and is being spent trying to meet some of the objections that he outlined.

Those who, like my noble friend, were against the project denounced it for costing some £50 billion, yet with every speech they want to add to that cost because there is something in their area that they wish to preserve. I pay tribute, as others have, to the Select Committee, and note that my noble friend Lord Adonis has joined us. It spent months listening to various petitioners, many of whom were against the project, but all anxious for more public money to be spent on the bit they objected to. We could go on like this for ever and not build anything at all. Presumably that was the objective behind the speech of the noble Lord opposite. For my noble friend to pray in aid my noble friend Lord Mandelson by describing it as a vanity project—this from the man in charge of the Dome, a vanity project if ever there one—is, in addition to the other Second Reading speeches that have been made, of no great service to the Committee or the project.

I am fascinated by the agreement between my noble friend Lord Berkeley and the noble Lord, Lord Bradshaw. My noble friend wants to extend the line from Hanslope to Crewe. I am not sure how much that would cost. He also wants to build a four-track railway to replace the short distance of three-track railway from Hanslope Junction—as he will recall, there is another three-track railway going north from Rugby. Although it is neither in the Bill nor his amendments, it should not be too great a project to build that replacement. The noble Lord, Lord Bradshaw, meanwhile, wants to reduce the other end of the line to Old Oak Common. Yet they say they are in agreement with one another—by the sound of it, they both want to redesign the whole project. I am not quite sure how much that would cost, either.

[LORD SNAPE]

I do not know whether there is any great merit in these amendments. I know that my noble friend and the noble Lord, Lord Bradshaw, spent a considerable time behind the scenes in the attempt to redesign Euston station and I am sure that we will come to that issue under a future amendment. However, it seems to me that this Committee will not make much progress if those who were against the project in the first place make similar speeches on every set of amendments between now and whenever the Committee adjourns later today or on Thursday.

Baroness Randerson: My Lords, I rise to make a short point following the comments made by the noble Lord, Lord Snape. I recently went to the railway museum in Swindon, where I read all about the predictions of disaster for Brunel's Great Western Railway and the huge opposition to it. In fact, the towns that accepted a station in their centre prospered; those that rejected a station did not prosper as much. We nowadays look on railways as an environmentally friendly way of travelling. I simply want to point out that I do not believe that amendments that question particular aspects of the Bill undermine the Bill; in our case, they are designed to strengthen it. Wanting to monitor the spending of money is a sign that we want the project to succeed. I want to make it absolutely clear that putting down an apparently critical amendment does not mean any lack of support for the concept of the project as a whole. We want it to succeed.

Lord Snape: I hope the noble Baroness will accept from me that I am not making that accusation. I am saying that I do not quite understand the agreement between my noble friend and her noble friend Lord Bradshaw on this group of amendments, but I am sure that they will explain it. I appreciate that there are genuine and legitimate concerns inherent in their amendments. My objection is to speeches that are meant to sabotage the whole project. We have had these debates on umpteen occasions. My noble friend mentioned the Economic Affairs Committee report, which was torn apart on the Floor of the House. I am not saying that my contribution made any difference, but the approach that was taken was enough for me. If we are going to judge every project on so-called value for money, no project would ever meet the criteria laid down by those who were against that project in the first place. Whatever you did, they would say, "This is not value for money". As the noble Baroness, Lady Randerson, said, some of the objectors to Brunel's railway were thought quite credible. They gave evidence to a House of Commons Committee saying that trains passing through Box Tunnel on the Great Western main line at faster than 60 miles an hour would asphyxiate those on board. They were not particularly credible then, although they were listened to, and some of the objections that we have heard to this project are not particularly credible now.

Lord Adonis: My Lords, we have had a wide-ranging Second Reading debate. I sympathise completely with the noble Baroness, Lady Mallalieu, and all the communities that are affected. The golden rule of any construction project is that people would rather it happened somewhere else. The golden rule of high-speed

rail is that people want the stations but they do not want the line, but the line unfortunately has to go somewhere. Every time that this has been looked at, still more of the line going through the Chilterns has gone into a tunnel to mitigate the impacts on the local community. None the less, the construction work will be a major inconvenience for local communities and I in no way underestimate that fact.

The House and successive Governments have had to address themselves to a particular issue. My noble friend referred to the Government to 2010, in which I led the work. I can tell her that it was absolutely not the case that this was generated as a vanity project. It was generated by looking at the options of further upgrades of the west coast main line. Noble Lords need to understand that the last upgrade of the west coast main line, which was completed in 2009, cost £10 billion—of course, inflation would make that figure much larger now. That was a modest upgrade to provide very limited additional capacity compared with what HS2 will provide. Unfortunately, there is no free lunch. We definitely need upgrades to parts of the Southern network—particularly the London to Brighton line, though if the trains were operating on that line at the moment most of the immediate concerns would be met. Upgrades are needed to most of the commuter lines coming into London. However, we are also going to need significant additional intercity capacity. My noble friend said that this is a line that very few people will use—these are the major conurbations of the country. Almost half the output of the entire country is generated between them by London, Birmingham, Manchester and Leeds. It is simply not conceivable that we will not need very significant additional transport capacity between those conurbations over the next generation. We will clearly not be flying lots of planes between them. We do not want to build new motorways: I know my noble friend will have views on the impact the M40 had on the Chilterns.

The only option is a significant increase in rail capacity and that can only come in one of two ways. It is not the case that this has not been examined; it was looked at exhaustively in the work that I and the subsequent coalition Government did. It can come from radically upgrading the existing lines. Options for this have been looked at, including four-tracking the Chiltern line—the impact of which on the Chilterns would be greater, out of all proportion, than HS2—and significant upgrades to the west coast main line. The sums required to conduct those upgrades would be approaching the levels we would spend on HS2. The noble Baroness, Lady Randerson, referred to Brunel. The London to Birmingham railway, linking the two major cities of the country, is not even a Victorian project; it is pre-Brunel. It was opened for the coronation of Queen Victoria in 1838. There are only four miles of the entire line going to Manchester which are straight, because most of it was built to get around the estates of many Members of your Lordships' House. Building significant additional capacity on that pre-Victorian railway, including the required resignalling of almost the entire line, the relaying of the junctions for longer trains, and the rebuilding of the stations—starting with Euston, which is operating at twice the capacity for which it was built in the 1960s—are vastly expensive projects.

The question to which Parliament must address itself, and have a consistency of purpose on, is not whether something needs to be done—there would be a massive betrayal of our national economic future, particularly post-Brexit, if we do not have sufficient transport capacity between the major cities and economic centres of the country—but what should be done. Taking a longer-term view of investments will produce a step change in capacity between these major cities, rather than more patch and mend. Producing incremental increases in capacity will not be sufficient, including on commuter lines because the building of high-speed lines releases significant capacity on existing commuter lines.

Lord Snape: The noble Lord is making a much better non-Second Reading speech than I did. Does he agree that any upgrade of the existing railway lines could not be done at the same time as running the present intensive service? The short-sighted nature of debates in this House and elsewhere means that alternative routes have long since been closed—since the 1960s—so we would paralyse the west coast main line for a decade or so ahead while not having the benefits of any diversionary routes.

5.15 pm

Lord Adonis: My noble friend is completely correct. Of the £10 billion spent on the last upgrade of the west coast main line, £1 billion was spent on compensation to train companies for not running services. The easiest way to make money if you are running a train service on the existing rail network is to have major upgrade work taking place, which means you get compensated. You get a huge and reliable source of funds for not running any services at all.

I do not want to go through these big arguments again. I come back to the Chilterns. The villages and settlements my noble friend Lady Mallalieu mentioned would not be the successful, vibrant settlements they are without the Chiltern line itself. It was the construction of the Chiltern line that put life-blood into many of these communities. Two sets of decisions were taken at the end of 2009 in respect of these lines, one of which has been hugely controversial, and will continue to be until it is open, when people will wonder what all the controversy was about, which is the construction of HS2. The other big investment that I authorised, which also took some persuading because there were alternative uses of the money, was a significant sum for the upgrade of the Chiltern line, which I assume my noble friend welcomes. That upgrade now enables services on the Chiltern line to run at 90 miles per hour. As my noble friend mentioned, it provides an economic alternative route to Birmingham, which was not possible before. We have just opened the new services going to Oxford, which will transform the connectivity of that area, including the construction of a great deal of housing.

All this is being made possible by significant investment in a major transport artery, including one that goes through an area of outstanding natural beauty. We cannot have successful communities and a thriving economy unless we have decent connectivity. The Chilterns knows that better than anywhere because it has one of the most successful and fastest-growing railway lines, in traffic terms, in the country in the Chiltern line. It is

vital that we do not deprive our great conurbations and all those who depend on them, which are the life-blood of the nation, of the essential benefits of connectivity into the next generation.

What we need to do—huge attention has gone into this—is reconcile those big investments and the big projects with the amelioration necessary for the local communities. Nowhere in the history of the planning of railways has seen greater investment in tunnels to ameliorate the impact on the community than what is taking place in the Chilterns. A huge amount of work is going into ensuring that the impact of the construction work is reduced too, but it is important not to confuse these two essential points. The continuing work that needs to be done, which HS2 Ltd should do and which my noble friend is quite right to continue to press it on, is seeing that the impacts of the construction work on the communities affected are minimised. Equally, we as a Parliament need the resolve to see that we have the essential connectivity between our major conurbations in the next generation, without which our economy would be severely damaged.

Lord Rosser: I do not wish to make a Second Reading speech, but I simply say that at Second Reading we indicated our support for the Bill and the project. That is where we stand. Likewise, we accept the point made that that does not prevent amendments being tabled and debated to discuss issues of outstanding concern.

I wish to raise only one point in the context of my noble friend Lord Berkeley's Amendment 3 referring to routes east of Old Oak Common. Do the Government intend now, in this debate, to address the point made in the Select Committee's report in paragraph 178, or is their intention not to respond to this issue at this time, but when they produce their formal reply to the report? The issue I refer to is the point about the comprehensive redevelopment of Euston and this comment in the Select Committee's report:

"The new station which will eventually emerge after so much expenditure of public funds and so much misery endured by Camden residents, ought to be a world-class railway station, and the splitting of its design into two different operations seems unlikely to assist in the achievement of that objective. We earnestly urge the Secretary of State to ensure that funding is provided for the second planning stage to proceed as soon as possible".

What will the Government's response be to that, and, indeed, to the views of Camden Council on this issue of ensuring the design and development of Euston as a coherent whole? Will they respond when they reply to Amendment 3, spoken to by my noble friend Lord Berkeley, or does the Minister—I would obviously accept this—wish to indicate that that will be covered in the Government's response to the Select Committee report when it comes out?

Lord Ahmad of Wimbledon: I again thank all noble Lords for their contributions. On the final point made by the noble Lord, Lord Rosser, I have already alluded to the fact that the Government will look to publish their response to the Select Committee report next week, which will certainly cover the two questions that he raised.

On the amendments, the noble Lord, Lord Berkeley, talked about shooting messengers. It is certainly never the intention of government to indulge in such activity.

[LORD AHMAD OF WIMBLEDON]

We fully accept that there are challenges. There have been thorough reviews of the proposals behind such a large infrastructure project. I fully accept, too, that strong sentiments are associated with large infrastructure projects such as this, in their building and in the challenges posed in ensuring that we mitigate impact on the environment. As several noble Lords have said, such challenges should be looked at practically to see how best they can be addressed. Without such an approach, as the noble Lord, Lord Adonis, and the noble Baroness, Lady Randerson, well articulated, many an infrastructure project, and perhaps our railway as a whole, might not be present today. I was once told by a Parisian that when the Eiffel Tower was being constructed Parisians at the time strongly objected to such a monstrosity appearing in the middle of the capital city. I wonder what they would think wherever they are now. Nevertheless, I note the concerns that have been expressed and will address some of the issues that have arisen.

A number of the amendments that have been tabled for this Committee stage of the Bill have been fully considered by Select Committees of both Houses and look to alternative proposals for aspects of the Bill scheme. I am sure noble Lords will appreciate that two Select Committees have already spent a combined period of more than two years hearing evidence and considering all aspects of the proposed Bill scheme and alternatives to it. Those committees received representations from more than 3,400 petitioners and made their conclusions having explored all the relevant issues. As we move through the different stages of the Bill, it is important that we draw a line under such considerations.

On a review of the costs for phase 1 of HS2, I assure noble Lords and, in particular, the noble Lord, Lord Berkeley, that the costs have already been subject to intense analysis and review over several years and will continue to be reviewed for many years to come, and indeed during construction. Several noble Lords, including my noble friend Lord Framlingham, raised the issue of costs. I assure him and others that both the Public Accounts Committee of the other place and the National Audit Office, a body that already has a statutory function to examine proper allocation of public expenditure, have produced several publicly available reports on the costs of HS2. I am sure both bodies will continue to examine those costs as we move into the detailed design and construction stage and as more detailed costs information becomes available.

As noble Lords will be aware, an updated cost estimate for the project is also published at each new iteration of the business case, with the next such iteration due this summer. The project as a whole, including its cost estimate and business case, is subject to regular independent review by the Infrastructure and Projects Authority and the Commons Public Accounts Committee. I therefore do not believe or accept that further independent review is necessary at this time. The Select Committees and other committees that I have referenced have looked at the costs associated with the project. I say to the noble Lord, Lord Berkeley, that we have produced high-level cost estimates for our Euston proposals as well, but we have to be mindful that we need to keep certain detailed cost

figures commercially confidential as we go to market for the construction work. I am sure the noble Lord will acknowledge that officials in my department and the team at HS2 have sought to work with him and given time to listen to the proposals he has presented.

I also fully endorse the point that was well made by the noble Baroness, Lady Randerson, that those who may be suggesting alternatives or being critical of certain elements of the construction of HS2 are not against the scheme as a whole. Indeed, I know that the noble Lord accepts that part of the reasoning behind building HS2 is the economic case in terms of addressing issues of capacity. I know that he, as a great champion of the freight industry, also accepts that once we see the extra passenger capacity on HS2 it will release extra capacity for freight on existing lines.

I assure noble Lords that we have produced various costs for both the Select Committees, including funding costs and costs for key elements, but we will provide more detail as we move forward. It is also worth noting that an independent review of the HS2 Ltd cost estimate of a bored tunnel through the Colne Valley has been undertaken. The outcome of that independent cost review, undertaken by the lead non-executive director for the DfT, Ed Smith, has been published and concluded that the HS2 Ltd cost estimates were both reasonable and consistent. Other than delaying the railway, and in doing so adding additional cost, it is not clear to me what benefit the amendment would bring.

With regard to the alternative routes into Euston and the associated request from the noble Lord, Lord Berkeley, to consider a route east of Old Oak Common, I do not believe that this amendment is necessary or appropriate. The noble Lord knows that I respect his commitment to this subject. I know that he appeared before the Select Committees in both Houses to make the case for an alternative solution at Euston. Neither Select Committee saw fit to recommend his alternative solution, nor a value-for-money review as the amendment proposes.

Given that it is the role of the Select Committee to consider such matters and that both Select Committees, having considered all the available evidence on these issues, did not believe any further cost reviews were necessary, I do not believe that the amendment is appropriate at this stage. It would serve only to delay the beginning of construction once Parliament had authorised the project. Clearly, such a delay in and of itself would add additional and unnecessary costs to the delivery of the scheme, which I am sure is not the noble Lord's intention.

The link to the west coast main line at Handsacre was also considered by the Select Committees of both Houses, which were the most appropriate forum for any subsequent amendments on this issue to have been made. It is also important to note that the link at Handsacre serves a dual purpose. It will allow services to run north following the completion of phase 1 but, following the completion of phase 2A, it will also allow high-speed services to continue serving Stafford, something that the people of Staffordshire value very highly.

As I said, the Select Committee of the other House spent considerable time hearing evidence from parties wishing to promote alternative environmental mitigation

proposals, including tunnel options in the Chilterns. The noble Baroness, Lady Mallalieu, spoke with great passion on this issue. I assure her that this work included reviewing the cost-benefit analysis of the various options. Ultimately, the Select Committee of the other place requested a 2.6-kilometre extension to the Chilterns tunnel, at an additional cost of £47 million, and recommended a 100-metre extension of the Wendover Green tunnel, at an additional cost of approximately £15 million.

However, the committee was clearly of the view that the environmental benefits of further tunnelling did not warrant the significant additional cost. The cost of the other proposed tunnel options ranged from £82 million to £485 million. While I am sure that those who favoured an extended tunnel in the Chilterns will continue to be dissatisfied that their proposals were not supported, I hope that they—including the noble Lord, Lord Stevenson, who could not attend this afternoon—would concede that the process allowed them to have their say and that we should now respect the outcomes of the process even if we do not always agree with them.

5.30 pm

Let me also assure the noble Baroness that we have looked to mitigation in a series of areas. For example, we have provided more than 50 assurances to Buckinghamshire County Council to further mitigate the impact of the new rail line. This includes 21 assurances on traffic and transport, a fund of £3 million towards additional environmental enhancements in the Chilterns area of outstanding natural beauty, a fund of £3 million towards additional mitigation in the Colne Valley, and a £1 million fund for additional mitigation and engagement on detailed design with stakeholders in the Calvert and Steeple Claydon area. In the area of the noble Lord, Lord Stevenson, we have provided £500,000 for Great Missenden, a £1.2 million enhancement to the link road roundabout, and a further £500,000 to provide a new school car park.

I fully appreciate the concerns of noble Lords in relation to traffic management, but I believe that Amendment 6 is also unnecessary. The nominated undertaker is required by the code of construction practice to prepare a route-wide traffic management plan. This will be developed in liaison with relevant highway and traffic authorities and the emergency services. It will also cover all traffic management issues in relation to HS2. In addition to the route-wide plan, the code of construction practice also requires the appointed nominated undertaker to prepare local traffic management plans in liaison with the relevant local highway and traffic authorities and emergency services.

I also assure noble Lords that once contractors have been appointed, they will be required to communicate regularly with parties affected by the works. Local residents and businesses will be informed appropriately and in advance of dates and durations of any closures of roads or public rights of way, and will be provided with details of diversion routes at least two weeks in advance or when final details are available. Advance warning signs of road closures will be provided for users of roads and public of rights of way.

I therefore hope that noble Lords recognise that sufficient protections already exist in the commitments that have been made, and that the Government have sought to listen in addressing and mitigating issues of both noise and the environment. Any further requirements are unnecessary and will serve only to delay the start of construction on what most recognise as a vital infrastructure project. Furthermore, I believe that this House should respect the decisions of the Select Committees, whose members, as we have recognised, spent many hours considering many of the issues that have been discussed this afternoon in detail with the evidence in front of them before they came to their reasoned conclusions. Therefore, with the assurances that I have provided, I hope that the amendments will not be pressed.

Lord Berkeley: My Lords, I am grateful to all noble Lords who have spoken in this short debate. At one stage, I felt that I had really put the cat among the pigeons in an unacceptable way, but we have come back to the text of the amendments, and I am grateful for the Minister's response. I want the scheme to go ahead. It is needed for capacity, as my noble friend Lord Adonis said. My worry is to do with the costs. As the Minister knows, I have been meeting senior officials of HS2 and his department, probably for two years. In connection with the Euston scheme, it was clear to me that there was no cost estimate for the AP3 scheme, as it is called; that is why we decided to price it for them. The figure came out at £8.25 billion. Because it was so high in relation to the total cost of phase 1, I thought it was very likely that there would be a serious cost overrun for phase 1, which could put the project at risk, which I do not want to happen.

If HS2 or his department have figures for costs, is the Minister willing to share them with us? We have a big schedule here of the costs of the whole project from railway control systems, train power, enabling works and building works to signalling. If we have got it wrong, I would like to know about it. We have a blank screen at the moment. Could we have a meeting on this before Report when we could share these costs with his officials?

Lord Ahmad of Wimbledon: If there is anything that we can assist with between different stages of the Bill I would welcome meetings, either directly with myself or with officials, and if schedules allow we will arrange them. On the cost of the Euston AP3 scheme, an estimate of expense was deposited in September 2015, as required by Standing Orders, and I hope that the noble Lord is aware of this.

Lord Berkeley: I am grateful to the Minister. Perhaps we can follow this up afterwards. I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendments 3 to 6 not moved.

Clause 1 agreed.

Amendment 7

Moved by **Viscount Astor**

7: After Clause 1, insert the following new Clause—

“Benefit and cost review of a Wendover Mined Tunnel

- (1) The Secretary of State shall commission a review of the potential benefits of constructing a Mined Tunnel at Wendover, Buckinghamshire.
- (2) The review shall have regard to possible alleviation of High Speed 2 construction and train operational noise, and to alternatives for such alleviation.
- (3) The review shall include estimates of the costs of construction of a Mined Tunnel and other relevant costs.
- (4) The Secretary of State must lay a report on the outcome of the review before both Houses of Parliament—
 - (a) within three months of the passing of this Act; and
 - (b) before commencement of any High Speed 2 construction works necessitating the movement of more than 24 heavy goods vehicle through Wendover per day.”

Viscount Astor (Con): My Lords, my amendment—and possibly those that follow—may rehybridise the Bill. However, as this is Grand Committee there are no votes and that is not likely to happen today. I have tabled them to elicit a response from the Minister. While rehybridising and recommitment does not often happen, it is not unprecedented. As a Minister in a long-past Government, it happened to me on a Scottish transport Bill. Lord Burton put down an amendment about badgers and otters crossing roads—a subject which your Lordships would get rather worked up about. My speaking notes from the department at the time said: “Resist at all costs”, which I gamely tried to do. However, I was somewhat undermined half way through the debate by the noble and learned Lord who had chaired the Select Committee standing up and saying that there was an omission that the committee had failed to debate or look at. He therefore supported Lord Burton’s amendment that it be looked at again, whereupon I had to retire hurt. It did work, and the Bill finally came forward with Lord Burton’s amendment.

These amendments are important because the Select Committee had a very limited remit when it looked at the Bill. It could not stray from its rather narrow route. That said, it produced a good and admirable report. It made some general points about the promoter engaging in effective and timely public engagement and noted that it found the complexity of the process difficult for petitioners to understand. Petitioners sometimes also found the documentation provided by the promoter, “arcane, opaque and unhelpful”. They were also sometimes unfairly treated by late replies after months of silence, suggesting that their concerns had perhaps been met. I am sure the Minister will be the opposite this afternoon: clear, helpful and responsive.

In its report, the Select Committee noted the issues that surround Wendover and reported that it had directed a longer Chilterns bored tunnel, greater noise protection for Wendover and better construction arrangements in Hillingdon. It did not comment on the evidence presented on the proposed mined tunnel further along the route. It could not consider changes that require an additional provision without a direction from the House. We have the opportunity at a later stage

of the Bill to give that direction for it to be looked at via a transport works order. The initial longer, mined tunnel was rejected by the promoter on grounds of cost. Although it is obvious that a longer tunnel is more costly and complicated, the promoter did not fully take account of the possible savings on the compulsory purchase of land and housing and the effect on the environment. There were two experts and, as we all know, experts on both sides of the argument hate being proved wrong. Those who wished for a longer tunnel provided an expert—described by the Select Committee as a credible witness—who disputed the costs. Indeed, those costs were not greater but actually a saving on the promoters’ costs. That is because the mined tunnel would be 4.2 kilometres long and it would save just over a kilometre of viaduct. As we know—as the experts tell me, anyway, and I think they are right—viaducts are expensive to build and maintain. There could be a saving on property, there could be a saving on costs, and it would solve noise issues. Mined tunnels are cheaper and have been done before. The area is virtually the same type of chalk as the other Wendover tunnel. Indeed, the water table does not present an insoluble problem.

I am no expert. I hesitate to say who is right between tunnelling and rail experts. I leave that expertise to the noble Lord, Lord Berkeley, who does know about these things. But I do know that this is an issue that should be re-examined as there is clearly a difference between acknowledged experts. In the overall scheme of timing and costs, it is actually quite minimal but for the people of Wendover it is extremely important and there is no excuse for the Government and the promoters not to get it right. Those affected by the route have a right to have their case heard and their petitions properly scrutinised, not rejected out of hand for the convenience of the process. I have tabled this amendment to ask the Government to look again at the issues of cost and to ask the Minister whether he will consider having a short, quick, independent review into whether this is feasible. I beg to move.

Baroness Mallalieu: My Lords, I support the noble Viscount’s amendment. It appears that this provision was not in fact looked at by the Select Committee. It is a provision which, unlike the concerns that were raised by the noble Lord, Lord Snape, is likely to save money rather than cost more—

Lord Snape: “My noble friend”.

Baroness Mallalieu: My noble friend, I am sorry. On the face of it, it will not require any delay either. The Select Committee was not able to look at it. It was told that the proposal that was then before it was additional provision.

The end result is that Wendover, which I think members of the Select Committee will remember is the village from which they had the largest number of letters, received the benefits, I suppose you could call them, only of a rejection of any sound barriers, which, although they were thought by the committee to be effective, would have been visibly intrusive. It was told that the donation to the church of £250,000 was generous. It is a very musical church which is going to have great difficulty in continuing as the centre for

various concerts and performances. A new cricket pavilion was to be provided by the promoters on an alternative ground. That was the end result of Wendover's concerted effort to bring about some changes in the proposals.

This proposal—if it is right, and I have no means of knowing whether it is—would appear to be one that would have the support of that community, would go a considerable way towards helping to ameliorate some of the worst parts of the line and, as I said, would result in some savings and no delay. Surely it would be possible for the Minister to say that this is one of the proposals that, respecting what the committee has said, was not before it and should be looked at before it is rejected out of hand.

Lord Snape: My Lords, I do not necessarily oppose the amendment, although I listened with interest to what my noble friend said about how this would save money. I am not sure what costings the noble Viscount has carried out. There has been some criticism of the costings so far as the whole project is concerned, yet we are told by the noble Viscount and my noble friend that this will actually save money. Perhaps, for the clarification of the Committee, they could tell us how their conclusions have been arrived at. I am no expert. My noble friend Lord Berkeley might tell me. I am not quite sure what a mined tunnel is and what differentiates a mined tunnel from a normal railway tunnel.

Viscount Astor: As I understand it, a mined tunnel is where you use a digger to make a hole, as opposed to one of those circular machines that makes a round hole. Apparently it is a cheaper way of doing it than the other way, but I am not an expert.

Lord Snape: Though he is not an expert, the noble Viscount has done extremely well. I am enlightened.

5.45 pm

Lord Berkeley: Maybe I can help. My noble friend at some stage probably came down the Channel Tunnel while we were building it. We had boring machines boring the tunnels, but there were two caverns for crossovers, which were mined using something called the new Austrian tunnelling method, which involves more or less what the noble Viscount said. It is a big digger on tracks with a revolving arm and cutters that stick out. Something then gets the spoil that goes underneath it, then you spray concrete with reinforcing mesh on it and put in in situ or precast concrete later. It is supposed to be a lot cheaper; you do not need a boring machine. My colleagues have looked at the costs and they reckon that there is about £750 million to save. It is a very good scheme.

Lord Adonis: My Lords—

Lord Snape: I am replying to an intervention on my speech. I will of course give way to my noble friend in a moment, but first of all I am grateful to my noble friend Lord Berkeley. He was very clear indeed. I have become an expert now on mined tunnels. I give way to my noble friend now.

Lord Adonis: I simply wished to make a point to the Minister. My understanding is that it is not correct to say that the Select Committee did not consider this issue of a mined tunnel at length. My understanding is that it spent a very considerable amount of time listening to the arguments. I find it inconceivable, with all the expertise my noble friend Lord Berkeley has been able to give us this afternoon, that we could substitute our judgments in the course of a debate of half an hour, or an hour, or an hour and a half for the huge attention that the Select Committee gave to this over many hours, as I understand it, seeking a very wide range of expertise. If it is the case that the Select Committee considered this and that my noble friend Lady Mallalieu was incorrect in suggesting that it was not considered, I cannot see that there is much point in us continuing this debate in the form that we are.

Lord Snape: I am rather sorry I got involved in this whole thing now. I make one plea on behalf of the train passengers, who will pay a substantial amount and a bit more besides as a premium. Part of the pleasure of taking a train journey is looking out of the windows. This obsession with tunnelling everywhere through the Chilterns means we will perhaps be denied the sight of my noble friend galloping across the rolling hills of the Chilterns in pursuit of the uneatable. Surely these are sights that people enjoy when travelling by train. Rather than confine train passengers in tunnels for miles on end, would not the noble Viscount be satisfied with some sort of noise barrier, rather than insisting that train passengers on this proposed high-speed line spend their lives in semi-darkness to avoid my noble friend and her colleagues?

Lord Young of Norwood Green (Lab): My Lords, I hesitate to come into this debate, but I confirmed with my colleagues that I was not suffering from post-traumatic High Speed 2 Select Committee delusion. We spent an inordinate amount of time, quite rightly, looking at possible alternatives and at costings. We did not just take the promoter's word for it. Whenever it put up its experts we looked at whether we could ascertain whether there was an independent corroboration of the costings. Indeed, the Minister confirmed that this was the case earlier when he talked about the possible tunnelling in the Colne Valley area. That was independently assessed. It was proved that the promoter's costings were right. There were not any savings to be made, although there were lots of assertions that there were savings to be made.

I appreciate the thanks we have had for the amount of time we spent. There were times when I remembered the old Army adage, "Never volunteer", but, despite that, for the most part we enjoyed it because it was expertly chaired. We ought to pay tribute to the noble and learned Lord, Lord Walker of Gestingthorpe, who carried out the task, in our collective view, skilfully and carefully.

On the final point in Amendment 7, there are no heavy goods vehicles going through Wendover. It was asserted on many occasions that there are alternative routes. Like my noble friend Lord Adonis, I am not trying to pretend that this project will not cause problems

[LORD YOUNG OF NORWOOD GREEN]

in its impact during the construction phase, but we at least ought to be accurate if we are putting down an amendment. I hope that that has helped noble Lords.

Lord Ahmad of Wimbledon: I thank all noble Lords for their contributions. After the interventions by the noble Lords, Lord Adonis and Lord Young, I feel that there is little left for me to say except to clarify that they are both correct. It is important to underline that point for the record.

I will start with the amendment in the name of my noble friend. As he recognised, the issue would lead to a rehybridisation of the Bill. He talked of his own experience and I fully accept that it is procedurally possible for this to happen, but we need to think long and hard about whether such amendments should be made. I reassure the noble Baroness, Lady Mallalieu, that, as we heard from a member of the Select Committee, this was given a fair and detailed hearing by that committee, as well as in the other place. Despite not being able to consider changes that would require an additional provision without a direction from the House, your Lordships' Select Committee nevertheless heard further arguments on the case for a mined tunnel at Wendover, on the supposition that an order under the Transport and Works Act 1992 could be used to enable further powers to be secured if needed. After that extensive and exhaustive review, neither Select Committee felt the need to recommend that additional work be undertaken to investigate the merits of or provision for a mined tunnel—we all know what that is now—at Wendover.

I reiterate that we have provided a range of additional assurances for the residents of Wendover, which, as well as the ones that I have spoken about, include noise barriers on the Small Dean embankment, an assurance relating to noise mitigation measures at Wendover Campus School and funding for a bespoke package of noise insulation at St Mary's Church, Wendover, to allow it to continue to function as a concert venue. I have already talked about the 100-metre Wendover tunnel extension and the noise barriers that were secured in the other place. I have also alluded to the independent review of costs—the noble Lord, Lord Young, also mentioned it—conducted by the non-executive director, Ed Smith. I reiterate the hope that the noble Baroness will reflect not just on what I have said today but on the appropriate sections of the Select Committee report, which also considered this matter.

While I continue to recognise the valid concerns that my noble friend raised about remaining impacts on Wendover, the area has been given many commitments to manage the impacts of the new railway. I believe that this House should respect the decisions of the Select Committees in the House of Commons and in your Lordships' House.

Baroness Mallalieu: I apologise for interrupting, but I just want to be clear about this. I am looking at the relevant section of the report—120—and it appears that the committee looked at a bored tunnel but not at a mined tunnel. If I am wrong about that, I would be grateful if I could be corrected. Notwithstanding the

fact that the committee was in some doubt about whether it should look at it, it looked at a bored tunnel, whereas the proposal that is now being made by the noble Viscount is a somewhat different project.

Lord Young of Norwood Green: I can assure your Lordships that we looked at all the alternatives at great length on many occasions. Although I did not always enjoy the repetition, it was important that we heard the arguments. We heard from experts on both sides, so if there is one thing this Committee need not worry about, it is whether these alternatives were given a lengthy and fair hearing.

Viscount Astor: My Lords, I am grateful to everybody who has spoken. I particularly enjoyed the idea from the noble Lord, Lord Snape, that a four-kilometre mined tunnel would put HS2 passengers in darkness. If I have got right the speed that the train is going to go, in a four-kilometre tunnel, you only have to blink three times and you have missed it.

Lord Snape: I am sure that is right, although I am not sure whether it would stand up mathematically in a courtroom, but we are not talking about just this particular tunnel—there is lots of tunnelling through the Chilterns, which has come about as a result of demands, including semi-hysterical demands from a then member of the Cabinet, which in the view of many of us who have taken an interest in the project have added unnecessarily to the cost and makes travelling by train less pleasant. A lot of the people that the noble Viscount represents are against the project as a whole—a point that we have made time after time.

Viscount Astor: I am not going to get into that debate with the noble Lord, but I think I am right in saying that the purpose of HS2 was not to give travellers better views of the countryside but to get them somewhere more quickly and more efficiently, although I am sure it is an added bonus if they have a better view of the country.

To come to the point, there is a difference of opinion among experts. The noble Lord, Lord Adonis, does not like to see any criticism of this project and regards the promoter's and the department's experts as necessarily right. I do not know whether they are right. I did not say who was right; I said that during the Select Committee hearings there were a lot of conversations between experts that show there is a difference of opinion, as there have been since its report. All I am saying is there is an opportunity for the Minister and his department to look at this again. That is all I am asking. I am not saying who is right and who is wrong, but that there is an issue. It will not delay the Bill or the process. It is about whether the Minister's department will look at the evidence and see whether it addressed all the concerns and issues.

Lord Adonis: I was not seeking in any way to say that one set of experts should be more highly esteemed than another. I was making the factual point that my understanding, which has been confirmed, was that the Select Committee heard experts on both sides. Indeed, it engaged its own experts because it was not going to take the word of one set of experts against

the other. It spent many hours reviewing the case and reached its judgment. I was simply making the point that if that is established as a fact, I cannot see how we would be in any position to substitute our own judgment for theirs.

Viscount Astor: The Select Committee came to a conclusion, which may be right or wrong. But its members are not rail experts. I admire its distinguished report, but even they would not say they got everything right on every single issue. What I am saying is that during and since the committee, issues have arisen, and there has been further debate and work done on cost. My request to the Minister was whether his department would look at it without in any way holding up the process. Perhaps my noble friend might give this some thought between now and Report. Would that be possible?

Lord Snape: The noble Lord said that this mined tunnel would not, in effect, make much difference as far as the journey is concerned. Would he be interested in knowing—I have just been assured by an expert that these facts are correct—that out of the 210 kilometres of the high-speed line, no less than 47 kilometres is already in tunnels? If he does not mind me saying so, that is more than enough.

Lord Ahmad of Wimbledon: I thank the noble Lord, Lord Snape, again for sharing facts. During the debates we have had this afternoon—

Lord Snape: It does not happen often.

Lord Ahmad of Wimbledon: I am always grateful for the noble Lord's interventions.

My noble friend talked about analysing and reviewing evidence. Let me reassure him that the Select Committees of both Houses have looked at this in detail and that it was an exhaustive process, as we have already heard from one member of your Lordships' committee. It was not looked at only for a few seconds in passing—a blink and then you are through the tunnel, so to speak. This is the view of the department, the Government and myself, and we have to respect the decisions that have been reached by not one but two Select Committees on a process which they themselves—notwithstanding that there were additional provisions as part of the proposals—looked at. They considered the opinions and views of experts from both sides, as we heard from the noble Lord, Lord Young, and their conclusions after that exhaustive process need to be both reflected on and respected.

Viscount Astor: I have listened to what my noble friend said and will consider it carefully. In the meantime, I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

6 pm

Clause 2: Further provision about works

Amendment 8

Moved by Viscount Astor

8: Clause 2, page 2, line 14, at end insert—

“() change the landscaping and other works, including shaping bunds to maximise the noise attenuation of the bunds by including steep sides, noise attenuation fences and trees, to mitigate any adverse effects of the construction, maintenance or operation of any of the works and of the operations of the railway authorised by this Act;

() change the works for the benefit or better protection of property, people, farm animals in yards, woodlands, habitats or wild species affected by any of the works or the railway operations authorised by this Act;

() reduce the extent of farm land taken for biodiversity where there is demonstrable equivalent local biodiversity capacity and considerate estate management and farming practices;”

Viscount Astor: My Lords, Amendments 8, 25, 26 and 27 have nothing to do with tunnels—I can assure the noble Lord, Lord Snape, about that. They are designed to make the route even more pleasant for those travelling on it and to protect those living alongside it.

My first amendment is perhaps more general, although it particularly affects Buckinghamshire, which, as your Lordships know, is a county with exceptional areas of outstanding national beauty. It does, however, have a dense population at the same time as having a wonderful countryside, and has some motorways and roads but also narrow lanes. One group that has been concerned throughout this whole process but has felt excluded is the parish councils. Some of them do not have the funds to enable them to take part and some do not have the expertise, and although there were community forum area meetings they did not always work or address all the issues. They certainly did not have some of the expertise that they required to make a good case. Local communities have knowledge of local traffic flows, school runs and public transport, and know what the effect of disruption is. If there was one noticeable point made in the Select Committee's report, it was that the promoters had failed adequately to understand the long-term disruption, noise and pollution during the building stage of HS2. This amendment asks whether during this process adequate attention will be spent on these issues.

The next three amendments are more specific. Amendment 25 concerns the proposed Calvert infrastructure maintenance depot. The depot requires a large site that will serve as a base for the maintenance of the railway and for infrastructure projects. In the original plan an accommodation bridge was included as a substitute for a user-worked crossing—not being an expert, I had to ask someone what that was before I felt able to speak to your Lordships. The accommodation bridge has now been removed by the promoters, as stated in a recent letter that was received after your Lordships' Select Committee's petitioning stage, and so was not able to be considered. The alternative user-worked crossing was instead proposed. I do not know whether this late change was intended to be an improvement or was a cost-saving exercise but the result is that the effect on Doddershall has not been properly reviewed—certainly its residents do not think it has. HS2 at this point follows the Bletchley to Bicester to Oxford existing railway, which will form the new upgraded east-west line. That upgrade will be an added complication. The present ameliorating effects of the route will result in a much longer and more

[VISCOUNT ASTOR]

expensive journey for farm traffic crossing in and out of Doddershall. As it is not clear why the original accommodation bridge was removed, will the Minister look at this, and see why it happened and whether it makes sense? It is a detailed point but it has been put to me by those who feel that they have an important concern that was not able to be addressed because their letter was received after the Lords stage

Amendment 26 concerns the route and, again, local traffic problems. I have given the Minister notice of what I am going to say because this is a complicated local issue. He may wish to write to me with a detailed reply. It is about configuring the local roads between Quainton and Waddesdon; otherwise, an estimated 1,200 people will have a much longer, more difficult journey between the two, adding to traffic complications. It is a local issue and I am sure there are many local issues along the route and it would not make sense to bring up every single local concern about HS2. I have brought it up today because people in the area feel that the promoters changed the effects that this was going to have after the Select Committee process. Therefore, they were not able fully to address the issues.

Finally, Amendment 27 asks a question about the alternative route that was developed by Arup for HS2 and was presented by Twyford Parish Council in Committee in the Commons. It is a route that would save the demolition of houses. The promoters believe that it is straighter and less costly. Again, I am not an expert. I do not know. They also believe that it would remove noise issues along the route and the disruption to local residents and farmers would be much less. My point to my noble friend the Minister is: this is a local issue. It is not the biggest issue that affects HS2, but it is important to the people who live there. I have tabled these amendments to ask the Minister whether he will consider these representations to see whether they can be addressed to help those who are affected by HS2. I beg to move.

Lord Ahmad of Wimbledon: My Lords, I thank my noble friend for tabling his amendments. I appreciate that he is seeking further clarification. I will take each amendment in turn.

First, the provisions set out in Amendment 8 replicate the powers already in the Bill under Clause 2(3). With respect to reducing the amount of land take, we are already under a general duty to minimise the amount of land we are taking for the railway if it is possible to do so without compromising the construction and implementation of the project in a timely and economic manner. Furthermore, we have given a general assurance to the National Farmers' Union and the Country Land and Business Association that we will aim to further minimise the loss of high-quality agricultural land where there are opportunities to do so through the detailed design stage of the project. I therefore hope that my noble friend will feel reassured in that respect, and I am sure those discussions will continue during the design phase.

My noble friend also raised the issue of changes or alterations, referring to the area between Calvert and Doddershall. I inform him that the Bill scheme has not been altered in this area, as he suggested. The accommodation bridge to which he referred is part

of the East West Rail scheme and not part of HS2, and as such will not be subject to this Bill. He mentioned a particular letter that was sent by concerned parties. I have briefly checked with officials and I have certainly not seen it. If it is available and he would like to forward it, I will respond appropriately to the matters raised in it.

Amendment 26 suggests a revised road layout in the Quainton area. As my noble friend may know, this issue was considered in detail by the Lords Select Committee, having been the subject of a petition and an evidence session. My view, which I reiterated in the debate on the previous amendment, stands: it is not appropriate to revisit here issues that have been discussed at length and in detail by the Select Committee. The considerable time that the Select Committee spent on those issues needs to be respected.

I also appreciate that this issue could be delivered outside the Bill powers, in which case it certainly does not require further consideration here. My noble friend recognised that but, as the requested road layout would require new land to be acquired, objections to the change would be expected, in particular from the Buckinghamshire Railway Centre due to the adverse impact on its operations and land use. I assure my noble friend that these issues have been fully explored by the Select Committee, which ultimately did not see merit in making a recommendation of the kind being sought by the amendment. It would create a requirement for significant works to the existing Station Road, where the proposed road layout would need to be raised to pass over HS2, taking land from the Buckinghamshire Railway Centre overflow car park and thereby restricting access to the adjacent industrial premises. It would also require substantial temporary diversion works to Station Road during the construction of the revised road alignment.

Amendment 27 seeks a review of the route alignment. Although I respect and appreciate my noble friend's commitment to refining the scheme, as he notes in the amendment, the "route C" alignment was an option considered in 2010 as part of the appraisal of route options consulted on at that time. It was the subject of detailed consideration, but ultimately was not selected when the Government announced the route in 2012. At this late stage in the progress of the Bill it is inappropriate to suggest that we disregard all the previous work that has taken place. I respect the fact that my noble friend has sought clarification by tabling these amendments and I hope I have been able to provide it, at least in part. As I said, if there is a letter that has yet to be answered I will ask my officials to look at it and we will respond accordingly. I hope that, on the basis of the assurances I have provided and the clarifications I have given, he will be minded to withdraw the amendment.

Viscount Astor: My Lords, I thank my noble friend the Minister for his response, particularly to Amendment 8, which is very helpful. I will indeed write to him on Amendment 25 and the correspondence that has been received. I have one point to make about the Select Committee. The noble Lord, Lord Adonis, the Minister and the noble Lord opposite talked about it as though whatever comes out of it should be written in stone and never questioned, looked at or

judged again. They forget, however, that the Select Committee had a very narrow remit; it could not look outside that very narrow route. It was restricted and could not look at lots of different possibilities because the remit under which it was set up did not allow it to do so, even if it wanted to. That was the issue that affected it. My noble friend has been enormously helpful. I am very grateful and do not wish to detain the Committee. However, although I understand why the committee had restrictions—otherwise the petitions would have gone wider and wider and wider—these prevented it looking at some of the issues that affected the route. I give way to the noble Lord.

6.15 pm

Lord Young of Norwood Green: I did not want to intervene again, but I feel I must correct the impression that the noble Viscount is creating that we did not consider these issues. All the issues raised by the amendments were considered in depth. We were not restricted. We heard numerous petitions on the possible alternatives. In his opening contribution, the noble Viscount suggested that we somehow did not listen to parish councils. I assure him that we listened to them on many occasions. Inevitably, some were better than others. After some of the legal representation that we heard, I would have much preferred to hear from the parish councils again. The idea that because they did not have high-powered legal representation they were unable to make their case is not true. I just wanted to correct the impression that the Committee should look at this again because it was not given a proper searching examination by the Select Committee; it was.

Viscount Astor: All I can say to the noble Lord is that some of those involved in parish councils felt unable to present in the way that they should have; I quite respect what he said.

Lord Framlingham: I am sorry to speak again, but I am beginning to wonder what we are doing. If the Select Committee has done everything that needs doing and the Minister will not accept any of the amendments, I am not sure how this Committee will contribute much to the process.

Viscount Astor: I do not know whether my noble friend wants to answer that, but perhaps I may finish responding to the noble Lord. He is quite right that there were a lot of petitions, and I am not in any way criticising the Select Committee or any of the work it did, but the petitions affected the route as proposed. The committee was unable to look any wider into some of the other issues. That was the point I was trying to make. I was not disagreeing with the noble Lord, but I was pointing out that the Select Committee was under certain restrictions. Having said that, unless my noble friend wishes to say anything, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Clause 2 agreed.

Clause 3 agreed.

Clause 4: Power to acquire land compulsorily

Amendment 9 not moved.

Amendment 10

Moved by Lord Ahmad of Wimbledon

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

“() In subsection (6), “the deposited book of reference” means the book deposited in November 2013 in connection with the High Speed Rail (London - West Midlands) Bill in the office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons.”

Lord Ahmad of Wimbledon: My Lords, the amendments in this group in my name are merely corrections flowing from the passing of a new set of consolidating regulations for the environmental permitting regulations and the need to update the relevant references in the Bill. There is also a correction to clarify the date on which Clause 66M—the vocational qualification reporting duty—will come into effect, and a clarification of a reference resulting from a change made by the Select Committee. I beg to move.

Amendment 10 agreed.

Clause 4, as amended, agreed.

Clauses 5 to 11 agreed.

Amendment 11

Tabled by Lord Stevenson of Balmacara

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

“Phase One of High Speed 2 property bond scheme

(1) The Secretary of State must establish a property bond scheme in relation to the scheduled works.

(2) Where—

(a) the value of an interest in land is depreciated by the presence of any of the statutory nuisances listed in section 79(1)(a) to (h) of the Environmental Protection Act 1990 (statutory nuisances and inspections therefor); and

(b) the nuisance arises from the construction or operation of the scheduled works,

if the person entitled to the interest (“the applicant”) makes a valid application within the prescribed period, a property bond for that depreciation shall be issued by the nominated undertaker to the applicant.

(3) The Secretary of State must make rules governing the making and approval or rejection of applications for property bonds under this section, including—

(a) the contents of an application,

(b) the evidence of open market value that is required to be provided,

(c) the evidence of depreciation that is required to be provided,

(d) any fee for making an application,

(e) the process for assessing and deciding the open market value and the depreciation of the land, and

(f) any minimum depreciation that is required for an application to be valid.

(4) When the interest in land is sold the owner of that interest must decide whether to—

- (a) redeem the property bond and sell the land for its depreciated value, or
- (b) sell the property bond with the land and sell the land for its open market value.
- (5) If the owner of the interest in land decides to sell according to subsection (4)(a) the owner must serve notice on the nominated undertaker of the owner's intention to sell the land together with details of the property bond at least one month before selling the land.
- (6) If the owner validly serves a notice under subsection (5) then the nominated undertaker must pay the difference between the depreciated and open market value of the land to the purchaser of the land at the date of completion of the sale whereupon the property bond is redeemed.
- (7) A property bond shall be a local land charge until it is redeemed and for the purposes of the Local Land Charges Act 1975 the nominated undertaker shall be treated as the originating authority as respects such a charge."

Lord Rosser: My Lords, my noble friend might have expected to be back by now, but my understanding is that it is accepted that he has other amendments which will be discussed on Thursday. Without wishing to move this amendment, he will speak on the subject then. For that reason, I do not seek to move the amendment on his behalf. He may address this issue in the context of amendments to be moved on Thursday.

Amendment 11 not moved.

Clauses 12 to 19 agreed.

Amendments 12 and 13 not moved.

Amendment 14

Moved by Lord Hunt of Wirral

14: After Clause 19, insert the following new Clause—
"For protection of Park Village Limited

- (1) The Secretary of State shall make compensation to Park Village Limited and its successors and assigns in respect of any loss or damage (including, but without prejudice to the generality of the foregoing, loss of profits and damage to tenant's fixtures and fittings and stock in trade) which it may sustain to its business, being the business now or hereafter carried on at No. 1, Park Village East, London NW1 7PX by reason of and during—
 - (a) the exercise by the Secretary of State of his or her powers under this Act; and
 - (b) the execution of works connected therewith by statutory undertakers being road works within the meaning of the New Roads and Street Works Act 1991.
- (2) Nothing in subsection (1) shall preclude the making of compensation under any other enactment or rule of law but compensation shall not be made in respect of the same loss or damage both under that subsection and that enactment or rule of law.
- (3) Any dispute arising on a claim for compensation under subsection (1) above shall be determined by the Upper Tribunal."

Lord Hunt of Wirral (Con): My Lords, my colleagues will know that I am a very strong supporter of this imaginative and important project. I proposed this new clause to highlight the unfairness of the compulsory purchase compensation code, which does not provide an adequate means of addressing the very real and present unfairness and inadequacies concerning the lack of access to compensation or suitable redress, in particular for small and medium-sized businesses greatly

affected by the extent and duration of public works—in this case, phase 1 of the HS2 project as set out in the Bill—but which do not necessarily have any property interests. I believe it should be the promoter's objective that no business is financially disadvantaged by significant loss of income or business as a direct result of the severity of impacts arising from construction activity.

I take this opportunity to say how strongly I believe, in the absence of such adequate compensation generally, that the promoter, in pursuit of fairness, should either agree a regime of compensation for the reimbursement of business and consequential losses in special cases where construction impacts are likely to be most severe, or accept a protective provision in the Bill for special cases.

6.21 pm

Sitting suspended for a Division in the House.

6.31 pm

Lord Hunt of Wirral: My Lords, there is a case for ensuring adequate compensation in special circumstances, and one such case is outlined in the proposed new clause. I understand that the company, Park Village Ltd, is and has always been acknowledged as a special case but is not necessarily being treated as such. It is a matter of public interest that this issue should be addressed during the progress of the Bill.

I am satisfied that Park Village Ltd is seriously under threat from the HS2 works. No adequate solution for the company's plight has yet been agreed following the appearance of the company before both parliamentary Select Committees. I was very pleased that the Select Committee of this House referred to its sympathy so far as the company was concerned, but I am pleading for more than just sympathy.

The company suffers the dual misfortune of being sandwiched directly between the proposed utility and construction works in the street directly facing the premises and the demolition, excavation and construction works for the proposed new tunnel portal, head house and barrette wall, making it potentially the single most affected business in the street, in Camden and perhaps ultimately on the entire HS2 route. Without assessing any blame, I believe there has been a failure to grasp the seriousness of the impact of the extent and duration of the HS2 works on the viable operation of this distinctive and exceptionally sensitive business, which relies on the special character of the property and its peaceful and accessible location.

Compensation proposals put to the promoter in the event that mitigation cannot adequately resolve the impact of the HS2 works on the viability of the business have so far been ignored, leaving the company effectively at the mercy of HS2. There is the very real possibility that this exceptionally renowned family business will be unnecessarily lost to the scheme unless special measures are put in place to ensure its continuance.

Let me explain. Park Village Studio is a valuable local asset with a business that has attained international recognition for its exceptional work, but it is nevertheless a family-run, father-and-son business with only limited capacity to withstand externally undermining impacts

on its viability brought about by the HS2 works. The studios provide an accessible, high-quality, characterful, tranquil and creative environment where films can be made in necessary peace and quiet, notwithstanding the proximity of the existing railway, which is in deep cutting.

The highly intrusive and lengthy programme of demolition, street utility diversions and construction works proposed by HS2 on virtually all sides of the property, including impacts above and below, will cause the business to suffer significant noise, vibration and pollution impacts. Of particular concern is the proposal by HS2 to deny vehicular access for months at a time to either or both of the studios' main access doors from Park Village East, which will render the studios incapable of use or hire. No compensation is offered from the promoter.

Indeed, this sort of problem has already arisen. HS2 I understand has subcontracted Thames Water to carry out a major utility diversion now. Park Village Ltd has already lost business before the Bill has even been passed. In essence, the statutory compensation code compensates for the loss of property value, but not for the loss of business income or damage caused to business.

6.37 pm

Sitting suspended for a Division in the House.

6.46 pm

Lord Hunt of Wirral: Where, as in the case of Park Village Ltd, no land is taken, albeit that the property may be immediately adjacent to HS2's major construction works with resultant significant impacts, the position is different. The only compensation ordinarily payable comes after completion of the works—in this case, perhaps in excess of eight years and then only in respect of some aspects of the operation of the project—not their construction. Paradoxically, greater loss can be suffered by being adjacent to works than by being in their way.

Relocation of the studios on a temporary basis for short periods of time at HS2's cost remains a possibility but it is highly unlikely that the promoter or the company would be able to find a comparable location offering the distinctive qualities of the Park Village Studio. Just to give an example, the dry hire business would be lost, for which there would be no compensation; nor would there be any compensation for the disruption to the in-house production part of the business.

The assurances offered to Park Village Ltd set out a regime in which mitigation, but not compensation, might be taken forward, but then only on a conditional basis. What has been offered provides no guarantee that the business will be able to remain in the property on a viable basis. More especially, the company remains rightly concerned that in the event that its expectations are borne out and any mitigation that might be provided fails to enable it to carry on its normal activities and continue to attract custom as now, there is no right of redress or recompense. The promoter now needs to act to ensure that, in the acknowledged special case of Park Village Ltd, this business can continue to operate viably throughout the lengthy period of works.

The special report of the House of Lords HS2 Select Committee states at paragraph 196 that,

“the owner-occupiers of Park Village East are among those who will be most severely affected by the works, and to whom we recommend that the Secretary of State should provide further compensation going beyond what is at present proposed”.

I believe the same should apply to the business at 1 Park Village East but this is not currently the case. In the absence of sufficient consideration being offered by way of an agreement that provides for the reimbursement of business and consequential losses arising from the impacts of the HS2 works, a new clause giving such protection should be included in the Bill on a similar basis to the protection provisions given to businesses in similar circumstances in another example of public works. I have done some research. I found Section 16 of the London Transport (Liverpool Street) Act 1983, which is an example of what I am arguing for. Parliament considered it necessary to do this then; it is open to Parliament to do it again.

Through no fault of its own Park Village Ltd, which is a highly reputable and respected company within the UK's film and recording industry—it is on its own at the top; it is not in a dead heat with anybody else: it is an incomparable and outstanding company—may unnecessarily become a casualty of HS2's works and the inadequacy of the compulsory purchase compensation code to provide sufficient remedy should mitigation fail.

If I can go back into the history books, having been a Minister for 16 years without a break and without ever having been sacked, I have immediately to stress that I believe the Government's reluctance to depart from the statutory compensation code is understandable, but they should nevertheless be willing to deal fairly with a recognised special case. When the Bill was first introduced the then Transport Minister said that compensation should be full and fair. More recently, the current Transport Secretary said:

“Where compensation is due, it's right that we pay, and that we are generous”.

Park Village Ltd is asking only for fair treatment through me, not generosity. For these reasons, I plead with the Minister to acknowledge properly and substantively that Park Village Ltd is a special case. It is a very important provider of jobs locally and significant on the international scene. As no adequate fallback arrangements have been offered, please would he agree to this proposed new clause, because it would give the company the protection it needs and deserves? I beg to move.

Lord Sharkey (LD): My Lords, I will say a few very brief words in strong support of the amendment in the name of the noble Lord, Lord Hunt of Wirral. I live in Camden. I know the location of Park Village very well. I can quite see how the works associated with HS2 would effectively put the company out of business. That is quite apart from the disfiguring of a particularly attractive corner of what is not always the most attractive borough.

I have also worked with Park Village over two decades or so. My companies and their clients have been enthusiastic users of the studio, which plays an important part in London's creative industries. It generates significant revenue. It has an international reputation.

[LORD SHARKEY]

It contributes to Camden's creative life and its stock of jobs. London is quite rightly seen as the leading creative city when it comes to advertising and perhaps photography. Park Village Studios is part of this. It would be a very bad idea to lose the studio. It would be a bad and quite unjust idea to lose it without appropriate compensation.

Lord Ahmad of Wimbledon: My Lords, before I continue there is one point I want to clarify from my noble friend Lord Framlingham that came up in a previous debate. He asked about the purpose of the Grand Committee in relation to the work of the Select Committee. In general terms, a Select Committee in consideration of such a hybrid Bill normally looks specifically and primarily at private interests raised by petitioners, which gives it a very exhaustive opportunity to look at the different options. The role of the Grand Committee is what it traditionally is: to consider the public law clauses of a Bill, not the specific details of a private petition. We have certainly discussed those and I hope my noble friend feels that the issue has been clarified. I thought it was important to clarify that point.

Turning to the amendment, I apologise to my noble friend: I know he has written to me on this issue. I am assured by officials that a letter will be on its way shortly to address the specific issues he has raised in his letters. I hope that what I say will, if not totally, partly reassure him with regard to the concerns he has raised. As my noble friend acknowledged, this issue was considered fully by the Select Committees of your Lordships' House and the other place. It received lengthy hearings. A number of assurances have already been given to the proprietors of Park Village Ltd regarding the compensation of losses.

Those assurances set out in detail that the Government will aim to avoid or reduce any impacts on the operation of the business and, if it becomes necessary to do so, will compensate losses suffered by the business under a number of scenarios. This compensation, which my noble friend referred to, will be determined in accordance with the compensation code, which, as I believe he acknowledged, is a tried and tested method of establishing such losses. This system has developed over many years and seeks to address the very concerns he has raised.

Notwithstanding those comments, during the recent Lords Select Committee hearings, the Government gave further assurances to the proprietors of Park Village Ltd to manage the impacts from construction works at Euston on the business. Additionally, we will keep open the possibility of relocating the business should that become necessary. In its recent report, the Lords Select Committee noted that the best course was for the proprietor,

"to work with the promoter to find ways of continuing to carry on the business where it is. Only if this proves unworkable should relocation, at least on a temporary basis, be considered".

This matter is on the Government's agenda and the Select Committee had specific views on it. I hope that my noble friend is partly reassured by what I have said and the fact that in the determination of the Lords Select Committee on this matter it has been aware of the challenges that the business is facing. Based on those reassurances, I hope my noble friend is minded to withdraw his amendment.

Lord Hunt of Wirral: My Lords, it will come as no surprise to my noble friend that his reply to my points raised more questions than answers. While I recognise that he quite rightly quoted from the report of the Select Committee, he did not actually quote the point that the Select Committee made when it said:

"We are sympathetic to Mr Webb",

but he did raise the point about relocation.

The problem, as I understand it and the noble Lord, Lord Sharkey, also mentioned, is that sadly it is not possible to transport this business easily to another location. Although the Select Committee may well have hoped that it would be possible, I understand now that it is impossible without very substantial cost and expense to a company that could not possibly manage that cost and expense. As the noble Lord pointed out, it has a marvellous location, offering jobs and a business that has been built up and is of international repute. Therefore, there is a need to revisit this issue. I hope my noble friend will agree to hold some further discussions in an effort to find a solution.

With the latest action of Thames Water, the business is effectively going to have to close. Before we allow that to happen, there should be some way of negotiating a solution, and I once again plead with the Minister to see me, Park Village and other noble Lords who have already indicated to me their support for this amendment, to see if there is a way through before this goes back to the other place.

No doubt the local Member of Parliament, Sir Keir Starmer, who has already taken up the cudgels on behalf of Park Village East, will want to be involved in any such discussions. There must be a solution, and perhaps before I move to a decision my noble friend the Minister could indicate whether his door is open.

7 pm

Baroness O'Cathain (Con): One of the problems with this whole Committee today is that there are only four or five of us here who know exactly what happened, what exactly the atmosphere was and how we dealt with particular circumstances. This was certainly one which we spent a lot of time on. It might help take some of the heat out of this question if people actually read through the verbatim report of that day, which I am sure is available. It is just an idea, but I feel as though we are being accused of doing down—

Lord Hunt of Wirral: No.

Baroness O'Cathain: There is the suggestion that we should have come up with a solution. But we came up with the only practical solution at that stage and did not rule out there being another practical solution. When it comes to the tenor of the conversation, I am sure other members of the committee will agree with me when I say people should not be too harsh. It happened on one or two occasions earlier in this meeting today and I decided not to talk about it, but I think we were all really striving to deal with this, and I am sure the people from Park Village East realised that. I just wanted to make that point.

Lord Berkeley: Is the noble Lord aware of proposals for altering the routes of the tunnels under Park Village East to try and avoid that awful birdcage structure, which I believe can be done without an additional provision? I have heard that they are looking at it. I do not know enough about it to know whether that improves the situation or not, but I know there are moves afoot, because that birdcage is a very tricky structure to build and could put all those houses and Park Village East at risk due to settlement, because it is a tricky piece of construction.

Lord Hunt of Wirral: I am very grateful to the noble Lord for the suggestion he makes, which rather reinforces my plea to the Minister for an assurance that his door is open.

Lord Ahmad of Wimbledon: I say to my noble friend and indeed to all noble Lords that doors are always open. My noble friend Lady O’Cathain made a very appropriate and pertinent point in this respect. I deliberately listened in to the live deliberations of the committee and the tone that was set on certain issues, including this one, was not just sympathetic but—I have used this word repeatedly because I have seen it in action not just in writing—exhaustive when it came to considering the concerns raised by petitioners. The Government fully acknowledge the areas of concern that the Select Committee raised. If we can explore other areas further in discussions or meetings with appropriate parties without impacting any of the additional provisions, I am of course willing to listen and hear more—as I say during the passage of any Bill.

I do not want to give false hope that I can give any new commitments, but I reassure my noble friend and the noble Lord, Lord Sharkey, who also raised concerns, that we are live to the issues of this particular business—other petitions have been raised as well—and we will, as I articulated in my response to his amendment, be looking to ensure that we not only minimise and mitigate the effects but seek to work with the company to address any issues on an ongoing basis. This is not a *fait accompli* in the sense that the decision has been taken and there is nothing more that can be done.

I reiterate that we will continue to work with the company to ensure that its concerns can be addressed head-on. I asked officials briefly about the issue around Thames Water which he raised and I will seek an update on that. I have yet to sign the letter: perhaps we can reflect on those comments in it as well. I fully accept that my noble friend will not be totally reassured by what I have said, but I hope that at this juncture he will be partly reassured by the fact that the Government are live to this issue and respect the conclusions and recommendations of the Select Committee in this regard.

Lord Rosser: As the noble Lord, Lord Hunt of Wirral, has already said, the comments are contained in paragraph 197 of the Select Committee’s report. This follows 196, which deals with a different issue—the owner-occupiers of Park Village East—and recommends that,

“the Secretary of State should provide further compensation going beyond what is at present proposed”.

When the Government respond to the report they are, presumably, going to address the comment the Select Committee made in paragraph 196. In view of what has been said in the discussion about Park Village Studio, and the fact that the Select Committee included a paragraph on this issue, when the Government respond to the report will the Minister also be responding to what is in paragraph 197?

Lord Ahmad of Wimbledon: That was also a reflection of the issues raised by the report about residential properties that are impacted. As I said, if the noble Lord will bear with us, the Government’s response will be available in a week’s time.

Lord Hunt of Wirral: I am grateful to my noble friend the Minister and to my noble friends who sat on the Select Committee. The solution they were hoping for has not proved to be possible and that is why I am so pleased that not only is the Minister’s door open but he is determined to find a solution to the problem that I raised. This will come as a great relief to all those in the area. Perhaps we can now look at all possibilities and, however big his office is, ensure that everyone who is affected is able to hear from him directly on the sort of solution that he would propose. Those of us who are raising this are very strong supporters of the project and I am grateful that the noble Lord who is a director of HS2 has been here listening to the discussion. I would have thought that HS2 itself would want to ensure that a case as special as this is not ignored. In the light of the Minister’s kind agreement to take this further, I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Clauses 20 to 31 agreed.

Amendment 15

Moved by Baroness Young of Old Scone

15: After Clause 31, insert the following new Clause—

“Duty to have regard to minimising number of gantries

In exercising its powers under this Act, the nominated undertaker shall have regard to the desirability of minimising the number of gantries to be installed to provide power to the railway, in particular in areas of outstanding natural beauty designated by statute and in other areas of particularly high environmental value and sensitivity, and shall consult local communities when designing plans for gantry installation.”

Baroness Young of Old Scone (Lab): I will move Amendment 15 in the name of my noble friend Lord Stevenson who, as the Committee has heard, could not be here today and speak to my Amendment 28 which is grouped with it. I declare my interests as chairman of the Woodland Trust, president of a local wildlife trust, vice-president of RSPB and a former chairman of the Government’s wildlife adviser and regulator.

Had my noble friend Lord Stevenson been here I am sure he would have waxed lyrical about gantries and the need for the undertaker to ensure that gantry selection is as sympathetic as possible. I shall not try to emulate what he would have been saying so lyrically.

[BARONESS YOUNG OF OLD SCONE]

I will instead focus on my amendment, Amendment 28, which is about ensuring that the nominated undertaker deals with the commitment made that HS2 phase 1 would result in no net loss of biodiversity, and particularly dwell on HS2 Ltd's approach to the impact of the project on ancient woodland.

As the noble Lord, Lord Adonis, pointed out, HS2 is an extremely important infrastructure project—that is my only Second Reading remark—but ancient woodland is pretty important too. To refresh the Committee's memory of why, ancient woodland is defined as woodland that has existed since 1600. Some ancient woodlands are tens of thousands of years old and they are an irreplaceable resource of undisturbed soils, biodiversity and community that have existed for many centuries. They are redolent with history as well as biodiversity, and they are irreplaceable, as cathedrals are irreplaceable—they are the cathedrals of our natural world. Yet, more than 600 of them are currently under threat from development, and we are now down to less than 1% of the land surface of this country, which used to be substantially covered with wild wood, now remaining as our ancient woodland.

The impact of HS2 phase 1 on ancient woodland is considerable. It damages 34 ancient woodlands directly and 29 are further affected by noise, light or construction impact; there is more than 30 hectares of total loss. HS2's commitment to no net loss of biodiversity is impossible, because any damage to ancient woodland is irreplaceable, so the Select Committee in the other place directed the promoter to identify an independent arbiter to review the methodology for assessing no net loss, and suggested the Government's nature conservation adviser, Natural England, which has a statutory role in that respect. Natural England did the review and submitted its report at the end of July. Unfortunately, ongoing discussions with the Department for Transport meant that it was not published until 9 November, which did not leave the Lords Select Committee much time in which to consider it.

The Natural England review had three key conclusions. The first is that ancient woodland is indeed irreplaceable and that the ancient woodland calculation should be taken out of the metric on no net loss. I would applaud that.

Secondly, where loss of ancient woodland is unavoidable, the terms of compensation should be 30 hectares of new woodland created for each hectare lost. That is in line with Defra's draft biodiversity off-setting metric, which was developed in 2012. That sounds like a huge scale, but it is necessary due to the irreplaceability of ancient woodland. These are hugely rich areas, with their complex networks of biodiversity both above and below the soil level. Providing brand-new wood, which will be thin on biodiversity, not have those complex networks and take decades—centuries even—to come to a respectable level, means that you must provide an awful lot more that you have destroyed to be in even remotely the same ballpark for compensation.

Natural England was absolutely right to have that high ambition, based on the evidence which it had used to help Defra deliver its original off-setting metric in 2012. Apart from that, it would be apposite for HS2

to provide a positive legacy for the natural environment communities along the route. Alas, the current compensation ratio proposed by the promoter is less than five hectares for every hectare destroyed.

7.15 pm

The third recommendation from the Natural England report and review was that compensation planting should be not just within the line of route but enabled to be outside the limits of the corridor designated by the Bill. This is partly to avoid a wood that would be 10 meters wide and 140 miles long, but it would also help to reduce the pressure on land around the route, which landowners are already feeling quite severely, by allowing through voluntary agreements—which have been demonstrated to be possible—the creation of more effective groupings of woods across a broader part of the landscape over a wider area. This would ensure that woods are connected to each other and that they show enough scale and scope to be resilient for the future, and, indeed, to deliver best value for money. I am delighted that the Country Land and Business Association, which expressed worries about the pressures on land within that corridor, would welcome such an approach, which would take pressure of land immediately adjacent to the line, provide more flexibility, and reduce the impact on landowners worried about their most sensitive land.

I was dismayed when your Lordships' Select Committee dismissed the compensation proposals outlined in the Natural England review as not being evidence based. The report had 71 pages, was based on the best evidence available, had considerable expert input, and contained six pages of reference to other sources. I urge the Minister to seriously consider the complex work done by Natural England, which is ultimately the Government's own nature conservation adviser and made up of experts in the field. I very much look forward to the Government's response to its report, which I hope we will see before Report, and I thank the Minister for his offer on a discussion of that response beforehand.

The Government have a commitment to halting the overall loss in biodiversity by 2020 and to being the first Government for a very long time, if not forever, to hand on the natural environment in a better condition than they received it. I welcome those two commitments and in the light of them would like to ask the Minister three things: first, for a thoughtful response to the Natural England review that takes full account of the fact that it is the most expert body and the Government's statutory adviser; secondly, to accept Amendment 28, which requires the undertaker to take account of the Natural England report and indeed to take its advice throughout the construction of the railway; and thirdly, to ensure that the lessons that have been learned from the way ancient woodland protection has been dealt with in phase 1 be taken on board effectively for phase 2. I beg to move.

Baroness Pidding (Con): My Lords, in the unavoidable absence of the noble Lord, Lord Stevenson of Balmacara, and with his permission, I will speak to his Amendment 15, which I support. I must first declare two interests. First, my partner is a Lloyd's underwriter and is part

of the tendering process for the insurance provision for the construction of HS2. Secondly, we live in an area affected by the project.

The amendment raises the issue of the design for the gantries being used in the Chilterns AONB from the point at which it emerges from the bored tunnel and proceeds on the surface to Wendover. My appeal to the Minister is that the promoter and the nominated undertaker should think very carefully about the appearance of these intrusive overhead power lines. In particular, they should explore the possibility of removing as much as possible of this unappealing infrastructure to compensate for the imposition of the railway on the sensitive landscapes of this precious part of our countryside. There is, I accept, a design panel and I am sure it will do what it can to mitigate these unwelcome intrusions of which I speak. But we must all do what we can to protect this rural environment.

I look forward to hearing my noble friend the Minister's response and hope that he has it in his power to give undertakings: that sensitivity will be used in design; that local people will be consulted; and that all efforts will be made in the Chilterns AONB to conceal power lines, which currently, on the design presented by HS2, will be attached to towers twice the height of the existing pylons. Of course, the ideal solution would be to bury overhead power lines associated with this project in the AONB underground. Will he indicate whether this would be a possible solution?

Lord Berkeley: My Lords, I follow my noble friend's example. While I fully support her wish to have woodland preserved, I do not know much about it. I think it is a very good idea and I look forward to hearing the Minister's response. I hope that it will be in the response next week. However, I have problems with Amendment 15. Overhead power lines for railways are a necessary part of making the trains run, unless you use diesels. Diesels are not only polluting, they are very heavy and they do not really like going as fast as is planned for HS2.

Noble Lords may be aware that when the east coast main line was electrified—before my day, but perhaps the noble Lord, Lord Snape, was around then—it was done on the cheap and the wires do come down with depressing regularity. Network Rail, in electrifying the Great Western, have therefore gone to the opposite extreme and put up some pretty hefty towers, supported on piles in the ground, and the wires will be so strong that they will probably resist a good hurricane. But then the people of Bath said that they did not want wires on the railway going past the beautiful city of Bath. When Bath was built, there was not a railway, was there? But a railway was put through it so that the good people of Bath could get to Bristol and London and other places. They did not want a catenary at all; they wanted a third rail because you would not see it. It would have cost billions to develop a special train to go just there so you would not see the wires. The later idea was that the people of Goring, somewhere between Didcot and Reading, did not like the look of these posts and so they are taking legal action, I believe, against Network Rail to have the posts redesigned.

If we want to move around in a modern way, we need electric wires to move the trains. The further apart you put the posts, the more the wires are likely to

come down when there is any wind. There has to be a compromise. Yes, we have railways going through AONBs and other places but if you go to places such as the Swiss Alps, the Austrian Alps or other beautiful parts of the continent, all the lines are electrified and the wires just blend in with the rest of the infrastructure. I would strongly resist HS2 being told to have special architect-designed posts for a particular area. It will not work. It will cost an enormous amount of money. These things will fit in with the surroundings quite well. Frankly, when 40% of the line is in a tunnel anyway, you are not going to have too many posts around to look at.

Lord Rosser: I want to make just one or two comments about Amendment 28, to which my noble friend Lady Young of Old Scone has spoken. Obviously, I am aware of the comments that have been made by the Select Committee, which was not, let us say, fully enamoured of the report by Natural England. Equally, as I understand it, it was a report that Natural England was asked to produce in relation to this issue. As my noble friend has said, it has made its recommendations. The Select Committee took the view that it did not feel the reference to a scale of 30:1 was evidence-based. Before I go any further, I accept that I was not a member of the committee and therefore do not know everything that was said when evidence was taken. I do not doubt in that sense that the committee had good reason for making the point it has.

I hope the Government will look sympathetically on the amendment. Certainly, I, too, wish to hear what their response is to the report and the review by Natural England. If their view is that they do not feel they can go down the road of that report, I hope they will set out very clearly what their reasons are and perhaps whether they have alternative propositions to those that have been made. I hope the response will be, at least in large measure if not in its entirety, that they would be willing to accept what was in the report that Natural England was asked to prepare.

Baroness Buscombe (Con): I thank all noble Lords who have taken part in the debate. I begin with the amendment proposed by the noble Baroness, Lady Young of Old Scone, and supported by my noble friend Lady Pidding. I immediately declare an interest. My full title is Lady Buscombe, of Goring. Therefore, the reference the noble Lord, Lord Berkeley, made to gantries affects me directly and is one of the reasons why I was very keen to speak to the amendment on behalf of the Government.

As the noble Lord said, we are dealing with an engineering issue that is largely based on safety. While I completely empathise with my noble friend, the number of gantries needed is based on a strict engineering and operational specification. Most of my friends and neighbours in Goring have come to terms with this now, because the reality is that if you have too much distance between each gantry there would be a slack of the line, which can be whipped up by the wind, as the noble Lord said. There would therefore be a genuine safety issue. That is something we have sought to take on board. Any variation in this specification would introduce reliability issues on the railway.

[BARONESS BUSCOMBE]

The ability to reduce the number of the gantries is therefore limited. However, the project is committed to mitigating the visual impacts of the railway through, for example, providing screen planting along parts of the railway to help obscure the overhead line equipment where it is likely to cause a significant visual effect. The phase 1 route has been developed specifically to minimise its impact on landscape and visual amenity, and, where possible, to make a positive contribution to it. This includes the decision to keep the railway as low in the landscape as is reasonably practicable. That is something we did not achieve with Network Rail through the AONB known as the Goring Gap. This is a huge step forward in mitigating the sight of the gantries. The use of earthworks and tree planting will help integrate the railway into the landscape and obscure features such as gantries. I hope what I said will reassure my noble friend such that the proposed amendment is unnecessary. I therefore hope that it will be withdrawn.

With respect to Amendment 28, proposed by the noble Baroness, Lady Young, and supported by other noble Lords, I very much empathise with what she said, but I hope that I can persuade her that this amendment, too, is inappropriate, as it seeks to impose a requirement whose merits were fully examined and rejected by the Lords Select Committee. As noble Lords are aware, toward the end of last year, Natural England produced a report, referenced this evening, that reviewed the Government's proposed metric to achieve no net loss of biodiversity. The primary recommendation of that report, which was markedly different from its previous standing advice, is that where new woodland planting is used to compensate for ancient woodland losses, 30 hectares should be planted for each hectare lost, as the noble Baroness said.

7.30 pm

However, the Lords Select Committee considered this issue and ultimately did not agree with the conclusions of the report. Let me explain why. The Select Committee noted in its report that it was,

"not persuaded by Natural England's opinion ... to create new woodland on the scale of 30:1".

The Select Committee went on to note:

"Having emphasised ... that changes should be evidence-based, the report seems to have plucked this figure out of the air".

Indeed, Natural England itself accepts that there is very little evidence to support this ratio. It is for this reason that the Government did not accept the recommendation. Providing 30 hectares of new woodland planting for each hectare lost would be the equivalent of providing approximately 45 football pitches for every hectare of ancient woodland lost—an immense amount of additional land take. We have moved past the stage where we can add in additional land requirements to the Bill and we must be mindful of this project's objective to minimise, wherever practicable, the total amount of land take.

We will be providing over 5 hectares of woodland for every 1 hectare of ancient woodland we have to take. Overall, we will be planting more than 650 hectares of new woodland between London and Birmingham as part of the first phase of HS2. The Government

have also established an additional £5 million fund to create new native broadleaf woodland and enhance existing ancient woodland. This is on top of the package of compensation for ancient woodland lost during construction measures already in place. As part of the fund, £1 million has already been made available to the Forestry Commission to support projects that will help restore, enhance and extend ancient woodland on private land or in partnership with multiple landowners. This could support projects similar to the restoration of Chalkney Wood in Essex, which has successfully removed all the conifers from an ancient woodland to restore it to native species.

We have also recently awarded a contract to Crowders Nurseries in Horncastle, Lincolnshire, to grow and provide HS2 with 7 million trees and shrubs. I hope noble Lords will agree this is great news for a UK family-run business and for the people of Lincolnshire, as Crowders also aims to create 13 new apprenticeships over the duration of its 10-year contract, giving a skills boost to its workforce and providing new opportunities for people looking to develop their careers within the horticulture industry. This is an important example of the wide benefits that HS2 will bring, beyond the simple—albeit extremely important and, we believe, crucial—benefits on the line of route.

HS2 is doing more than any other major project to protect the environment and leave as little trace as possible. The new woodland will be managed for up to 50 years so that the trees are protected and communities will be able to enjoy it for hundreds of years to come. For all those reasons, I hope your Lordships will agree with me that this amendment is inappropriate and unnecessary and should be withdrawn.

Baroness Young of Old Scone: My Lords, first, I apologise to the noble Baroness, Lady Pidding, for stealing her thunder in moving Amendment 15 and apologise for the fact that, under the conventions of the Committee, I now cannot speak about my own amendment but have to reply on Amendment 15, if I understand it correctly. I am sure that had the noble Lord, Lord Stevenson, been here, he would have been disappointed at the Government's response to the amendment on the number and style of the gantries, as I am sure the noble Baroness, Lady Pidding, is.

I thank noble Lords who spoke in support of both amendments, and the Minister for her thoughtful response, although I look forward to the Government's response to the Lord Select Committee's report and hope that, in the intervening period, there may be further consideration of whether there is any scope between the 30 times and the five times compensation ratio for something as important as ancient woodland. I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Clauses 32 to 34 agreed.

Amendment 16

Moved by Lord Ahmad of Wimbledon

16: After Clause 34, insert the following new Clause—

"Traffic regulation

Schedule (Traffic regulation) contains provision relating to traffic regulation."

Lord Ahmad of Wimbledon: As noble Lords will know, traffic regulation orders, or TROs, are a mechanism for local highway authorities to make temporary or permanent restrictions on the use of highways in their area to control traffic. They can include stopping up roads, restricting roads to one-way operation or restricting roads so that they cannot be used by lorries. Such orders could frustrate the construction of the railway by, for example, putting lorry bans on a road that is needed to reach an HS2 phase 1 construction site or point. We have already seen one example of a road in London that we intend using for construction traffic being made one-way, despite our intentions being in the public domain for more than three years.

The new clause and schedule will ensure that local highway authorities consulted the Secretary of State for Transport before making any orders that affected either specific roads identified for use by HS2 or other roads related to HS2 construction works, thereby avoiding this problem. It also allows the Secretary of State, if required, to make TROs, and to prohibit or revoke TROs that unnecessarily hinder the delivery of the railway. The Secretary of State already has the ability to prohibit TROs under specific circumstances, but this power will make that process less convoluted, which is necessary to ensure we do not create unnecessary bureaucratic delays and associated costs in the delivery of the railway.

Clearly, we hope that the regular meetings taking place with local highway authorities to consult on, agree and monitor local traffic management plans will ensure that there will be no need to rely on this provision. However, given the impact such TROs could have on the overall construction and delivery of the railway, we feel that it is both prudent and necessary for such a power to be included.

While a power in relation to TROs has not been required for previous hybrid Bills, given the scale of the project and the risk of issues that could arise during construction, we believe that it would be prudent for the will of Parliament and its approval for this project to be constructed not to be thwarted by a TRO. Therefore, I beg to move the amendment.

Lord Brabazon of Tara (Con): I am grateful to my noble friend for having explained the new schedule, which extends to four-and-a-half pages of quite draconian powers being asked for by the Secretary of State. It is most unfortunate for it to be introduced now, after the Bill has been through the hybrid Bill committee in both Houses, therefore denying the highway authorities the opportunity to petition against it, which I think I can say authoritatively that they would have done. I have been briefed by Camden Council, which says that it would have petitioned against the new clause, and I think the same can be said for Transport for London and various other highway authorities along the route, notably Buckinghamshire County Council.

It is most unfortunate that my noble friend should be introducing four-and-a-half pages of such a draconian new schedule but not allowing the people involved to petition against it. I would also like to know whether the Minister has actually consulted on the new schedule with any of the highway authorities that are likely to be affected by it. My understanding is that no consultation

has taken place so far. I also rather wonder what the purpose is of HS2 information paper E13, which deals with the management of traffic during construction and how much of it is now being negated by the introduction of the new schedule. I hope my noble friend will consider whether it is really necessary or whether he might not just drop the whole thing and rely on the powers that the Government already have.

Lord Berkeley: My Lords, I echo the comments of the noble Lord, Lord Brabazon. I have had communications from Transport for London, Camden Council and the West Midland Transport Authority, all expressing serious concerns about both the procedure being used and the practicality of what is proposed. In his opening remarks, the Minister said that the size of this project was unprecedented and therefore all these special regulations were needed to make sure you could get along the road. It is bigger than HS1, but not that much. Crossrail, going all the way through London was a pretty major project, too, and had many traffic issues. I was vaguely involved in both of them. As the noble Lord, Lord Brabazon, said, that begs the question of why, if this legislation was thought necessary, it was not in the original Bill so that local authorities could petition.

In terms of consultation, I have a letter here from Transport for London, dated 6 January, to the Department for Transport expressing concern that it had a meeting before Christmas where the consultation consisted of bringing up this draft regulation under AOB and that was it. It states that the discussion focused on the removal of vehicles and did not cover the amendments. So there was no consultation. Camden, in particular, must be worried about lorries: the latest figure for the borough is 1,500 per day. We shall probably come to that in a later amendment. It is no good HS2 trying to ride roughshod over TfL's Safer Lorry scheme or using bus lanes for its heavy commercial vehicles. For a bus user, why should HS2 trucks get in the way of buses? London has to continue to operate. The cycle superhighway network—which I love, of course—is apparently going to be affected. None of these organisations appears to have been consulted.

There is a way forward. All these organisations—and I am sure Bucks county council and others are the same—want to consult and find a solution. I urge the Minister to withdraw the amendment and organise some far-reaching and comprehensive consultations so that, if there has to be legislation, a new draft can be brought forward on Report. If he does not withdraw the amendment, I shall oppose it.

Baroness Randerson: My Lords, I share the serious concerns that have been voiced around the room this evening. The way in which this is being attempted undermines trust in the whole process. We just heard the noble Baroness go to great lengths to reassure us about the care and concern that has been taken over an issue such as ancient woodland, and we are all very pleased to hear that. However, then to hear that the lives of thousands of residents and many thousands of drivers could be seriously affected by the introduction of changes to traffic regulations that have been subject to virtually no scrutiny and are contrary to the wishes

[BARONESS RANDERSON]

of the local councils and traffic authorities means that the whole approach is unbalanced. I urge the Minister to think again, to reach out and discuss it with the authorities concerned and give them an opportunity to put their case. Some form of compromise can probably be reached. At least they will have been properly consulted. If that is not done, it feels a bit like sharp practice. I dare say that it is the result of people thinking about the need for this rather late, but I also tend to think that it is an overreaction and probably is not needed. As the noble Lord, Lord Berkeley, said, other big schemes have managed without it.

7.45 pm

Lord Snape: My Lords, I will be extremely brief. I agree with the sentiments expressed on both sides of the Committee. My question to the Minister is: why this particular schedule, and why now? I served on the Crossrail Bill. As my noble friend said, many roads in the centre of London were affected. Any of us who have travelled between Westminster and Euston will know the years of dislocation caused by all the Crossrail work at Tottenham Court Road, yet we seem to have coped reasonably well during that time. Now, out of the blue, after a protracted parliamentary process, this draconian measure is put before us. Surely, under his existing highway powers, the Minister could act against any deliberate attempt to forestall proposed works along the route of HS2. If he goes ahead with this, I suspect there will be a further long debate on Report. I cannot forecast the future, but I suspect the Government will lose.

Lord Jones of Cheltenham: I add my voice to those who are asking the Minister to think again. Having served on the Select Committee with colleagues who are now friends, I must say that there was no hint of such a late intervention into traffic management. People should be consulted before it goes ahead.

Lord Rosser: My Lords, I add my support the views expressed. Frankly, it does not look as though we will go much further with this because my noble friend Lord Berkeley has indicated that he will object to the amendment and, as I understand it, if the question is put, a single voice against an amendment causes it to be negatived in proceedings in Grand Committee. My noble friend has made his position quite clear, and I

must say that I support him and so many others who have spoken, significantly including members of the Select Committee, who are clearly less than impressed by what has happened. I do not think it is misrepresenting the position to say that the Select Committee faced a number of people who were less than impressed by the way that HS2 itself had conducted some of the consultation processes and sought to address some concerns.

The question has been asked why the amendment has come late. I am sure other Members of the Committee have also received the letter of today's date which has been sent from HS2 by Mr Roger Hargreaves to the leader of Buckinghamshire County Council. He writes: "The need for these proposed amendments arose late in the Bill process, and I am sorry that this did not leave time for the level of engagement with the local highway authorities that we would have liked ... Parliamentary convention is that government amendments should be moved at the Grand Committee stage, which unfortunately left little time". Unfortunately, if the Committee does not like what is happening and one Member chooses to object, that negatives the item. I finish by saying that I sincerely hope that the Minister will take the fairly strong hints that have been given to him during this debate and agree to withdraw the amendment, hold the consultations that have been referred to—which, as I understand it, is what people are really seeking—and come back with it on Report or at Third Reading.

Lord Ahmad of Wimbledon: My Lords, I have always been very respectful of views that are expressed in your Lordships' House, and today is no different. The Government have outlined their position, which I articulated in my opening remarks, on their concerns about project delivery being held up unnecessarily by a TRO. However, I have listened very carefully to the views of my noble friend who served on the Select Committee in particular, and to those of other noble Lords, and without prolonging debate on this point, I will reflect on the comments that have been made. On that basis, I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Clause 35 agreed.

Committee adjourned at 7.51 pm.

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