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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Tuesday 31 January 2017

2.30 pm

Prayers—read by the Lord Bishop of Norwich.

Royal Assent

2.36 pm

The following Acts were given Royal Assent:

Policing and Crime Act,
Wales Act.

Railways: Fares Question

2.37 pm

Tabled by Baroness Randerson

To ask Her Majesty's Government whether they intend to review the mechanism used to determine annual increases in train fares.

Lord Bradshaw (LD): My Lords, with the leave of the House and on behalf of my noble friend Lady Randerson, I beg leave to ask the Question standing in her name on the Order Paper.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, the annual increase of regulated rail fares is set using the retail prices index figure published for July. This is consistent with the approach adopted across the rail industry. The UK Statistics Authority concluded in 2015 a consultation and review of UK consumer prices statistics. The review recommended moving towards ending the use of the RPI. The Government will await the UK Statistics Authority response before considering further changes to the current mechanisms.

Lord Bradshaw: My Lords, I thank the Minister. In waiting for that response, will the Government consider whether it is right to have a universal increase in fares across all services, regardless of the quality of service for passengers? In particular, it seems to me that London commuters, especially those from south of the river, are facing a situation where the Government are using RPI automatically to increase fares on Southern, regardless of the quality of service being offered.

Lord Ahmad of Wimbledon: As I have already said, we will certainly look at the findings and will then make an appropriate decision. The noble Lord raises the important point about fare increases, which I know impacts many in your Lordships' House and many beyond. However, as he will be aware, regulated fare increases are capped at RPI plus 0% for the term of Parliament until 2020.

Lord Tebbit (Con): My Lords, would it not be rather curious if we adopted the suggestion from the other side of the House? It would mean that we would be raising fares where the demand was lowest, and raising the fares most where the demand was lowest.

Noble Lords: Highest.

Lord Ahmad of Wimbledon: I think that I follow the thread of my noble friend's remarks. I agree with him about the importance of giving certainty to those who are affected. We are adhering to the position that the Government have taken, which was a manifesto pledge.

Lord Snape (Lab): My Lords, does the Minister agree that, as recently as 2008, 50% of train fares in the United Kingdom were met from the Treasury, and the same proportion was paid for by the train traveller? As that percentage has now been skewed to 27% by the Treasury and the remainder by the traveller, does that not have some impact on the mechanism for fare increases on an annual basis?

Lord Ahmad of Wimbledon: Again, the noble Lord raises an important point. If we were to put figures to that, there is about £4.8 billion in government subsidy. He is quite right that the rest comes from rail revenue, which is about £9.8 billion. It is important that there has been a review of the current process; we should await the outcome of that consultation and the Government will then take any necessary decision at that time.

Lord Dholakia (LD): My Lords, is the Minister aware that passengers are now using consumer laws to gain refunds from their credit and debit card providers? This is a very worrying practice. Will the Minister issue a clear instruction to Southern that this is its obligation? It should be met and the situation ought to be monitored.

Lord Ahmad of Wimbledon: The noble Lord is right to raise the important issue of compensation for Southern passengers. The Government are acutely aware of the challenges on that network, as many from across your Lordships' House have also made clear to me during our debates on this issue. As the noble Lord will be aware, we have issued additional compensation schemes but we continue to work with and monitor Southern, and to hold it to account for any issues which arise. If the noble Lord has specific matters or a particular case to raise, I ask him to please write to me.

Lord Rosser (Lab): Why do the Government keep claiming that the regulated fare increases are needed to fund the investment programme in the railways, when the increase in fares paid by rail passengers is really intended to achieve a continuing reduction in government subsidy, and a continuing increase in the percentage of rail costs that are paid for by hard-pressed fare-paying passengers to well beyond that in nearly every other country?

Lord Ahmad of Wimbledon: Again, what the Government have done was made clear in the run-up to and during campaigning in the last general election: that what rail users need when it comes to fares policy is certainty. That is why we gave a commitment to have RPI plus 0%, and we are staying true to that pledge.

Lord Foulkes of Cumnock (Lab): Has the Minister noticed that the Scottish Government are doing exactly the same as the United Kingdom Government on rail fare increases, proving yet again beyond peradventure that they are still Tartan Tories?

Lord Ahmad of Wimbledon: The noble Lord always brings a particular viewpoint to our debates here and he has done so again. It is a matter for the Scottish National Party to determine its ideology. However, if it is being won over by the positive agenda of the Conservative Government then I welcome that.

Earl Attlee (Con): My Lords, does the Minister agree that it is essential to have an RPI formula in order that the train operating companies do not have to try to forecast where inflation might be in several years' time?

Lord Ahmad of Wimbledon: My noble friend is right to raise this issue. The basis we currently use, as I have been clear, is RPI. It is important to provide certainty to the market not just for people using the services but, as he points out, for rail companies as well. As I have said, once we see the result of the consultation we will look at this.

Baroness Altmann (Con): My Lords, can my noble friend explain why we are using the RPI rather than the CPI, as RPI is no longer an official statistic? Pensioner incomes are tied to the consumer prices index rather than the retail price index, yet hard-pressed consumers are having to pay an RPI increase.

Lord Ahmad of Wimbledon: My noble friend speaks from great expertise, particularly on pensions, and she is right to raise the concern expressed by the travelling public. But I say to her that RPI is consistent with the general indexation approach currently used across all aspects of the rail industry, including franchise payments, network grants and franchise financial models. As she will be aware, those are all indexed at RPI. I have already alluded to the study; let us await the outcome and we will then see how we progress on the way forward.

Lord West of Spithead (Lab): My Lords, 378 years ago yesterday, Charles I was executed. Does the Minister agree that this shows the dangers of any form of taxation, including indiscriminately taxing rail fare users for something that should be provided in another way?

Lord Ahmad of Wimbledon: The noble Lord again raises an important chapter in history. No matter what challenges the Government face, I hope that that fate does not await anyone.

Russia Question

2.45 pm

Asked by **Lord Balfre**

To ask Her Majesty's Government whether, in the light of the change of administration in the United States, they intend to re-evaluate United Kingdom relations with Russia.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, the Government's objectives on Russia have not changed. They remain to protect UK interests and those of our allies, uphold the rules-based international order in the face of Russian challenges, engage with Russia in key areas of shared interest, promote our values including the rule of law and human rights, and build stronger links between the British and Russian peoples. The new Administration in the US do not alter these objectives.

Lord Balfre (Con): I thank the Minister for her Answer. Do the Government understand that there was considerable anger in the United States at what was seen as Europe—not Britain, but Europe—not pulling its weight, particularly in defence matters? People in Louisiana cannot see why they pay 3.3% while people in Latvia, in return for an Article 5 guarantee, pay 1.1%. Therefore it is not unreasonable that the new United States Administration may be seeking a further means of détente. Will we support them in so far as we can?

Baroness Anelay of St Johns: My Lords, when my right honourable friend the Prime Minister met President Trump last week, she confirmed not only that they had agreed to lay the groundwork for a future trade deal but that he had confirmed that he was 100% behind NATO. However, it is right that all members of NATO pay their fair share. We shall certainly encourage other members to do so. My right honourable friend the Prime Minister also advised clearly that in relations with Russia, it is a matter of "engage but beware".

Lord Davies of Stamford (Lab): Would we not send the most dangerous and perverse signal to Russia, and indeed to any potential aggressor anywhere in the world, and greatly undermine the credibility of the western world if we were to lift sanctions without Russia having begun to fulfil her obligations under the Minsk agreements?

Baroness Anelay of St Johns: My Lords, my right honourable friend the Prime Minister has made it absolutely clear that we will support the continuation of sanctions until and unless all the aspects of the Minsk agreements are met. That is essential.

Lord Pearson of Rannoch (UKIP): My Lords, do the Government agree that the treatment of Russian minorities in the Baltic states has been unhelpful to harmony with Russia? If so, what are they and the multicultural but ineffective European Union doing about it?

Baroness Anelay of St Johns: My Lords, I would say many things about the European Union, but I would never call it ineffectual. It is because of some of its effects, perhaps, that the British people decided that they wished to leave the European Union when they cast their votes last year. With regard to the specific issue of ethnic minorities, as I made clear in my Answer, we are a strong supporter of human rights. We will continue to argue that point in our relationship with Russia.

Lord Wallace of Saltaire (LD): My Lords, given the importance of co-ordinating our relations with Russia with our European partners, particularly with regard to Ukraine and the other countries round Russia's western border, how do the Government intend to maintain that close co-ordination as we withdraw from the mechanisms of European foreign policy co-operation?

Baroness Anelay of St Johns: My Lords, on a previous occasion I have been able to make it clear that the Foreign and Commonwealth Office is already putting in place the opportunity to expand our network throughout the other member states of the European Union. Our bilateral relationships should therefore remain strong and develop to be even stronger as and when we leave the European Union.

Viscount Waverley (CB): My Lords, would it be helpful if the Government, in the Security Council, resolved to endeavour to complete uncompleted Wilsonian principles as to when the right of self-determination supersedes that of territorial integrity, to remove all question of doubt?

Baroness Anelay of St Johns: My Lords, we can learn from history. We can certainly learn to engage with Russia and to engage even more closely with our allies in the United States, as I mentioned yesterday. Sometimes it seems at the moment that policy development is, in the polite phrase that I think I used, evolving and rather confusing. That makes it difficult to be able to give the noble Viscount a satisfactory answer at this particular moment.

Lord Forsyth of Drumlean (Con): My Lords, will my noble friend take this opportunity, amid all the media froth, to emphasise the importance of the commitment which the Prime Minister obtained from President Trump to NATO, on which the security of Europe and indeed the West depends?

Baroness Anelay of St Johns: My Lords, as I mentioned a moment ago, my right honourable friend the Prime Minister indeed raised that very issue in the press conference. It is absolutely vital that we have that commitment, and it has been given by President Trump.

Lord Brooke of Alverthorpe (Lab): My Lords, if we can learn from history, as the Minister states, could she say whether her department does an assessment and evaluation after state visits? Did it do so after President Putin visited the country and might it repeat that in the future?

Baroness Anelay of St Johns: My Lords, matters relating to state visits are decided by a committee whose members come from across Whitehall, including of course from No. 10 Downing Street. I am sure that all departments reflect on the success of every single state visit.

Lord Marlesford (Con): My Lords, does my noble friend agree that one of the things that international diplomacy should seek is common ground between all these countries? In the case of the United States and Russia—and of course us—one important bit of common ground is fighting ISIS. We can also bring in the other two permanent members of the Security Council, France and China, on that. But apart from the military aspect, the aim should be to ensure secular rather than theocratic Governments. That is the only long-term route to peace.

Baroness Anelay of St Johns: My Lords, we of course work towards the principle that it is for the people of the country to decide the status of any Government in free and fair elections, which should include votes for every single person qualifying and involve no duress. I would not say that I would ban one particular type of democratic government, if properly chosen. With regard to the unity of the strongest powers in the world—as the P5 at the UN may be defined—it is essential that we find common ground to resolve conflicts. I am delighted that Russia, Turkey and Iran all recognised, at the Astana talks on Syria, the primacy of the UN in resolving those issues.

Homelessness *Question*

2.53 pm

Asked by Lord Beecham

To ask Her Majesty's Government what steps they plan to take, in addition to their support for the Private Member's Homelessness Reduction Bill, to tackle the growing problems of homelessness and rough sleeping.

Lord Beecham (Lab): My Lords, I refer to my local government interests. Rough sleeping has doubled since 2010—

Noble Lords: Oh!

Lord Beecham: I apologise to the House—I beg leave to ask the Question standing in my name on the Order Paper.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I thank the noble Lord for the brief insight into the supplementary that he is about to ask, although unfortunately it was perhaps a little too brief. The inference in the Question on the Order Paper is absolutely right. The Private Member's Bill introduced by my honourable friend Bob Blackman in the other place is of great importance. In addition, the Government are determined

[LORD BOURNE OF ABERYSTWYTH]
to help the most vulnerable in society and we are investing over £550 million up to 2020 to tackle homelessness and rough sleeping.

Lord Beecham: My Lords, as I was saying before I was properly corrected, rough sleeping has doubled since 2010, and the use of temporary accommodation by local councils has increased by 40%. The Government's support for the Homelessness Reduction Bill is welcome, but their £61 million funding over three years leaves a gap of £79 million according to the Local Government Association. Is not the reality that the causes of homelessness are not being tackled? When will the Government take action to facilitate the building of affordable housing to rent and to tackle the problems caused by an unregulated private rented sector in which high rents and a lack of security of tenure have led to the present crisis?

Lord Bourne of Aberystwyth: My Lords, the question of homelessness and rough sleeping is a complex one. The noble Lord is right that the number of rough sleepers has gone up in the past six years—that is absolutely true—but the number of homeless people has halved since 2003, and more than halved since its peak. As I said, during this Parliament we have committed £550 million to tackling rough sleeping and homelessness over the next four years.

Lord Bird (CB): Could the Government look at the enormous problems around empty homes? There are probably about 250,000 empty homes in Britain today, and if we put effort into doing something about that we might find that the housing problem shrank a bit. There used to be a wonderful organisation called the Empty Homes Agency that kept the Government on their toes. I suggest that we return to looking at these ways—as well as all others—of solving that problem.

Lord Bourne of Aberystwyth: My Lords, I pay tribute to what the noble Lord does in the area of homelessness. He really knows what he is talking about. I will take that idea away for consideration. In the housing White Paper, to be published shortly, there will be discussion of these issues. However, I applaud what he has done and welcome that particular initiative, which we will look at.

Baroness Farrington of Ribblesdale (Lab): My Lords, would the Minister care to answer the second part of my noble friend Lord Beecham's question, which he did not answer at all?

Lord Bourne of Aberystwyth: My Lords, if that is the case, I will write to the noble Lord. I thought that I had fully addressed the question. I am not now sure what it was but I will write to the noble Lord on the second part of his second question.

The Lord Bishop of Norwich: There is a growing number of reports of landlords evicting tenants on universal credit, not because the tenants are in arrears but because landlords dislike the new system where their rental income comes through the tenant rather than being paid direct. Will the Minister assure the

House that this change of practice will be reviewed if these indications show that it increases homelessness and rough sleeping?

Lord Bourne of Aberystwyth: My Lords, I thank the right reverend Prelate for his contribution. As I have indicated, the housing White Paper is due shortly and will deal with different tenures. The Homelessness Reduction Bill, which will proceed through your Lordships' House shortly, is an opportunity to discuss this issue. We are, however, giving increased security of up to 56 days.

Baroness Pinnock (LD): My Lords, Homeless Link has estimated that 86% of those sleeping rough have had, or are currently dealing with, mental health issues. What, in particular, will the Government do to help people suffering from both homelessness and sleeping rough?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness is right about that mental health challenge, and it goes back to what I said about rough sleeping and homelessness being a complex issue. We discuss this with other government departments and with the charitable and voluntary sector, as part of a ministerial group chaired by my honourable friend Marcus Jones in another place. She is, however, right to highlight that issue and we are looking at it.

Lord Best (CB): My Lords, I have the honour of taking the Homelessness Reduction Bill—the Private Member's Bill—through your Lordships' House. I thank and congratulate the Government on giving this strenuous support, and the same goes for Her Majesty's Opposition. Can the Minister, however, impress on his colleagues in the Department for Work and Pensions that their attempts to reduce housing benefit and freeze the rents paid to private landlords is undermining efforts to place people in the private rented sector? As the right reverend Prelate says, there are already enough inhibitions on private landlords taking people on housing benefit, and some are now terminating their agreements. Unless we tackle this, the Homelessness Reduction Bill will not make much odds.

Lord Bourne of Aberystwyth: My Lords, I first thank the noble Lord for his endeavours with regard to the Homelessness Reduction Bill and I pay tribute to all parties that are ensuring that this legislation passes, because it will make—notwithstanding what the noble Lord just said—an important contribution to this area. Again, the noble Lord has addressed an important issue and shows that it cuts across government. We talk to the Department for Work and Pensions. As he has indicated, there are issues. We have ensured, for example, that there is deferred application of the local housing allowance until 2019, and then we will ensure that we have a new funding model that delivers just as much at the same level, which will include hostels. He is, however, right to address that issue: it requires a concerted effort across government.

Lord Smith of Hindhead (Con): My Lords, in 2015, only 44 local authorities out of 326 went out to gather data for the rough sleeping count. The rest estimated

their results. Will my noble friend consider reviewing how these data are collected and introducing more standardisation, perhaps through the homelessness Bill?

Lord Bourne of Aberystwyth: My Lords, my noble friend is right about the reliability of the data. I do not have the precise figure to hand, but I believe that there have been improvements in the collection of data. Let us bear in mind that these data were not collected at all until 2010: it was initiated by the previous Government. I will take that point away to ensure that we bear down on local authorities on this, but, as I said, I think the position has improved since the figures that the noble Lord gave us.

Southern Rail Question

3 pm

Asked by **Lord Berkeley**

To ask Her Majesty's Government what plans they have to nationalise the Southern railway franchise.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, there are no plans to strip Govia Thameslink Railway of its franchise. The speculation in the media is just that: speculation. DfT of course continues to monitor the operational and contractual performance of all franchises.

Lord Berkeley (Lab): I am grateful to the Minister for that reply, but there was a lot of press speculation last week that Ministers were considering taking direct control of rail franchises, including Southern rail. I cite the *Guardian*:

"Options ranging from splitting off Southern from Govia ... to a complete 'managed exit' to take direct control of the entire franchise".

It might be odd that none of that came from anywhere near government. I am pleased that the Minister is saying that there is no plan to nationalise, because on the same day the Secretary of State repeated that there is no better alternative to GTR—I hope that noble Lords would agree with that. Of course, three years ago, the Government got rid of the nationalised east coast main line franchise, because Sir Patrick McLoughlin, the then Secretary of State, said:

"I do not believe that it would be in the public interest for us to have a nationalised train operating company".—[*Official Report*, Commons, 27/6/13; col 449.]

I hope that in his response the Minister can clarify what the Government's policy is.

Lord Ahmad of Wimbledon: The noble Lord has perhaps answered his own question. He cited two sources: one was the *Guardian*, and the other was my right honourable friend, the then Secretary of State. I would rely on the response of my right honourable friend.

Lord Stoneham of Droxford (LD): My Lords, would the nationalisation of the franchise really make much difference? Does not the current government control mechanism and the performance measures that they have in place for the Southern franchise suggest that they are already running it?

Lord Ahmad of Wimbledon: I do not agree with the noble Lord. There is a particular mechanism in place by which the Government can hold GTR to account on performance. We are doing just that, but it applies across the rail network.

Lord Naseby (Con): If Her Majesty's Government are monitoring all the franchises, I draw my noble friend's attention to the performance of the Great Northern over the past three years, where the timekeeping has got considerably worse from when it started out. Should not Her Majesty's Government be doing something to ensure that all the train companies stick to the contracts that they were given?

Lord Ahmad of Wimbledon: I agree with my noble friend, and that is why my department monitors the operational and contractual performances of all franchises. If a franchisee does not meet its contractual commitments, the Secretary of State will make a decision on next steps.

Lord Rosser (Lab): What benefits have current Southern rail passengers gained from a private operator running their railway service under the present franchise agreement, in view of the extent of the widely recognised poor performance from that train operator over the past two years not related to industrial action?

Lord Ahmad of Wimbledon: We are acutely aware of the challenges which everyone who uses that franchise currently faces. The noble Lord tries to distinguish the effect of the industrial dispute, which, as I have always said from this Dispatch Box, has compounded the challenges that Network Rail is facing. The Government have committed an extra £300 million to investment on the Brighton main line. Let us contextualise the industrial dispute, as I have done before. RMT is out on dispute on a new contract. Every train supervisor, as they are now called, has signed that contract—every one; not one is exempted. They are working on the new contract. There are no job losses on the new contract. There is no pay cut on the new contract. What is more, they are guaranteed a job until 2021—even I cannot lay claim to that.

Lord Cromwell (CB): Has the Minister seen the promotional poster for Southern railways, the strapline for which is, "Stay longer, see more"? Is that where we have been going wrong—we have not understood its mission statement?

Lord Ahmad of Wimbledon: I have to declare that I have not seen that particular poster, but I am sure that the company will look at its mission statement quite carefully to ensure that it delivers what it seeks to do.

Lord Hayward (Con): Considering the question asked earlier, will my noble friend identify how many working days in this country have been lost over the last six months, and what proportion of those working days arise from disputes with the RMT on one line or another, including in Greater London, where the Mayor said that there would be no disputes?

Lord Ahmad of Wimbledon: My noble friend is right to raise the important issue of days lost. On the Southern dispute, 27 days have been lost and we are looking at a cost of circa £38 million. My noble friend asked specifically about the ongoing dispute in London with RMT, which we hope will be resolved shortly. I do not have the particular figures to hand but I will write to him in that respect.

Lord Snape (Lab): My Lords, bearing in mind the fact that Southern trains operates with a management contract set out by the Government, operates trains specified by the Government for driver-only operation, and that its own director of financing said at a public meeting only last year that, on DOO, 2016 was the year that the department would break the unions, what is the difference between the situation with Southern and a nationalised industry anyway?

Lord Ahmad of Wimbledon: What is happening on Southern, as I have said before, is that various issues have come to the fore. Yes, there is non-performance on the part of GTR, and it is seeking to address those matters. The Government are holding it to account, but the continued industrial dispute on that network compounds the challenges that commuters—passengers—face, and it is about time that industrial dispute came to an end.

High Speed Rail (London–West Midlands) Bill

Third Reading

3.07 pm

Lord Taylor of Holbeach (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the High Speed Rail (London - West Midlands) Bill, has consented to place her interests, in so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Motion

Moved by Lord Ahmad of Wimbledon

That the Bill do now pass.

3.08 pm

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, at the final stage of this important Bill in this House, I take this opportunity to thank all noble Lords who have contributed to its passage, and without whose efforts we would not have been able to make such excellent progress. I thank my noble friends Lord Younger and Lady Buscombe for their diligent work in assisting me during the Bill's passage. I greatly appreciate their support.

On behalf of the House—indeed, I believe I share the sentiments expressed by all Members across the House—I thank the Select Committee, which was so ably chaired by the noble and learned Lord, Lord Walker

of Gestingthorpe. His resolute, compassionate and pragmatic approach in handling the business before him was impeccable and held in high admiration by petitioners, by the Government as the promoter of the Bill, and by his fellow committee members.

I also thank other members of the Select Committee for all their efforts and hard work. I thank the noble Baroness, Lady O'Cathain, for her contributions, particularly in Committee and on Report; the noble Lord, Lord Young of Norwood Green; my noble friends Lord Brabazon of Tara and Lord Freeman; and the noble Lords, Lord Elder, and Lord Jones of Cheltenham. The committee served diligently for eight months, hearing over 300 petitioners, and made extremely valuable interventions both in Committee and on Report. I also thank noble Lords from the Opposition Benches. I have sat with the noble Lord, Lord Rosser, in sessions both in and outside your Lordships' House, trying to address issues on which we did not quite agree. I thank him, and the noble Baroness, Lady Randerson—who unfortunately is not in her place—for their helpful interventions and the co-operative and positive approach they adopted in resolving any final differences that remained on the Bill.

I also thank all other noble Lords who have contributed to debates on the Bill and helped the Government make valuable improvements. It would be remiss of me not to make special mention of the noble Lord, Lord Adonis. Some things are originated by one Government and then handed over to another. I am sure the noble Lord will reflect with satisfaction on the fact that this baton has been passed on successfully. What now remains is the important work of getting HS2 built, and I thank him for his efforts. Outside this Chamber, I thank the officials at the Department for Transport and HS2 Ltd, some of whom have been working for over five years on the preparation and passage of this hugely complex Bill, for their dedicated and conscientious efforts. I also thank our parliamentary agents, our counsel team and my private office for their help and advice in preparing the Bill and during the Select Committee phase.

Amendment to the Motion

Moved by Lord Framlingham

As an amendment to the motion that this bill do now pass, leave out “now” and insert “not”.

Lord Framlingham (Con): My Lords, I am well aware of the gravity of the amendment I have tabled. I hope the House will understand that I have only decided to do this after long and careful consideration. I have been a Member of your Lordships' House for six years, but I was a Member of the House of Commons for 27 years and a Deputy Speaker for 13 of those, so I am well aware of the proceedings and conventions surrounding the passage of a Bill. What we are doing today is a rare occurrence, but not without precedence and quite in order. Sometimes desperate situations require desperate remedies. In this case, your Lordships are all that stand between the wishes and welfare of the people and a folly on the greatest scale imaginable.

I have followed this issue carefully since it arrived in this House. I spoke against it at Second Reading, during the Queen's Speech debate and in Committee. During all those stages I heard nothing but criticism of the project from every corner of the House, but noble Lords were still, for some reason, reluctant to speak against it in principle. So we arrive at the situation we face today—all the scheme's credibility has long since gone, yet it is still bowling along with a momentum all of its own. It has been compared to Alice in Wonderland or the emperor's new clothes. One journalist described it as the "zombie railway" that refuses to die. How has it got so far? The originators of the scheme, all those years ago, were bewitched by the idea of speed. They had looked at high-speed railways in France and Japan and thought we should do the same here, with speeds up to 250 miles per hour. This was the original motivation for the whole scheme and when the claims for speed were eventually discredited, the promoters started talking about capacity. Now that the figures on where capacity is needed must have been queried, confirming a report by Sir Rod Eddington, the former head of British Airways, there is little or nothing to be said for the scheme at all. In his report, Sir Rod also challenged the cult of speed for its own sake, pointing out that above 150 miles an hour energy use soars and rates of return plummet.

3.15 pm

The use of Euston station has produced enormous, as yet unanswered questions. How will all the new platforms needed be fitted in without reducing present capacity and affecting existing Euston operators? How are passengers going to link up with the rest of the transport system, given that links, especially with the underground, are very poor? Passengers from the north wanting to use Eurostar may have to carry their bags for a mile down the busy Euston road. Even at this stage these vital matters are still not resolved.

I do not intend at this stage to go further into all the other countless failings of the scheme. The huge and insurmountable problems raised in Committee with major aspects of construction still have not been resolved; nor has the issue been addressed of how the money could be much better spent on linking Liverpool to Hull, or on modernising and improving the whole railway system.

Our right reverend Prelates have pointed out that untold damage has been done to homes and heartbreak caused to families along the proposed route; the same is true of offices, businesses and long-established, settled communities in both London and the countryside. People have had to move out of their homes and fight for compensation, sometimes in the most harrowing circumstances.

It is not commonly understood that most people will not be able to use their local station anymore because it will not be linked to the new line. They will either have to drive all the way to one of the very small number of new stations or suffer an inferior service.

It might be possible to justify all this upheaval if the project was essential—vital to the national interest. However, this is without question not the case. It has been dubbed a vanity project and the truth is that it has always been entirely optional. Originally a bright

idea, it simply took off, took hold, and has never been seriously channelled. If it proves to be the failure predicted by so many well-informed people, what a terrible disaster that will be.

The total cost of the scheme is currently £56 billion but according to current estimates it is more likely to be in the region of £80 billion. I remind your Lordships that the National Health Service is having difficulties balancing its books to the tune of £1.8 billion, yet we are talking about £80 billion for this project. How can a Bill be given the go-ahead when there are so many outstanding problems—not minor ones but major ones?

If people try to argue that this project cannot be stopped because so much has happened already and so much time and money has been committed, our answer must surely be, "How has this happened? Why have people done this before it has passed its obligatory parliamentary stages?". What is the point of our looking at and discussing these matters if our thoughts, views and decisions are to be totally disregarded? Nothing could better illustrate the gap between Parliament and people, Government and the governed, than a scheme such as this.

I have it on good authority that the Prime Minister, when she assumed office, wanted to abandon the scheme but was told that she could not because it was too late. It is never too late. There is an old adage about throwing good money after bad and although it may well be necessary to write off considerable moneys already spent, these sums have to be compared with the billions of pounds that would be spent in the future, not to mention the 10 years it is going to take to build, the massive disruption to Euston station and the surrounding area in London and, of course, the devastating effect it will have on our countryside.

The Institute of Directors, after a comprehensive survey of its members, has decided that HS2 is "not worth the money" and a "grand folly" and it calls on the Government to abandon it. The Institute of Economic Affairs has predicted a cost of £80 billion and said the line "defies economic logic". The Engineering Employers' Federation wants the money switched to roads. The former chairman of Eurostar, Adam Mills, said in a letter to the *Times* that HS2's economics were "away with the fairies". He said the money should be spent on, "traditional rail enhancements, given the ... short distances between UK cities".

I have here four pages, filled with quotations from business leaders, academics, railway specialists, economists, ex-Cabinet Ministers and journalists—I cannot possibly read them all out. Every single person condemns HS2 and will, I imagine, be watching today's proceedings with great interest. Most significantly for us, our own House of Lords Economic Affairs Select Committee, in its report on HS2, was hugely critical. On capacity it said:

"There are less expensive options to remedy these problems than HS2 but these have not been ... reviewed".

In summary, the committee's chairman, the noble Lord, Lord Hollick, said that at £50 billion, which was the then estimate,

"HS2 will be one of the most expensive infrastructure projects ever undertaken in the UK but the Government have not yet made a convincing case for why it is necessary".

[LORD FRAMLINGHAM]

In conclusion, the committee said:

“We have set out a number of important questions on HS2 that the Government must now provide detailed answers to. Parliament should not approve the enabling legislation that will allow HS2 work to begin until we have satisfactory answers to these key questions”.

There have been no satisfactory answers, because there cannot be—they do not exist for this scheme, and anyone who has studied it knows this to be true.

This House has a simple choice before it this afternoon. If it believes that the HS2 project provides good value for money and will benefit the British public, it will vote against the amendment. But if it agrees that this was an ill-conceived project from the start, which has been entirely discredited, even during the three years it has been passing through Parliament, and that if allowed to proceed, it will result in massive expenditure and huge disruption in both London and the countryside for no discernible benefit at all, the House will support the amendment and stop this scheme before any more harm is done. I beg to move.

Baroness Mallalieu (Lab): My Lords, I understand that this House will be reluctant to vote on a Bill at this stage, particularly one which has seen detailed scrutiny in both Houses—which, I have to say, was mainly directed at the line of route. However, despite all that, and despite the fact that those who served on those Select Committees devoted a considerable amount of time and that the noble Lord, Lord Ahmad, has sought to be helpful and open, and indeed has been patient itself at every stage in steering the public Bill through this House, I cannot but support the amendment.

I do not live in fairyland, and I suppose that there is little realistic chance of the amendment being passed if it is pressed to a vote, because the Whips on all sides of the House are apparently intent on nodding the Bill through. However, I would see it as a failure of my position as a Member of this House if I did not speak now and vote if necessary later in opposition to the passage of the Bill.

As I have done before, I declare my interests as president of the Countryside Alliance and someone who knows personally much of the stretch of countryside between London and Birmingham which is about to be devastated, and many members of the rural communities which will be destroyed along that route. However, I am speaking today not to repeat my views on the devastating environmental damage but because there is a question which surely must be answered before the Bill—this folly—goes any further. That is, simply: does HS2 phase 1 now represent value for money? Is this the best way to spend £55.7 billion—the National Audit Office figure—of taxpayers’ money?

The project we were originally sold was to cost £30 billion in 2010—these are the Department for Transport’s own figures. By 2015, the estimate had risen to £57 billion. Independent estimates are now in the order of £80 billion, or £87 billion if it is adjusted for inflation. The estimate for both phases 1 and 2, taking this railway line on beyond Birmingham, is somewhere in the region of between £138 billion and £147 billion.

The original project was sold to us as one which would have direct trains through to Heathrow and also to the Eurostar, both of which have been ditched.

The original argument was based on reducing the journey time to Birmingham by, as I recall, about 20 minutes. When, not surprisingly, that found little favour, the argument became about the need for future capacity—that is despite the urgent immediate need for capacity on trans-Pennine routes, with all the people standing like cattle on trains coming into London day after day.

The train, we were told, was going to run into central London. What is not widely understood, however, is that the present plan goes only as far as Old Oak Common station. It is planned to end there for a good seven years after phase 1 is completed—that is, seven years after the projected completion of phase 1 in 2033. The MP for the area, Sir Keir Starmer, believes it will cause “decades of blight”. The Mayor of London, Sadiq Khan, has called for the redevelopment to be put on hold unless less disruptive plans can be made.

The cost of making the necessary acquisitions for taking the trains on into Euston with rising London property prices are frankly unquantifiable. The reality is that it is likely to be cheaper to fly than pay the fares which will have to be charged on this line. So where does the demand for this now come from? It comes from politicians who have put reputations on the line—some of them the most articulate of advocates. It comes from people who have already put money into trying to sell this project. And it comes from people who are hoping to make money, either from the construction work or from the developments around the out-of-town stations—that is, the few of them that are on the route.

Yet ex-Treasury Ministers of all colours have said that more, smaller, infrastructure projects are of greater value to the public and to the country as a whole. This project has already gone badly wrong, as a range of those who have examined it have pointed out. The Treasury Select Committee, the Public Accounts Committee and the Economic Affairs Committee of this House—as has already been mentioned—as well as the Infrastructure and Projects Authority, which only last year gave it an amber/red warning, have all cautioned that it is not likely to be on time or within budget.

The warnings are all there and senior personnel have gone very recently, including the chief executive. A financial crisis during construction, which will require major curtailment of the present plans, or a bailout, and the likelihood of there being insufficient money for phase 2 from Birmingham Northwood, are increasingly odds-on prospects.

The Prime Minister, on taking office, called in and re-examined the Hinkley Point project. She then let it proceed. This project surely must be called in to answer the question: does it still represent value for money? We keep saying, to critics of this place, that the value of this House is to hold the Government to account. If we let this through without raising our voices, we will have failed in our purpose.

Lord Young of Norwood Green (Lab): My Lords, as someone who spent six months of my life serving on the Select Committee, I feel I have to answer some of the points that the noble Lord made, in particular that the Bill has not been scrutinised. It had two years’ scrutiny in the Commons and a further six months on every aspect imaginable. Whether concerns were about

the environment, noise, or construction, every aspect of the route and its impact was carefully examined. There will always be those who argue against infrastructure expenditure, especially on the levels that we are talking about. When it started, Crossrail was by no means universally accepted, yet now it is praised to the skies as a scheme that was necessary and was delivered on budget and on time.

This is the first railway out of London in something like 120 years. Whether or not the proposal started from the point of view of increasing speed, there is a capacity argument and this project will relieve capacity. It was certainly news to me when my noble friend suggested that the trains would stop at Old Oak Common. If they do, that will be a new development. We debated that not long ago and rejected amendments to that effect from the noble Lord, Lord Bradshaw, and I believe that my noble friend Lord Berkeley was associated with that as well. Therefore, we examined the impact of the line very carefully. Can it be accommodated at Euston? Yes, it can. Allowances have been made for the integration of Crossrail 2 and a new classic railway station.

Thousands of jobs are dependent on this scheme. Somehow we seem to have lost the vision that we started off with in terms of what we need in infrastructure capacity. I suppose that that is not surprising when one looks at the length of time that the scheme has been under consideration. I sincerely believe that the House will recognise that this Bill has been scrutinised in great depth and that it would be a decision of great folly to follow the advice of the noble Lord, Lord Framlingham.

3.30 pm

Lord Adonis (Non-Aff): My Lords, this is a huge investment and the noble Lord, Lord Framlingham, need not apologise for putting down his amendment or opening this debate. Given the views that he holds, I think he is absolutely right to require the House to come to a decision after a debate and without simply proceeding straight to a vote before such an investment is made involving an important strategic departure from our transport policy.

The noble Lord and my noble friend Lady Mallalieu made two claims: first, that this project is somehow undemocratic because it has not properly been considered by Parliament and the people; and, secondly, that I and those who followed me were somehow bewitched by trains doing what they seem to do in most of the rest of the world—that is, running at 200 miles per hour and linking up the principal cities of countries with economic geographies similar to our own. Perhaps I may deal with those two points in turn.

I was responsible for publishing the Command Paper that began the process for HS2 in March 2010. I can tell the House frankly that there was a debate inside the Government at the time as to whether we should publish the Command Paper before or after the election. I can also tell the House frankly that a key factor in that discussion was whether the route should be published before the election or after it. The route had been prepared in detail by High Speed 2 (HS2) Ltd and indeed, following all the scrutiny since 2010, it has survived with hardly any variation, except for the addition of a considerable number of tunnels.

I was very firmly of the view—and the Prime Minister at the time, Gordon Brown, came to the same view—that it would be profoundly undemocratic to announce an intention to build such a major infrastructure project as HS2 knowing what the route would be but hiding it until after the election from the people and, in particular, from those who lived in the constituencies affected. So we published the route before the election.

All three major parties had a commitment to HS2 in their manifestos for the 2010 election. Because of the public meetings that I conducted in the 2010 election, I know that it was—how can I put it?—a very live issue in that election. I remember addressing one meeting where I said that I thought that HS2 would be on my tombstone and somebody from the back shouted out, “Not soon enough”. So there is no way that this scheme was disguised from the people in the 2010 election, and an overwhelming majority was returned supporting HS2.

That then led to exhaustive consideration by the House of Commons and a Select Committee of the House of Commons. There were thousands of petitions against the scheme and the Select Committee considered the Bill in detail for the best part of two years. When the House of Commons had considered the report of that committee, it voted by 399 votes to 42 in favour of the passage of the high-speed 2 Bill. After another general election, HS2 was in the manifestos of the major parties, and all the detail relating to it, including the detailed parliamentary consideration, could be considered by voters.

It is hard to see how the noble Lord, Lord Framlingham, can sustain a charge of a lack of democracy in this process. It has been almost a model of democratic engagement: there have been two general elections; two parliamentary committees; thousands of petitions, which were considered patiently by members of a Select Committee in both Houses; and two votes in the House of Commons—on Second Reading and Third Reading—in which the Bill passed 10 to one, with very large numbers voting.

We now come to my bewitchment. To clear up one factual error, it has been stated that at the beginning HS2 was about trains running very fast and that it became about capacity when that argument fell apart. That is completely untrue. The opening words of the 2010 Command Paper which launched HS2 are:

“the Government’s assessment is: ... That over the next 20 to 30 years the UK will require a step-change in transport capacity between its largest and most productive conurbations”,

that is, London, West Midlands, the north-west, and Yorkshire. It continues that alongside such additional capacity—let me repeat those words—

“alongside such additional capacity there are real benefits for the economy and for passengers from improving journey times and hence the connectivity of the UK”.

The argument could not have been clearer. Capacity was the first and overriding consideration. But because a new railway was being built it was clearly sensible and right that Parliament authorised it to be built with 21st-century technology not 19th-century technology, the cost difference between the two not being great in any event.

[LORD ADONIS]

The noble Lord and my noble friend spoke as if there might be a free lunch—if we do not build HS2 we will save large sums of money. I freely confess that constructions costs are high. If someone could wave a magic wand and reduce them I would be glad to hear from them and I think the House and Parliament would be well served. The two key points in relation to the costs are these. First, if HS2 is not built then other, very expensive interventions, which will probably end up costing about the same amount of money, will be needed to systematically upgrade the west coast main line to meet the requirements of the next generation. Those upgrades will not produce anything like the capacity that could be produced by building a new railway to 21st-century specifications.

The first function I performed as Minister of State for Transport was opening the refurbished west coast main line. That line is often described as Victorian. It is in fact pre-Victorian; it was opened for the coronation of Queen Victoria in 1838. Only four miles of the line—between London and the extension north from Birmingham, built after the coronation—are straight, because it had to be built around the estates of Members of your Lordships' House. I can assure the House that in earlier hybrid Bill Committees, noble Lords were extremely good at getting compensation for the building of the line—much greater in real terms than is available to those affected now, which is of course part of the reason that the project is controversial. They were also good at making the line take detours.

Upgrading a pre-Victorian railway is a very difficult task. It has been described to me as like performing open-heart surgery on a moving patient. It is also very expensive and complex. The completion of the last upgrade of the west coast main line, which produced only a fraction of the additional capacity that HS2 will produce, cost, in pre-2010 prices, £10 billion—in post-2010 prices that figure would be significantly higher. Of that £10 billion, £1 billion alone was for paying the railway company not to operate services at all in compensation for the disruption. For HS2, with the scale of the work that would be required, the proportionate figure would be larger still.

If an alternative scenario to HS2 were to be carried out—upgrading the existing railway—the estimate that was made for me by officials in 2010, and which has been done again since, is that you would have to spend half as much as on HS2 for a quarter of the capacity, and of course the sum is a moving target because of construction costs and inflation. The idea that this is good value for money is for the birds. It is good value for money only if the limit of our horizons for the modernisation of this country and of the transport links between our major conurbations stops in 10 or 15 years' time. If we are doing what I regard as our job as parliamentarians—looking to the longer term—then it is very poor value for money.

I should add that the alternative scheme involved the complete rebuilding of Euston station, which will need to be done anyway. The great monstrosity that is Euston station was built for half its current capacity in the 1960s. I am glad to say, for those with a sense of history, that the Euston arch will come back when the station is rebuilt. The scheme also required hugely

difficult and expensive work that would involve weeks on end of closures to realign tracks and signalling, extend platforms at all the main stations going north from Euston and so on. Those of your Lordships who used the west coast main line when the last work was being conducted will know that the disruption was chronic for the best part of a decade. We would be looking at something significantly worse than that if we were to seek to modernise the west coast main line on the scale required for the additional capacity.

It is not just the west coast main line that would be affected. In order to provide that 25% extra capacity, the Chiltern line would need to be substantially four-tracked throughout. I am not the most popular person when I appear in the Chilterns to explain the benefits of HS2. However, I can tell your Lordships that if you were to go the Chilterns to suggest that the existing railway be four-tracked, all of which goes above ground and which would have a significantly worse impact on the environment than HS2, I wish you luck in conducting those public meetings.

The choice that we faced was between building a new line between the major conurbations of the country to provide three times the existing capacity and the essential economic backbone for interchange between those great conurbations for the next generation, or conducting yet another patch and mend of a pre-Victorian railway at huge expense and offering a fraction of the capacity. I believe the decision that we took, which the coalition Government and now the existing Government have stood by, was exactly the right one, looking to the long term. The big mistake that has been made was the failure over the previous 40 years to adequately modernise the railways and, instead, to make do with patch-and-mend solutions that were hugely expensive and did not meet the exigencies of the case.

Let me make one final comment. My noble friend said that there were other pressing investment requirements for the railways, and she is correct. The London to Brighton main line, which was mentioned earlier, is one among many lines that have huge capacity constraints, and I am entirely supportive—as is the National Infrastructure Commission, which I chair—of what has been called the east-west Crossrail of the north; that is, the upgrading of the lines between Liverpool, Manchester, Leeds and Hull. But these are not choices. We can actually manage, as a country, to conduct more than one big infrastructure project at a time—most other developed countries have been managing it for the past 50 years. The idea that it should be an ambition beyond the reach of this great country that is now looking to forge a path in the world on its own as a great economy is, of course, nonsense. It is perfectly possible for us to carry through and pay for HS2 over the next 15 years, the completion of Crossrail, the next Crossrail scheme, the Crossrail of the north and other essential modernisations. What we need is proper planning, the right level of ambition and to stand by our duty to the country to see that we do not have to put up with, in the next generation, second-rate infrastructure that holds back the economy in the way that we did for too much of the post-war period. That is the issue that faces us, as a House and as Parliament. I hope that your Lordships will rise to the challenge.

3.45 pm

Lord Rosser (Lab): Although the amendment is listed as changing one word, it would in fact change just one letter; it would substitute “t” for “w” in the word “now”. In so doing, it seeks to consign HS2 to the dustbin.

HS2 was initiated by a Labour Government and was taken forward first by the coalition Government and then, following the general election, by the present Government. There is clearly a mandate to proceed. The Bill has been debated and considered both in this House and in the Commons and has been the subject of detailed consideration by Select Committees of both Houses. I hope that the Government will look favourably on the outstanding compensation issues that have still to be determined.

The *Companion to the Standing Orders* indicates that, on an amendment of this nature at this stage:

“Any remarks should be brief and should not seek to reopen debates at previous stages of the bill”.

Consequently, my remarks will be brief. First, I thank the Minister, his ministerial colleagues and the Bill team for the way in which they have dealt with the debates as the Bill has progressed through this House and for the full responses that they have sought to give to issues that have been raised both in the House and at meetings. I also thank my noble friend Lord Tunnicliffe for his most welcome and much-appreciated advice and guidance and Hannah Lazell in our office for the considerable work that she has put into the Bill, which has been of such help to me. Finally, I thank the members of your Lordships’ Select Committee, who considered the Bill in detail over some months, for their invaluable and painstaking work.

The amendment is fatal and hardly appropriate for the unelected House to pass, even more so when the Bill has already been passed in the Commons by, as the noble Lord, Lord Adonis, said, an overwhelming majority of over 350. HS2 will bring a major and much-needed addition to this country’s transport infrastructure, including relieving the increasing pressure on the west coast main line—an issue that has to be addressed and cannot just be ignored and waved away. The pros and cons of HS2 have been considered and debated for a number of years. Inevitably, there will be some who will never feel able to agree to it, but the time has now come to make a decision. That decision must be to proceed. We can do that now by ensuring that the amendment, if put to a vote, is defeated and that the substantive Motion that this Bill do now pass is agreed.

Lord Ahmad of Wimbledon: My Lords, I thank all noble Lords who have spoken in the debate. I recognise the strength of feeling expressed by my noble friend in raising this issue. Indeed, I met him again only yesterday to see whether we could allay some of his concerns. I do not share the experience that he cited of the passage of the Bill in your Lordships’ House; I am sure that most noble Lords across the House share my sentiment. Several noble Lords have rightly, at various stages of the Bill’s passage, challenged aspects of cost and detail, but—I look across the House to the noble Lords, Lord Berkeley and Lord Bradshaw—they made it clear that, while challenging key aspects of the construction of HS2, they did so with the understanding and absolute assurance that they were committed to the project.

The noble Lord, Lord Adonis, clearly articulated the benefits of HS2 and I thank him for putting the whole project into context and correcting some of the history of railways in our great country. He talked about the time pre-1838, before Queen Victoria’s coronation. I am surprised that the noble Lord, Lord West, is no longer in his place, but I am sure that he made a particular note of that.

My noble friend Lord Framlingham rightly raised the issue of costs and the control of costs. It is right that your Lordships’ House challenges the basic element of costs. However, given the recent experiences of infrastructure projects and the intense debates, discussions and scrutiny in Select Committees of both Houses on the Bill, it was very clear that that issue would be addressed. Noble Lords from across the House quoted the positive nature of projects such as Crossrail that are running to time and budget. The noble Lord, Lord Adonis, talked about the brave new world in which our country finds itself. It is projects such as Crossrail that we are taking to the world to showcase the best of British engineering, supply chains and apprenticeships. I believe earnestly that HS2 provides opportunities of this magnitude. For example, the training facilities associated with the skills element of the HS2 project are an important legacy of any infrastructure project.

I assure my noble friend again that the scrutiny of costs will not only be internal. As I am sure he is aware, the Commons Public Accounts Committee and the National Audit Office have already produced several reports on the costs of HS2, which are publicly available. These bodies will continue to examine the cost of HS2 as we move forward and as more detailed costs on the project become available.

I am mindful not to detain your Lordships’ House longer than necessary. It is important that this project is supported across your Lordships’ House, as it is in the other place. My noble friend Lord Framlingham raised the issue of the CBI and the BCC. They are fully supportive of HS2 and have gone on record to say that the additional capacity it will create is vital.

We have debated, discussed and scrutinised this Bill and this project in the true traditions of parliamentary democracy. In closing I again pay tribute to the incredible work that the Select Committees of both Houses have done. My noble friend has been a Member of both Houses and is testament to the incredible work that Select Committees do in scrutinising petitions to ensure that, whoever the petitioner is, their voice is heard, considered and validated. If valid concerns are raised, Bills and projects can be amended—and the same is true of HS2. If you look at the course of the Bill and its progress through your Lordships’ House—I commend the Select Committee analysis of the various petitions—you will see the detailed scrutiny, analysis and recommendations of your Lordships’ Select Committee, all of which the Government have accepted. As I said, there were differences of opinion and we have sought to resolve them. I thank all noble Lords who worked on a constructive basis in that sense.

As I said to my noble friend, both in your Lordships’ House and in other meetings we have held, I appreciate that he has been consistent in his position in opposing this project. However, we have addressed and scrutinised

[LORD AHMAD OF WIMBLEDON]

this issue and the project and we have put in place the checks and balances necessary to ensure that the cost implications of the project have been fully considered and will continue to be so. I implore my noble friend, even at this late stage, to consider carefully the responses I have given and the valid processes, checks and balances that we have put in place. As we have heard, this project is not only necessary for investment in our railways but is important to ensure connectivity, capacity and that our country is truly a 21st century country on the world stage.

My noble friend has made his consistent position absolutely clear. He knows that I have respected his position throughout the process, as I assured him again yesterday. However, when he reflects on the debate this afternoon, the other debates and scrutiny that have taken place and the assurances that the Government have given, I hope he will be minded to withdraw his amendment.

Lord Framlingham: My Lords, I am grateful to the Minister for his words. He has been diligent and gracious throughout. He asks me to reflect on my words and my actions today. I have done little else for quite a few days now and I would not have done what I have done unless I really believed it was the right thing to do—for me, for this House and for the country.

I hope that noble Lords in the House will be sure, when they leave the House, go outside and talk to other people, that they have done the right thing today. This is going to last for at least 10 years. I do not want to rehearse all of the arguments again, because I can pretty well tell when the House has had enough, and I am not going to refute all the arguments—although I could. I understand why other people want to put their points of view, and I am grateful to the Minister and particularly grateful to the noble Baroness, Lady Mallalieu, for supporting me so well and being very much a kindred spirit in this. There are more of us around than I think anybody really appreciates. I say to the House, with all sincerity, that I have heard nothing this afternoon that makes me change my view that the HS2 project is fatally flawed and should not be given the blessing of your Lordships' House. I want to test the opinion of the House. I beg to move.

3.56 pm

Division on Lord Framlingham's amendment

Contents 25; Not-Contents 385. [The name of a noble Lord who voted in both Lobbies has been removed from the voting lists.]

Amendment disagreed.

Division No. 1

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Bradley, L.	Fall, B.
Bradshaw, L.	Farmer, L.
Brady, B.	Farrington of Ribbleson, B.
Bridgeman, V.	Faulkner of Worcester, L.
Brooke of Alverthorpe, L.	Faulks, L.
Brookman, L.	Fearn, L.
Brougham and Vaux, L.	Fellowes, L.
Browne of Belmont, L.	Fink, L.
Browning, B.	Finlay of Llandaff, B.
Bruce of Bennachie, L.	Finn, B.
Burt of Solihull, B.	Fookes, B.
Buscombe, B.	Foster of Bath, L.
Butler-Sloss, B.	Foulkes of Cumnock, L.
Byford, B.	Fox, L.
Caine, L.	Fraser of Corriearth, L.
Caithness, E.	Freeman, L.
Callanan, L.	Gadhia, L.
Cameron of Dillington, L.	Gale, B.
Campbell of Pittenweem, L.	Garden of Frognal, B.
Campbell-Savours, L.	Gardiner of Kimble, L.
Carey of Clifton, L.	Garel-Jones, L.
Carrington of Fulham, L.	Geddes, L.
Carter of Coles, L.	German, L.
Cashman, L.	Giddens, L.
Cavendish of Furness, L.	Gilbert of Panteg, L.
Chakrabarti, B.	Glasgow, E.
Chalker of Wallasey, B.	Glasman, L.
	Glenarthur, L.
	Gold, L.

Goldie, B.
 Goodlad, L.
 Gordon of Strathblane, L.
 Goschen, V.
 Goudie, B.
 Grade of Yarmouth, L.
 Grantchester, L.
 Greaves, L.
 Greenway, L.
 Griffiths of Fforestfach, L.
 Grocott, L.
 Hague of Richmond, L.
 Hamilton of Epsom, L.
 Hanham, B.
 Hanworth, V.
 Harries of Pentregarth, L.
 Harris of Haringey, L.
 Harris of Peckham, L.
 Haworth, L.
 Hayman, B.
 Hayter of Kentish Town, B.
 Hayward, L.
 Healy of Primrose Hill, B.
 Helic, B.
 Henley, L.
 Hodgson of Abinger, B.
 Hodgson of Astley Abbots,
 L.
 Hollins, B.
 Holmes of Richmond, L.
 Home, E.
 Hope of Craighead, L.
 Horam, L.
 Howarth of Newport, L.
 Howe, E.
 Howe of Idlicote, B.
 Howell of Guildford, L.
 Howells of St Davids, B.
 Hoyle, L.
 Hughes of Woodside, L.
 Hunt of Kings Heath, L.
 Hunt of Wirral, L.
 Hussain, L.
 Hutton of Furness, L.
 Inglewood, L.
 Irvine of Lairg, L.
 James of Blackheath, L.
 Janke, B.
 Janvrin, L.
 Jay of Ewelme, L.
 Jolly, B.
 Jones, L.
 Jones of Cheltenham, L.
 Jones of Whitchurch, B.
 Jopling, L.
 Jowell, B.
 Judd, L.
 Kalms, L.
 Keen of Elie, L.
 Kennedy of Southwark, L.
 Kerr of Kinlochard, L.
 Kerslake, L.
 Kilclooney, L.
 Kingsmill, B.
 Kinnoull, E.
 Kirkhope of Harrogate, L.
 Kirkwood of Kirkhope, L.
 Laming, L.
 Lamont of Lerwick, L.
 Lawrence of Clarendon, B.
 Lea of Crondall, L.
 Lee of Trafford, L.
 Leigh of Hurley, L.
 Lennie, L.
 Liddell of Coatdyke, B.
 Liddle, L.
 Lindsay, E.
 Lingfield, L.

Listowel, E.
 Livermore, L.
 Lothian, M.
 Low of Dalston, L.
 Luce, L.
 Ludford, B.
 Lupton, L.
 McAvoy, L.
 McDonagh, B.
 MacGregor of Pulham
 Market, L.
 McIntosh of Hudnall, B.
 McIntosh of Pickering, B.
 MacKenzie of Culkein, L.
 Mackenzie of Framwellgate,
 L.
 McKenzie of Luton, L.
 MacLennan of Rogart, L.
 Maddock, B.
 Mancroft, L.
 Manzoor, B.
 Marland, L.
 Masham of Ilton, B.
 Massey of Darwen, B.
 Meacher, B.
 Mendelsohn, L.
 Mobarik, B.
 Monks, L.
 Montrose, D.
 Morris of Bolton, B.
 Morrow, L.
 Moynihan, L.
 Murphy of Torfaen, L.
 Myners, L.
 Naseby, L.
 Nash, L.
 Neville-Jones, B.
 Neville-Rolfe, B.
 Newby, L.
 Newlove, B.
 Nicholson of Winterbourne,
 B.
 Norton of Louth, L.
 Nye, B.
 O'Cathain, B.
 O'Loan, B.
 O'Neill of Bengarve, B.
 O'Neill of Clackmannan, L.
 Oppenheim-Barnes, B.
 O'Shaughnessy, L.
 Ouseley, L.
 Oxford and Asquith, E.
 Palmer of Childs Hill, L.
 Palumbo, L.
 Pannick, L.
 Parminter, B.
 Patel, L.
 Patten, L.
 Paul, L.
 Phillips of Worth Matravers,
 L.
 Pinnock, B.
 Pitkeathley, B.
 Popat, L.
 Porter of Spalding, L.
 Prior of Brampton, L.
 Prosser, B.
 Radice, L.
 Ramsay of Cartvale, B.
 Ramsbotham, L.
 Rana, L.
 Rawlings, B.
 Redesdale, L.
 Redfern, B.
 Reid of Cardowan, L.
 Renfrew of Kaimsthorpe, L.
 Rennard, L.
 Ribeiro, L.

Risby, L.
 Roberts of Llandudno, L.
 Rogan, L.
 Rooker, L.
 Rosser, L.
 Rowlands, L.
 Saatchi, L.
 Sandwich, E.
 Sawyer, L.
 Scott of Bybrook, B.
 Scott of Needham Market, B.
 Scriven, L.
 Seccombe, B.
 Selborne, E.
 Selkirk of Douglas, L.
 Selsdon, L.
 Sharples, B.
 Sheikh, L.
 Sherbourne of Didsbury, L.
 Sherlock, B.
 Shields, B.
 Shinkwin, L.
 Shipley, L.
 Shrewsbury, E.
 Shutt of Greetland, L.
 Simon, V.
 Singh of Wimbledon, L.
 Skelmersdale, L.
 Slim, V.
 Smith of Basildon, B.
 Smith of Clifton, L.
 Smith of Hindhead, L.
 Smith of Leigh, L.
 Smith of Newnham, B.
 Snape, L.
 Soley, L.
 Spicer, L.
 Stedman-Scott, B.
 Steel of Aikwood, L.
 Stephen, L.
 Stirrup, L.
 Stone of Blackheath, L.
 Stoneham of Droxford, L.
 Stowell of Beeston, B.
 Strathclyde, L.
 Stroud, B.
 Stunell, L.
 Sugg, B.
 Suri, L.
 Sutherland of Houndwood, L.

Suttie, B.
 Taylor of Goss Moor, L.
 Taylor of Holbeach, L.
 [Teller]
 Teverson, L.
 Thomas of Gresford, L.
 Thomas of Winchester, B.
 Thornton, B.
 Thurso, V.
 Tope, L.
 Touhig, L.
 Trees, L.
 Trefgarne, L.
 Trenchard, V.
 Trimble, L.
 Tugendhat, L.
 Tunncliffe, L.
 Turnberg, L.
 Turnbull, L.
 Tyler, L.
 Tyler of Enfield, B.
 Uddin, B.
 Ullswater, V.
 Vere of Norbiton, B.
 Verma, B.
 Wakeham, L.
 Walker of Aldringham, L.
 Walker of Gestingthorpe, L.
 Wallace of Saltaire, L.
 Walmsley, B.
 Warsi, B.
 Wasserman, L.
 Watkins of Tavistock, B.
 Watson of Invergowrie, L.
 Watts, L.
 Wei, L.
 West of Spithead, L.
 Wheeler, B.
 Whitaker, B.
 Whitby, L.
 Wilcox, B.
 Willetts, L.
 Williams of Trafford, B.
 Wills, L.
 Woolf, L.
 Wright of Richmond, L.
 Young of Cookham, L.
 Young of Norwood Green, L.
 Younger of Leckie, V.

Bill passed and returned to the Commons with amendments.

Digital Economy Bill

Committee (1st Day)

4.18 pm

*Relevant documents: 11th and 13th Reports from the
 Delegated Powers Committee*

Clause 1: Universal service broadband obligations

Amendment 1

Moved by Lord Mendelsohn

1: Clause 1, page 1, leave out lines 11 and 12 and insert—

“(2B) The universal service order shall say that broadband
 connections and services must be provided—

(a) with speeds of 2 gigabits or more;

(b) with fibre to the premises (FTTP) as a minimum
 standard;

- (c) with appropriate measures to ensure that internet speed levels are not affected by high contention ratios;
- (d) with appropriate measures to ensure service providers run low latency networks.”

Lord Mendelsohn (Lab): My Lords, as well as moving Amendment 1, I shall speak to Amendments 9, 10 and 11. These amendments cover the nature of the universal service obligation and the setting of standards—issues relating to market structure and how best to roll it out are dealt with in group 5—so these focus particularly on those aspects. These are probing amendments that address whether, in passing such an important Bill that makes a further step in developing our digital economy, the measures contained are sufficient, and whether this legislation will provide leadership and adequately address our future needs. It is important that we remain ambitious and have a flexible policy and, now that we have an industrial strategy, have the mechanisms to meet it.

There is of course a strong case for a universal service obligation. A “universal service” is an economic, legal and business term used in regulated industries to provide a baseline of services to every resident. It establishes the availability of a quality service at just, reasonable and affordable rates, which should be available to all consumers. Universal services were widely adopted across Europe in the 1980s and 1990s, and there is a case to say not just why we should have one but why we have not had it. It is therefore welcome that the Bill establishes it. Across the EU, only Finland, Malta and Spain have provided for a minimum broadband speed in national law—Germany is on the way to it—but this Bill is an important step. That reflects the fact that communications, such as broadband and the like, have become a fourth utility that is crucial to modern life. Citizens face more and more encouragement to be online to access public services, commercial services or other things, and there are now penalties for those who cannot access, or are not adequately served by, broadband or who find it difficult to use.

The universal service obligation is a critical part of the Government’s strategy to ensure that the current model of broadband delivery does not risk ending up in a two-tier service, dividing the digital haves and have-nots and exacerbating the potential for holding back Britain’s regional economies. The Government are providing funding to support the rollout of fast broadband to those areas of the UK where commercial rollout has not been sufficiently attractive or where the market structure has not developed to incentivise it adequately. This is mostly, but not entirely, in rural areas. The broadband universal service obligation will act as a safety net, allowing those with poor connections the legal right to request a fast connection.

The Bill contains enabling powers for the USO to be specified in secondary legislation. The download speed will be specified in secondary legislation, and is expected to be 10 megabits per second. Amendment 1 would write that ambition on the face of the Bill, and it sets out the speed and nature of the delivery—fibre to the premises—and covers contention and latency issues.

Prior to getting into the meat of the amendments, I think that it is important to see broadband in the context of mobile. The universal service obligation

should be on mobile as well, and we will come to that in later debates, but it is important to take note of it at this stage, because we are here following the market, not consumer behaviour. We are addressing much, although too little, of what is happening.

Ninety per cent of the UK adult population is online, which is about 48 million people. The share of adult users has held steady, suggesting that stubborn challenges remain to reach 100% use rates. Most room for growth lies in take-up and deeper usage of online services among the over-55s. With the growth of mobile, focus has shifted away from broadband, but the fixed broadband market is still slowly growing. Seventy-seven per cent of UK adult users connect to the internet via broadband at home, and this number has held steady. Regarding devices, laptops and smartphones, each of those boasted 38 million users; tablet ownership has been declining. Use of a desktop PC has been on a steady decline since March 2011, and this is forecast to continue over the next few years.

Mobile connectivity has become such an important part of our life that one of the central findings of the National Infrastructure Commission’s report was that,

“mobile connectivity has become a necessity. The market has driven great advances since the advent of the mobile phone but government must now play an active role to ensure that basic services are available wherever we live, work and travel, and our roads, railways and city centres must be made 5G ready as quickly as possible”.

Many in this Chamber will have digital services: many will connect via broadband; some will connect through 5G services; they are interrelated.

I turn to the issue of speed. The Government argued in the universal service obligation consultation early last year that 10 megabits per second was sufficient to enable,

“full participation in a digital society”.

Later, Ofcom was charged in its technical specification to model around that definition. It modelled 10 megabits per second—10+1 being the upload speed and 30+6 being a speed frequently mentioned by others.

Is 10 megabits per second really a sensible target? I would suggest that we look at the evidence supplied by Sean Williams, the chief strategy officer at BT Group, to the Committee in the other place. He stated that BT has,

“made clear our willingness to deliver 10 megabits to every premises in the country by the end of 2020 without any further public funding and without even really progressing the USO regulations”.—[*Official Report*, Commons, Digital Economy Bill Committee, 11/10/16; col. 5]

If it is that easy, is it a sensible target?

In its assessment on the technical specification, Ofcom made a very important point. Ofcom has published evidence showing,

“that a speed of 10Mbit/s is sufficient now to allow multiple users to simultaneously use the internet, including web browsing, video streaming, video calling and gaming”.

That would not be the opinion of my children, but that is another matter. It goes on to acknowledge that this minimum,

“may need to increase over time”.

Even if we took the argument that 10 megabits per second was sufficient at this stage, which I do not think is the case, it would not be a very sensible approach to start with.

What are our anticipated needs? Many representations have been made. I think the National Farmers' Union made a very cogent argument as to the speeds it was looking at. It would need to establish, as a minimum, both upload and download of 30 megabits per second. Is that sufficient? European Union Governments are committed to providing this speed universally by 2020, and EU targets are now of 100 megabits per second by 2025. If the broadband USO is intended to be only a safety net, this means that there is currently nothing offered for the 5%, and they will have limited access to anything that is defined as superfast.

New York announced a plan that, by the end of 2018, there should be 100 megabits per second, and by the end of 2019 this should rise to 300 megabits per second. Included in the package to deliver this was an affordable broadband service to unserved, underserved and low-income residents. It is no accident that the list of top 10 countries does not include the UK but does include such luminaries as South Korea, Norway, Sweden, Hong Kong and the like. When it comes to an international comparison, looking at download speeds for fixed internet services, the UK currently resides in 23rd place. We may feel that we have achieved a huge amount, but we are only in 23rd place. If we aggregate download and upload speeds, looking for the average between the two, we drop another 15 places. That is hardly encouraging. I have to say that it is better than our mobile internet access, on which we are currently placed at 39.

A further point to make is about the nature of the digital economy. E-commerce underpins the UK digital economy. Much growth has come from online sales. Moving forward, we expect a lot of the drivers of e-commerce to be the additional interactive mechanisms—AI and other forms of activity—that require much greater speeds in order to encourage uptake. British brands enjoy great cross-border appeal among European and Asian shoppers. An important part of what we need to do, to give ourselves the infrastructure to be able to compete effectively, is to have the right broadband level.

However, this is not just about speed, and we do not just specify speed here. We go for a speed of 2 gigabits to be established by 2020. That is not an unrealistic objective. There are parts of the world servicing 10 gigabits already, so 2 gigabits is not an overly ambitious target, but it is not just about speed. There is the important issue of reliability and consistency. The noble Baroness, Lady Harding, made a good point in the Committee in the other place, when she said that,

“consumers and businesses would say that reliability and consistency are every bit as important as speed”.—[*Official Report*, Commons, Digital Economy Bill Committee, 11/10/16; col. 8.]

Indeed, for many people there has been a huge issue about the underinvestment in routers, which translate broadband speeds at a very low speed across the house, and among many international comparisons we have some of the worst performing routers.

Upload speed is also an important issue. We have no real specification for it, although it is as crucial as download speed.

4.30 pm

There is also an important argument about what mechanism we use. We believe that fibre to the premises is the right approach. The provision of broadband to new homes has now been established by a circular sent by the Government to local authorities. Through a voluntary agreement, the Home Builders Federation is now getting fibre to premises, which is an important initiative, but only around 2% to 3% of the UK is covered by fibre. In South Korea, as one would expect, it is over 60%, but this is also true of Japan and of Spain, whose land mass is twice the size of the UK. The argument has always been that having more flats and fewer single dwellings more than compensates for the size of those countries, but that does not hold good, as we now have multiple dwellings and conversions too. BT does not want to replace the copper and is looking at alternative technologies, such as G.fast, which is reasonable. It is currently commercially available and can possibly get to 100 megabits. However, it is only a theoretical construct that it can get to 1 gigabit and it would not give us a long-term plan. As to what would, I recommend the IoD's outstanding report *Ultrafast Britain* which sets out the case brilliantly:

“Going forward, fibre to the premise has to be a big part of the solution for two reasons. In pure bandwidth limits, it is future-proofed. It also allows for modular innovation, linking up satellite, wireless, mobile and other connecting technologies for those areas of the country where laying cables is not financially practical, giving even the most rural businesses access to the digital economy”.

There is a very strong case for FTTP.

Our other amendments would ensure that Broadband Delivery UK, which is charged with delivering superfast, is held to the goals and targets that it sets. In its delivery plan in 2011, it said that its future goal was that the, “UK continues to have the best superfast broadband network in Europe”.

We will not do this unless we establish realistic ambitions. We therefore propose that Broadband Delivery UK is challenged against the targets which it has set itself.

Amendment 10 tries to get government policy to focus and place primacy on the needs of small businesses, which have hitherto been ignored.

Amendment 11 is an attempt to encapsulate a framework—whatever drafting issues it may have—that does not just establish a USO but ensures that we have a mechanism to address Ofcom's point about how the minimum needs to increase over time.

These amendments are realistic and practical but provide a sense of ambition. They are to probe why we are not looking at these things in a more ambitious way, but they are all mechanisms which we can use. I beg to move.

Lord Fox (LD): I will speak to Amendment 2 and make some comments on Amendment 1. Like the noble Lord, Lord Mendelsohn, I welcome the principle of a USO and we are having a healthy debate now. I will probe the Minister in detail about how the Government will respond to the Ofcom report. I was frankly surprised by the report's language when it

[LORD FOX]

came out—it was a mere twinkle in our eye when the House last debated this. It referred throughout to “decent” broadband as a starting point, rather than “world-class” or “leading” or any of those things. As the noble Lord, Lord Mendelsohn, outlined, the work that has gone into modelling the need for broadband is, in one way, completely pointless. Most noble Lords are old enough to remember a time before the internet, or the industries which now use that medium, even existed. You could not have modelled how much bandwidth you would need today 10, 15 or 20 years ago. The industry that will use this network has not been invented so we cannot know what is necessary. Decent is fine but frankly we should be looking for the best possible. In Amendment 1 the noble Lord has set a very high bar.

In Amendment 2 we have taken as our text—as I am sure noble Lords can recognise—scenario 3 from the Ofcom report. It is really to test two things. One is the universal part of the USO. We are of the persuasion that universal means universal rather than 99-point-whatever-it-is per cent. I would be grateful to hear from the Minister what he believes universal means. On timing, we have heard various claims that by 2020 at the flick of a finger we could all have 10 megabits. There are many people where I come from in the countryside and from all over the country who would be very surprised if they could get 10 megabits. They are still struggling with ones and twos and upload speeds of practically nothing. The fact that apparently this is so easy and frictionless yet so far away for so many people seems slightly at odds. The point of Amendment 2 is very much to set what I think the previous speaker would call a less ambitious target, but one that we believe should be eminently achievable. I misspoke because it is not a target; the USO is a minimum. The noble Lord who spoke previously used the word “target”. One of the dangers is that this becomes the limit to our ambitions and it should not be. In many senses Amendment 2 is entirely compatible with Amendment 1. We have to get to Amendment 2 as a minimum but Amendment 1 and all the ambition enshrined within it can still be part of this formula.

Looking forward, we will be talking later about how we can assess the progress of this. At the moment we want an amendment that is designed to give the Minister enough pressure on Ofcom and Ofcom enough pressure on the service providers to deliver a minimum standard. It is inconceivable and unacceptable that we should be so down the pecking order at the moment. We will talk about other structural issues through the course of Committee but as a very minimum we believe Amendment 2 sets a standard.

Baroness Byford (Con): My Lords, I have Amendments 3 and 7 in this group. I reiterate the expressions of support for this Bill given by earlier speakers. There are many aims in this Bill that I support but some specifics are worth raising at greater length. I perhaps should remind the Committee of our family interests in farming although, as far as this Bill is concerned, we are without any form of modern communication in any of our buildings. That might change in the future but clearly we are not an interested player in that part. I am a member of the CLA.

Amendment 3 is quite detailed—so I will not read it out—and tries again to tie things down more specifically than they are in the Bill. It seeks to guarantee clarity over what the consumer can expect from a universal service obligation on broadband. It will ensure that the USO delivers a minimum speed of 10 megabits—perhaps we might have further conversations about that—and that this is reviewed to reflect technological advances and increased demand. Once enforced the USO must also allow those who are not provided with access to broadband at the set minimum speeds a simple means of seeking financial redress if that is not resolved, which they can then use to find an alternative means of getting connected.

The CLA believes that this redress should mirror the reasonable cost threshold, which should sit just above the current landline threshold, at £4,000 per property. Small, rural communities should be able to pool this money to invest in alternative technologies and connection schemes that provide them with faster and more reliable—and potentially cheaper—connections compared to its being done individually. For these most remote premises, making use of a wide range of technologies, including wi-fi networks, satellite and mobile data to help provide universal coverage, will help to ensure that the introduction of the USO is a success and should be encouraged.

On my Amendment 7, which is about “may” and “must”, I need not argue the toss of the wording between the two words but feel strongly that “may” is a facilitator and “must” is a direction. I am sure that other noble Lords are probably heartily sick of receiving complaints from friends, neighbours, colleagues and family about the broadband service which they either have or are still unable to achieve at all. I have often spoken in this House of the areas that are not covered at all; of the services that advertise speeds “up to” but which achieve only a fraction of the implied promise; and of the difficulty of obtaining a helpful response from service providers when things go wrong.

The speed of change on the digital technology front is such that the Government must keep up with both the challenges and changes facing them and with their implications for society. No one can doubt that Ministers are very busy people, who are subject to a variety and quantity of pressures. I feel strongly that Parliament should assist them by indicating those priorities that are paramount. Most of us can have no idea of future provisions that will affect the universal service obligation. We ought to insist that whenever that obligation is affected, the Minister has to look closely at it more closely.

I wholeheartedly support the amendment in the name of the noble Lord, Lord Mendelsohn. I merely suggest that it be made clear that most farms—we spoke about rural areas—GP practices and businesses are small and medium-sized enterprises but are often not regarded in that way. My concern may be unnecessary, but I have read a great deal about the difficulties experienced by these enterprises, which are located in rural areas and which may not be recognised as belonging in that category of small or medium-sized businesses. Only last year, those who wanted to put forward their claims for the single farm payment were totally unable to do so in some areas because there was no broadband

available, and in fact the department had to revert to accepting written paper applications, which people had been using for years.

My amendments are probing amendments, but it is important that our broadband is strengthened and is available to all. As was quoted, the NFU has suggested a speed of 30 megabits per second. Reliability is absolutely key to success in any area. As the noble Lord who spoke just before me quite rightly pointed out, many of the new businesses that have been formed would never have been started had they not had broadband access. If you look at rural areas and the growth in small and medium-sized businesses, many of them are based in those areas and give an option for employment for people in areas where it would not have been at all possible in the past. Therefore, delivery, accountability, setting challenges and holding to account are hugely important. I know that the Government are aiming at 100%, but it is often said that the aim is 95% or 99%. Often I wonder whether that refers to numbers of people or the areas covered. If it is on numbers of people, obviously it is easier in urban areas than in very rural areas.

I have tabled one or two amendments to the Bill that we will come to later. I support and welcome it, but there are areas which we need to strengthen, and I am glad to have spoken to my two amendments along with the other amendments that have been moved and spoken to already.

4.45 pm

Lord Aberdare (CB): My Lords, as I indicated at Second Reading, I very much support the proposal for a broadband universal service obligation. The amendments in this group raise a number of questions in my mind about how the USO will work. Like several other noble Lords who have spoken, I am not convinced that all of these can or should be left to Ofcom, or to enabling powers, to resolve. For example, is the USO intended by government to be a safety net for users for whom no other service is available? Or is it seen as part of a more ambitious and aspirational strategy aimed at ensuring that the UK is, and remains, a global leader in the quality of its broadband availability? If the latter, Amendment 1 would look attractive, setting the sorts of targets that I believe we should really be aiming for. But even if the Government are leaning more towards a safety net approach, as seems to be the case, I would be inclined to support Amendment 2, which includes not just superfast download speeds but provisions for such other key features as upload speeds, response times, information rates and data caps. As the Local Government Association points out in its briefing, and as other noble Lords have mentioned, upload speeds are at least as important to businesses, especially smaller businesses, not least in rural areas.

Ofcom itself, in its technical advice to the Government, looks at three possible USO scenarios, as laid out by the noble Lord, Lord Mendelsohn. I share the view that the USO should offer more than the basic, standard service. While Amendment 1 might be seen as representing an ideal—a very worthy ideal—Amendment 2 sets out a perhaps more realistically achievable target, which I would support. I also fully support the proposition at the end of Amendment 2 that whatever initial

specifications are set should be reviewed annually and increased in line with growing need, as well as the requirement in Amendment 8, tabled by the noble Lord, Lord Fox, for an annual report on the implementation of the USO. Indeed, I would also support the review of Broadband Delivery UK, proposed in Amendment 9, and the duty proposed in Amendment 11 to ensure that the USO is, in fact, achieving its aims.

Who will the USO fall upon, and who will be designated as universal service providers? Will it be just BT and KCOM in Hull—at least initially, as envisaged by Ofcom—or is it expected that others will be designated; and if so, who might these be, how will they obtain USP status and on what terms?

Finally in this group, I also welcome Amendment 10, which is designed to ensure that the needs of SMEs are addressed as a priority under the USO. I look forward to hearing from the Minister how the proposed USO will help to take the UK further up the global league table from the position described by the noble Lord, Lord Mendelsohn, which I think was 23rd going on 38th.

Lord Gordon of Strathblane (Lab): My Lords, I support Amendment 1, and indeed the other amendments in this group, without in any way taking away from the credit due to the Government for introducing the USO. I think we are universally in approval of what the Government have done, and they deserve great credit for it. However, as I mentioned at Second Reading, this is a rather unambitious target. That of itself is not worrying—after all, it can be left to Ofcom to increase the target—except that it will alter the way that we go about things. We need a step change in how we go about things. Ten megabits can be achieved by wringing more miracles out of copper wire, and we would change nothing. This is not even in tune with the Government's own thinking. Again, the Government deserve great credit for what they announced in the Financial Statement about new funding to look at what we can do with 5G. 5G could revolutionise our industries and the Government have put money behind that. The department would find itself pushing at an open door if it asked the Treasury for more funding at this point.

My last point in this brief intervention is simply to say that, having looked at the broadband advice to the Government and the three scenarios, I was, frankly, pleasantly surprised by how little option 3 costs. If that is all it costs, why not go for it and get the Treasury to cough up?

Lord Mitchell (Non-Affl): My Lords, I support all three amendments on the USO. In my view, anything is better than what we have at present and what the Government are aiming for. In particular, I support Amendment 1 in the names of the noble Lords, Lord Mendelsohn and Lord Stevenson of Balmacara. Theirs is the most ambitious amendment, and ambition is what we desperately need. I do not think that it is pie in the sky; it really is what we have to go for.

In my Second Reading speech, I said that gigabits are the future of connectivity—they are the king—and that megabits are simply history. I stick by that. We cannot have pathetically low connection speeds. As we know, sadly, from its past performance, you can set a

[LORD MITCHELL]

target for connectivity as low as you like, and the one thing you can be absolutely certain of is that BT will fail to meet it.

It is very clear that worldwide the goal is gigabit connectivity. South Korea, China, the Baltics and Scandinavia are all racing to the top to ensure that their societies are right at the forefront, and so must we. If the Prime Minister wants an industrial strategy that results in a global Britain leading the world, then she and her Government have to set high targets for 21st-century Britain, and nowhere more so than in connectivity. What the Government propose is like having a man with a flag walking in front of a car to ensure that it does not exceed 4 miles per hour. That is why I support Amendment 1—it flies the flag for digital Britain.

I plead with the Minister: do not settle for a third-rate target lobbied for by BT. It has its own agenda, which is to milk its obsolete copper infrastructure. Its interest is not in the national interest. Will this Government be bold and will they set their sights on promoting a gigabit economy?

Lord Arbuthnot of Edrom (Con): My Lords, one issue that has not been raised in this debate so far is the effect on small businesses in rural areas of the poverty of mobile telephone networks. That, combined with slow or poor, and sometimes non-existent, broadband speeds, puts rural businesses at a disadvantage. So I have a great deal of sympathy with the amendments that have been spoken to, and I hope that the Minister will show similar sympathy.

Lord Inglewood (Con): My Lords, I join those who have spoken in support of these amendments. Like some other noble Lords, some weeks I come up from the country to your Lordships' House. The shortcomings of the infrastructure in rural Cumbria, where I live, is far too frequently a topic of conversation.

As a number of noble Lords have said, connectivity is the crucial aspect here, because it is now part of the essential infrastructure of contemporary life. It is important that we look at this issue from the perspective of what people need, but the reality is that what we need today may not be what we need tomorrow. We have to try to bridge the gap between the digital haves and the digital have-nots, and we achieve that by looking at the issue in the way that I have just described. Therefore, I am not approaching this matter from a kind of nerdy, technical perspective. What matters is the result as much as the means by which you get there.

Over the years, there has been a lot of debate about whether a universal service obligation should be in our law and be statutorily enforceable. I had the good fortune to chair the Communications Committee, and a number of years ago, when we conducted an inquiry into broadband, we debated this issue at length. On that occasion we reached the conclusion that what mattered was the rollout and that it was quite conceivable that a USO would get in the way. With the benefit of hindsight, that was probably a mistake, and therefore it is interesting to see the provisions for such a legal obligation coming into our legislation.

However, at the end of the day I come back to where I started with all this, and it is why I will be interested to hear what the Minister has to say. It is not the detail but the result that matters here. We have got to move into a world where the digital divide is bridged. This is particularly important for areas in the country, and I speak from that perspective, but it is also true for a number of urban areas. We seriously deny people access to a whole range of commercial, and other, aspects of contemporary life if there is not adequate connectivity. As a number of your Lordships have said, we live in a country that is adopting a different approach to industry. It is crucial to appreciate that the key to increasing wealth creation in areas outside the south-east of England—which I think everyone agrees is desirable—is improving connectivity. That is the way, as noble Lords have said, to improve the potential of SMEs outside the south-east.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde)

(Con): My Lords, I am glad that we are at last able to start this very important Committee. I should immediately declare an interest, which is that I suffer at my home in the country from extremely bad broadband, although we are lucky enough to be able to use microwave technology to do something about this. In addition, last night when I tried to ring my wife from central London on my mobile telephone to complain how overworked I was, I was unable to get a signal. So, I can absolutely sympathise with my noble friends Lord Arbuthnot and Lord Inglewood; I recognise the problems, particularly for rural areas and SMEs, and the Government agree with quite a lot of what has been said in terms of aspirations. I think we will differ when we come to decide how the USO should be used to fulfil those aspirations, and exactly what its role is.

The Government have a clear digital agenda, and our ambition is for world-class digital connectivity. We are determined to ensure that the UK has the digital infrastructure that our businesses and citizens need both now and in the future. The Green Paper published on 23 January makes digital infrastructure a central pillar of the Government's proposed industrial strategy and identifies good digital infrastructure as a driver of growth.

We support the spirit of Amendment 1, requiring that the universal service order should define a gigabit-speed broadband universal service obligation—or USO—delivered via full fibre to the premises. We differ in that we do not think that the broadband USO is the right tool to use at this stage in the development of the UK's digital infrastructure market. To pick up on the point of the noble Lord, Lord Aberdare, the rationale for a USO is to prevent social and economic exclusion. It does this by ensuring that where the market does not deliver, a minimum set of communication services are made available, on request, to everyone, no matter where they live or work. In doing so, it takes account of the prevailing technologies enjoyed by the majority of people: the USO follows the market, it does not drive market change. The UK's fibre market is at an early stage of development—currently only 2% of UK premises have full-fibre connection—so I do not think we have reached the stage where there is a case for

introducing a gigabit-speed USO. It is not a prevailing technology used by the majority and it is not needed to prevent social and economic exclusion.

We do, however, agree that more extensive fibre connectivity is crucially important to the UK's future digital growth. We are planning now for the networks that are going to be needed to ensure continued economic growth and development across the UK in both urban and rural areas. In the Autumn Statement we announced more than £1 billion to support digital infrastructure, targeted at supporting the rollout of full-fibre connections and future 5G communications. The Government are consulting on how we might further encourage full-fibre rollout.

Amendment 2, in the name of the noble Lord, Lord Fox, proposes a superfast broadband specification for the USO. This specification is, as the noble Lord said, in line with scenario 3 of Ofcom's USO technical advice, which the Government commissioned to help inform the design of the USO. All the scenarios set out in Ofcom's report are being given careful consideration. Once that work has been completed there will be a public consultation on the design of the USO and the specifications that will be included in the universal service order, including the minimum speed.

5 pm

The noble Lord's amendment also proposes that the minimum speed should be reviewed annually. I agree that it will be crucial to monitor progress of this important consumer measure. Ofcom's USO report foresees that it would monitor the broadband USO on an ongoing basis to ensure that it is effective in meeting the needs of consumers. Alongside this, it also proposes periodic full-scale reviews to assess whether the technical specification for the USO needs to be changed. As noble Lords will be aware, the Bill already includes a power for the Government to direct Ofcom to undertake such reviews.

In Amendment 3, my noble friend Lady Byford has proposed that the minimum broadband speed for the USO should appear in the Bill. She proposes a speed of 10 megabits or more, which is one of the scenarios included in Ofcom's USO technical report. Last March, when the Government consulted on their proposed road map for implementing the broadband USO, they sought views on whether the minimum speed should be set in primary or secondary legislation. The vast majority of those who responded agreed that the minimum speed should be specified in secondary legislation. As many noble Lords have said, technologies and service capabilities continue to improve rapidly, and it is important that any specifications can be updated over time to take account of these developments. As the noble Lord, Lord Mendelsohn, said, and with whom we agree, secondary legislation can be revised more readily and is therefore a more appropriate means to specify the minimum level of service.

My noble friend proposed that the cost threshold for each USO connection should be set at £4,000, and that communities should be allowed to pool individual requests and explore alternative delivery mechanisms. I am afraid that this would not be possible under the universal service directive, which provides the regulatory framework for the broadband USO. To ensure provision

upon receipt of a reasonable request from a consumer, a USO connection is delivered by the universal service provider designated by Ofcom. Consumers will not be able to choose which company provides their USO connection, as not all communication providers will be designated. However, as part of the ongoing work on the design of the USO, we are considering how individual consumer requests to be connected can be aggregated so that communities can benefit.

My noble friend's Amendment 7 would change the power to direct Ofcom to review the broadband USO into a mandatory duty. In its technical advice on the USO, Ofcom explained that ongoing monitoring of how the USO meets the needs of consumers and businesses would be necessary. It also foresees that there will be a need for less frequent, full-scale reviews of the USO's technical specification. On that basis, I do not think the existing review power needs to be changed.

Amendment 9 inserts a new clause requiring an independent evaluation of the delivery of superfast broadband by Broadband Delivery UK. BDUK has already been subject to considerable scrutiny of the value for money of the public investment and the level of competition in the rollout programme. It has been given a clean bill of health.

BDUK has published online its plans to evaluate the impacts of the superfast broadband programme over the next five years, as required by the European Commission's decision to grant state aid clearance, in order to ensure that the programme complies with the terms for using public funds in the deployment of broadband. Superfast broadband projects under the previous state aid decision were subject to an independent evaluation report carried out by the economic consulting firm Oxera. Oxera's report, which is available online, concluded that BDUK had complied with the terms of the state aid decision, been effective in its role in increasing broadband coverage, and had not created undue distortions of competition. In addition, BDUK has been the subject of two value-for-money and delivery reviews by the National Audit Office and the independent projects authority. Further evaluation is therefore unnecessary and would not add value to those already undertaken.

Amendment 10 calls for SMEs to be prioritised in the rollout of the broadband USO. The broadband USO will have an important role to play in improving SME broadband connectivity, particularly in rural areas. It will deliver economic benefits by providing SMEs with the connectivity that they need to participate in and drive the digital economy. It will, however, be delivered on demand, rather than via a rollout programme, and the extent to which SME connectivity can be prioritised will depend on whether a USO connection is requested. As part of the USO implementation, we will make sure that small businesses have the information they need on the eligibility criteria and the connection process so that they can take advantage of the USO.

We have also been consulting on further support for business broadband. The full-fibre rollout consultation, to which I referred, included the option of a further full-fibre business broadband voucher scheme, alongside other options for supporting the rollout of full-fibre

[LORD ASHTON OF HYDE]

networks locally. We will publish the findings of this consultation and the next steps alongside the summary of the findings of the business broadband review.

Amendment 11 calls for steps to be taken within 12 months of the Bill coming into force to ensure progress on a number of broadband issues. I do not think that there is a need for these measures to be set in primary legislation, as work is already in train on each of them. As I noted at the outset, this Government have a clear digital agenda and our ambition is for world-class digital connectivity. Good progress has already been made, but there is still, we agree, lots more to do. Commercial and publicly funded rollout of superfast broadband continues. More than 90% of UK premises already have access at speeds of 24 megabits per second or more—89% if measured on the basis of 30 megabits per second. We expect to reach 95% coverage by the end of this year. We have committed to reinvest funding from efficiency savings and clawback to extend superfast broadband to as many homes and businesses as possible, including in hard-to-reach, often rural, areas, which would otherwise have been left behind by commercial providers.

We are working with regulators and industry to ensure that advertising for broadband more accurately reflects the actual speeds that consumers can expect to receive, rather than a headline “up to” speed available only to a few. Broadband speed claims made in advertisements are regulated independently by the Advertising Standards Authority, which is currently reviewing its guidance on broadband speeds, with a report due in spring this year.

Measures elsewhere in the Bill give Ofcom powers to ensure that consumers receive automatic compensation when something goes wrong. Ofcom will issue detailed consultation on the exact form of automatic compensation measures.

With that rather detailed explanation—I apologise—I hope that noble Lords will feel able not to press their amendments.

Lord Mendelsohn: My Lords, I have a confession: I did not expect the Minister to concede on all these points. I have another confession. One has to see the universal service obligation in context. It is a mechanism that addresses a market failure—the inability to get broadband extended across the country and to deal with the problems that are so replete in its delivery. I understand the Minister’s point, although we might disagree about how to use the USO. The Government are using it to nudge towards something that is otherwise not possible, but in the discussion on these amendments we have raised broader issues about what that means. I do not agree with the Minister when he says that we have to follow the market rather than define it. Everything that the Government have done has defined it. If you define it with such a low base, it is a major problem.

The noble Lord, Lord Fox, said that this was a minimum, not a target. Our target is a minimum, so we agree on that. I take the point made by the noble Lord, Lord Mitchell, that we are talking about gigabits because they are the future, whereas megabits are the past. We have to address that material failure.

We are disappointed at what the Minister said about the BDUK report. It established goals that it said were dynamic; it said that it was pegging itself in comparison with other countries in the achievement of its goals for the UK. If you do not measure against a changing goal, you do not believe in the goals. That is the problem. It is not a value-for-money exercise. It is about whether you believe in the goals that you have set for that organisation. If you are not prepared to report on it, it means that you do not believe in it.

In the new clause proposed by Amendment 11, we accept that the Government are looking at what is in paragraph (b), but I would be grateful if the Minister would write and say how the Government are trying to achieve what is in paragraphs (a), (c) and (d).

To finish, let me say quickly that 10 megabits is totally inadequate. If you are trying to establish a small business using 10 megabits and have a variety of people using it, it does not work. That is a huge failure for our country. You have to establish a reasonable target. As one noble Lord said, 30 megabits is certainly affordable.

Even if you get 30 megabits into a house, most people are reliant on using wi-fi to distribute it; they do not use a cable connection. I defy anyone to establish that most of the population is using anything near a definition of superfast in this country. We have a massive problem with routers and where they go. The Government talk about numbers as if they are giving us a proper and defined future. When we sell a USO, we have to have some sense that what is delivered to the public is really worth while. As a mechanism to nudge it forward, it is probably insufficient. Having said that, I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendments 2 and 3 not moved.

Amendment 4

Moved by Baroness Janke

4: Clause 1, page 1, line 12, at end insert—

“(2BA) If the universal service order says that broadband connections and services must be provided to any extent, it must require the provision of a social tariff for broadband services which has the aim of preventing digital exclusion.”

Baroness Janke (LD): My Lords, Amendment 4 deals with the introduction of a social tariff. At Second Reading, Members felt very strongly about exclusion, particularly digital exclusion, and the amendment seeks to address the issue of affordability.

Many people at the moment do not have access to broadband, particularly in some of the more deprived communities of the country. I come from a city and I know that it is easier there to access broadband than it is in rural areas. However, even where there is physical access, large sections of the population will not have broadband because the costs are unaffordable. I speak particularly of families on low incomes, children who need access to broadband for schoolwork and learning opportunities, unemployed people who are seeking jobs, people with limited mobility who have great needs and older people who may find the levels they are being asked to pay unaffordable.

It will become increasingly impossible to live in the modern world without having access to broadband, whether it is for the purposes of banking, claiming benefits, applying for a passport or any of the other things that we expect to do online. It is therefore important for the Government to consider during the passage of the Bill how they will address the issue of affordability.

The amendment seeks to introduce a social tariff. BT has a social tariff for telephones and the Government may wish to look at that. I hope that we can address this issue because, whatever the universal service obligation in regard to quality, accessibility and the extension of broadband to some of our less wealthy communities and vulnerable people is important. There is an opportunity to address this in the Bill and I beg to move.

Lord Mendelsohn: Very briefly, we on these Benches wish to associate ourselves with Amendment 4. It is an extremely good amendment which raises the important issue of ensuring that broadband is accessible to the unserved and underserved, and others.

The noble Baroness, Lady Janke, made a good point about online access for schoolchildren, particularly in communities where there are great challenges in teaching. You can already hear the reports from many schools about the divide between those who can and those who cannot afford access, with the expanding level of online teaching and resources. Schools are also administering other things online.

We have an amendment to remove the reasonable cost threshold because any extra cost associated with delivery of the USO should not be borne by the users of CSPs. It is important to make sure that the cost of ensuring delivery has been adequately taken care of in the Government's considerations and that the companies provided to do this do not seek to transfer the costs to consumers. We must make sure that it is as affordable as it can be and that it extends to the widest possible number.

5.15 pm

Lord Maxton (Lab): My Lords, I would like to add one category of cost to that: someone who lives in a remote area some distance away from the main telephone service. The cost of BT or another company installing a line up to that property can be outrageous, to be honest. It can be very considerable and much more than most people can afford to pay. So to the list of those who are disadvantaged and cannot get full access, including, quite rightly, the disabled, must be added those who live in a single property at some distance away from the main service. The costs can be prohibitive.

Lord Arbuthnot of Edrom: My Lords, I will address the House on Amendment 5, in the name of the noble Lord, Lord Mendelsohn. We all want to prevent digital exclusion and this is clearly an admirable way of attempting to do so. But the noble Lord suggests that, "any excess costs ... shall not be paid by users of communication service providers".

So those excess costs need to be paid, presumably by someone other than any of the users of communications service providers. I wonder whether this amendment might be strengthened if it were to set out by whom those excess costs should be paid.

Baroness Buscombe (Con): My Lords, let me begin by making it very clear that the Government are committed to building a country that works for everyone, and that we are working to make sure that nobody is digitally excluded. The broadband universal service obligation will provide a digital safety net by giving everyone the legal right to request a connection to fast, affordable broadband.

Amendment 4 proposes that the broadband USO should include a social tariff. The existing telephony USO already includes one—as the noble Baroness, Lady Janke, said—and BT has voluntarily added broadband for those who want it. When Ofcom was commissioned to provide advice to the Government on the design of the broadband USO, we specifically asked it to consider a social tariff to ensure that the USO was affordable for all. Noble Lords will be aware of the report that was published on 16 December. Ofcom's USO analysis said that a social tariff was likely to be appropriate for low-income users. Once we have considered Ofcom's report we will publish a consultation on the detailed design of the USO.

I should also make it clear—particularly in relation to the contribution from the noble Lord, Lord Maxton, and the reference by the noble Baroness, Lady Janke, in connection with vulnerability and access—that the Government are committed to actively tackling digital exclusion, which can be caused by lack of access but also by other barriers such as lack of basic skills. Some people will never be able to use online services independently, so the Government are committed to ensuring that assisted digital support is always available for these people. The Government's digital support strategy mandates departments to provide this support.

If I have interpreted Amendment 5 correctly, it proposes that consumers would not be required to pay any excess costs above any cost threshold that is set. Under the current telephony USO, consumers pay the first £130. BT will then pay up to a threshold of £3,400. Consumers are then asked to pay any further costs above the cost threshold. Similar arrangements are in place for other essential services such as electricity and water. Ofcom's technical advice, which we are considering, sets out analysis of this kind of model for a broadband USO.

Under the telephony USO, consumers have the option of carrying out some of the work themselves to help reduce their costs. Individual consumer requests for a USO connection can also be aggregated to help reduce the cost per premises to below the reasonable cost threshold. We are considering whether this type of arrangement would be suitable for the new broadband USO; this will be the subject of the later consultation. With that explanation, I hope that the noble Baroness will be able to withdraw her amendment.

Lord Foster of Bath (LD): Could the Minister help the House with what she has just said about Ofcom's recommendation being that it was likely that a social tariff would be needed? Can she explain exactly where within the legislation that social tariff will be introduced, bearing in mind what is said in Clause 1 about setting out the universal service obligation characteristics?

Baroness Buscombe: My Lords, I will need to check this to be absolutely sure, but it will not form part of the legislation. I am talking about the report that is being considered with care at the moment. There will be a public consultation after that report, so we cannot commit to this without fully exploring our thoughts and proposals in response to the report of 16 December. I hope that that is helpful—but it will be subject to regulations as opposed to primary legislation.

Lord Clement-Jones (LD): My Lords, I do not want to prolong this but if it is to be subject to regulation, there must be primary legislation permitting that regulation to be made. Perhaps the Minister could write to us on that subject.

Baroness Buscombe: Yes, that is a good idea. We will absolutely make sure that we write to noble Lords on this point.

Baroness Janke: I thank the Minister for her response, which sounds extremely encouraging, and I look forward to hearing the Government's response to the Ofcom report. In so doing, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5 not moved.

Amendment 6

Moved by Lord Stevenson of Balmacara

6: Clause 1, page 2, line 2, after “services” insert “and mobile network coverage”

Lord Stevenson of Balmacara (Lab): My Lords, I start by drawing attention to the National Infrastructure Commission report that came out recently, which I am sure the Minister is well aware of, in particular to its references to the future of communications and mobile networks. This was central to the request by the Government for a review, so that the commission could come back with some recommendations which the Government might build into future plans. The report starts by saying that,

“the UK lacks the level of coverage ... to offer ... mobile services ubiquitously. In rural areas 3% of the population do not have any coverage outside their homes”,

which it calls “complete not-spots”, and that,

“25% do not have coverage offered by all the main mobile networks (partial not-spots). Coverage on our road networks is poor even for voice coverage ... 17% of A and B roads are in complete not-spots and an additional 42% have only partial coverage”.

The Committee will probably have to read *Hansard* carefully afterwards to get exactly what I am trying to say on the not and have-not spots. However, the picture is pretty poor.

The commission's report goes on to say:

“The UK performs poorly in comparison to other countries”.

We do not seem to have an overall plan for what to do. It also says that,

“government has agreed with operators that they should deliver 90% geographic coverage for voice and text by 2017”,

but that,

“it is not clear that this will meet consumer service expectations”—

a point which has already been made in earlier debate. It continues:

“As it stands, gaps in current 4G networks mean that around 20% of urban premises and almost 80% of rural premises are in a not-spot for 4G coverage”,

which is surely unacceptable. It then comes to the point that bears on the amendment we have tabled in this group:

“The next generation of mobile connectivity will need to deliver the right type of networks, in the right places, for the services that people and business need. This means that 5G networks cannot be thought of in isolation but must be considered as part of a wider ecosystem of mobile connectivity. Delivering the connectivity we require for the future must start by ensuring that we have the networks we need for today—this will not only provide a basic level of service to consumers ... but ... the backbone of the network infrastructure we need for the new services of the future”.

These points are relevant to Amendment 6. I think that we are agreed that a USO will have some value although we are not that agreed on what it will be and how much it will bite—we might be able to make some progress on that. If we have a USO, Amendment 6 addresses whether it is just for the provision of wi-fi and wire-to-premises services or will include the additional services that will probably be necessary to achieve full coverage.

Everybody hopes that the USO will deliver 100% coverage. As the report from the National Infrastructure Commission makes clear, we would not be able to reach that coverage without some element of mobile telephony. Therefore, while we shall be regulating for the wires and the fibre to take the signal by a conventional route, we shall be stuck with unmet need. We shall not be covering the last 5% or 10% of people who will probably need supplementary provision. Indeed, the Minister himself said that the only way that he could satisfy his children's need for proper access to the internet was to provide microwave technology in addition. Therefore if the USO is to be effective, it will need to cover forms of technology other than simply communication down wires or through fibre.

Amendment 6 simply suggests that the Government should take a step forward along the lines set out by the National Infrastructure Commission. They should add in the mobile coverage that would be required to complete what would be the first widely acceptable USO at whatever level it is meant to be. That is necessary if we are to make the progress set out in that report.

Amendment 19 concerns the vexed question of roaming. A number of issues seem to arise whenever anybody picks up a contract for a mobile phone and tries to use it. First, if in the shop you ask whether you will be able to use a phone throughout the United Kingdom, a promise will almost certainly be made that will not be honoured in the detail. It is quite clear to anyone who does any travelling that service from the various network providers varies considerably. I think that the Government will argue that this is a good thing because only by having competition between the mobile network operators will one get the maximum coverage sought. However, since it patently does not achieve that, one has to ask whether this is the right way forward.

From time to time the suggestion is made that even if you could get the coverage that you wanted from the network and contract to which you signed up, it would not be sufficient. This is because there will always be a point at which the income to be generated from additional coverage will be less than the investment in new masts and equipment. Therefore there will always be not-spots, even with mobile and not just internet connections. As the National Infrastructure Commission said, voice coverage will be patchy and not be fully efficient unless we can do something to make it more possible to receive any signal, not just the signal from the contracted operator. It is going to be mixed—if we are to reach 100% we will need to have more than the current incentive for services to include that.

This amendment proposes a national roaming provision at certain points. Without this we will not see the coverage that the National Infrastructure Commission wishes, which common sense dictates and which usage will demand. Consumer pressure may well be the final straw on this point. We will need to make sure that there is a possibility of reaching out to whichever mast is nearer and whichever services are appropriate to needs. Roaming may be the answer. I beg to move.

Lord Gordon of Strathblane: My Lords, my Amendment 17 is along similar lines. Perhaps because of my comments at Second Reading, I have had various meetings with mobile phone operators. They take me to task for contrasting their performance with my experience of broadcasting where for 50 years ITV and the BBC have been sharing masts. They correctly point out that broadcasters can differentiate their product by content, whereas they cannot. Their business model is based entirely on one provider owning one mast and providing that signal to its subscribers alone. In fairness, it is not the ideal way to build infrastructure. For water, the equivalent would be three water mains running into the average house and three sewage pipes taking waste away. It is a pretty silly way to organise things, but it is the way they have been organised and—as everyone says nowadays with a degree of resignation about quite a lot of subjects—we are where we are.

5.30 pm

I accept that no roaming is the rule of the game normally, but I agree with my noble friend Lord Stevenson. What happens when the market just stops and cannot deliver? Recently, Ofcom produced an app which I recommend to all noble Lords. It is free, and will tell you what signal you are getting on your premises and your broadband speed et cetera, as well as showing you which providers offer the best signal. It is going to arm the average citizen with the information to challenge their providers and say, “Look, you are meant to be giving 4G by the end of December 2017. At the moment you cannot even give me 3G. What are you going to do about it?”. The Bill at the moment simply requires a communications provider to provide compensation. That is important, and compensation matters, but it does not actually help deliver the 4G or whatever that the end-user is looking for.

My amendment suggests that once the current system has been shown to fail, we should allow roaming. My noble friend Lord Stevenson used the term

national roaming, which we use to distinguish it from roaming when you are abroad, which is most people’s experience of roaming. The fact is that anybody who comes from Europe to this country can roam and find the best signal. We are simply saying that in certain circumstances, when an adequate signal cannot be provided by the mobile provider, the end-user should be allowed to roam.

Beyond that, I would like to see the development of joint masts and would not rule out the possibility, I am afraid, of subsidy. If at the end of the day we are prepared to subsidise the provision of fibre, we should also be prepared to subsidise if necessary in very remote areas the sort of masts that will host 5G, because that will be the way that a lot of people get broadband.

Lord Maxton: My Lords, I just want to raise an issue of the future rather than the present. I hope that masts will soon be a thing of the past and we move to satellite provision of telephony in the very near future. I do not know whether that will be the case, but I have certainly heard it will be. Otherwise, I agree with my noble friends that we ought to be moving to having the best provider we can get in any area. I am with EE, and when I am sitting in my motor car driving along with my wife, who is on O2, and my son, who is with Virgin Media, who gets a service on their phone in some areas of the country will depend on the provider.

Baroness Byford: My Lords, as someone who is not as well versed as some noble Lords with the technology, it always strikes me as strange that if you go abroad, wherever you are, you seem to be able to get access. What do they do that we do not? Are there lessons that we should be learning? Do they have a different system? How does it actually work? It seems ludicrous that we are going into such nitty-gritty when perhaps, over there, there is something that we are not even opening our minds to.

Lord Ashton of Hyde: My Lords, I am grateful for the contributions in this interesting and important debate. Amendment 6, in the name of the noble Lord, Lord Stevenson, seeks to include mobile coverage within the scope of the guidance on the broadband universal service obligation. The universal service directive currently provides the regulatory framework for a broadband USO and although, depending on the design of a broadband USO, there is scope for the USO connection to be provided using mobile technology such as 4G, the directive does not apply to mobile coverage.

I am afraid we do not currently consider there is a case for a USO for mobile. The Government have already secured significant progress to ensure mobile coverage across the whole of the UK through the licence obligations arising from the December 2014 agreement with the mobile network operators, which locked in £5 billion of investment to support the rollout plans. We want to hold the mobile operators’ feet to the fire, and noble Lords will be aware that Clause 10 will give the regulator, Ofcom, the power to issue hefty fines to mobile phone companies that fail to meet their licence obligations. The noble Lord, Lord Gordon, mentioned that it does not help if you

[LORD ASHTON OF HYDE]

are not getting a full mobile service, but it is a direct incentive, as is compensation. We are trying to achieve what he wants.

Amendment 19, in the name of the noble Lord, Lord Mendelsohn, seeks a licence variation to require roaming within networks where there is an intermittent or no signal, while Amendment 17 in the name of the noble Lord, Lord Gordon of Strathblane, would offer roaming as automatic compensation. I understand the frustrations of people whose mobile experience does not live up to their expectations, but although roaming appears to offer a quick fix, it would do more harm than good, undermining the incentive for operators to invest in new infrastructure. This is particularly important for areas that have no coverage from any provider at all, as there is no incentive to invest capital in a new mast if other operators simply piggy-back off your investment.

Noble Lords mentioned coverage in other countries—my noble friend Lady Byford mentioned travel abroad. The reason for that is there are international roaming agreements, which apply to a UK citizen travelling in Europe. However, it is offered on a fair-use basis, when tourists travel for a limited period of time. Details of a fair-use test to prevent abuse of roaming are being agreed in the EU at the moment.

Roaming was considered by the Government in 2014, but was rejected in favour of licence obligations to drive increased coverage by all mobile operators, which locked in the £5 billion investment I mentioned earlier. We are making progress: Ofcom's *Connected Nations 2016* report, which records progress to June 2016, shows that 99% of UK premises now have indoor voice coverage and 98% have indoor 3G or 4G data coverage. Our recent reforms to mobile planning laws in England, and the proposed reforms of the Electronic Communications Code which we will be talking about later, will support further investment and improvements in connectivity across the UK and reduce coverage not-spots. We are working to make it easier and cheaper for mobile companies to invest so that consumers benefit from good coverage and can receive it at low prices. Our measures are achieving this, and our future reforms will support this further, thereby delivering a better deal for consumers across the UK.

Noble Lords will also be aware of our commitment to being world leaders in 5G, as the noble Lord, Lord Gordon, suggested. That is why we announced over £1 billion of funding in the Autumn Statement to support the deployment of the next generation of digital infrastructure. We want to support investment, and not discourage it. The noble Lord, Lord Maxton, talked about his desire to see no masts at all and for the system to be based on satellites. I am not an expert on the technical side of this, but I think I am right in saying that for 5G, which is what we are aiming for, we are going to see more masts, I am afraid, or more transmitters attached to various edifices—we will talk about that later, I am sure—because they have shorter range and greater bandwidth. So I am afraid I do not think the bandwidth that is possible from satellites will enable what we have all talked about and what is required for the future.

Lord Fox: I am grateful that the Minister has brought up the matter of smaller and more populous transmissions for 5G, because one of the issues that he could consider when implementing this is to limit the amount of new ducting and work that needs to be done on our streets and in our towns. To enforce, or expect, the sharing of ducting across our towns—which is not necessarily forthcoming—would help us with that. Perhaps the Minister will consider that.

Lord Ashton of Hyde: An amendment on that issue may be considered later today. That, however, will be a little taster for later. I have, therefore, come to the end of my explanations and I hope that, with those reassuring words, the noble Lord will withdraw the amendment for the moment.

Lord Stevenson of Balmacara: That is not at all the impression the noble Lord has given. Again, we have seen a lack of ambition to solve some of the long-standing problems. The noble Baroness, Lady Byford, was right to draw attention to what happens when you go abroad: you get a completely different experience—you are regularly connected to a service that you have become used to and there are no questions about which mast to point at. Wherever you are you will get service. Why we cannot get that here, I do not understand.

On this issue, however, we will always come up against the fact that if we are to get a 5G service across the whole of the United Kingdom the current system will not work. The directive may provide convenient help in propping up the Government's arguments at the moment but that will not be available in a couple of years' time when 5G begins to roll out seriously. We will come back to this issue. If we are to get to more than 92% coverage—the sort of ambition in the Government's own paper, *Connected Future*—we cannot stick with the current model, which clearly does not work. In the meantime, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Amendment 7 not moved.

Amendment 8

Moved by Lord Fox

8: Clause 1, page 2, line 23, at end insert—

“72B Universal service order: annual report

- (1) OFCOM must publish an annual report on the implementation of the universal service order for all areas pursuant to the provisions of this Act.
- (2) The annual report must include information on—
 - (a) the number of premises that have been supplied with the minimum download speed as specified by the universal service order;
 - (b) the number of premises that have been required to cover some of the cost of connection;
 - (c) of the premises under subsection (2)(b), the average cost of connection per premises covered by residents, disaggregated by local authority area;
 - (d) the number of premises that have chosen not to be connected via the universal service order after being provided with an estimate;
 - (e) the amount of time on average it takes to provide an estimate and connect a premise, disaggregated by local authority area;

- (f) the percentage of premises nationally connected via fibre to the premises (FTTP);
- (g) the take-up of superfast broadband as a proportion of connected premises;
- (h) the measures taken by OFCOM, Government and others to increase take-up of superfast broadband;
- (i) the average time taken by named service providers to reconnect broken connections;
- (j) the number of community schemes set up in that year and the level of subsidy delivered to achieve this; and
- (k) the extent to which the rights of consumers are explained to them.”

Lord Fox: It transpires that since I last spoke in Committee—literally since I last spoke in Committee—I must now declare an interest: I have just received an email telling me that my broadband service conditions will change. The price has increased. I am virtually certain that the bandwidth has not.

Whether the Minister’s world-class targets, or the gigabit economy of the noble Lord, Lord Mendelsohn, is in play, the purpose of Amendment 8 is to address the issue raised very eruditely by the noble Lord, Lord Mitchell, which is that BT will miss its targets. The aim of this amendment is to introduce a way of monitoring performance regularly. There is a lot of talk about driverless cars but we do not want this to be without some serious driving. It is the central mechanism by which we on this side believe that the Minister and Parliament can drive performance on a regular basis. We talked, in Amendment 2, about an annual review of the USO, and we believe that this would be the precursor to that process. It is designed to create a sense of urgency and—to be honest—pressure, on both Ofcom and the service provider. Noble Lords will be aware that it is based on a suggestion, or proposal, of the LGA, but it has additional key measures designed to monitor progress.

It is perhaps simplistic to say so, but we should see ourselves—the Minister and Parliament—as the client in this relationship, Ofcom as the project manager and Openreach, or KCOM, as a contractor, and we need to be able to measure progress regularly. It is therefore not unreasonable to suggest some measures. Without going into huge detail, the measures address a number of issues. They address performance: paragraphs (a) and (f) look at minimum download speeds and the amount of fibre being installed on the premises. The economic aspects of (b) and (c) look at the cost of connection borne by citizens and the mean cost of connection. In (d), (e) and (i) we look at service levels, premises choosing not to connect, the time to get your estimate for connection and the time for repair—which many noble Lords will have experienced and should also be measured.

We then look at take-up and public acceptance, and my noble friend Lord Foster will pick up on some aspects of driving take-up. We need to look at the percentage of people opting to take this up and find ways of pushing it. We should have a way of measuring community schemes: in some senses the ease with which they can be established, and, frankly, the amount of resistance from the service provider that stops them happening. We also need to know that consumer rights—what they are receiving—are fully explained and understood, as I think the Minister has already said.

The reason for having an annual report is that we cannot rely on the Openreach mission to deliver this and we need to be able to put regular pressure, through Ofcom, on that delivery. Amendments coming up talk about the delivery model—the connection between Openreach and BT—but while we are in that situation, and even after, this amendment is a strong way of driving performance.

5.45 pm

Lord Foster of Bath (LD): My Lords, as my noble friend Lord Fox has said, I will very briefly address one element of the report, though I support the principle and all other aspects of the proposed list of things to be covered in that report. However, I draw the House’s attention to subsections (2)(g) and (h). Paragraph (g) talks about the take-up of superfast broadband as a proportion of connected premises and (h) about the measures taken by various bodies to improve that take-up.

I fully share the Government’s desire to create a digital Britain, with all the benefits that it can bring, including the online delivery of our public services. However, all the discussions I have had about broadband since joining the House have predominantly been about its speed and making it available. We know the figures—they are fairly clear: about 89% of households can currently access high-speed broadband, but we also know that only 31% of households have actually taken up the offer and 22% remain entirely offline. Furthermore, last year’s Ofcom study revealed that some 10% of households make it clear that they have no intention whatever of getting on to the internet at any speed. We also know that it is those with limited means—perhaps older and less well-off people—who make up the bulk of the 30% of the population who currently have either very limited or no access to the internet.

Bearing those figures in mind, and while I welcome all the energy, enthusiasm, debate and deliberation going on in the House—and by the Government, Ofcom and others—to improve the availability of high-speed broadband, at the same time as addressing the supply side we need to do far more work to address the demand side as well. If we are to reap the full benefits of digital Britain—to bridge the digital divide and reduce the unit cost of the installation of high-speed broadband—we need a concentrated and co-ordinated demand-side management programme. I have argued before that such a programme would address issues such as: skills training, which we will come on to later in the Bill; marketing the benefits of broadband; addressing the cost barriers—we have already had a brief debate on that with the amendment of my noble friend Lady Janke in relation to social tariffs; and of course developing quality, technology and content.

I readily acknowledge, as I have in the past, that there is good work going on in this regard by BT itself, the BBC, Barclays and many others. Local councils deserve a great deal of credit for the work they are doing, and the Do It Digital campaign is trying to help businesses get online. The Government have played their part with changes to the IT curriculum and aspired improvements, at least, to digital skills.

However, given that the take-up rate is so low, far more needs to be done, from the skills agenda to having a digital TV switchover-style campaign, advertising

[LORD FOSTER OF BATH]

the benefits of getting online. It needs co-ordination. I believe that BDUK would be best placed to do that—its business voucher scheme was a good demand-driver—and the Minister might comment on where we are with the next iteration of that in his response. I toyed with tabling an amendment adding to the purposes of BDUK to cover responsibility for that but, for the time being, so that we have an opportunity to hear the Minister's reaction and find out a bit more about what the Government plan in demand-management measures, I thought it more sensible to leave it included as one of the issues to be reported under the excellent proposal of my noble friend.

Lord Mendelsohn: My Lords, I express our support for the amendment so ably produced by the noble Lord, Lord Fox. It is entirely consistent with Amendment 21, to which we shall come in the next group, and it provides a useful window on performance. In considering what the full report should look at, I just suggest that it would be useful if it considered upload speeds, outages and user experience. We talk far too often about what speeds are delivered to the home and not enough about the user experience; it would be very useful to include that in such a report.

Lord Ashton of Hyde: My Lords, Amendment 8 also relates to reviewing the delivery of broadband policy. We have spent some time discussing broadband policy and I do not wish to repeat myself by setting out the Government's digital agenda again. We do not disagree with the urgency, and the noble Lord is right to mention it.

The amendment would require Ofcom to produce an annual report on progress in implementing the universal service obligation. We should remind ourselves that that is the point of this part. The amendment lists a number of areas that the report should cover, not all of which relate to the broadband USO. As noted previously, I agree that it will be crucial to monitor progress of this important consumer measure, but I think that it is reasonable that the reporting requirements should be decided once the design of the USO has been finalised, not before. This will be done following the consultation on the detailed design of the USO.

Some of the areas listed are already reported on by Ofcom. For example Ofcom's *Connected Nations* report, which is published annually, already provides details of superfast broadband coverage and take-up, including the percentage of premises nationally connected via fibre. The length of time taken to repair lines is also monitored and reported on by Ofcom under its market review process. Ofcom also conducts mystery shopping exercises to check compliance with the broadband speed code of practice. Under Ofcom's voluntary code of practice on broadband speeds, broadband providers agree to give clear information on broadband speeds to consumers when they consider or buy a home broadband service and provide redress when speed performance is low. Earlier, I mentioned the Advertising Standards Authority's review.

The noble Lord, Lord Foster, mentioned take-up, as he did on Second Reading. We agree that that is an important issue. It is interesting that Ofcom's report

assumes an 80% take-up, which we will have to think about. We agree that it is important for the per-unit cost to reduce as it is rolled out. This will be one thing we can take into consideration in the consultation. He also mentioned the broadband voucher scheme. As I said earlier, the full fibre rollout consultation included the option of a further full fibre business voucher scheme alongside other options. We will publish the findings of the consultation and the next steps alongside the findings of the business broadband review.

Therefore, although we sympathise with the spirit of the amendment, we do not think it is the correct thing to do at the moment, before the decisions have been made, and I hope that the noble Lord will feel able to withdraw it.

Lord Fox: I must confess to being disappointed. The idea that because the service provider publishes some information to consumers, the point of the amendment is addressed, misses the point. Whatever else we have in our broadband service provision, it is not a free and fair market. It does not work as a market. The whole point that we are debating is that, if we were going to build this from scratch, we would not start from where we are now. I think it was the noble Lord, Lord Mendelsohn, who mentioned market correction. This is designed to enable us to maintain market correction of something that is not a market. We have deliberately created something that is completely agnostic as to what the universal service obligation should end up being, and it would be strengthened by the suggestions of the noble Lord, Lord Mendelsohn. I ask the Minister, in quiet reflection afterwards, to think again, but in the meantime, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Clause 1 agreed.

Amendments 9 to 11 not moved.

Amendment 12

Moved by Lord Mendelsohn

12: After Clause 1, insert the following new Clause—

“Universal service broadband obligation: fair and competitive market

The Secretary of State must ensure that rollout of universal service broadband obligations is delivered on a fair and competitive basis.”

Lord Mendelsohn: My Lords, I shall speak also to Amendments 13, 20 and 21. These are probing amendments: three are “why not?” and one is a rather extended “why?”. Amendment 12 follows on nicely from the final contribution of the noble, Lord Fox, to the previous debate. It attempts to address the competitive dynamic of the market—what it is there to achieve—and whether competition works in the broadest interest. We contend that the structure of the market has impeded private investment.

In 2005, responsibility for the broadband network was given to BT, which already owned the copper landline network—that seemed like a good idea to

achieve a certain series of goals. Those goals were achieved but, unfortunately, time has moved on and there are other requirements.

In those terms, BT has done a good job—there are limits to what it can do—and we have much to thank it for. I should declare an interest here: I am a very small shareholder in BT—since last week, an even smaller one—and I do not believe in BT bashing. We create frameworks and incentives, and it is not a company's fault for following them. Markets have changed. BT receives a lot of criticism for its move into content, but that is adjustment to the market. Frankly, it can find people who are prepared to buy a service to watch the Bundesliga, and I have used it to watch Borussia Mönchengladbach, but the Government are finding it difficult to balance the needs of a national broadband infrastructure with BT's corporate requirements. The market just does not work well and there are few incentives for new entrants and little scope for small players. Bluntly, the Government's reliance on BT's free cash flow moves it from having a real policy to being reliant on prayer.

The communications market revenue growth has accelerated from about 5% to about 5.5%, and this is driven by two particular factors. The main one is price rises which have been unsurprisingly in that 5% to 5.5% range, and there has been a movement to try to compete on the basis of ever-faster connections, or the marketing of ever-faster connections, even if they are not met.

6 pm

In that price competition it is not sufficient to say that there is a fully competitive market that allows for new entrants, forms of investment and competitive pressures to come in. It is competitive pricing but it is not a competitive market. The greatest illustration of where we can see market failure is that Ofcom has devoted so much effort—indeed a whole section of its digital communications review—to empowering and protecting consumers. There is so little dynamic in the market that it is the regulator's task to deal with a whole range of issues to protect and provide opportunities to consumers to be able to get data, recompense, standards, and other things.

What we need is a different sense of how we are creating a competitive market, and I would be very grateful if the Minister will address that question. Every time we read a document, it describes the notion of having some degree of competition, so can he describe the mechanics of this competitive market and how it drives the benefits that we are looking at, beyond just price competition?

In Amendment 13 we are looking at a new requirement to try to ensure a rollout to,

“areas with no or very low broadband coverage before deploying their networks in urban areas”.

The reason we are doing this is because we believe it would be a wonderful opportunity if, when tendering for 5G, we were able to use that to advantage by not just ensuring the effectiveness of the rollout of 5G but in plugging the gaps where broadband is deficient. Companies bidding for it can develop reasonable economic models at that point of investment to do it. This is not pie in the sky. The reason why I think this is such a

good suggestion, and I would be very grateful to hear the Minister's view, is because this is exactly what Germany did in a previous auction that took place between 2009 and 2011 when the licensing conditions and the whole process included specific coverage obligations aimed at getting fixed broadband to homes, which was the primary focus of the obligation rather than just mobile coverage in rural areas. They were required to ensure that they hit the smallest areas before they could move on to the others, so small towns and districts with 5,000 or fewer inhabitants were priority stage 1. It then went up through other stages to priority stage 4 where there were more than 50,000 inhabitants. Deployments in each stage could begin only when 90% of the population in 1,000 districts specified in the previous stage had been provided with access by one or more of the licences. This was extremely successful. In fact, a number of companies bid for this and have delivered it, including—maybe these are familiar to some noble Lords—Vodafone, O2, T-Mobile, Telefónica and Deutsche Telekom. Do these seem like unremarkable companies that we will not have bidding for our particular arrangements?

Here we have a practical measure—a practical way of tendering—that would bridge that gap, would fill it and allow for effective competition and an effective economic model to be developed. I would be very grateful if the Minister will say why that is not a good idea.

Amendment 20 addresses the question of Openreach. There have been many debates on Openreach so everyone agrees with the conclusion of Ofcom, to ensure that there is a proper legal separation where the upstream business is established as a separate legal entity within the wider group and that it remains under the same overall ownership but there is a divisional board that can act independently from the group board. That is an interesting proposal. I think that there is a case for structural separation but it is reasonable to look at legal separation at this stage and measure where that is.

However, there are two elements to this amendment which address some of the major concerns. The highly respected Enders commented on this proposal from Ofcom saying:

“Ofcom's latest proposal for the structure of BT's Openreach sits neatly between BT's offer and its competitors' demands, and is broadly sensible if the Pension Fund and cost issues can be resolved”.

It could have added debts, and the like, and there is a range of issues to sort out. It is hard to have a USO and so much running on a company encumbered by such issues.

Openreach is fundamentally immensely profitable. When you can finally get to understanding the accounts—it tries to suggest that there is a lot more capital there—you can identify the profit. In fact, I cheated because one of the other group companies revealed the level of profit. This is a business with some of the highest margins in the FTSE. It is a highly profitable business, so it should be able to address these issues. It is wrong to encumber the decisions of Government by someone being able to hold a gun to their head saying that it has all these other particular problems.

[LORD MENDELSON]

The other element is that this proposal should be acted on. We have proposed the amendment because we think it will be timely to ensure that this is delivered. This should and can take place now. It can be enforced now, either through the EU arrangements, or even through domestic UK arrangements. There is no reason for any delay or for the Government not to encourage the separation to happen as soon as possible. I will be grateful if the Minister will give us some indication of whether the Government will be looking to ensure that this separation takes place now.

We like Amendment 21 very much indeed, apart from coming after the report which I hope the Minister will reconsider. It address a big issue. The Government's Autumn Statement provided funding for the rollout of fibre to the last 5%, some would say, and it has not met with great interest from the private sector. This is largely a result of two factors. The first is that the competition is in superfast, and to try to deliver a low spec on this one is not a massive incentive for companies and, secondly, there is not much chance to roll out further. It is important to create a more competitive, performance-driven and dynamic market to make changes for the benefit of areas.

If we were to look at some of the top 10 cities of the world for delivering broadband speed, the number one is Seoul, Hong Kong is number two, number three is Chattanooga, number four is Kansas City, number five is Lafayette and number six is Bristol—in the United States. Number seven is Riga, and then we have Amsterdam, New York, and others. London is better but we have a patchy service. That is because the local delivery of new forms and new arrangements to ensure fast broadband have been pioneered in a variety of other countries and we should have that method.

I will tell two stories. Hudson, Ohio, had two internet providers where connectivity was slow, unreliable and expensive. The city decided to become its own provider. This was a real problem because it could not attract businesses. It became a one gigabit economy. Since that time, 900 companies have moved into the area and transformed it.

In 2010, Chattanooga—yes, Chattanooga—modernised the power grid and laid a fibre network. From 2011 it had a one gigabit economy. Last year it rolled out 10 gigabits, and users could get this at home. In my private business I have been to Chattanooga and it is absolutely extraordinary. It has attracted a whole host of companies, including a lot of tech companies, start-ups, 3D-printing companies and some of the most innovative companies and entrepreneurs. It is the number-one-ranked service provider for customer satisfaction, eclipsing Google Fiber. That was fought quite heavily by the existing providers but it has been able to transform an area's economic prospects and the life and livelihood of the populations there. There are areas in our country that are not being served well and an authority could start to deliver a better outcome to the population by creating a better infrastructure, and we should certainly give it the means to do so. This amendment fulfils that. I beg to move.

Lord Aberdare (CB): My Lords, I support Amendments 12 and 13. I have no mobile coverage at all at my home in Wales and would have no broadband worthy of the name if it were not for a small local supplier offering a line of sight wireless service and willing to do so in competition with BT, although “competition” is hardly the word I would use to describe it.

I believe that a more competitive marketplace is essential to increase the speed and quality of broadband rollout, including, or especially for the final few per cent which I hope means household rather than geographic coverage, and who of course tend to be in rural areas. Similarly, my experience in Wales leads me to believe that to achieve a genuinely competitive and open market, it may well be necessary to bring about some sort of separation of Openreach from BT. I hope that the Minister will be able to tell us how the Government plan to promote a more competitive marketplace as a driver of better services across the nation.

Lord Arbuthnot of Edrom: My Lords, these are very important amendments. There is a concern that BT has tended to invest just enough in a particular area to make it uneconomic for competitors to come in and provide services there. This may just be a natural complaint by people who have been beaten fair and square in the marketplace, because BT is a very large and effective company which is, in many respects, a national champion. However, if it is a canard, it is a persistent one. I hope the Minister will be able to say something to reassure the Committee, either that it is untrue or that something is going to be done about it.

Lord Maxton: My Lords, I too support these amendments, which are on the right lines. My only reservation is that if BT is already the owner of the line into a property—it could be a commercial one—who is responsible if a repair needs to be done: Openreach or BT?

Lord Fox: My Lords, we associate ourselves with Amendment 20. I was under the impression that Ofcom was already looking at the process of legal separation, and if this is designed to strengthen its arm and make sure that it happens, then we approve. At Second Reading, I talked about the desirability of full structural separation. We know that the pension deficit has been used as a reason. When that calculation was made, was the full effect of the EE acquisition factored into the pension equation? Now that there have been substantial changes in the make-up of the corporate parent, can a different argument be made on pensions?

In the recesses of my mind I recall something being attempted in York along the lines of Amendment 21. It foundered because there was no separation in the BT/Openreach model and the route to market proved very difficult. Perhaps to be successful Amendment 21 needs Amendment 20, if not full structural separation.

Lord Mitchell: My Lords, I will address Amendment 20. The separation of Openreach from BT is fundamental to the success of Britain being a leader in the digital economy in the 21st century. It is unanswerable that BT has been given a monopoly in fixed broadband connectivity. It displays classic monopoly behaviour: it controls the distribution, sets the prices and dictates

the terms to its competitors. It has no incentive to improve the quality of its service—just the minimum. I would not be so vehement on this issue if BT was supplying a brilliant service, or even if it gave us believable market facts. Its broadband coverage is awful and it successfully lobbies to persuade Ministers and others that it is meeting its targets; it is not. It is undeserving of any government support, particularly in its ownership of Openreach. Why should it be granted this monopolistic licence to print money? Alternative owners will have a real incentive to improve the service.

Fixed and mobile connectivity are converging. The route may be different, but they are joining up: data are data. BT is rapidly taking on all the attributes of the overall monopoly supplier: all internet connectivity. If you aggregate its stranglehold in broadband, add its ownership of EE in mobile and then factor in its future 42% ownership of the 5G spectrum, it is overwhelming. We have a massive monopoly in the making. Separating Openreach will certainly clip BT's wings and improve broadband connectivity.

Baroness Byford: My Lords, at Second Reading I spoke against the continuation of BT and Openreach as one unit. Many of us have experienced disappointing results when we have asked BT and Openreach to do things: the two of them seem to pass the buck to each other. Separation is a very good suggestion and I support Amendment 20 in principle. If this is not possible—like others, I have followed the current pension debacle, which is adding to the difficulty—who holds BT to account? If it is Ofcom, is it doing its job; if not, should somebody else be doing it? One does not often hear praise of BT, and its provision is unsatisfactory. If the Government say that the amendment is not necessary, the Minister should tell the Committee what he is going to do about the current position, which is far from satisfactory.

6.15 pm

Lord Ashton of Hyde: I am grateful to all noble Lords who have contributed. Amendment 12 would introduce a new clause to require that the rollout of the broadband USO be delivered on a fair and competitive basis. Under the EU universal service directive, the USO is delivered by one or more designated universal service providers. Designation of the provider or providers is a matter for Ofcom under Section 66 of the Communications Act 2003. The Act enables Ofcom to set out the procedure for designation in regulations, and Section 66(7) requires that this procedure must be efficient, objective and transparent, and not involve or give rise to undue discrimination against any person. Existing legislation therefore already provides for a fair and open process for the designation of a universal service provider, which meets the concerns of this amendment.

As noble Lords may be aware, in April last year Ofcom published a call for inputs, seeking views from industry and consumers on the design of the broadband USO. The majority of respondents shared Ofcom's preference for a transparent and competitive designation process for the universal service provider. At the same time, however, few industry stakeholders expressed a desire to be designated as the provider of the broadband USO.

In light of this, Ofcom's USO technical advice, published on 16 December, explained that it considered that a more restricted process, whereby all providers are considered and an appropriate provider chosen, subject to a consultation process, was more likely than a competitive process which was unlikely to bring forward any interested providers. It also indicated that the most efficient outcome may be for BT and KCOM to be designated as universal service providers. This will be a matter for Ofcom to consider fully, once decisions are made on the detailed design of the broadband USO. I should, however, stress that the universal service provider is only able to recover from a USO fund in respect of an unfair net cost burden, as calculated by Ofcom, so the method of designation has no bearing on whether the designated provider is incentivised to deliver the USO in the most efficient way.

Amendment 13 would require the designated universal service providers to roll out in rural areas before deploying their networks in urban ones. I do not think this would be appropriate. There are, I know, more rural consumers struggling with slow broadband speeds, but I do not think that the needs of urban consumers are any different from those of rural ones in the same position. As such, they should be treated the same. The USO is being introduced specifically to target those areas where commercial providers have not provided, and are unlikely to provide, connectivity, be they rural or urban areas, and to confront social exclusion wherever it is located.

The noble Lord, Lord Mendelsohn, talked about the role of smaller suppliers in the BDUK superfast programme. Of course, smaller suppliers can successfully deliver infrastructure into communities in the hardest-to-reach parts of the UK. There are now 11 smaller suppliers contracted to deliver superfast broadband projects through BDUK's programme. The noble Lord also asked why we do not introduce an outside-in rollout, like Germany. We agree that has been very successful but unfortunately it is not comparable to what is proposed under the USO. In Germany there is no USO, but a publicly funded rollout programme. It worked by giving the commercial sector the opportunity to roll out in more commercially viable urban areas. The USO is intended to target areas that are not commercially viable.

Amendment 20—I pay tribute to the noble Lord, Lord Mendelsohn, for his measured remarks about BT, which is a bit of a whipping boy here—would give the Secretary of State a power to direct Ofcom to begin the process of legally separating the Openreach division of BT. We do not think this power is necessary, since on 29 November last year Ofcom announced its intention to do that very thing, as the noble Lord, Lord Fox, mentioned. In answer to the question from my noble friend Lord Arbuthnot, I am afraid I do not know the details about the way it has been operating. I will check that and get back to him in writing. According to Ofcom, the only thing that can stop the process is if BT agrees a voluntary arrangement that meets all of the regulator's requirements.

Furthermore, through its comprehensive digital communications review, which reported in February 2016, Ofcom examined closely the whole of the UK

[LORD ASHTON OF HYDE]

telecommunications market. It concluded that changes to the governance of Openreach could benefit competition and consumers, and consulted last summer on the form that these changes should take. Last November it announced its decision that legal separation was the way to go. Therefore, Ofcom has already carried out most of the actions set out in paragraph (2) of this amendment. If the Secretary of State were to use the power granted by this amendment to direct Ofcom in the manner described, the result would be repetition and delay due to the requirements of the clause.

Because Ofcom is an independent regulator—I can say to my noble friend Lady Byford that it is Ofcom that holds it to account—the Government do not wish to take a power to direct how it should carry out its duties. However, I can assure noble Lords that the Government are listening to Ofcom in case there is anything we can legitimately do to ensure that the changes the regulator has proposed can be carried out expeditiously. I will leave that there for the time being.

Amendment 21 would require local authorities to take steps to ensure that alternative suppliers are in place to meet the requirements of the broadband USO where they identify areas which do not receive this. It would also give local authorities the option of publishing data on broadband speeds in their area and the extent to which the broadband USO is being met.

If I have understood the intention, the first part of this new clause seems unnecessary, as the process for designating the universal service provider is intended to ensure that no operator would be excluded from being designated. It would be for operators themselves, either on a national or regional basis, to put themselves forward to be considered for designation by Ofcom. This is not something that local authorities would have a role in. If, on the other hand, the intention of the new clause is that local authorities should take a role in procuring alternative suppliers to deliver broadband to the same standard required by the USO, this would fall outside the USO measures in the Bill. Local authorities can, of course, carry out procurements to provide areas with superfast broadband through the UK's national broadband scheme, and areas covered in this way will not need intervention under the USO.

The second part of the new clause is also unnecessary as local authorities already have the option to publish data about broadband speeds in their area without the need for this legislative provision. They would, in any case, rely on Ofcom data. Ofcom has extensive data-gathering powers and reports to the Government on the availability, take-up and use of broadband in its annual *Connected Nations* reports. The reports include data at local authority level. In future, once the USO has been introduced, the *Connected Nations* report will also provide a means of reporting on the broadband USO and whether it is effectively meeting the needs of consumers and businesses. Given those explanations, I hope the noble Lord will withdraw his amendment.

Lord Mendelsohn: I thank the Minister for his very full answer in relation to Amendment 12, but it was to a completely different question from the one I had posed, which was about having an objective, efficient

and transparent process in establishing providers. His answer concerned delivering on obligations. He should take from the Committee the important message that there is great concern about the nature of the competitive market.

Turning to Amendment 13 and the outside-in approach taken in Germany, I was under the impression that, given the amount of money we have put behind this, we have a similar publicly funded rollout programme. Germany has gone for a different approach—its USO occurs later in the process—and will meet a much higher standard over time. This is one of our big competitive pressures in Europe. Such an approach still has merit because it is the one occasion when you can get the private sector to factor in reasonable infrastructure spend, which it is not doing at the moment.

I thank the Minister for saying that I have been fair-minded concerning Openreach. However, I am sorely tempted to lose that tag. He made the crucial point that if there is a voluntary agreement to meet the requirement, it can stave it off. As he will have seen in the extensive commentary on this issue over the past two weeks, there is great concern that that is exactly its intention and it will delay the process. That is why we have suggested that much swifter action be taken.

I confess that with Amendment 21, we shoehorned in something completely different that does not and cannot really fit within the USO. However, it does provide for effective support for the local and regional economies. We should look at this issue. This is a broader policy arrangement to try to solve some of the problems that we are running headlong into, because the structure of the market just will not service them in the long term and will not maintain our competitiveness. Frankly, when Chattanooga is choo-chooing along at such an incredible pace and we are falling behind, something needs to be done, and that is a bigger policy. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendment 13 not moved.

Clause 2 agreed.

Amendment 14

Moved by Lord Stevenson of Balmacara

14: After Clause 2, insert the following new Clause—

“Bill limits for mobile phone contracts

- (1) A telecommunications service provider supplying a contract relating to a handheld mobile telephone must, at the time of entering into such a contract, allow the end-user the opportunity to place a financial cap on the monthly bill under that contract.
- (2) A telecommunications service provider under subsection (1) must not begin to supply a contracted service to an end-user unless the end-user has either—
 - (a) requested the monthly cap be put in place and agreed the amount of that cap, or
 - (b) decided, with the decision recorded on a durable medium, not to put a monthly cap in place.
- (3) An end-user may, after the start of the contracted service—
 - (a) contact the service provider to require a cap to be put in place and agree the amount of that cap, or

- (b) require a cap to be removed, with the requirement recorded on a durable medium.
- (4) The end-user should bear no cost for the supply of any service above the cap if the provider has—
 - (a) failed to impose a cap agreed under subsection (2)(a) or (3)(a); or
 - (b) removed the cap without the end-user's express consent, provided on a durable medium as required under subsection (2)(b) or (3)(b)."

Lord Stevenson of Balmacara: My Lords, as we reach the end of this first part of the Bill we have a bit of a conglomeration of amendments in one group. I think we will need to just go through them slowly to get the sense of them.

Amendment 14 is also in the name of the noble Lord, Lord Foster, and I am grateful to him for his support. It tries to deal with an issue that we probably all agree in this Committee is one of the most complicated areas of domestic expenditure—trying to work out what you owe for your mobile phone. I have never understood the tariffs. I certainly do not understand the various little odds and ends to opt in and opt out of, and I find it hard to get my mind round which bits are prepaid and which are costed at a rate that I do not recognise. Nevertheless, the bill comes in regularly and has to be paid. However, for some people this can be a source of worry and, as with other universal provisions, there may be some danger of vulnerable customers getting into difficulty. We therefore thought it might be interesting to suggest that the mobile operators should be encouraged, either voluntarily or if necessary through some form of statutory provision, to set caps or work on a system under which customers could set caps—more correctly—so that if expenditure was getting out of control on their mobile phone they were not being taken for a ride, even if it was for a relatively short period. Therefore, the idea of a financial cap, which is not uncommon in other areas of consumer expenditure, occurs. The suggestion in the amendment, which I hope the Minister will find of interest, is that it might be a way to make sure that there is a more secure arrangement for this important part of our everyday lives.

6.30 pm

Amendment 15 raises the interesting question of how to switch out of your existing contract if you wish to do so. It is a competitive area—many people offer services in mobile telephony—but it is quite hard to extricate yourself from one contract and move to another. It has been suggested for some time—we raised this in discussion on previous Bills, including the now Consumer Rights Act 2015—that the way to do it is to enable mobile provider-led switching. This amendment would put this on a statutory basis, and suggests that it is the standard we should move to.

The current position as I understand it—I look forward to the Minister's comments—is that mobile provider-led switching is permitted, that how best to expedite it is being discussed with Ofcom, and that progress is being made. However, it seems to take a long time; we were talking about it during the passage of the Consumer Rights Act 2015 but it came up on earlier Bills as well, and we still do not see very much progress. It is still hard to do, and I will be grateful for further comments on whether this is a helpful initiative in this area.

Amendment 16 picks up on what is already in the Bill on the power that Ofcom will get to set a condition requiring payment of compensation by communication providers to end-users where standards or obligations are not being met. There is a gap in that provision in the sense that nothing there suggests that they should do it within reasonable timescales, and we ask that that be taken into consideration.

Amendment 18 deals with the question of whether coverage is satisfactory. This area has already been raised with regard to amendments earlier in the debate. This amendment would specify conditions under which telecommunications service providers would be required to pay compensation and provide satisfactory mobile coverage, which of course is not currently the case; your coverage is not part of your contract, and we think it ought to be.

Amendment 22 seeks to put into a code of conduct a mandatory provision, so that where broadband speeds are specified in the USO or equivalent requirements, these should be placed in a way which makes them more than just a contractual term in an arrangement. In other words, after consultation, the Secretary of State should make a code of practice which would allow the code to specify what speed information we will get under our broadband services. It would require those providers to make sure that they deal with any problems that arise from that, to ensure that there is no penalty if the customers want to leave a contract, because speeds consistently or even occasionally fall under a specified minimum threshold, and to make sure that information is available around that in a more positive way than at the moment. This would be a good thing for work in this area. However, it raises a wider issue, which also came up during the passage of the Consumer Rights Act 2015.

For reasons that we could never get to the bottom of, when one orders digital content—which one increasingly does these days, whether it is books, music or other forms of transfer—the rights you acquire when purchasing that material are not the same as if you acquired it in a physical format. In other words, if you download a CD to your iPod or equivalent and play it and listen to it, you do not acquire the same rights as if you bought that CD in a shop, took it home and played it on the same or a similar machine. We could not understand why that was the case, because the whole purpose of the Bill—I do not wish to rehearse that in this venue—was to try to equalise rights in the digital marketplace with those in the physical marketplace. Yet this was one area where the Government were very stubborn and would not move—although we had a lot of interesting and good debate around other issues, many of which were changed. The argument was largely around whether one could really say that it was comparable to download digital data in a form which was not physical and therefore could not be physically returned if it turned out to be defective. That was the crunch debate. We have moved on since the debates in 2014-15, and we should think much harder about what consumers' rights should be in a digital age. This probing amendment has been tabled to see whether there is a further appetite in government to take this forward again. I beg to move.

Lord Foster of Bath: My Lords, we on these Benches have much sympathy for Amendments 15, 16, 18 and 22, although I know that my noble friend Lord Clement-Jones will say a few words in a minute or two about Amendment 15. I will confine my remarks predominantly to Amendment 14. I am conscious that many Members of the House are probably regular users of credit and debit cards. However, we are of course also increasingly regular users of mobile phones. I suggest to noble Lords that most mobile phone contracts are in all but name no different from their credit card contracts: they are a credit agreement, paying retrospectively for services that have been received. Yet with the credit card, of course, a limit is imposed upon you, which is not currently the case with mobile phones.

As mobile phones have developed since they were first introduced 30 years ago, the services that are offered and the billing arrangements are increasingly complex. There are benefits from all of that, but their complexity can lead to difficulty for some people, not least people from low-income families, who are five times more likely to rely on their mobile phone than people from high-income families. Very often their mobile phone is their only connected device, as they do not have a fixed landline or broadband connection. Unfortunately, as the complexity has developed, some of the support systems for customers have not gone alongside them. We know from evidence from Citizens Advice that in 2014-15 it helped no fewer than 27,000 customers who had problems with mobile phone debts, which totalled some £11 million. I was told of the case of Martin, who, “was in the British Armed Forces and had been deployed overseas. He contacted his mobile network provider before travelling and, based on their advice, believed he had disabled data roaming. He took his phone with him and used Skype to stay in touch with his wife back in the UK, believing he was connected via Wi-Fi and that Skype calls would therefore be free. On arriving back in the UK, Martin found he had been billed £3,700 for data roaming”.

We need some mechanism to help customers from falling into debt unexpectedly. The amendment proposes the voluntary and opt-in cap system.

During the passage of the Bill in another place, a similar amendment was put before the Government on a number of occasions, and they repeatedly said that they did not think such a measure was necessary, because there are a variety of ways in which the consumer can avoid bill shocks. They talked about the range of apps that are available, dedicated phone lines for people to check on their current limits, warning texts that are sent when customers approach their allowances, and a range of different online tools. However, the reality is that none of that saves the large number of people who get into difficulty with their mobile phone bills. Nearly five years ago, Ofcom recognised that this was a problem, producing a report in which it said:

“We will also push for increased availability and use of financial caps ... We have already called on”,
mobile service providers,

“to do more to develop and promote ‘opt-in’ systems so that consumers can choose to set limits on their expenditure”.

Indeed, Ofcom went even further five years ago, saying that,

“it might be more appropriate to move to an ‘opt-out’ system of financial caps”.

So, five years ago, Ofcom was alerting us to a real problem—a problem that it was proposing could be addressed by mobile service providers at least being able to offer an opt-in cap to their consumers. It did not proceed with that because the mobile phone operators said it would be far too expensive and too difficult to change their billing systems. But those were exactly the same arguments the mobile phone operators used in 2009 against the imposition of the EU roaming cap, which is in place. They said it was far too difficult and could not be done—that there were technical difficulties and so on. Yet they have done it, and it is perfectly possible for them to do it in this country. The evidence of it being perfectly possible is that two companies, Three and Tesco Mobile, have demonstrated that it can be done. They have done it, they are leading the way, and they have shown that they are providing a better service to customers as a result.

The time has now come for us to require mobile service providers to offer an opt-in cap system to their customers. The customer does not have to take it, but the offer should be there. I hope that, at this stage of the Bill—having rejected it on a number of occasions in another place, and given that Ofcom recommended it some five years ago—the Government might now be minded to accept the amendment, or at least something like it.

Lord Clement-Jones (LD): My Lords, at the beginning of the debate on this group, the noble Lord, Lord Stevenson, said this was rather a disparate group. I agree with him, and on that basis it is entirely logical that I am quite supportive of one amendment, Amendment 15, but entirely unsupportive of another, Amendment 233.

This takes us back to the Consumer Rights Act, which feels but yesterday although, looking back, I see that it was debated at the end of 2014. Amendment 15 is very timely and it is right to probe the Government’s intentions on switching. I have a letter, which the noble Baroness, Lady Neville-Rolfe, wrote to me after we had put down various amendments on the then Consumer Rights Bill, on gaining provider-led switching. She said:

“I think we are in full agreement on the likely benefits of gaining-provider led switching for consumers and for competition in the telecoms industry. This view is reflected in our work on switching, since before the publication of the *Consumers, Connectivity and Content* strategy paper, when two experts from Ofcom were seconded to DCMS to help develop policy on switching”.

Moving on slightly from there, I thought it was quite encouraging that, in the Government’s May 2016 paper, *Switching Principles: Government Response and Action Plan*, a number of principles were set out. But I see none of them reflected in the primary legislation. I do not know what the Government’s intentions are in terms of regulations. It is not even clear that gaining provider-led switching will be permissible. Therefore, I ask the Minister whether principles such as these will be enshrined in the secondary legislation:

“Switching should be free to the consumer, unless they are aware of and have consented to fair, reasonable and clear restrictions and charges to do so ... The switching process should be led by the organisation with most interest in making the switching process work effectively—the gaining provider ... Sites and tools providing comparisons to consumers that receive payments from suppliers should make clear where this affects the presentation of results”.

These are principles that the Government have set out in their own paper, and it is not clear at this stage whether they fully plan to deliver on them. I would appreciate an answer from the Minister on that.

On Amendment 233, I am not sure why the noble Lord, Lord Stevenson—with whom I have sparred on a number of occasions on software issues, and certainly on the then Consumer Rights Bill—believes that we are in a different place and need another bite at this particular cherry. The software industry carefully negotiated a particular break-out from the Consumer Rights Act, for good reasons, because of the way that software is developed. There are beta applications that need to be perfected before the final product is fit for purpose, and there are upgrades and so on, as is perfectly well understood by the industry. So I do not support a call for another look at this. I do not believe the evidence is yet there that we have moved into a new place. It is barely two years since we debated these issues and I do not think technological progress has been so quick that we can afford another look at this without prejudicing our software industry.

6.45 pm

Baroness Buscombe: My Lords, I thank all those who have spoken in this debate. I begin with Amendment 14 in the names of the noble Lords, Lord Stevenson of Balmacara and Lord Foster of Bath. The amendment seeks to place a mandatory obligation upon mobile phone service providers to agree with the customer a financial cap on their monthly bills at the time of entering into a contract.

Providers offer consumers a range of innovative ways to manage their usage, such as apps that allow consumers to turn financial caps on and off, warning text messages when customers are approaching their existing allowance limits, and dedicated telephone numbers that advise the customer about their usage. The noble Lord, Lord Foster, has already referred to some of these opportunities.

We expect providers to continue to take steps to minimise bill shock and to ensure that their customers are sufficiently equipped to manage their usage. Having said that, if the Government consider that more needs to be done, the forthcoming consumer Green Paper will be an opportunity for us to consider the issue of bill capping in more detail. It is also important to note—and perhaps it has been said before in another place—that Ofcom has guidance on its website to help consumers avoid so-called bill shock. Tips include making sure you have the right deal to suit your usage, switching provider or increasing your usage allowance, monitoring your usage, and how to protect your phone from unauthorised use.

Amendment 15, in the names of the noble Lords, Lord Stevenson and Lord Mendelsohn, seeks to amend the Communications Act 2003 and Ofcom's power to set conditions to ensure that the interests of the consumer are protected when purchasing a contract relating to a mobile phone, and when switching mobile provider. Changing provider should, of course, be quick and easy for everyone. This is why Clause 2 makes explicit that Ofcom has powers to facilitate easier switching across all the communications sectors, including mobile services. Ofcom has an existing statutory duty to

protect consumers of communications services, including consumers of mobile services, under Section 51 of the Communications Act 2003. The combination of this power and duty thus already creates the effect this amendment seeks.

The noble Lord, Lord Clement-Jones, is concerned about whether there is more to be said on this matter. The clause extends Ofcom's power to set conditions for switching, so it will be for Ofcom to decide what should be required and whether switching is an appropriate requirement to impose on providers.

Lord Clement-Jones: My Lords, I am sorry to interrupt the Minister but I find that a somewhat extraordinary statement. The Government are responsible for policy—indeed, they have published a paper on switching principles. The question is: what has Ofcom been asked to implement? Surely the type of switching that will be implemented is not purely up to Ofcom. The Government—the business department, as was—published a paper setting out very clearly the principles on which switching was to be based. We cannot have a situation where a Minister simply says that it is all down to Ofcom and that is the kind of scheme that it will suggest. I find that extraordinary.

Baroness Buscombe: My Lords, I am sorry if the noble Lord finds it extraordinary. However, I think that he has made a reasonable request and I will make sure that we write to him in detail, giving a full reply.

Amendments 16 and 18 seek to make additions to Clause 3 to ensure that compensation is paid within a reasonable timescale and that, for mobile phone services, compensation is payable where the provider fails to meet a specified standard or obligation. Also, one of those standards must be satisfactory mobile coverage.

The drafting of the clause already allows for Ofcom to consider timescales for compensation, as well as what service standards are within scope. In the spring of this year Ofcom plans to publish a full consultation setting out how automatic compensation could work. Thus, we do not see the need for these amendments.

Amendment 22 seeks to establish a code of practice on business broadband speeds. In January 2016, Ofcom published a voluntary code of practice on business broadband speeds, and it came into force in September 2016. The code gives businesses clearer, more accurate and transparent information on broadband speeds before they sign up to a contract. Signatories to the code also commit to manage any problems that businesses have with broadband speed effectivity and to allow customers to exit the contract at any point if speeds fall below a minimum guaranteed level. Ofcom will continue to work with the industry to ensure full transparency. With such a code already in existence, we see no need for there to be a power for the Secretary of State to prepare one.

Amendment 233 would amend the Consumer Rights Act 2015. I am grateful for the response of the noble Lord, Lord Clement-Jones, to this amendment, as I have to hand the transcript of the debate on that legislation—it makes quite enjoyable reading—when he referenced the consequences of an amendment which is the same as the one before us tonight. He said that,

[BARONESS BUSCOMBE]

“the consequences of this amendment could be quite unforeseen and extremely contrary to the interests of the strong and vibrant software industry that we have in this country”.—[*Official Report*, 19/11/14; col. 507.]

We entirely agree with the noble Lord that things have not changed that much, and they certainly have not changed in that regard. The rights set out in the Consumer Rights Act were designed to achieve a workable balance to reflect consumers’ reasonable expectations while not imposing unnecessary and potentially damaging requirements on our vibrant, growing and technically innovative digital content suppliers. We believe that this amendment would undermine those rights.

When formulating the Consumer Rights Act, we concluded that providing for a short-term right to reject was not necessary in the context of digital content. Unlike physical goods, digital content can on the whole be fixed rapidly and with little effort on the part of the consumer. Consumers accept that it is the nature of digital content that it may be released with minor errors and incompatibilities which come to light in use and which will be fixed to ensure that the product is satisfactory. A short-term right to reject digital content and impose strict limits on the number of repairs and replacements would not be practical in this context. In the digital environment, a fault in one copy of digital content may be replicated in all copies, or the fault may not be the result of an action by the trader at all. That is why a repair is a more equitable solution in the first instance than a full refund.

Many digital content producers are micro-businesses and start-ups, and we need to maintain an environment in which they can flourish and provide innovative products, while ensuring appropriate protections. Enabling rejection as an immediate remedy could cause the industry to be more conservative in its product offerings, reducing our competitiveness and chilling innovation, to the detriment of both business and consumers.

As we know, the Act has been in force since October 2015 and the Government have received no evidence or representations to the effect that it is not working as intended. With that further explanation, I hope that the noble Lord will agree to withdraw his amendment.

Lord Stevenson of Balmacara: I thank the noble Lord, Lord Foster, for joining me on Amendment 14 and I welcome the contribution from the noble Lord, Lord Clement-Jones, with whom we can agree on one thing and disagree on another. I am sure that that will continue—he is a contrary sort of chap and it is sometimes difficult to work out where he is coming from.

I like the phrase “bill shock”—I had not come across it before. It is an issue that might be dealt with in the forthcoming Green Paper and therefore I accept that at this stage we need not progress further on that amendment. However, I should like to reflect on my experience of trying to deal with accounts from my provider of mobile telephony. It is complicated by the fact that I also, stupidly, pay my children’s bills. I should not do that because, if I can never work out what their bills are, I certainly cannot work out my bills, and the combination is almost impossible.

The only way that you can interrogate your bill from that particular provider, whose name begins with a “V”, is by going on to the website and logging in. That is fair enough, but you cannot access your account until the provider sends you a text message on your mobile phone with a number that you have to enter in. That methodology is now becoming common among the banks. However, it does not work in a not-spot, so I cannot reach my account. I cannot interrogate it, I cannot set caps and I cannot do all the things that the noble Baroness talked about in her full and very interesting response. Therefore, there is an issue there with some of the technology that is still being used. I do not think that it is anti-competitive or anti-consumer but it borders on the “difficult to use”. I think that there is an issue there that we might want to come back to, although a Green Paper may well be the right way forward.

If we could have a letter on gainer provider-led switching, that would be very helpful. This is an area where I do not think there is any doubt about where we are trying to get to, but the pace seems glacial and I do not understand what the barriers are.

On the two points on payment, I accept that a paper offering a consultation on that would be useful. If I am correct about the timescale, it seems a little unfortunate that it will appear later than the completion stage of the Bill. The Minister mentioned the spring, but if she could give us some detail in writing about when it is likely to be available, that will be helpful.

With regard to the voluntary code of practice, we come back to the point that we raised on Amendment 1 regarding what the USO will be if it does not have teeth. In some senses, an aspiration is fine and a floor is also fine, but if the code is to be used to make real progress in this area, we have to try to make sure that the ISPs that try to operate it find that it contains something that they have to deliver on. I will look carefully at the Minister’s response and we may come back to that point.

Finally, I turn to my Amendment 233 on digital content. The debates are obviously very familiar. Indeed, I think that the Minister may have been present at one or two of the previous ones and therefore what we say will ring even more loudly in her mind. The noble Lord, Lord Clement-Jones, was quick to pick up the main point, but time is moving on. So much more material is now downloaded and not supplied in hard copy, and at some point we will have to look at this again. The more the Minister talks about a strong and vibrant software industry, the more that speaks to me of customers being put at the bottom of the priority list, and I do not think that that is right. It is difficult to operate in a digital environment without the proper digital legislation. I am not sure that we know yet what that is and I accept that we may need more time to go through it. I signal that this is something that we may have to come back to at some point but, in the interim, I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendment 15 not moved.

Clause 3: Automatic compensation for failure to meet performance standards

Amendments 16 to 18 not moved.

Clause 3 agreed.

Amendments 19 to 22 not moved.

7 pm

Clause 4: The electronic communications code

Amendment 23

Moved by Lord Grantchester

23: Clause 4, page 3, line 20, at end insert—

“() Any rent savings made by mobile network operators as a result of provisions in this section must be invested in efforts to increase geographical coverage.”

Lord Grantchester (Lab): My Lords, this amendment brings the Committee to Part 2 of the Bill: digital infrastructure. This introduces, under Schedule 1, the new revised Electronic Communications Code to replace the code assembled in 1984 and revised in 2003. The Government claim that the new code gets the balance right between operators and site providers. Many of our amendments today are intended to challenge and assess that claim and to make the code work better for everyone.

The code introduces a new no-scheme regime for valuing land sites and access. Under a backstop power there is an element of compulsion—including compulsory purchase, compulsory lease and compulsory contract powers—if agreement cannot be reached. However, the code is distinct from most compulsory purchase powers in that it creates continuing relationships and seeks to impose what would reasonably be agreed. Yet this principle of agreement requires a market value, even a deemed value, rather than compensation for a loss.

In trying to get this code right, the Government sensibly undertook consultations and asked the Law Commission to come up with a solution. However, they suddenly changed tack and came up with this new interpretation which has caused consternation to many who sense that the Government have listened to only one side, the operators—characterised as huge multinationals made up of only a handful of companies—as opposed to site providers, which are, by contrast, small entities with diverse interests. The National Trust, for example, which is charged with obligations under the European Landscape Convention, has concerns where there is a need to protect landscapes and scenic beauty. Fisher German, meanwhile, which represents around 7,500 clients, not only in rural locations but also land owners and authorities in urban areas, argues that there has been close consultation with the operators only to the detriment of land owners.

The Government's new code aims to incentivise investment in infrastructure which will in turn improve coverage and connectivity for everyone. The charge is that infrastructure costs are too high for the operators. The Government wish to change the balance in favour of those larger institutions; that is, the operators. There are certainly problems with the old code but the

sector has made it work. The sector has developed more through the market than by statutory imposition. Changing that to imposition sends warning signals that could lead to much greater resistance by those affected.

BT has claimed that 20% of its costs are tied up with infrastructure. We all want improved coverage and connectivity, yet is it correct that operators blame obstructive landowners blocking development and charging ransom rents? The Government have been convinced by networks regarding these new powers.

I am grateful to Mobile, which has undertaken an investigation into the true cost of mobile network operators' rental agreements. Its research covered 184 councils, as well as others, with 52,000 masts in the UK. The data compiled by Mobile relating to both rural and urban sites showed that estimates of the average rent costs were 34% less for rural sites and 18% more for urban sites than the information provided by Deloitte. The average urban rent was £11,346 as opposed to an average rural rent of £4,946. Yet it is the rural and more remote areas of the UK where coverage is poor. These statistics point out that the biggest costs are in the urban areas.

The Deloitte report, commissioned by the Mobile Operators Association in 2015, concluded that £270 million could be unlocked for investment in improving networks if the new Electronic Communications Code was in place. The Government assume that reducing costs will result in increased investment. Will cutting the costs of city-centre rents result in better rural coverage? Has the Minister seen the site traffic data and income figures for some of these sites? It is claimed that some sites in London could earn £1 million a month, whereas the code seeks to reduce the rent from £30,000 a year to £200. Have the Government considered the other side of the coin, by which I mean the lost income to site providers—the local authorities, hospitals, water-tower owners, sports club charities, and even clubs like Lincoln City in football whose floodlights on football stands host the infrastructure? These amendments put the challenge to mobile network operators and give real incentive to the Government's backing. If the costs are so significant and constraining to investment, let us see the savings spent on extending and improving that coverage.

I also speak to Amendment 24 in this group. There is great concern at the concentration of ownership of wireless infrastructure in the hands of huge vertically integrated mobile operators. To encourage an independent network of sites under integrated management, this amendment proposes a threshold of 10 as a minimum size to encourage investment in independent infrastructure. Many of these investments are in alternative structures such as water towers and pylons and often improve connectivity across mainly rural areas. The challenge is whether the rents and returns can support this investment. By clarifying the situation regarding using site provider investments to become ECC beneficiaries, this probing amendment challenges the Minister to say whether he sees this as a further incentive to the sector, and to aggregated site rights in particular, to bring forward efficiencies such as multiple properties on standard terms. I beg to move.

Baroness Byford: My Lords, I have two amendments in this group. Amendment 25 suggests leaving out paragraph 3(h) of Schedule 1:

“to interfere with or obstruct a means of access to or from the land (whether or not any electronic communications apparatus is on, under or over the land)”.

As I declared earlier, at the moment we have no such masts on any of our land.

This is a probing amendment intended to ascertain what is meant here. How can it be reasonable, necessary or practicable to interfere with or obstruct access to land—any land as it currently stands, as is stated in the preamble—even when there is no apparatus on, under or over that land? Will this, as the noble Lord suggested, include children’s play areas? Will private citizens return home to find they cannot access their property because there is an unmoving Openreach van across their drive? Will farm animals be denied welfare services because they cannot be removed from their fields? Will emergency services, including air ambulances, be barred from using land where access has been obstructed? Will any obstruction be time limited to, for example, not more than half an hour? Indeed, have the Government given thought to this particular issue?

Amendment 39 deals with the height and clearance requirements of overhead lines. I am not sure why Amendment 40 has been removed from this group but I will speak to it at the same time, if I may. These are probing amendments, though the alternative heights they suggest are not to be regarded as frivolous. Three metres is only 10 feet. Modern agricultural machinery is large and growing larger. Three metres above the ground is likely to mean that combining a cereal crop will be difficult, more costly than strictly necessary and probably more dangerous. Have the Government consulted, for example, the NFU, the Health and Safety Executive and the CLA; and if so, what were their comments?

Two metres is only 6.5 feet. Wires hung in mid-air tend to stretch over time. It is likely that 2 metres will become, in places, 1.6 or 1.7 metres—less than the height of the average man. How will roof repairs, chimney repointing and the installation of solar panels be carried out safely with a wire at head height? Ladders and other apparatus will have to be positioned and lifted over the roof ridge. Who will carry the can and bear the cost if a wire set at 2 metres has lengthened and is damaged? Who will be held responsible if a wire moves suddenly and sharply in a gust of wind and hurts or kills somebody working on the roof? I believe that the height envisaged in this section of the code is from a time when agricultural machinery was much smaller and we did not, of course, have the whole question of electronic communications as we do now. As I said, this is a probing amendment. However, if we are not careful, this section of the code has the possibility to cause difficulty in the future.

Lord Aberdare: My Lords, the issues relating to valuation seem to span this and the next group. In a sense, we have not yet examined the horse to which Amendment 23 is the cart. However, I will follow the noble Lord, Lord Grantchester, and the noble Baroness, Lady Byford, in covering the area as a whole.

The no-scheme valuation methodology proposed in the Bill is designed to promote greater investment in the development of much-needed communications infrastructure. In doing so, it needs to maintain a fair and workable balance between the range of different interests involved, including that of landowners, infrastructure providers, network operators and, of course, users. Briefings from the CLA, representing landowners, and from APWireless, a land aggregator, argue that this is a market that already works well and has done so for 30 years. They express serious concern that the proposed change could in fact reduce the availability of land for wireless infrastructure development, thereby slowing the rollout of extra capacity. They point out that the Law Commission report on the ECC some years ago, which the noble Lord mentioned, warned that changes along the lines proposed in the Bill would,

“generate an extremely difficult transition, and a consequent overload of litigation; more importantly, the market in sites benefits the economy—not only small businesses in the countryside but also some larger concerns”.

A subsequent report by Nordicity made similar statements.

I am not aware of any evidence that so-called ransom rents are a significant issue under the existing regime. Independent infrastructure providers, such as VVIG and Arqiva, see it as essential that these new powers are used responsibly and only as a measure of last resort. They stress the importance of seeking voluntary agreements first, to retain the support of the landowner community. The undertakings given in the Minister’s helpful letter to Peers after Second Reading, relating to wholesale infrastructure providers and to the treatment of alternative structures such as water towers and pylons, are encouraging in this respect.

A possible effect of the proposed change to a no-scheme valuation may be to generate windfall savings for large mobile network operators whose costs of acquiring access to land will fall. For that reason I support Amendment 23, which seeks to ensure that such savings are at least reinvested in increasing coverage, rather than just disappearing into the coffers of the MNOs. However, I remain concerned that the change, particularly if applied to existing agreements or their renewal, could introduce uncertainty, risk and tension between ECC beneficiaries and landlords—and of course landlord co-operation and good will is key to a sustainable, efficient and well-maintained network. It also seems to represent a fundamental change in the rules surrounding private ownership in this country.

I hope the Minister will be able to explain why this proposed new valuation methodology was introduced into the Bill so apparently unexpectedly, as the noble Lord, Lord Grantchester, said, and contrary to what had previously seemed to be the Government’s intention. What provisions does the Minister have in mind to ensure that any savings made on rents are indeed reinvested in communications infrastructure? I apologise if I have jumped the gun in talking about some of the amendments in the next group.

7.15 pm

Lord Ashton of Hyde: My Lords, this is an important part of the Bill. The Electronic Communications Code is the regulatory framework underpinning agreements

between site providers and electronic communications operators that wish to install and maintain digital communications infrastructure. The existing code was introduced in 1984 and has been subject to persistent criticism. It is widely perceived as unclear and outdated. The reforms before noble Lords today are the result of extensive research, consultation and collaboration with a diverse range of stakeholders and other government departments. This has included review by the Law Commission in 2012, followed by full government consultation in 2015, as well as the commissioning of independent economic research. We believe the reforms will ensure that communications operators are able to deliver the coverage and connectivity that UK consumers need.

Without making a Second Reading speech, I think we should bear in mind when considering the amendments and the Electronic Communications Code the views expressed in previous debates. Noble Lords have roundly condemned the speed and availability of mobile communications. We do want to reduce costs but we do not want to tear up existing arrangements. That is why they are prospective. It is important to say, as the noble Lord, Lord Aberdare, mentioned, that we expect most of the contracts to be consensual.

Amendment 23 seeks to introduce a statutory obligation on mobile network operators to invest any savings in improving geographical coverage. The reformed code introduces an essential package of reforms that will give rise to significant savings for industry. Our impact assessment estimates that the industry stands to save around £1 billion over a 20-year period. The Government agree that if reforms are to have real impact, savings must be invested in expanding network infrastructure. Mobile network operators have already made commitments to improve coverage and connectivity. These include the 2014 joint agreement to provide voice and text coverage across 90% of the UK's geographical area by 2017. There is also a wide-scale industry rollout of 4G technology, led by Telefonica's licence obligation to deliver to 98% of indoor premises 4G coverage by the end of 2017. This will amount to investment of close to £5 billion in UK infrastructure. However, that is just the beginning. We are confident that the revised code creates the right market incentives to secure real investment in digital communications infrastructure. As such, regulatory intervention to direct industry savings is not necessary.

Amendment 24 seeks to expand the category of persons who can be designated by Ofcom as a code operator under Section 106 of the Communications Act 2003. The amendment would allow a new category of specified persons to use the code to compulsorily acquire land and then offer it back to the market for digital communications use. The code's purpose is to confer code rights on operators to install apparatus on land. A person whose purpose is only to acquire land to provide to other operators is, in effect, a statutory middleman and an unnecessary addition to the code. We believe that the amendment could reduce the availability of land in the market.

Amendment 25, in the name of my noble friend Lady Byford, seeks to remove the code right to obstruct or interfere with access to land. Naturally, when rolling

out or maintaining physical infrastructure, it is sometimes necessary to temporarily interfere with access to land. However, the code makes it clear that an operator cannot obstruct access to land unless the occupier of that land agrees to it or the court so orders. This is a fundamental right to protect landowners' rights of access, long established in the current code. Its retention was recommended by the Law Commission. To confirm, the previous code provided for a right to obstruct access to the site provider's land, but not to obstruct other land without the written agreement of the occupier of the other land. The revised code continues this provision, but as with the rest of the revised code, more clearly sets out the code rights applicable to code operators.

My noble friend spoke to Amendments 39 and 40. I do not regard them as frivolous. Clearly a £250,000 combine, which is the sort of thing that will be driving around now, is not frivolous. Her amendments deal with the right to install overhead lines. The right to install overhead lines is subject to paragraph 74(3) of the code, which stipulates that the right to fly overhead lines will not apply if it,

"interferes with the carrying on of any business carried on on that land".

As such, the Government consider that the code provides sufficient protection for landowners who may be affected by overhead lines, and therefore these amendments are not necessary. In answer to my noble friend's question, the Law Commission's consultation considered whether any changes were necessary, and it concluded that they were not. The Government have not received any evidence to suggest that they are.

I hope that in light of these explanations and reassurances, the noble Lord will withdraw his amendment.

Lord Grantchester: I thank the Minister for his reply. I am well aware of the areas he spoke to in terms of the objectives in the code. However, I am somewhat sceptical that the MNOs have a real case that costs are prohibitive. That has been the draconian whip behind a lot of the code's provisions. I am even more sceptical that these cost savings will be spent on improvements to the geographical coverage of the rural and more remote areas of the UK. However, we understand what the Minister said.

On Amendment 24, it is somewhat puzzling that the Minister mentioned middlemen in the system. I understand that they are already present in the system in that they have often bought sites from rural landowners, to give them an up-front payment, in order to receive rents when they lease them out to the telecommunications industry. The middlemen in the system have real concerns. They provide a service to the mobile networks in some of their activities congregating sites so that they can introduce an agreed package rather than dealing with each site individually. We will look at the overall thrust of the Minister's reply on that and, more pertinently, on the big group which is to come because it will all knit together in a more comprehensive package by the time we have finished our deliberations.

Lord Ashton of Hyde: It may be helpful if I say that these are fairly technical amendments, particularly those in the next very big group. It may help the noble

[LORD ASHTON OF HYDE]

Lord if we agree to allow him to think about some of my answers. He can read what I have said, and we can possibly meet before Report to discuss some of the technical aspects of things so that he does not feel it necessary to go through every single scintilla of difference in the Chamber.

Lord Grantchester: I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

House resumed. Committee to begin again not before 8.24 pm.

Health: Neurological Services

Question for Short Debate

7.24 pm

Asked by Baroness Gale

To ask Her Majesty's Government what progress they have made in improving neurological services in England.

Baroness Gale (Lab): My Lords, I am very pleased to have the opportunity of debating this matter and thank all noble Lords who are taking part. I declare an interest as co-chair of the All-Party Parliamentary Group on Parkinson's. Quality neurological services are vital to help people manage Parkinson's. It is a complex and debilitating condition for which there is no cure. These services are also vital to people with motor neurone disease, epilepsy, migraine, multiple sclerosis and myriad disorders of the brain, spinal cord and nervous system that affect more than 12 million people in England.

I want to focus on the opportunities to improve services, in particular, those initiatives, often proposed or driven by clinicians and expert organisations, which now rely on the political will of Ministers, the Department of Health and NHS England if they are to succeed.

A long-running, major issue for neurology in England is the lack of leadership. A significant amount of NHS and social care money is inevitably spent on neurology. Between 2003 and 2013, there was an increase in funding of 200%, yet there was no accompanying improvement in services. A national clinical director of adult neurology post was created and filled in 2013 following a recommendation in the Public Accounts Committee's 2012 report. Although the postholder was contracted for just two days a week, he is widely acknowledged to have made significant progress by encouraging better co-ordinated working and mapping service provision. None the less, the PAC heard in evidence for its follow-up report four years later that the NCD for neurology role was likely to end in March 2016. There was no transparency around the decision. No consultation was conducted, and no impact assessment was made available. I tabled Questions on this issue and was given assurances in Written Answers that strategic clinical networks for neurology would be able to do some of the work. Soon after receiving those assurances, it was announced that the funding for those networks was also to be withdrawn.

In the period of confusion and uncertainty that followed and in the absence of any other proposals, it was the Neurological Alliance—a collective voice for more than 80 organisations—that took the initiative and suggested an alternative structure called the National Neurological Advisory Group. This group comprises a range of stakeholders giving their time and expertise voluntarily. It includes the Neurological Alliance, the Association of British Neurologists and the Society of British Neurological Surgeons. NHS England provides the secretariat. NNAG is already working on a strategy for improving neurology services which is to be published shortly. With the NCD of neurology role gone, it is essential that this new group be supported by the Department of Health and NHS England, over and above the secretariat being provided.

Commissioners hold the key to patient care. During the 2012 Lords debate about neurology services, the Government voiced real optimism about the new opportunities provided for patient care by the new commissioning system. In reality, commissioners are confused by the split of responsibility between specialised commissioning, which is the responsibility of NHS England, and other treatments and services, which are the responsibility of the clinical commissioning groups.

This confusion is heightened in the context of commissioning neurological services, as contradictory guidance is given in the materials meant to help decipher this responsibility. The Neurological Alliance has identified situations where neither NHS England nor the local CCG has accepted responsibility for a neurology service, leaving local people without treatment and support. A survey of CCGs by the Neurological Alliance, to which 90% responded, highlights the seriousness of the problem: 85% had not assessed local costs relating to the provision of neurological services; 80% had not assessed the prevalence of neurological conditions in their area; and 80% had not assessed the number of people using neurology services locally. It would seem that the majority of local health commissioners lack a comprehensive understanding of the health needs of an average of 59,000 people in their local populations with neurological conditions. As a result, they simply do not know what neurology services should be commissioned to improve patient outcomes.

A survey by the Neurological Alliance in 2016 showed that almost 20% of patients waited more than a year to see a neurological specialist after seeing a GP. The survey suggests that the problem has worsened, with over 42% of people seeing their GP five times or more before being referred to a neurological specialist, an increase of nearly 10% from 2014. When the PAC heard evidence on the issue of access to neurologists for its 2015-16 report, it was told that not only were there not enough but the existing neurological people were not well dispersed, leaving areas of England without any appropriate provision. The PAC concluded that better deployment of existing neurologists should happen to counter this and that other clinical staff, such as specialist nurses, might do some of the work if services were redesigned. This would be very difficult for specialist nurses. As I know from Parkinson's nurses, for example, they already have a heavy workload and there are not enough of them; it would be very difficult for them to take on this extra work.

Care plans remain a serious problem. The Department of Health set NHS England the objective that all neurological patients should be offered a personalised care plan for 2015, and yet only 12% of patients have a written care plan. This results in unco-ordinated care. Parkinson's UK frequently hears of people without access to a multidisciplinary team which would usually co-ordinate care for its patients. Without this team, people with Parkinson's have to interact with many health and social care professionals across primary, secondary and tertiary care, which leads to duplication of services and support, while wasting NHS resources and providing a poor outcome for that person.

Data are central to driving up the quality of neurological services and the outcomes for patients. Excellent work is being done by, for example, the Neurology Intelligence Network, which identifies and collates indicators of adult neurological conditions. One example of its work is its neurology-focused "commissioning for value" packs produced by the Right Care team, which will give commissioners a huge and much needed opportunity to use local data to identify key improvement areas for neurology services. The right data and intelligence are often vital to support research to develop better treatments and, one day, hopefully, a cure for Parkinson's and other neurological conditions. Supporting quality in neurology services means supporting research, all of which will boost care outcomes, which is what people want and deserve.

I have posed a number of questions that need to be addressed and I hope that the Minister can respond to them tonight. However, in order to explore them further, will the Minister be prepared to meet with me and others with an interest in this subject at a later date? I look forward to the Minister's response and to the contributions of other noble Lords.

7.34 pm

Lord Ribeiro (Con): My Lords, I thank the noble Baroness, Lady Gale, for securing this debate and for returning to a subject which affects millions of people in this country. I will focus later on the 127,000 people who suffer with Parkinson's, and the increasing number of them who have benefited from deep brain stimulation surgery.

As a surgical trainee in the 1970s, my experience of neurosurgery was through performing "burr holes", a modern version of trephining. This was a skill performed by the Incas, normally to allow evil spirits to leave the brain—whereas, in my case, it was to take pressure off the injured brain after a head injury. Forty years on, with the advent of modern diagnostics and specialisation, general surgeons no longer operate on the brain.

The question I want to ask is: do we have enough neurologists and neurosurgeons to deliver what is now an increasingly complex service? In June, the noble Baroness, Lady Gale, raised the questions she addressed in her opening speech around the services that were to be provided. The noble Baroness, Lady Finlay, who is in her place, made reference to the fact that one of the factors that affected this was the low numbers of neurologists and neurosurgeons—factors which would influence delays in diagnosis, poor outcomes and a widened variation in access and treatment.

Epilepsy is a case in point. Sir Muir Gray, in his *Atlas of Variation*, made reference to a twofold variation in emergency admissions of patients with epilepsy and a fourfold variation in elective admissions—important differences for those who have to access epilepsy surgical programmes. Delays in diagnosis for neurological patients in general is an issue. Over 42% of patients see their GP five or more times before they see a neurological specialist, and 20% wait a year before seeing a specialist at all.

Information I have received from the Royal College of Surgeons suggests that there has been a sharp rise in the number of patients waiting longer than 18 weeks, particularly in neurosurgery. Since February 2016, neurosurgery has been the worst-performing surgical speciality in terms of waiting times. There are also regional variations. For example, of the 717 patients waiting for neurosurgery in Plymouth last October, 59% had been waiting longer than 18 weeks, compared to an average of 16.5%.

In the past 10 years, the number of neurologists in the NHS has grown by 5% to 650 full-time equivalent consultants. However, they are not well distributed. Currently, also, 30% to 50% of new consultant posts remain unfilled due to a lack of specialist neurological trainees. Can the Minister say why NHS England believes that the current rate of growth is unlikely to change in the coming years, and what can be done to improve recruitment? I believe that NHS England is due to report on the availability of neurologists and on variations in access in hospitals in April 2017. He may wish to throw some light on this and give the House a heads-up on what it is likely to say.

I welcome, through the National Institute for Health Research, the £816 million that has been provided to 20 NHS and university partnerships—seven of which expressed interest in neurosciences and neurological conditions. Sheffield University, in particular, specifically identified translational neuroscience for chronic neurological disorders as one of the things it would do research in. However, 50% of the funding went to the usual suspects—Oxford, Cambridge, UCL and Imperial—which took up the major slice of the money.

When I was president of the Royal College of Surgeons I became aware of the work of Professor Tipu Aziz and Professor John Stein at Oxford and I went to visit them. They had started and had been using deep brain stimulation in primates as part of their research, and then subsequently for patients with Parkinson's disease. As a result of Professor Aziz's use of primates in his research, they suffered abuse and attacks from animal rights activists. In fact there was a protest, which some noble Lords may recall, when students in Oxford came out in support of the research because of the benefits for patients.

I subsequently saw Professor Aziz silence his critics on a BBC programme, discussing the ethics of animal research. Many in the audience spoke against any form of animal research. A gentleman quietly got up, rose to his feet and extolled the virtues of surgical research. He looked no different from anybody else in the audience. Suddenly, in mid-sentence, he threw a switch and changed from his normal persona to a man with an uncontrolled tremor, violent shakes and a

[LORD RIBEIRO]

complete change in his demeanour and persona. He was demonstrating symptoms of Parkinson's that had been kept under control with his deep brain stimulation. I personally had never seen such a transformation on live television, and I am sure that it did a lot to demonstrate to people what surgical procedures can achieve.

There are currently 16 centres in the UK: one in Scotland, in Glasgow, and the rest dotted around England, mostly clustered, as I said, around the golden triangle—I think there are about five or six in London—and in the Midlands and the north of England, in Newcastle. In the south, which is usually the part of the country that is heavily supplied with healthcare, there is nothing other than in Bristol.

NHS England has produced policy documents on deep brain stimulation for movement disorders such as Parkinson's, in 2013, for chronic neuropathic pain, in 2014, and, more recently, in 2016, for central post-stroke pain. Will the Minister tell us what the likely outcome is of these policy documents? What impact will they have on improving access and reducing variation?

7.41 pm

Baroness Masham of Ilton (CB): My Lords, I congratulate the noble Baroness, Lady Gale, on having brought up this most important topic. I want to pay tribute to my late friend, Lord Walton of Detchant, a remarkable neurologist who did so much to help research and promote the needs of people with muscular dystrophy. He inspired young doctors and encouraged them into the speciality of neurology. Had he been in your Lordships' House today, he would have been speaking in this debate. We need more inspired and dedicated neurologists like Lord Walton to give the NHS the leadership that it needs.

I declare an interest as president of the Spinal Injuries Association. I founded this organisation in 1974 as I saw the need for people with spinal injuries who remained paralysed to have the best life possible. There are many different ways injuries can happen, but the vital need is that these patients get the specialised care by trained doctors, nurses, physiotherapists and other dedicated staff. Spinal units do a great job, but they are working under great stress and pressure. The shortage of dedicated staff has meant that the Spinal Injuries Association has had to employ two trained nurses in the specialty of spinal injury. These nurses can advise when spinal patients have to wait in general hospitals for the specialised treatment they need because there are such pressures on the specialised hospitals. There are also specialised nurses funded by the Stroke Association, Parkinson's UK and other patient-centred organisations who really know the needs and priorities. Again, there is a need for a sufficient number of adequately trained and well-supervised specialist headache nurses in post across the country to meet the demand of the high cohort of headache patients.

Many patients with neurological conditions need extra help when first afflicted and in hospital, such as those who have had a stroke. They may need help with feeding and can have difficulty with swallowing, washing and bowel, bladder and skin care. It is of great concern that the staff crisis has grown as foreign nurses abandon

the NHS. With the referendum last June, the introduction of the tougher language tests last year, and the fall in the pound, there has been a dramatic fall in new arrivals. In 2015, thousands of EU nurses came to work in Britain, but the numbers arriving have fallen every month since July.

Patients, where possible, always want to stay at home, but there has also been a dramatic fall in carers coming to look after them from abroad; by no means are there enough people in England who want to do these jobs. I hope that the Prime Minister, who has so much on her plate, will realise that there is a desperate need to encourage and help more nurses and carers, who must be retained to help look after these patients who cannot survive and lead a life in their communities without them. Some time ago, the local people in north Yorkshire who had Parkinson's disease had an excellent doctor from Germany. Everybody concerned appreciated his skills and care but, sadly, he moved to Saudi Arabia. Will the Minister tell us how these much-needed doctors can be retained?

There is a need to have more staff awareness of Parkinson's in GPs' surgeries. To give an example, a receptionist told a patient that the doctor was ready to see him. He froze. He was told, "Hurry up; we have not got all day". The situation got worse. Neurological conditions are disorders of the brain, spinal cord or nerves. The latest figures available estimate that the total number of neurological cases has now reached 12.5 million. The Department of Health and NHS England need to address the shortage of neurologists and the variable provision across the country as a matter of urgency.

As a high-lesion paraplegic, having had a spinal injury, and having had a husband who had a stroke and developed Parkinson's disease, I know too well what it all means. I ask the Minister, who has youth and energy on his side, to help his colleagues in government to realise how important it is to provide the means to the NHS so that it can provide the care that is needed. Children are being put at risk because of shortages in trained experts in X-rays and scans. The Royal College of Radiologists has warned that just one of 12 standards introduced in 2010 for children's radiology is being met.

There are thousands of complicated, rare conditions in neurology. Will the Minister tell us why the post of national clinical director for neurology has been cut? I cannot understand how this has been cut as part of NHS streamlining. Advice to so many people—including the Government—on such varied and complex complications is vital. Several strategic clinical networks have been closed down. Will the Minister assure us that the neurology network will remain? Integrated neurocare—bringing together disciplines and specialties when there is a primary neurological condition such as spinal injury, which affects so many systems—must be the correct procedure. This should be the same for autonomic conditions. Working together as a team, including the patient, rather than in isolation, must be the way forward.

7.48 pm

Baroness Noakes (Con): My Lords, I congratulate the noble Baroness, Lady Gale, on securing this evening's debate on neurological services. This is a large and

important topic, and I shall focus my remarks on just one neurological condition: motor neurone disease. I thank the Motor Neurone Disease Association for providing me with a briefing for this evening.

The Minister is relatively new to his brief as a Health Minister, and he might not be aware of this devastating condition. In fact, the low prevalence of motor neurone disease, affecting around 5,000 adults in the whole of the UK at any one time, means that it is not well understood within the NHS. In turn, the services provided by the NHS for motor neurone disease sufferers are often inadequate.

While its prevalence is low, those who encounter the disease among family, friends or colleagues—as I did over 30 years ago—will never forget it. It is a horrible and rapidly progressive neurological disease that affects the brain and spinal cord. Muscles fail, leaving sufferers unable to walk, talk and eventually breathe. It can also affect thinking and behaviour. Most are fully aware that their bodies are failing and that they will die from the disease. There is no cure for MND: one-third of sufferers are dead within one year of diagnosis and half are dead within two years. This is why the availability of high-quality neurological services is vital.

It is clear that neurological services have been downgraded by NHS England at the national level. There is no longer a national director for neurological services, and this has led, as the Public Accounts Committee in another place predicted in 2015, to a loss of clinical leadership and accountability. With neurology not embedded in the leadership structures and accountability frameworks of the NHS in England, it is not surprising that there is disengagement at the local level within clinical commissioning groups. Without national leadership, clinical commissioning groups will not focus on services for lower-prevalence, complex diseases with the same urgency as those for services which have vocal national champions.

The result is clear. Fewer than one in six CCGs has assessed costs relating to the provision of neurological services, while only around one in five has assessed the number of people using those services and the prevalence locally of neurological conditions. Only one in three bothers to ask patients what they think about the services. The Minister should not be surprised that the Neurological Alliance found that nearly 60% of patients had experienced problems in accessing the services or treatments that they needed.

I do not generally get concerned about the so-called postcode lottery in the NHS. I believe that it is an inevitable part of a devolved NHS, with power in the hands of local clinicians and organisations, that there will not be a uniform service across the NHS. Local areas will set their own priorities. But I cannot begin to defend what is happening in neurological services. It is shocking. One-fifth of CCGs have no local consultant neurological services whatever and the majority do not provide more than 80% of appointments locally. I ask the Minister to contemplate what this means for a motor neurone disease sufferer seeking a diagnosis or specialist treatment against the background of a progressive and fatal disease.

The story does not end there. The most recent attempt to look again at what the NHS does, via sustainability and transformation plans, seems largely

blind to neurology and had little input from specialists in this area. These plans will be driving service provision in the future, and unless NHS England wakes up to the lack of focus on neurological services, the future will be even more bleak for those with MND.

There are also problems with specialised commissioning, which impacts MND sufferers who at times need to rely on nationally commissioned services. The Health and Social Care Act 2012 brought in a definition of a specialised MND clinic, and the NHS is required to provide clinics throughout England to that standard. NHS England has failed to do this and many of the clinics would not exist without the Motor Neurone Disease Association, which has been forced to fund what the NHS should unambiguously have been funding.

Those suffering from motor neurone disease face many other problems within the NHS in England, in particular as continuing healthcare packages are often delayed. Delay is a common strategy in the NHS for keeping financial pressures at bay. I am well aware that the financial pressures facing the NHS are acute, but financial pressures must not excuse delaying CHC assessments for progressive diseases. The Continuing Healthcare Alliance found that only 14% of the CCGs which responded to its survey last year kept to the 28-day timeframe and that the longest delay was 255 days. People with motor neurone disease cannot wait that long.

Motor neurone disease may not affect many people—but when it strikes, the consequences are terrible. This is precisely when the NHS is most needed and neurology services are essential. I am clear from the briefing that I have received that the NHS is failing MND patients with these services. I hope my noble friend the Minister can tell the House this evening that the Government understand the problems, that they recognise that these are very real issues and that they will tell NHS England to sort neurological services out.

7.56 pm

Baroness Finlay of Llandaff (CB): My Lords, I congratulate the noble Baroness, Lady Gale, on her ongoing and persistent work on behalf of neurological patients. Up to a fifth of acute medical admissions are neurological problems. The second national survey of acute neurological services is about to be published and despite indications of some improvement in the past two years, we still lag way behind Europe and the US overall. With around a sixth of the neurological workforce of Europe the NHS cannot cope, let alone deliver optimum care. The hospitals surveyed reported limited access to neurologists overall. The 28 neuroscience centres have seven-day consultations, but over a quarter of general hospitals have a neurologist on for only three or fewer days a week, while a fifth of clinical commissioning groups offer no neurological services at all—yet accurate diagnosis is key.

Neurology input leads to a revised diagnosis and new management plan in 79% of patients—that is, four in five. Time matters: neurological emergencies can become permanent disability in minutes or signal a devastating progressive diagnosis. Open conversations must start early. As disease advances, specialist palliative

[BARONESS FINLAY OF LLANDAFF]

care can dramatically improve quality of life and ensure a calm and dignified death. With specialist planning, and I declare my interests, those deciding to stop interventions such as ventilation have breathlessness and distress controlled. They are not left gasping and choking, as the press horror stories portray. Everyone with advancing neurological disease should be offered access to specialist palliative care; currently, only a minority are.

The Association of British Neurologists is working closely with NHS England, through Professor Adrian Williams, but there is only so much that they can do. Will the Government now establish a national strategy for acute and chronic neurological services to address the variations in care, and will they ask Health Education England to increase training opportunities in neurology and in specialist palliative care?

7.58 pm

Baroness Walmsley (LD): My Lords, I too congratulate the noble Baroness, Lady Gale, on introducing this important debate. It has highlighted a number of serious issues in relation to the provision of treatments and services for people with neurological diseases. These diseases may be incurable in many cases but there are many treatments and services that can improve symptoms, and improve the quality of life and death, for these patients. It is important that we look at the reasons why many are not getting them.

There is clearly a great deal of variability in the quantity and quality of care and services received by patients in different parts of the country. One of the demands made in the briefings that we received asked for a national service review, so that we can be aware of the state of services across the regions. It would be interesting to know how many of the STP plans include a local review of demand and service provision.

The briefings that we have received from various organisations are agreed about many of the issues. They are agreed that the current confusion as to who is responsible for these patients must be cleared up immediately. Since 2013, as the noble Baroness, Lady Gale, pointed out, there has been confusion because NHS England is responsible for specialised commissioning and the CCGs are responsible for other treatments and services. However—sadly—many CCGs have assumed that the whole responsibility lies with NHS England and this has resulted in patients suffering.

The evidence for this is clear. Only one CCG in five even knows the extent of neurological disease in its area and therefore the others have no strategy for addressing this. As we have heard, there is contradictory information in the manual for prescribed specialised services and the adult neurosciences service specification. The DH can do something about this right away. Will the Minister now set in train the process of launching the new national service standard along with—and this is important—a plan for promoting it among the commissioners? There is no point in it sitting on someone's shelf. Will he also put in place a process for collecting information about whether commissioning for neurology has improved as a result of this change?

This leads me to the issue of data, on which there is also considerable agreement. Of course, if we do not collect data in an appropriate and consistent format, we will never be able to assess whether there have been improvements and where the gaps are. That is why I welcome the creation in 2014 of the Neurology Intelligence Network. Its work has already helped commissioners and other groups so I ask the Minister whether this work will be supported in the long term. This information is vital if we are to develop better treatments and even cures for some serious neurological diseases. It is also important that plans are put in place to improve the linking of health and social care data, because these help us to understand whether the well-being of patients is improving.

Clinical leadership is another issue that has been raised. Can the Minister explain why the National Clinical Director for adult neurology was scrapped, despite the good work done? How does the DH believe that the drive for better neurology services is being led in the absence of the clinical director—somebody who can really put some drive behind improving services—or has neurology simply been given a low priority?

I am aware that, since the post was scrapped, the Neurological Alliance has worked with the NHS to set up the National Neurological Advisory Group consisting of several senior experts. This is welcome, but will the Minister say how this group's advice is being put into practice and whether it will continue to be supported? How is the advice being evaluated and disseminated? Will there be, as others have demanded, a national plan for neurology?

Talking of national plans leads me to mention the national stroke strategy. I wondered whether I could legitimately speak about stroke in this debate but I came to the conclusion that I could because although strokes are caused by vascular breakdown, they result in neurological problems that are often severe. The difference, however, between stroke and some other neurological diseases is that many stroke survivors can recover well and go back to their old life, becoming once more productive contributors to society—that is, as long as, once they leave hospital, they have the necessary rehabilitation which may involve speech therapy, physiotherapy, occupational therapy, mental and emotional therapy and much more.

The national stroke strategy has been a great success. Not only has it led to reconfiguration of services in many places, where centres of excellence are saving more lives and leading to far less disability, but there has also been more provision of the rehabilitation that patients need to help them get well and not feel so isolated. We can label it a great success. However, as with rehabilitation, which needs to carry on in the long term or patients can go backwards, the national stroke strategy, which comes to an end soon, needs to be continued or replaced with a new strategy to build on the achievements of the old one. What plans do the Government have to replace or extend the national stroke strategy to ensure that we do not lose the improvements that have been made to services over the past few years?

Rehabilitation is also important for other neurological conditions—for example, for people who have had a tumour removed. It seems that it is quite fashionable to raise money for flashy scanners for diagnostics.

These are, of course, important because early diagnosis is vital. However, it seems that this is more important to some than to recruit, train and pay for the skilled people who are needed to help people to get over the effects of stroke and other neurological problems. I fear that the effect of Brexit is going to be dire on the supply of many of these people and on the supply of radiographers and radiologists who can interpret the results of the scans. These are vital for the recovery of so many patients.

8.06 pm

Lord Hunt of Kings Heath (Lab): My Lords, it is a great pleasure to thank my noble friend for inaugurating the debate and for the persuasive case that she put across on the need to improve neurological services. To echo the noble Baroness, Lady Noakes, I commend the three excellent briefings that I received from the Motor Neurone Disease Association, the Neurological Alliance and Parkinson's UK. My noble friend spelled out some of the key issues. To summarise, what she is saying is that one way or another we have lost national leadership. Whether it is through the national clinical director or the strategic clinical networks, at a national and local strategic level we do not seem to have the leadership required to drive through improvements in neurological services.

At the local level, the stunning evidence provided by the noble Baroness and by the Motor Neurone Disease Association is that because NHS England clearly does not regard neurological services as a priority, clinical commissioning groups have taken that as a signal to disengage themselves. That is why the data collected by the Neurological Alliance have shown that CCGs are so uninterested in these services.

This should not come as a surprise. Looking back at the various reports written in the last two or three years, I am particularly struck by the Committee on Public Accounts in February 2016. It said then that with over 4 million people alone in England having a neurological condition,

“Services for people with these conditions are not consistently good enough, and there remains wide variation across the country in access, outcomes and patient experience”.

Other noble Lords have made that point. The committee made a number of important recommendations, including on information. I echo the point made by the noble Baroness, Lady Walmsley, about that. They hark back to the core issues raised.

What is going to be done to make the best use of available neurologists and reduce the variations in access, which seem unacceptable? The second issue is the role of national clinical director for adult neurology. I hope that the Minister is not going to say that that is a matter for NHS England, because ultimately he will find that he will take responsibility for the decisions that NHS England makes. The contrast with now is that when national clinical directors were appointed, they were appointed by Ministers to serve in the Department of Health. They worked in Richmond House. They had direct access to Ministers. NHS England clearly does not like the concept of national clinical directors because when they were established by NHS England they were often very part-time roles, they were given virtually no administrative support,

and we can see that time after time it has sought to reduce their influence and add to their nominal responsibilities.

The beauty of national clinical directors is to have front-line clinicians involved at the most senior level in the development of policy. This has all been lost in the way that it has been handled by NHS England. I hope that we will not be told that these matters are best done locally through CCGs, as we have seen that CCGs simply do not have the capacity to think through and commission neurological services. It is quite clear that the moment they get a signal from NHS England that it is no longer very important—and clearly that is a signal that NHS England has given—they simply will not engage. That is why the CCG returns have been so lamentable.

The noble Lord, Lord Ribeiro, made a point about the numbers of neurologists and neurosurgeons. Is Health Education England reviewing this and what are we going to do about the variation throughout the country? Can the Minister confirm that waiting times are slipping? Do Ministers now accept that in fact the targets for patients who require neurological or other services are never going to be met? I will also pick up the point the noble Lord made about animal research. I agree with him that it was the march by students that completely turned opinion in this country in favour of responsible animal research, where other means are not possible. I am sure that he, like me, supports the three Rs, whereby animal research is used sparingly and responsibly but none the less has an important role to play. I hope the Minister will affirm that that continues to be the Government's view.

The noble Baroness, Lady Masham, raised a very important point about specialist nurses. My impression is that the number of specialist nurses is going down and that they have become a very scarce resource. The noble Baroness, Lady Walmsley, also made a point about the implications of Brexit—could the Minister comment on that? Brexit itself, the fact that people who would have come from the EU may feel that the UK is not as welcoming as it used to be, and the economic downturn which I think will inevitably come our way over the next few years could all have consequences in the future. Can he at least say what the Department of Health is doing to work out the impact of Brexit in terms of staff movements? That would be very welcome indeed.

The noble Baroness, Lady Masham, said that the Minister brings youth and energy. I hope after a year or so in his post answering such debates, he will still bring youth and energy. This is a very important subject, and I also hope he will agree to the request from my noble friend for a meeting with her and representatives of the sector.

8.13 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, first, I thank the noble Baroness, Lady Gale, for securing a debate on this important issue. I am new to the brief but I know enough to know that she is a forceful campaigner on these issues and I very much respect her knowledge and opinion. Indeed, I thank all Peers

[LORD O'SHAUGHNESSY]

who have spoken for their very informed and expert contributions. I will do my best in the time available to answer as many questions as possible. To answer the noble Baroness's request, I would be extremely happy to meet her and others in order to discuss these issues following on from the debate.

As many noble Lords have said, neurological disorders can have a serious impact on people's quality of life, cause disability and affect family members and carers. It is estimated that there are around 4.7 million neurological cases in England, with the UK prevalence of specific conditions including: 400,000 people with epilepsy; 100,000 people with multiple sclerosis; 5,000 people with motor neurone disease; 120,000 people with Parkinson's disease; and 60,000 with neuromuscular disorders. It is probably fair to say that there is scarcely a family in England that has not been touched in some way by neurological illnesses and disorders. The NHS spends around £3.5 billion a year on neurological care—excluding stroke care, which is on top of that.

Since NHS England assumed its responsibilities as national commissioner and leader for the NHS in 2013, there have been a number of important initiatives aimed at improving neurological care, including the development of a national specialised service for neurological conditions to ensure that people with complex problems can access high-quality neurological care. The Government have established a national children's epilepsy service that offers the chance of symptom improvement and even cure for children whose epilepsy cannot be well managed by routine treatment.

There is now a national augmentative and alternative communication service to provide support to patients with complex and progressive conditions such as motor neurone disease who cannot speak. The National Institute for Health and Care Excellence has provided a range of expert guidance to manage neurological conditions, including a motor neurone disease guideline in 2016 that was described by one of the leading charities as "hugely significant". So, although I recognise the comments of noble Lords about what can still be done, good progress has been made.

The Public Accounts Committee report was mentioned in many speeches tonight. As noble Lords are aware, the committee published its progress report on neurological services on 26 February 2016. In their response on 28 April 2016, the Government agreed with three of the committee's recommendations, around supporting CCGs with neurological commissioning, reporting back to the PAC on reductions in variation and providing greater clarity on who commissions what in the system. Less than a year on, we have been implementing those recommendations. Furthermore, progress has been made in a number of areas relevant to the PAC recommendations that were not accepted by the Government, as I will set out.

The noble Baronesses, Lady Finlay and Lady Walmsley, both talked about reducing variations in neurological care, as did other noble Lords. I think it is fair to say that this is not a problem that is unique to neurological services. Nevertheless, the Government recognise that there is work to be done.

We agreed with the PAC recommendations about reducing variation in neurological care in services and access to specialists. Reducing unwarranted variation is crucial to improving services and patient care, and to efficiencies. The overall programme to reduce variation across the NHS is delivered through the RightCare programme to all clinical commissioning groups. Of the 65 CCGs in wave 1 of the programme in 2016, 40% prioritised neurology because it offered a substantial opportunity to reduce variation in services and outcomes compared to other pathways. A similar proportion of the 144 CCGs in wave 2 are expected to prioritise neurology to the same degree in 2017.

RightCare is already delivering results. For example, the Southampton CCG discovered in 2014-15 that it had spent £1.5 million more on neurology emergency admissions than similar CCGs, particularly for headaches and epilepsy. In response, the CCG is providing education and support to GPs on managing headache and migraine patients and is working with local hospital consultants to develop a protocol for migraine management in A&E to provide quick access to diagnostics, avoiding emergency admission wherever possible. On epilepsy, the CCG is considering whether additional clinical expertise, such as specialist nurses, is needed in community services.

More information was clearly needed on the prevalence and outcomes of diseases, and that led to the creation of the Neurology Intelligence Network, which several noble Lords talked about. This sits within Public Health England, collates and interprets data on neurological conditions and works with the RightCare programme to develop neurology-related metrics that will offer further insights into neurological services and outcomes. The network will also run a best-practice and knowledge-sharing session for CCGs in March 2017, prioritising neurology. I can confirm that the Neurology Intelligence Network continues to be supported financially, and that local areas will continue to have their own neurology networks.

The issue of national clinical leadership has featured heavily in the debate. The Government did not agree with the PAC's recommendation to retain the national clinical director for neurology. We recognise that NHS England's decision to remove the post came as a disappointment to stakeholders. However, decisions about clinical priorities, including those regarding clinical advisory structures, are a matter for NHS England, as is consistent with the overall vision of service delivery that is clinically led. I am, however, more than ready to speak to NHS England about its general attitude to national clinical directors, and specifically on neurology.

The creation of the new neurology advisory group has been welcomed by noble Lords tonight. It brings together key system partners, professional bodies and stakeholders to align work to improve neurological care. This is the right point at which to express my gratitude to NGOs, charities and voluntary groups involved in supporting neurological care in the UK. The group is led by Professor Adrian Williams; it met first in October 2016 and is currently working with stakeholders and developing its plan.

The Government also disagreed with the PAC recommendations about how it held the NHS to account for delivering care plans. This was mainly because the

objective no longer featured in the mandate and the previous metric used was unreliable. However, two important developments have recently taken place. First, in July 2016 NHS England announced a deal to grant 1.8 million people with long-term conditions access to the patient activation measure as part of its self-care support programme. This is a tool which captures the extent to which people feel engaged and confident in managing their care and helps professionals tailor support accordingly. It is an important part of ensuring that services are accountable to patients.

Secondly, and also in 2016, the final report of NHS England's Realising the Value of Self-care programme was published. This provided a range of tools and resources, including an economic model to help the local NHS understand the costs and benefits of self-care approaches, such as peer support and health coaching. Evidence from the programme demonstrated that access to self-care can be effectively provided by systematically putting in place personalised care planning.

The noble Baroness, Lady Gale, asked about the clarity of commissioning responsibilities. This was an area where the Government were able to accept the PAC recommendation to better define responsibilities. The updated services manual was published in May 2016 and describes the responsibilities of NHS England and CCGs in terms of neurology outpatients. Specifically, it sets out that NHS England is responsible for only those services where the patient has been referred by a consultant to that service.

Going further, the neurosciences service specification, which sets out the design of specialised neurological care, is also being revised and NHS England is developing plans for consultation during the financial year 2017-18. I am keen to hear from noble Lords about any examples of patients falling into the gaps between CCGs and NHS England's specialised commissioning, and I will ensure that when the new neurosciences service specification has been published there is a proper promotional plan to spread best practice throughout the healthcare system.

I will touch briefly on two further issues: personal health budgets and research. There is an extension of personal health budgets throughout NHS England at the moment, and anyone with a neurological condition who is eligible for NHS continuing healthcare has the right to a personal health budget. Beyond this, CCGs have flexibility around their introduction and are developing local plans which would include services used by people with neurological conditions, such as rehabilitation or wheelchair provision.

In the first six months of this financial year, almost 11,000 people had a personal health budget—an increase of 130% on the same period last year. By March 2021 between 50,000 and 100,000 people will benefit from a personal health budget.

Finally on research, there is clearly a need for more research, and spending on research through the National Institute for Health Research on neurological conditions has almost doubled since 2010.

I will now pick up a few points made by noble Lords in the debate, specifically ones I have not yet addressed. On the question of the workforce, in September 2016

there were 1,325 neurologists, compared to 1,019 in May 2010: that is an overall increase and includes 200 more consultants and 100 more doctors in training.

I very much take on board the point about distributional issues: whether areas of the country are not getting the right kind of support. I shall certainly look at that to find out what is happening and write to Peers. At this stage, I would not be too concerned about whether they are featuring properly in sustainability transformation plans—they are not attempting to be comprehensive about all conditions at this point—but it is important to watch them to ensure that neurological conditions get the attention that they deserve.

Several noble Lords mentioned waiting times. Clearly, we have referral targets, which should be met for neurological conditions, as with others. We are working with NHS England to ensure that that is done and that the staff are in place. Early diagnosis is also important, and NICE will be producing new guidance in January 2018 on that. I hope that that provides some reassurance to the noble Baroness, Lady Finlay.

The noble Baronesses, Lady Masham and Lady Walmsley, and the noble Lord, Lord Hunt, asked about the impact of Brexit on the workforce. Clearly, the health and care system is reliant on foreign workers. We will take that into account in negotiations and other opportunities, and are increasing domestic recruitment. I will not touch on the national stroke strategy here; that is for another time.

Finally, in response to the noble Baroness, Lady Masham, who praised me for my youth and energy, I say: long may that continue, and I will certainly do what I can to bring them to bear for the benefit of those patients who are suffering from these illnesses. I again thank the noble Baroness, Lady Gale, for tabling the debate, and all noble Lords for a useful, interesting and informative discussion.

Digital Economy Bill

Committee (1st Day) (Continued)

8.25 pm

Lord Stevenson of Balmacara (Lab): I am sorry, my Lords, but I am in some disarray, because my noble friend Lord Grantchester is about to walk in and take over.

Clause 4 agreed.

Amendments 24 and 25 not moved.

Amendment 26

Moved by Lord Grantchester

26: Schedule 1, page 94, line 3, at end insert—

“(4) For the avoidance of doubt—

- (a) neither the inclusion of such a building within the meaning of a structure, nor anything else in this code, shall prevent any code right for further electronic communications apparatus being conferred on any operator in respect of the roof or external walls of such building; and

- (b) any structure, whether or not a building, which would not otherwise be considered electronic communications apparatus, shall not be considered as falling within sub-paragraph (1)(d) simply by reason of the installation upon that structure of any operator's electronic communications apparatus under this Code or other lawful agreement."

Lord Grantchester (Lab): I am grateful to the Minister for his helpful remarks before the Committee adjourned. I agree that we should not become overly concerned with technical drafting, but in Committee, it is important that we bring out the important issues. Many interested sector representations have been made to us, and the noble Lord, Lord Aberdare, has already raised some of them. I am greatly indebted to Mr Jeremy Moody of the Central Association of Agricultural Valuers, who has immense experience in this field. I shall endeavour to be brief and, as the Minister said, I am sure that a period of reflection and dialogue will become necessary before Report.

In moving Amendment 26 I shall speak also to Amendments 29 to 36 and 41 to 43. It is a huge group, and I will endeavour to be as brief as I can, yet do justice to all the important matters that they raise.

I spoke earlier about the new code, which readjusts the balance of interests in infrastructure between operators and site owners. The code will extend largely untrammelled powers to operate, if the Committee is not careful. The new code makes substantial changes. Operators will have new automatic rights to upgrade and share, and cannot be charged extra for changes where, to their interpretation—the wording is as yet untested—there is minimal adverse visual impact or burden on site providers.

The new code will enshrine reassignment of code rights by the operators to communication providers, with no option for site owners to negotiate new terms for existing contracts. There may be no future bids for further rents to benefit site providers, as well as operators, for new technologies as they come on stream, bringing further income and wealth to operators only.

Code rights will continue to apply on any land transfer without any requirement to register these rights. These are some of the severe implications of all these changes and demand a balance of behaviour reflecting competing responsibilities and objectives in the various rights between the parties which will continue to wish to develop their businesses. The amendments in this group also have the intention of making the code work better in the business environment.

On Amendment 26, the Government's stated policy intent with regard to the scope of the new EEC is not to disrupt market incentives for investment in passive infrastructure by establishing a legal framework to allow compulsory access to site towns in which infrastructure providers have made a significant investment. The Government seem to look to achieve this through the Bill by developing the definition of land over which operators will have code rights that exclude "communications apparatus" in line 13, page 152. There are questions around whether this does or does not confer mobile operators with code rights over purpose-built masts provided by infrastructure providers as the drafting in line 28 of page 93 goes significantly

further than this, creating the risk that non-telecom infrastructures used for fixed-line telephony will fall outside the scope of the code.

On the one hand, I am probing whether it is the Government's intention to remove a significant proportion of sites from the scope of the code, diluting the impact of the code reforms. On the other hand, it should be made clear that non-telecom structures, such as electricity pylons, water towers, floodlights, church steeples, and so on, do not become electronic communications apparatus when an operator installs a dish or antenna on the structure and is therefore within the scope of the new code, subject to the full force of code powers.

Given the Government's intention that code operators should be free to assign code agreements between themselves, Amendment 29, replacing paragraph 15(4), would give a better process for the fair treatment of site providers. It does not qualify the intended freedom to assign but it would establish a better process than that proposed by the Government so that, for example, the assignee would have the benefit of the rights only once a site provider is notified by the assignment. Secondly, the notice would state that there is an assignment and to whom and give an address in the United Kingdom for the service of notices on the assignee. The requirement that the address be in the United Kingdom would be consistent with other legislation, such as the Landlord and Tenant Act 1987, which makes rent enforceable against many tenants only when a new landlord has provided such an address. An address outside the United Kingdom would be problematic for many site owners and it would add to a sense that this was opaque.

Amendment 30 is proposed as an alternative to provide a better climate between operators and site providers. Paragraph 16 gives operators substantial but qualified rights to upgrade apparatus where it will have,

"no more than a minimal adverse impact",

and to share apparatus where this does not impose an adverse burden on the site provider. That, however, could see operators simply proceeding with such plans, careless of the site provider who would only become aware of effects as they arose afterwards, so having to object only when the investment or action has already taken place. Many examples could be provided and I know that the National Trust is very concerned as to what may be interpreted as "a minimal adverse impact" if, in other people's eyes, the apparatus could be described as a blot on the landscape.

This amendment would resolve this in a practical way, by requiring the operator to notify the site provider beforehand, so that these issues can be considered before the event. It gives a timetabled structure for the site provider to object and refer the matter to arbitration—a more appropriate forum for such an issue than a court or tribunal. Failure to meet that timetable would enable the operator to proceed with the benefit of code rights.

Amendment 31 seeks to underline the Government's intention that the new code will initially apply only to new sites and new agreements. The Government have yet to clarify the transitional arrangements whereby agreements can be renewed over the longer term, perhaps

taking 15 to 20 years to complete. There is a fear that many existing agreements will potentially be exposed to challenge, on what may be considered rather spurious grounds, in order to be superseded by new agreements under the new code. This amendment will ensure that the focus remains on rollout to new sites and increased coverage, rather than operators tearing up current contracts. This will initially avoid network disruption, protect good working relationships and provide clarity and certainty to businesses and communities.

Amendment 32 makes reference to the code of practice which Ofcom is initially consulting on, to clarify behaviour between the parties, and which we will be discussing when we consider paragraph 103. Experience in other sectors, be it the water industry or even retail supermarkets, shows that however good a code of practice may be it has no merit if it is not remembered and respected. This amendment is one of several which seek to achieve that status. It would give the code of practice default status as part of all agreements, save where, and to what extent, the parties or the court decide otherwise. It does not impose the code of conduct where the parties see parts of it as inappropriate to their specific circumstances.

Amendments 33 to 36 are intended to determine that, under the new code, consideration or price is properly based on the market and agreement, taking into account all the relevant features in the wording of the amendment, and from the fact of the date of the occupation being either before or after the introduction of the new Electronic Communications Code. The amendments refer to paragraph 23 of the schedule and are extremely complex on the issues they raise. They are intended to specify that the value of code rights and agreements still have a reference to the established market-value methodology, reversing out the no-scheme approach of the new code until any reference is needed in any court or tribunal. Under Amendments 33 and 34, any move to a new system of compulsory agreement must offer businesses certainty, while at the same time seeking to avoid dispute. These factors are listed, especially regarding future additional burdens as technology advances and greater access is required.

The proposed new code importantly affirms that the payments for rights, taken under the code, are still to be assessed as a price and not as compensation—as market value, not recognition of loss. That maintains the consistent principle that the code operates on the basis of agreement, albeit that this may on occasion be imposed. In this, we stress that all definitions of market value in professional valuation standards turn on the price expected to be agreed between willing and well-informed parties after suitable marketing and with no compulsion. It is stressed that the concept of market value excludes ransom value—a special category which also includes a marriage value for properties. Market value is the value of a property in a market, not its particular value or worth to any individual. In this case, the market value need not be the value it may have to either the operator or the site provider. This is where the schedule's current paragraph 23(3) is confusingly worded as it imports a concept that is not market value. Paragraph 23(3) should be deleted as confusing and inappropriate. The Government's policy, if approved,

would be more clearly stated by a straightforward disregard of the use of the apparatus for electronic communications purposes.

There is no requirement for a market value to be a high price or one that always goes up. Properly functioning markets will see prices reflect their realities and so the value of some sites will be less than others and may, according to circumstances, go down. Thus, sites that can serve only distinctively small or remote areas or those with low populations may naturally have a lower value than ordinary masts, but that is to be found in the market. Ideally, the policy should, as now, be as simple as that. The consideration should be market value. The present arrangement has worked well and with little litigation for perhaps two centuries, and the core concept is an agreement—with recourse to an agreement being imposed by a court—for which the price is market price and market value. That would remain the most satisfactory answer.

However, the Bill's proposal in paragraph 23 compromises the market-value approach to an unknown extent by a change in policy announced in May—that the assessment of market value is to be on a no-scheme basis, making it subject to an awkward series of disregards and special assumptions. The drafting needs significant improvement to assist both the parties and their valuers in applying the intended basis. Many in the sector believe that it would be more rational and practical to stay with the present basis and do not see that that impedes the development of the sector, as rents paid for masts and cables are a very small share of the operational costs of operators and assist affected owners to view the infrastructure positively.

I have already spoken about costs and their relative size in considering an earlier amendment. The valuation change would have a substantial impact on many site providers who may no longer wish to have their land used in this way, and create issues that operators may not yet have foreseen. It may be much harder for, for example, school governors, a village hall committee or a church council to explain why they should enter into an agreement affecting their property if they are not to be properly paid for it, especially if they are aware that it may complicate future plans they may have for the structure. That issue is equally critical for those with valuable buildings offering good sites for infrastructure but for whom it can simply be an ancillary inconvenience, impeding redevelopment or even necessary repairs and maintenance. They are deterred from having code apparatus by such events as expensive and frustrating delays to critical repairs that could be needed to a building, caused by an unresponsive operator.

There is concern in professional practice about the artificiality of the assumption to be imposed by paragraph 23(4)(b) that requires the parties or their valuers to disregard the statutory limitations which the code will apply to agreements in permitting assignment or the sharing or upgrading of equipment. The effect of this is that valuers will be asked to assess the consideration payable for a site on terms that cannot exist in practice because they are not permitted under the code. This is akin to asking for a semi-detached house to be valued as if it was a detached house, but in a world where no detached house exists; or indeed, as I am advised,

[LORD GRANTCHESTER]

to value a horse, whether a racehorse or a nag, by reference to an achieved sale value for a unicorn. I have not seen a unicorn, not even in my dreams.

If agreements are effectively to be all-inclusive on these points, they should be valued as such. Developments in the marketplace may often mean that the current financial conditions or bars on site sharing in agreements are already ineffective, meaning that rental differences between the regimes may, in reality, be less marked than might have been supposed. To expressly recognise the proposed inability to bar assignment, site sharing and upgrading would remove an assumption that is not only artificial but contrary to practical and commercial reality. That would enhance transparency with the use of direct comparables and aid the functioning of the market that delivers this infrastructure.

8.45 pm

Paragraph 24(4)(b) of Schedule 1 should be deleted so that the consideration payable for an agreement is based on actual terms agreed. There would be no disadvantage in doing so, because all agreements will be treated on the same basis, but the valuer can assess what actually exists instead of a hypothetical agreement which can never exist.

Even in implementing the policy stated by the Government, we fear that the present wording of paragraph 23 does not properly deliver the official objective or fit with recognised professional valuation standards. The drafting here represents the simple transfer of parts of the alternative valuation provisions in the Infrastructure Act 2015 into paragraph 23. This process has resulted in confused wording, which would be better drafted afresh to achieve clarity of concept and effectiveness of application. Redrafting is necessary to enable the Government's own approach to be delivered in the new code in a way that is clear and comprehensible to professional valuers and the tribunal that is to decide disputed cases. We also suggest further clarification to affirm that the full physical and legal impact of the rights taken is properly assessed—proposed sub-paragraph (3) of Amendment 34 would assist in that.

Even accepting the Government's policy here, with its special assumptions for the market-value approach, the present drafting is an insecure basis for sound valuation by valuers or determination by the tribunal in accordance with professional valuation standards. It should be revised.

Amendment 33 would also assist in clarifying the asset that is to be valued—that is, the rights being granted rather than, as the Bill presently says, the site provider's agreement.

Amendment 34 offers four replacement sub-paragraphs. Proposed sub-paragraph (3) would be welcome as a useful addition in helping parties, advisers, valuers and the court or tribunal in applying this recast area of the law by drawing attention, in a non-exhaustive way, to the range of possible issues that could be considered and found relevant to the assessment of consideration. The clarity given by that provision would help to minimise early uncertainty and conflict as the new law is first used and custom and practice are identified.

In particular, it makes it clear that rights taken can go well beyond the land occupied by the apparatus. The tribunal has no previous experience of dealing with matters under the code.

However, proposed sub-paragraphs (4) and (5) would repeat the Government's confusion between market value and worth. Their intended effect is understood to be that, where there are current, subsisting agreements for apparatus, the basis for rent for subsequent agreements should remain as now; where there is a new site, the rent for it should be on the Government's proposed basis. That would be better achieved by stating the Government's understood policy objective here, that the use of the apparatus for electronic communications apparatus should be disregarded.

Proposed sub-paragraph (6)(b) would beneficially remove the requirement to disregard the real-world benefits of the intended new powers for operators to assign agreements and upgrade or share apparatus. That would be welcome.

I apologise that that group of amendments has taken quite a long time to expand upon. I am sure that the Minister has got the main thrust of the arguments that are being made.

Turning to paragraph 103 of Schedule 1 and Amendments 41 to 43 in this mini-group, the main thrust of Amendment 41 is introducing the notion of a code adjudicator rather than Ofcom, under the last sub-clause. The amendment would allow the code adjudicator to have matters considered in the preparation and revision of the code of practice, so that it reflects the experience in the market sector.

Ofcom has until now had very little involvement with the Electronic Communications Code beyond its light-touch licensing regime to approve code operators, with no apparent subsequent monitoring of conditions, such as operators' provision for decommissioning apparatus. It is now being given a serious role in regulating matters where site providers and infrastructure providers should also be treated equitably. Yet historically, Ofcom has had duties only to the operator. This is important. Amendment 43 extends explicitly the range of people it should consult. I beg to move.

Lord Foster of Bath (LD): My Lords, I have been a Member of your Lordships' House for just 14 months, so I am relatively new. That probably explains my confusion as to what exactly happened to the previous string of amendments. I look forward to the Minister's response to them, even though they appear to have been withdrawn at a later stage—but I am sure it is all very simple.

Another surprise is that I never thought I would hear a debate in which a spokesman on the Front Bench, in this case the noble Lord, Lord Grantchester, would appear to be singing the tune of the Country Landowners' Association. I say openly to the Minister that, on these Benches, we are broadly supportive of the new Electronic Communications Code. The noble Lord, Lord Grantchester, is absolutely right to ask a number of questions about some of the details of it, and concerns have been raised about some aspects by a number of organisations. However, we believe it is vital that the new code is brought in quickly, because

we want to see an expansion of the infrastructure that will enable us to deliver the increased connectivity that this country desperately needs.

I do not want to go through all the amendments in this group in the way that the noble Lord, Lord Grantchester, did. We look forward to the Minister going through them—and the previous ones—in a few minutes. However, I want to pick up one amendment. It is probably the one that has most surprised me—the lead amendment in this group, Amendment 26. The noble Lord, Lord Grantchester, acknowledged that this was a probing amendment. But, at the same time, he made it fairly clear that he was quite supportive of what was contained within it.

On these Benches, we believe that independent wireless infrastructure providers have benefited this country enormously by investing in the development of alternative structures—water towers, pylons and so on—to make them some of the most productive telecommunications facilities in the country and improve connectivity, not least in rural areas. Our real concern about Amendment 26 is that, if accepted, it could alter investment planning by independent infrastructure providers in a way that would curtail much of the development we want to see.

I believe the issue raised in Amendment 26 was adequately addressed in a letter that the Minister sent to many of us some time ago. For the benefit of Members who do not have the letter in front of them, he said:

“Code rights can only be obtained to install apparatus on, under or over land. Where operators have invested significantly in the physical apparatus that underpins coverage they should be able to achieve appropriate commercial returns. Alternative structures that have been adapted for the purpose of delivering network coverage are essential to connectivity and there will be cases where code rights do not apply”.

He said that questions had been asked,

“about whether code rights apply to various structures such as church steeples and water towers”—

and so on. But he goes on to make it very clear when he states:

“Whether a water tower has been adapted to the extent to which it can be considered to be electronic communications apparatus will depend on the specific circumstances of the adaptation ... We have established a clear and robust legal framework within which parties can resolve matters by agreement and if necessary apply to courts to resolve any disagreements”.

That is very clear—we want to protect these sorts of developments because we do not want to attack the investment that we hope will be made in the future.

That position is exactly the same as the one taken by the Labour Party Front Bench when this issue was debated in another place. Louise Haigh said:

“We would also like to explore what consideration has been given to how we can ensure that independently-owned infrastructure can have a significant role in the sector and, if possible, make up a larger proportion of our infrastructure in line with the global market. The much-discussed difficulties of the broadband roll-out highlight the issues when infrastructure is owned by a private monopoly. We should seek to break up this market as much as possible. For that to happen, investment incentives for independent infrastructure need to be maintained”.—[*Official Report*, Commons, Digital Economy Bill Committee, 20/10/16; col. 165.]

I entirely agree with the Front Bench of the Labour Party in another place on this issue—but I confess that

I am concerned and confused by the Labour Party Front Bench in this House. I look forward to hearing where the Minister stands on this.

Perhaps I may give the Minister notice that, having said that we are very supportive, on the next group of amendments we may have a slight disagreement—but we will have that debate a little later this evening.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde)

(Con): My Lords, perhaps I can clear up one thing for the noble Lord. I have not been in this House much longer than he has but I was in the Whips' Office for two years and I have a vague understanding of what is going on. The noble Lord, Lord Foster, obviously missed my thrilling answer on the last group but I responded to it and the House resumed before the Deputy Chairman called the amendment. Therefore, the amendments in that group were dealt with and we resumed the Committee stage of the Bill with the Front Bench withdrawing their amendment. That got us back to where we should be, which is with this group. Therefore, I think that everything is in order.

Amendment 26 seeks to alter the definition of electronic communications apparatus. I too was rather surprised by some of the things that the noble Lord, Lord Grantchester, said. I shall try to explain where we are on this subject, although I think that the noble Lord, Lord Foster, made my case for me. This is a fairly interesting proposal. I will take a look at what the noble Lord, Lord Grantchester, said in the cold light of day and we will obviously have discussions about it if necessary. I accept that he has made a long case, but I cannot answer it in complete detail today.

We have had many meetings with noble Lords on this subject and we have discussed whether various edifices such as water towers are apparatus. The Government are clear that the code should not interfere with incentives to invest in infrastructure. The reformed code makes a clear distinction between land and apparatus, and an operator cannot exercise code rights against another's infrastructure. A building used solely for enclosing apparatus is appropriately defined as apparatus. This might include a small brick-built cabin that was part of a site. Permitting operators to secure compulsory access to such a building could encourage one operator to exploit another's existing investments, and this would naturally create disincentives for future investments in digital communications infrastructure. Here, I agree with the noble Lord, Lord Foster.

Equally, a range of structures are adapted for use in providing a digital communications network. Whether a structure has been adapted so as to make the entire structure “apparatus”—rather than only part or none of it—is a question of fact and degree, having regard to what the parties have agreed, the nature of the installation and the extent of the adaption, as outlined in my letter. These are fact-sensitive questions that should be the proper subject of agreements and, if necessary, determination by the courts or tribunals. As such, I do not consider the amendment to be appropriate or necessary.

Amendment 29 seeks to do two things. It would ensure, first, that the assignor remains liable to the landowner and, secondly, that the assignee does not

[LORD ASHTON OF HYDE]

have the benefit of the assignment unless the landowner is given notice of it. We want to ensure flexibility for operators and continuity of service for consumers when companies go through mergers or restructuring. This amendment would frustrate that objective, which was based on the Law Commission's recommendation that code agreements can be freely assigned. Further, the additional protection the amendment seeks to give the landowner is unnecessary: if no notice of assignment is given, the current drafting means that both the assignor and the assignee are liable to the landowner under the terms of the agreement, which is a substantial protection.

9 pm

Amendment 30 seeks to limit the exercise of new automatic rights to upgrade and share apparatus. The code already has a process for upgrades, including serving a notice on a site provider; while I hope parties will be able to agree, where they cannot, the matter can be referred to the courts. These new rights are essential to the efficient deployment and maintenance of networks; limiting them is likely to impede the deployment of future technologies and slow progress towards improved connectivity, goals that your Lordships support.

Amendment 31 seeks to include a stipulation that the courts cannot impose code rights where there is a subsisting contractual agreement. The Government are clear that parties should not be able to ask the courts to reopen an existing agreement. However, if an operator requires an additional code right on a site—for example, to add a piece of equipment—it is appropriate that it should be able to seek it, either by agreement with a site provider or by order of the court. If granted, the terms of the original agreement would not be affected and the operator would have to pay for the new right.

Amendments 32 and 42 propose that the code of practice should form part of an agreement unless either the parties or the courts state otherwise. This is likely to cause difficulties. A code of practice is about wider behaviour, rather than contractual rights, and matters that are included in it are unlikely to be appropriate to include in contractual terms. The actual effect of this amendment may, in practice, be to confuse contractual obligations and create more uncertainty. I understand the desire to ensure that Ofcom's code of practice effects real change in behaviour within industry. It will have weight. Indeed, failure to abide by it could be taken into account by a court or tribunal in the event of a dispute.

Amendment 33 deals with the valuation of code rights. The requirement to take into account all the terms of the agreement in arriving at the market value is expressly set out in paragraph 23(2)(c) of Schedule 1, and paragraph 23(2) includes the requirement to take consideration of the date the market value is assessed. Therefore, the amendment is unnecessary.

Paragraph 23 of Schedule 1 sets out the basis on which the consideration for the agreement of code rights is assessed; namely, on a no-scheme basis. I will look closely at what the noble Lord, Lord Grantchester, said on this subject but the rationale behind the provision is that landowners should be paid appropriately for

use of their land, but not be able to extract additional revenue from its value by the provision of electronic communications services.

Amendment 34 details what the court should take into consideration when assessing the market value on the new no-scheme basis. This is unnecessary because under paragraph 23 of Schedule 1 the court is already instructed to assess value based on all the terms of the agreement. The amendment then seeks to limit the application of new reforms to land which has not previously been subject to code rights. This would essentially establish two separate markets for access to land, which it appears would never merge. This could create distorted incentives. Furthermore, the amendment would significantly reduce any real savings from reforms, and could well risk our ambitions for greater UK connectivity and coverage. Limiting new rights to upgrade and share in this way will make it even harder to deploy new technologies such as 5G.

We understand your Lordships' concerns about land valuation. However, the reforms introduced will not apply retrospectively and existing contracts will remain unaffected. Equally, the Government are confident that market incentives will limit any rapid or stark reductions in rates. It clearly remains in the interests of both operators and site providers to continue to make consensual agreements and use the courts only as a last resort. Under these circumstances, our commissioned analysis suggests that market rents may reduce by up to 40%.

Amendments 35 and 36 seek to remove the no-scheme valuation basis by stipulating that market value should be assessed based on the value of the right to the operator and not the "relevant person". The amendments would essentially reverse government policy to introduce significant savings to the cost of infrastructure deployment. The impact of these reforms would risk the opportunity to effectively expand UK coverage and connectivity. Given the demand for digital communications services, it is time for real reform in the way that digital communications networks are deployed. We cannot accept the amendments.

Amendment 40 deals with the right to install overhead lines. I responded to this in the previous group. To summarise, we consider that the code provides sufficient protection for landowners who may be affected by overhead lines, and therefore the amendment is not necessary.

Amendment 41 seeks to create a code adjudicator to examine breaches of the code of practice and impose sanctions. The Law Commission reported on the need for a code of practice and concluded that:

"Mindful of the move towards de-regulation, and of the resource implications of closer supervision, we are not making any recommendation that Ofcom's supervisory role should increase".

In the same spirit, we do not consider that a costly and resource-intensive statutory code of practice or adjudicator is necessary. The courts, as a matter of general practice, will consider compliance with existing codes of practice when awarding costs.

Amendment 43 seeks the inclusion of a specific reference to "representative landowners" and "third party infrastructure providers" as parties that Ofcom is obliged to consult when undertaking duties at paragraph 103

of Schedule 1. In practice, Ofcom has worked closely with representatives from all the groups proposed by the amendment, as well as with other experts and interested parties, in developing the draft code of practice, which will be subject to a further, and public, consultation in the near future. As such, the Government do not consider that this amendment is necessary.

Again, I apologise for the length of my response, but in the light of these explanations, I hope that the noble Lord will feel able to withdraw his amendment.

Lord Grantchester: I am very grateful to the Minister for his reply. This group hangs together as quite a difficult jigsaw of amendments. To go through them again in replying to his reply would be excessively tedious, I am sure, because they interrelate in many different ways. We are happy to look at the Minister's reply and, no doubt, will meet later to try to understand our way through it all.

I say to the noble Lord, Lord Foster, that my brief did not come only from the Country Land and Business Association. I am glad that he received its communication, just as I did, but he may not have received the much wider range of submissions I did from many others who have to adjudicate between interests en masse, in urban and rural areas, including local authorities, health authorities and many more. If one of their buildings hosts such an apparatus, they may face many complexities in wanting to develop their operations and around the rights that operators will have in determining how that apparatus is maintained. The CLA did not endorse any of my comments in the amendments on the market value. Like Members from all around the House, it wishes the rollout of communications to proceed as fast as possible.

I merely wished to draw out some of the difficulties in the Government's drafting. That has been achieved tonight, but I would be very grateful to the Minister if we could look at it all again to make sure there are no unintended consequences in any of the provisions. I am very glad of his clarifications and notifications—for example, on Amendment 31—which were very helpful. With those comments, I am very happy to withdraw the amendment tonight.

Amendment 26 withdrawn.

Amendment 27

Moved by Lord Foster of Bath

27: Schedule 1, page 95, line 34, at end insert—

“(e) must be notified to Land Registry, Registers of Scotland or Land and Property Services, whichever is appropriate.”

Lord Foster of Bath: My Lords, the Minister will be aware that at Second Reading I argued that there should be a public record kept of when rights over land are granted under the Electronic Communications Code. The Minister said that he was not minded to do that. He told me that,

“prospective buyers will be able to ascertain what code rights might apply to land by inspecting the land”.

If I went to see a field or a piece of land that I owned and saw nothing on it, it would not mean that there

were no fibre-optic cables underneath it, and I am not sure how I would find that out by inspection. He gave me another option of,

“making appropriate inquiries before the contract”.

If I have a piece of land with nothing apparently on it, I have absolutely no idea of to whom I would start making those inquiries. Perhaps the Minister can assist me. He also said—presumably it was the basis of his reply—that the Law Commission had considered this issue, and as a result the Government were going to stay where they were, maintaining,

“the position under the existing code”.—[*Official Report*, 13/12/16; col. 1226.]

I therefore thought it would be a good idea if I looked at what the Law Commission said about this matter and the existing code. It said in its report:

“Paragraph 2(7) of the 2003 Code states:

‘It is hereby declared that a right falling within sub-paragraph (1) above is not subject to the provisions of any enactment requirement the registration of interests in, charges on or other obligations affecting land’”.

That is what is to be continued, according to the Minister, in the new arrangements. Yet the Law Commission said of this:

“It is not clear what this means”,

and that:

“RICS noted that: ‘the current situation, whereby Code Operators are unsure as to the correct interpretation of paragraph 2(7) of the Code, has led to some Code Operators registering their legal agreements and others deciding not to do so’”.

Following that, the Law Commission proposed a significant change to the arrangements. That appears in paragraph 2.116 of its report. In coming to that conclusion, it noted that some organisations proposed that we change the situation. For instance, Mobile Phone Masts Development Ltd said:

“There is no reason why rights created or granted should be exempt from the LRA 2002”—

the Land Registration Act 2002—and that:

“It is in the public interest for the rights/obligations to be recorded on the register”.

Some, including the Agricultural Law Association, took the view that it should go even further and that some things that currently would not be covered under the code should also be covered by land registration. Others, as the Law Commission pointed out, had a completely opposite view. The Country Land and Business Association, to which I referred earlier, and BT,

“suggested that a requirement to register would place an unwelcome administrative burden on Code Operators”.

I can see that the Minister was in a difficult position because some people wanted one thing and some wanted the other, but his solution has landed us back at the very thing that currently exists, of which the Law Commission says:

“It is not clear what this means”,

and which others say is a confused situation. In that difficult position, the Minister would no doubt look to the Law Commission's final conclusions. I shall read two of them out and ask the Minister to tell me which of them will be registered in the Land Registry and which will not, and why he will not support my simple amendment, which would require that all rights conferred

[LORD FOSTER OF BATH]

through the ECC be registered in the relevant Land Registry, depending on the system the devolved Administrations have.

The two recommendations from the Law Commission are, first:

“We recommend that where Code Rights are conferred by a lease, the revised Code should make no special provision as to who should be bound by the lease and its provisions, and should not amend or disapply the normal rules of land registration”; and, secondly:

“We recommend that where Code Rights are conferred otherwise than in a lease, the revised Code should provide for them to bind successors in title to the Site Provider who granted them, and those with an interest subsequently derived from the title of the Site Provider, as if they were property rights”.

Can the Minister tell me which of those two should be registered and why we should not just register all of them for simplicity?

9.15 pm

Lord Ashton of Hyde: My Lords, I start with the noble Lord’s test of which of the two should be registered. The answer is none because we do not think we should have registration of these rights. However, I accept that there are many issues about the Law Commission, which I will investigate and come back to him because I do not have all the answers at the moment. I am not by that guaranteeing that we will accept the amendment but I accept that he has made some points that deserve a closer look before Report.

The amendment proposes to include a requirement for code agreements to be notified to the Land Registry. The noble Lord will not be surprised to know that we have not changed our opinion on this. We held a consultation on the code in February 2015 and one of the issues consulted on was land registration. We concluded then that code rights should not be subject to a requirement that they are registered. This reflects the position under the existing code, which the noble Lord mentioned, which has worked effectively since 1984 and avoids creating unnecessary administrative burden.

When buying land it is usual to inspect the physical property and to make inquiries before contract to establish what burdens may be on the land that are not registered rights. These include standard checks by purchasers and conveyancers which should identify whether there are any existing code rights over the property, in the same way that when a property is bought in other circumstances the onus is on the seller to inform, and that becomes part of the contract.

However, as I have said, I accept that the noble Lord has made extra points about the Law Commission and so, on the basis that I will look at those before Report, I hope he will be able to withdraw his amendment.

Lord Foster of Bath: I am grateful to the Minister for his helpful reply that he will look at the matter further. With that assurance, I beg leave to withdraw the amendment.

Amendment 27 withdrawn.

The Deputy Chairman of Committees: I should inform the Committee that if Amendment 28 is agreed I cannot call Amendment 29 by reason of pre-emption.

Amendment 28

Moved by Baroness Buscombe

28: Schedule 1, page 97, leave out lines 11 to 40 and insert—

“(1) Any agreement under Part 2 of this code is void to the extent that—

(a) it prevents or limits assignment of the agreement to another operator; or

(b) it makes assignment of the agreement to another operator subject to conditions (including a condition requiring the payment of money).

(2) Sub-paragraph (1) does not apply to a term that requires the assignor to enter into a guarantee agreement (see sub-paragraph (5B)).

(3) In this paragraph references to “the assignor” or “the assignee” are to the operator by whom or to whom an agreement under Part 2 of this code is assigned or proposed to be assigned.

(4) From the time when the assignment of an agreement under Part 2 of this code takes effect, the assignee is bound by the terms of the agreement.

(5) The assignor is not liable for any breach of a term of the agreement that occurs after the assignment if (and only if), before the breach took place, the assignor or the assignee gave a notice in writing to the other party to the agreement which—

(a) identified the assignee, and

(b) provided an address for service (for the purposes of paragraph 91(2)(b)) for the assignee.

(5A) Sub-paragraph (5) is subject to the terms of any guarantee agreement.

(5B) A “guarantee agreement” is an agreement, in connection with the assignment of an agreement under Part 2 of this code, under which the assignor guarantees to any extent the performance by the assignee of the obligations that become binding on the assignee under sub-paragraph (4)(the “relevant obligations”).

(5C) An agreement is not a guarantee agreement to the extent that it purports—

(a) to impose on the assignor a requirement to guarantee in any way the performance of the relevant obligations by a person other than the assignee, or

(b) to impose on the assignor any liability, restriction or other requirement of any kind in relation to a time after the relevant obligations cease to be binding on the assignee.

(5D) Subject to sub-paragraph (5C), a guarantee agreement may—

(a) impose on the assignor any liability as sole or principal debtor in respect of the relevant obligations;

(b) impose on the assignor liabilities as guarantor in respect of the assignee’s performance of the relevant obligations which are no more onerous than those to which the assignor would be subject in the event of the assignor being liable as sole or principal debtor in respect of any relevant obligation;

(c) make provision incidental or supplementary to any provision within paragraph (a) or (b).”

Baroness Buscombe (Con): My Lords, in moving Amendment 28 I shall speak also to Amendments 37 and 38.

Paragraph 15 of the new Electronic Communications Code provides protections for landlords when a code agreement is assigned from one operator to another. This might occur when an operator is bought by another company or an operator transfers infrastructure assets to another company. Amendment 28 extends these protections to landowners in Scotland. This follows extensive discussion with the Scottish Government on how to bridge the differences in land law across the United Kingdom. In applying these protections to Scotland we have removed the reference to the Landlord and Tenant Act 1995 and instead replicated the relevant provisions in paragraph 15. This improves clarity and avoids reference to a law which is applied only in England and Wales. Paragraph 15 does not affect the position of third-party guarantees that may have been given in relation to the original agreement.

Amendment 38 removes paragraph 59, which deals with what happens to electronic communications infrastructure installed on or under a road which then ceases to be a road. An unintended consequence of paragraph 59 is that it transfers the costs associated with the alteration of equipment found on a stopped-up road from the landowner to the operator. Removing this paragraph preserves the status quo arrangement that the Law Commission seeks to maintain. Amendment 37 is consequential to Amendment 38. I beg to move.

Amendment 28 agreed.

Amendments 29 to 36 not moved.

Amendments 37 and 38

Moved by Lord Ashton of Hyde

37: Schedule 1, page 113, line 15, leave out “or 59(8)”

38: Schedule 1, page 127, line 32, leave out from beginning to end of line 17 on page 128

Amendments 37 and 38 agreed.

Amendments 39 to 43 not moved.

Amendment 44

Moved by Lord Grantchester

44: Schedule 1, page 149, line 4, at end insert—

“Code of Practice Adjudicator

The Secretary of State must appoint a person who shall act as an adjudicator with the powers—

- (a) to determine the validity of complaints as to breaches of the code of practice; and
- (b) on finding a breach of the code of practice, to determine whether it warrants an award of compensation, costs between the parties or a penalty as the adjudicator shall deem appropriate and proportionate.

Status of the Code of Practice

Compliance with the Code shall be a material consideration—

- (a) by the court in considering disputes referred to it under this Schedule as may be relevant to both the determination of the dispute and any ancillary matters including the award of costs between the parties; and

- (b) by the adjudicator in considering any question arising over the grant or retention of a licence to Operator enabling it to have the benefit of Code Rights under this Schedule.”

Lord Grantchester: My Lords, I will move Amendment 44 and my noble friend Lord Stevenson will speak to Amendments 47 and 48. Paragraph 103 requires Ofcom to ensure the preparation of a code of practice as to behaviour regarding information in negotiations and operations under this schedule. Ofcom, new to this level of detail in this sector, has commenced that process and a working party is well advanced in drafting. It is clear that the Government set considerable store by the potential of these codes of practice to lubricate the operation of the statutory Electronic Communications Code in practice. By setting out expectations on behaviour and conduct, the codes of practice are intended to address concerns that many stakeholders expressed about the imbalance of power between operators, which are usually very large corporations, and those with an interest in the site on which the apparatus is sited, who may be individuals, small businesses or local authorities.

I am reminded of the Groceries Code Adjudicator, where the Government were resistant to introducing the power to fine transgressions, believing that reputational damage was enough. I am pleased to reflect that the Government reconsidered and, in that piece of legislation, allowed supermarkets to be fined for unfair practices.

There is also a parallel in the water industry. Written in the early 1900s, its guidance is still relevant and practical today. It is very largely ignored in practice, meaning that much work results in damage to property and business. The problems arise in part because of the strength of the water companies' statutory powers and in part because the work is increasingly carried out by contractors and sub-contractors who are either not aware of the code of practice or whose contracts do not make reference to it. Breaches of the code of practice can only be taken to Ofwat, which will occasionally uphold a complaint and issue a minor financial penalty. In practice, few complaints are made to Ofwat, and as a result, it is not seen to be worth the effort involved.

I am concerned here that we draw lessons from both these codes as we try to decide how the Electronic Communications Code can operate effectively. In the communications industry, consumers already have the benefit of a referral to one or two ombudsman schemes if telecommunication companies do not deal with their complaints, but there is no parallel scheme in place for those whose land or buildings might be used or abused by telecommunications operators and their contractors.

With the model of the Groceries Code Adjudicator in mind from a sector with similar imbalances of power, our first proposed paragraph would provide for an adjudicator to hear complaints about breaches of the code of practice, with powers to make awards for restitution or penalties. Such a forum—especially if it is, as suggested, independent and accountable to the Secretary of State—would give all the more confidence that the code might be remembered so that it can, as intended, support better behaviour.

[LORD GRANTCHESTER]

The second proposed paragraph would make compliance with the code a material consideration when awarding licences to a code operator or determining the grant or renewal of a code agreement. I suggest that the harder it is for these issues to be referred to independent resolution, the worse the operators will tend to behave. This perspective should also apply in this sector. I beg to move.

Lord Ashton of Hyde: My Lords, we are now in our final group on the Electronic Communications Code, so I will spare noble Lords further explanation of what the code seeks to achieve. Amendment 44 is similar to Amendment 41, which we recently discussed. It seeks to create a code adjudicator to examine breaches of the code of practice and impose sanctions. I repeat that I will examine what the noble Lord, Lord Grantchester, said. However, we do not consider that a costly and resource-intensive statutory code of practice and adjudicator are necessary, for the reasons that I outlined on the last but one group.

Amendments 47 and 48 relate to points made by—

Lord Stevenson of Balmacara: The Committee may have picked up that my noble friend was at pains to say that he was speaking only to Amendment 44 and that I would give a brief introduction to Amendment 47. I can almost anticipate what the Minister will say but I will still do that.

Lord Ashton of Hyde: Would you like to do that now, before I reply?

Lord Stevenson of Balmacara: The Clerk of the Parliaments has said that is all right, so obviously it is—he is the boss.

I will probably say what the Minister was about to say: that Amendments 47 and 48 are drawn from the reports of the Constitution Committee and the Delegated Powers and Regulatory Reform Committee. Both committees stated that they took a dim view of the way in which the powers expressed in Clause 6, on page 4, suggest that it would be possible for Ministers to make and pass secondary legislation that has not even been discussed with the Ministers of the devolved Assemblies and Parliaments. I would be grateful to hear what the Minister intends to do about that.

Lord Ashton of Hyde: My Lords, it was worth hearing what the noble Lord, Lord Stevenson, said before I replied to it—although he may not agree by the end. As he mentioned, these amendments relate to points made by the DPRRC and Constitution Committee reports. I will take this appropriate opportunity to thank the members of those committees. We will be responding in full shortly, before Report.

Any amendments to devolved legislation would be related to telecommunications legislation, which is a reserved area of competence. As a matter of good practice, officials would consult with the devolved Administrations if we intended to make changes to devolved legislation. This commitment to the principle of good communication is referenced in the memorandum

of understanding between the UK Government and the devolved Administrations. We will of course provide a fuller response once we have completed consideration of the DPRRC and Constitution Committee reports.

As this is the final group on the Electronic Communications Code, I will take this opportunity to assure noble Lords that there will be further opportunities for interested parties to shape the way that the new code is implemented. As I have already mentioned, Ofcom will hold a full public consultation on the code of practice that it is developing. Industry representatives have also agreed to work with DCMS to develop an industry code of practice, covering matters such as best working practices. So I hope that in the light of this, the noble Lord will be able to withdraw his amendment tonight.

9.30 pm

Lord Grantchester: I thank the Minister for his reply and in doing so, recognise his answer to Amendment 41. On Amendment 44, I will further draw out that there are many issues involved with this code which give operators quite extensive powers to assign without recognising or even informing site owners. They could lead to many problems further down the field. At some point, a code of practice might need a body other than Ofcom, which has no experience of any adjudication in this field.

Nevertheless, the Minister has replied extensively. We will look at all our amendments and, as I said in withdrawing my earlier amendments, take due cognisance of his remarks in considering how we might propose amendments on Report. If we can secure some agreement with him to some of our more challenged considerations, it would be much the better way to proceed. We shall see how we proceed. We will have the opportunity to look at these issues again on Report. With that, I beg leave to withdraw the amendment.

Amendment 44 withdrawn.

Amendment 45 had been retabled as Amendment 229A.

Amendment 46 had been retabled as Amendment 229B.

Schedule 1, as amended, agreed.

Schedules 2 and 3 agreed.

Clause 5 agreed.

Clause 6: Power to make consequential provision etc in connection with the code

Amendments 47 and 48 not moved.

Clause 6 agreed.

Clause 7 agreed.

Clause 8: Regulation of dynamic spectrum access services

Amendment 49 not moved.

Amendment 50

Moved by Lord Stevenson of Balmacara

50: Clause 8, page 6, line 5, after “make” insert “written”

Lord Stevenson of Balmacara: I am sorry that we did not have the benefit of the contribution of the noble Baroness, Lady Byford. However, we have three amendments in this group. I will move Amendment 50 and speak to Amendments 51 and 52. These are small amendments that need not detain us long. They were drawn to our attention in correspondence with the Scottish Law Commission, which keeps a beady eye on your Lordships’ work. It has been a useful source of information and helpful advice on many matters, including these. It picks up relatively straightforward, rather minor but none the less important points.

This section of the Bill, on page 6 line 5, does not specify whether representations are to be oral or written. Amendments 50 and 51 suggest inserting the word “written”. Amendment 52 would ensure that the notices issued by Ofcom contain specifications about any right of appeal. At the moment there is silence on that. Clause 8 inserts a new section into the Wireless Telegraphy Act 2006 but it does not say how appeals should be made. It should do. I beg to move.

Lord Ashton of Hyde: My Lords, these amendments relate to Clause 8, which enables Ofcom to register dynamic spectrum access service providers. Amendments 50 and 51 require representations to Ofcom about, for example, a possible breach of a registration condition to be made in writing. We do not want to constrain people from making representations in other suitable ways. Having this flexibility could enable minor infringements to be dealt with swiftly by Ofcom where appropriate. It wants to keep this flexibility. We are therefore minded to disagree with these amendments.

Amendment 52 would require a right of appeal to be specified in any notification to a DSA provider about a contravention of its terms of registration. Ofcom is already required to give the provider the opportunity to make representations about a notification before it can make a confirmation decision under new Section 53G. Decisions taken by Ofcom under Section 53G are appealable. However, the right of any notified provider to appeal to the Competition Appeal Tribunal against a decision would depend on whether the appellant properly followed the tribunal’s rules. It is for the tribunal to decide whether it has jurisdiction to hear the appeal.

Ofcom’s other enforcement powers do not require it to notify a provider of the right to appeal to the tribunal. This is consistent with the approach taken by other regulators, for example, Ofgem and the Competition and Markets Authority. For that reason, I hope that the noble Lord will be able to withdraw his amendment tonight.

Lord Stevenson of Balmacara: I am grateful to the noble Lord for his comments. I am sure that the Scottish Law Commission stayed up to listen to them and we will be getting a pigeon at any minute. In the circumstances, I beg leave to withdraw the amendment.

Amendment 50 withdrawn.

Amendments 51 to 53 not moved.

Clause 8 agreed.

Amendment 54

Moved by Lord Stevenson of Balmacara

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

“OFCOM power to impose caps upon wireless telegraphy licenses

In paragraph 3 of Schedule 1 to the Wireless Telegraphy Act 2006 (information to be provided in connection with applications), at the end insert “, or

(b) that the applicant owns more than 30% of the total useable mobile phone spectrum in the UK and OFCOM has a reasonable belief that the award of further licences would have a damaging impact upon competition in a given electronic communications market.””

Lord Stevenson of Balmacara: My Lords, this is an interesting issue which has been drawn to our attention, and we thought it would be worth putting a probing amendment down. I am grateful that grouped with it is a more substantial amendment in many ways tabled by our colleagues from the Liberal Democrat Benches. Both bear on much the same thing.

It is quite common in commercial arrangements to find that there are limits set on ownership and control in proportions which are often around 30%, to reflect the ways in which people might control a market. Yet the way in which the Governments of the day have set up regulations to control the spectrum has not introduced any official cap. Amendment 54 suggests that it might be time now, given the intensity of concern about how much the spectrum is valued and how it is used, to have some form of competition cap, of about 30%. This probing amendment is there to invite the Government to comment on that.

Having said that, I am sure the Minister will want to cover another point, which I think will be the subject of other amendments later. We will come back to this, but I want to flag up now that the spectrum is not a single thing—I cannot think of the right word—and its value depends on which part of the spectrum we are talking about. Lower frequencies and higher frequencies are different, so to impose a 30% limit on the spectrum that any company can own would be slightly perverse, but the issue is important enough to raise the point. Future amendments may deal with the dispersion of the higher-value spectrum among operators, particularly in mobile telephony, where there is concern—I am sure that the Minister expects us to raise this at the appropriate point in the Bill—over the current way in which spectrum has been allocated among the existing players in this field, so that the larger ones tend to have more of the higher-value spectrum. This is an issue we will need to come back to, but it is not the subject of this amendment, which deals with a general concern

[LORD STEVENSON OF BALMACARA]

about the possibility of a monopoly operating within this area, which might be dealt with perfectly properly by a regulator, but where it might also help if there was a specific cap. I beg to move.

Lord Fox (LD): As the noble Lord, Lord Stevenson, intimated, Amendment 54A comes out of the same concern, but takes a slightly different view of the problem, placing the onus on the Secretary of State rather than Ofcom. The noble Lord, Lord Mitchell, spoke about fixed and mobile convergence, and at the heart of the concern here is that we are not talking about two separate markets when we talk about broadband and wireless; with the approval of BT's acquisition of EE, one player not only has a dominant position in fixed line but already has the lion's share of the spectrum already allocated, at 42%. As the noble Lord, Lord Stevenson, has said, this may come up in a different place, but it is at the heart of concerns expressed here.

Clearly the two weaker players were not allowed to join together, so we have an asymmetry in the wireless market, with two strong players and two weaker operators, which adds to the imbalance of spectrum allocation. We should be aware that spectrum allocation imbalance can clearly affect prices. It could affect access and also the speed with which technologies are rolled out: a land bank, or the equivalent, could be created.

It seems that Ofcom has already recognised this issue and is seeking to limit access to one of the bandwidths—the 2.3 gigahertz—but has not covered bands in the 3.4 gigahertz range so the principle appears to have been acknowledged by Ofcom but the measure has not been fully thought through. In a sense, we are debating how much of a problem this is, given that Ofcom has acknowledged that it is a problem.

This is, therefore, also a probing amendment, and it would place a requirement on the Government, rather than Ofcom, to assess the situation and come back with a thorough review of whether this really is an issue. Clearly there is a perception, but we need to measure that perception and publish some sort of assessment of whether 30% is the right limit and, indeed, whether there is a problem at all. I therefore ask your Lordships to consider this as a way of teasing out issues that, if they are not dealt with now, will come back to haunt us much later.

Lord Ashton of Hyde: My Lords, these two amendments concern the allocation of spectrum for mobile telephone networks. There are two main issues: the percentage amount of the cap; and the role of Ofcom as opposed to the Secretary of State, as dealt with in the amendment of the noble Lord, Lord Fox.

First, on the amendment of the noble Lord, Lord Stevenson, the Government have released a considerable amount of spectrum for mobile broadband. Ofcom

has just concluded a final consultation on rules for allocating it through an auction. The intention of the amendment—to ensure that Ofcom can enforce competition in the mobile market—is a worthy one. Ofcom already has the power to set appropriate rules for its spectrum licensing, taking due account of competition implications. Ofcom must award licences by processes that are open, objective, transparent and proportionate in what they are intended to achieve, without unduly discriminating against particular persons or a particular description of persons.

In principle, Ofcom could make a similar rule for its forthcoming auction to that proposed in the new clause. Indeed, it considered a number of possible spectrum caps in its consultation. The provision allows Ofcom to reject some possible results of the auction on competition grounds. Ofcom already has competition powers which would bear in such a situation. It also strikes us as unlikely that Ofcom, having determined appropriate rules for an auction, would immediately nullify the results.

Amendment 54A, from the noble Lord, Lord Fox, proposes that the Government commission an evaluation of the current usage and allocation of mobile spectrum. Ofcom already has a responsibility, when carrying out its functions, to consider competition issues and whether radio spectrum is being used efficiently. Ofcom considered many of these issues in its recent consultation on the forthcoming auction. In future, it may well wish to review the state of competition in the mobile market—perhaps on similar terms and to a similar timescale to those proposed by the noble Lord—but in our view, that is for Ofcom to decide.

Given those issues, it seems to me that the proposed new clauses do not help Ofcom to carry out its duties, and I hope that noble Lords will therefore agree not to press them.

Lord Stevenson of Balmacara: My Lords, I thank the Minister for his comments. I think we are trying to achieve much the same aim here. The judgment will be whether Ofcom has sufficient powers to achieve that shared objective. I will look carefully at what he said in *Hansard* but, in the meantime, I beg leave to withdraw the amendment.

Amendment 54 withdrawn.

Clauses 9 to 14 agreed.

Amendment 54A not moved.

House resumed.

House adjourned at 9.46 pm.

Grand Committee

Tuesday 31 January 2017

3.30 pm

Neighbourhood Planning Bill Committee (1st Day)

Relevant document: 15th Report from the Delegated Powers Committee.

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): My Lords, good afternoon. If there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Amendment 1

Moved by Baroness Cumberlege

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

“Duty to uphold neighbourhood development plans

- (1) The Secretary of State has a duty to uphold neighbourhood development plans, and in fulfilment of that duty must not seek to override neighbourhood development plans except in exceptional circumstances of national importance.
- (2) The Secretary of State has a duty to ensure that local planning authorities have sufficient resources to enable them to own, implement and defend neighbourhood development plans.
- (3) If it is deemed necessary to override a neighbourhood development plan and require the provision of additional housing, the Secretary of State must—
 - (a) have regard to the policies of the neighbourhood development plan, in particular, policies on employment opportunities; and
 - (b) inform the local community of the number of houses and types of housing required.
- (4) If a neighbourhood development plan has been overridden in accordance with subsection (3), it is the responsibility of the local planning authority, in consultation with the local community, to decide where it is most appropriate to provide the additional housing, and their decision must be accepted by the Secretary of State unless there are exceptional reasons of national importance not to do so.”

Baroness Cumberlege (Con): My Lords, I start by declaring an interest: I have a legal case concerning a planning application pending at the moment. I have taken advice from the Clerk of the Parliaments and been told that the sub judice rule does not apply in my case.

We had a very interesting and wide-ranging debate at Second Reading. I thank my noble friend the Minister for his introduction to the Bill on that occasion, and for his courtesy and his very thorough winding-up, in which he undertook to inform noble Lords of the process he wanted to work through. He said he wanted to be inclusive. He has certainly been so until now, and I am sure he will be in future.

The Bill reflects the very foundations of society. It is not just about building houses, although they are very much needed; it is about building homes, strengthening communities and ensuring that we create

better lives for future generations. As my honourable friend Gavin Barwell, Minister in the Department for Communities and Local Government, has said:

“Done well, with genuine local consent, garden villages and towns can help tackle the housing crisis. They can be preferable to what is currently happening in too many parts of the country—poor quality developments plonked on the countryside, in the teeth of local opposition and in defiance of good planning principles”.

He is absolutely right. Developments plonked in the countryside without a community infrastructure have no soul and are uncared for, unloved and unalterable. Through my amendments I seek to mark a real change: good planning with tight boundaries that is less top-down and gives more respect and power to local people.

It is the duty and the right of the Secretary of State and Ministers to establish a policy and set the types and numbers of houses to be built in each planning area. Thereafter it is for the local planners to decide how best to deliver these policies in conjunction with people who know their neighbourhood intimately. No Government can understand the nuances of every local authority. Local people must be allowed to build communities and that takes time and skill. My amendments, therefore, are based on trust—trusting people, respecting people and enabling those people who know their beat best.

We are beginning to trust people in the health service with personal budgets and we know they work. We are trusting parents and schools to define their own standards. We must do the same for planning. Just houses without integrated communities are at risk of becoming drug alleys, and of contributing to family breakdown, crime and despondency, which have huge costs for people and those who try to deal with the devastation left behind.

My proposed new Clause 1(1) places a duty on the Secretary of State to uphold neighbourhood development plans, which can be overridden only in exceptional circumstances of national importance. The purpose of my amendment is to delineate between the responsibilities of central government and those of the local planning authorities. The Secretary of State is responsible for strategy and local authorities for implementing the strategy. There is huge danger when these two roles are confused and the Secretary of State and the department start to meddle in the detail of something of which they know little. I am not criticising them; they are not equipped to understand the nuances, history, thinking and understanding of local communities. Surely that is what localism and neighbourhood planning are all about.

In proposed new subsection (1), I conclude that the Secretary of State should be able to intervene in matters of national importance; that is, to prevent neighbourhood plans being used to frustrate national schemes. These include, very topically, HS2, airport expansion, major highways or rail schemes, military necessities and so on.

Proposed new subsection (2) would place on the Secretary of State a duty to ensure that local planning authorities have sufficient resources to enable them to own, implement and defend neighbourhood plans. Drawing up a neighbourhood plan is costly. It is costly to the makers of the plan—who are frequently volunteers—as they can spend an inordinate amount

[BARONESS CUMBERLEGE]

of time drawing it up. Those in work lose financially. It is also financially costly to the local planning authority, since the Bill introduces a new procedure for making modifications. This will require additional guidance from officers and a new examination, which will place an additional burden on local authorities. Every time a parish or town council seeks to make changes, the planning authority will be expected to review the plan, provide guidance and take it through another examination. So far, costs have not been assessed in terms of the modification which some neighbourhood plans will require. Perhaps this is something we shall address through regulation or the promised White Paper, which we are told we will receive before the next stage of the Bill.

On top of this, costs for planning appeals can range from £10,000 to £50,000. The neighbourhood plan is owned by the local authority and, on occasions, it will have to defend the plan with its associated costs, including fighting planning appeals. Developers make no secret of poaching the best staff from local planning authorities and paying them more. Planning authorities struggle and are wrong-footed, unable to cope with the demands of developers. This is detrimental to good planning. Good-quality planners must be better paid.

I turn to proposed new subsection (3). As I explained, there can be situations where—regrettably, but with good reason—the Secretary of State finds it necessary to override a neighbourhood plan. Even so, he or she must have regard to the policies in the plan. If it is necessary to vary the neighbourhood plan, it may be to provide more houses than originally anticipated. This should not be a free for all among developers. The planning authority should instruct the neighbourhood plan makers to make the required provision and ensure that this is done legally and correctly in the interests of the community. This may mean considerable modification to the neighbourhood plan. In our case, there are a number of policies in the plan but, particularly, the requirement of a break between parishes, no more five-bedroom houses, no street lighting and the incorporation of opportunities for employment. I could go through these, but I shall not because of the time I have already taken.

I want to mention one policy because it goes across a lot of neighbourhood planning. Employment is one of the policies in our plan on which we are very keen. We need employment. In the Second World War, our lanes were turned into roads. We have had no improvements since the first tarmac was laid. We excel in congestion and pollution. Trains are so full that you cannot get a seat—and that is when they do run. The policy was refused because we do not have a square on the map saying “industrial estate”. We want employment threaded throughout the community, such as in Poundbury in Dorset. Dorset Cereals and other employment gives Poundbury a sense of purpose and pride. We need diversity and we want the Secretary of State for Communities to be exactly that, not the Secretary of State for dormitories.

Proposed new subsection (4) recognises that when the Secretary of State overrides the neighbourhood plan it is the responsibility of the local authority, working with the local community, to decide where

the most appropriate sites will be for additional development. The people who formulated the neighbourhood plan have scrutinised every aspect of their community, through consultation and data collection. It is respectful and prudent for those people, in consultation with the local planning authority that advises them, to decide where best to build additional houses, and when they should be built within the time set up to 2030, unless specifically directed towards another date.

It must be recognised that if a neighbourhood plan is overridden, 10 other changes to it may be necessary, commensurate with the degree of change. Simply accepting a planning application that happens to be submitted, which may or may not have any synergy with the neighbourhood plan, is not generally compatible with good planning. That is what the Minister, Gavin Barwell, has conceded. The Government and Whitehall cannot appreciate intimate details of a community's life. When Governments or inspectors think they know best, there is huge annoyance and resentment. Again, people will do a better job when their decisions will be more respected.

I hope my noble friend will consider these points, that he and his officers will see some merit in them, and that we can come to some agreement on how they might be incorporated in the passage of the Bill. I very much look forward to his reply. I beg to move.

Lord Stunell (LD): I declare an interest as a member of a neighbourhood forum in an unparished area at an early stage of development. I will speak very much in support of what the noble Baroness, Lady Cumberlege, said today and at Second Reading in her very eloquent presentation of the difficulties her area faced.

The balance has tilted from the need to defend local plans and local communities' building plans from the activities or, sometimes, inactivities of local planning authorities; they also need to be protected from what happens as a result of the interference of inspectors and the Secretary of State. In that sense, Amendment 1 from the noble Baroness, Lady Cumberlege, is at the hard end—rather surprisingly, she is the hard cop—and my Amendment 5 is a rather more modest proposal. Again, perhaps unexpectedly, I am the soft cop.

I am strongly in favour of the presentation she made and the amendment she has moved. I, too, would be very interested to hear what the Minister has to say by way of explanation for the interventions that have taken place so far and which run the risk of undermining, at a national level, the credibility and popularity of neighbourhood plans that we can see at present.

3.45 pm

Baroness Andrews (Lab): My Lords, I support the amendment. The account that we heard from the noble Baroness at Second Reading was pretty shocking. It seemed to be a failure of process but also of principle. The case she told us about then, and again today, seemed to contradict the basic assumptions on which neighbourhood planning is based. After the degree of detail that we went into when it was first proposed in this House and the expectations that were raised, it

also raised issues about the nature of localism and its credibility—not only at a local level; I think it actually contradicts the core principles of the National Planning Policy Framework.

When you look at those core principles—of course, a neighbourhood plan, like a local plan, has to subscribe to the NPPF—the NPPF says that the Government are committed to a plan-led system,

“empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area”.

Planning should,

“not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives”,

and it should,

“proactively drive and support sustainable economic development”, to deliver business and employment. All that should indeed be contained in the neighbourhood plan, rather than having a plan that is driven simply by housing requirements, however important they are. We know they are important—in that part of rural Sussex they are really important. But it is very important indeed that the principles are upheld, that the coherence and richness of the plan are upheld, and that local people are involved. From everything the noble Baroness said at Second Reading, it appeared that much of that had not happened but had in fact been ignored.

One of my questions to the Minister is: to what extent do we think that the sort of example that the noble Baroness, Lady Cumberlege, gave is happening in other parts of the country? What evidence does the department have that these sorts of things are happening in other places? Some time ago I asked a Question in the House about the number of appeals that had been made on housing decisions. There is a common phrase in circulation: “We’re having our planning by appeal rather than by local plan”. I would be very interested if the department could look at the figures for the number of appeals that have been made and let the Committee know so that we have some sense of whether that is a phenomenon.

When you look at the amendment, a lot of it is absolutely what we already expect to happen. Of course, there is a massive issue about resourcing. I do not think the problem that was identified in the noble Baroness’s example was an issue of resourcing but resources drive the capacity of the local authority to stand up for the local plan where there is a local or neighbourhood issue. The loss of experienced planners and conservation officers—the people who defend the principles, whether environmental or regarding sustainability—is significant when it comes to making the case against the inspector.

No amendment is perfect and I am sure the noble Baroness will understand if I raise a couple of issues. I am concerned, and have been concerned for a long time, that the definition of sustainability in the NPPF is not particularly strong. Therefore, it makes it relatively easy for forms of development to be pushed ahead outside the notions of sustainability. The role of the inspector and the planning authority is to get the balance right and to ensure that everybody makes the right judgment. Of course, that involves making the right

judgment about the balance of housing, infrastructure and everything else. But I am slightly worried about the phrase,

“except in exceptional circumstances of national importance”, because you can always make that case, especially in terms of housing. Is there a way of strengthening the local capacity to hold to its neighbourhood plan irrespective of such claims? I just put that into the debate.

The other point I want to make is about informing the local community. It should not need to be said because it is so fundamental to the whole democratic foundation of a neighbourhood plan, but I understand that in the case which we cannot discuss there was a considerable lack of information at the relevant stages and a positive exclusion, as it were. In that respect, if we are going to be consistent and logical, and if we believe in neighbourhood plans and want to make them work, the final subsection of the proposed new clause, which states that any agreed additional housing has to be decided by the local community, seems in all logic to be the beginning and the end of the conversation that a community would have about its neighbourhood plan and where it wanted new housing put—as well as about what sort of housing for what sort of community it had in mind.

Lord Shipley (LD): My Lords, I should remind the Committee at the outset that I am a vice-president of the Local Government Association. I want briefly to express my support for the objectives set out by the noble Baroness, Lady Cumberlege, in her amendment, which provides a foundation for and gives a clear sense of direction to the Bill. The crucial word of course is “duty” in that the amendment seeks to place in the Bill a duty on the Secretary of State to undertake certain actions, one of which is to uphold neighbourhood development plans and not simply to think that such a plan can actually be overwritten because a planning inspector or the local planning authority suddenly feels that the neighbourhood plan is out of date or may no longer apply. This is important because if the duty does not exist, it means that local people cannot have confidence in the fact that the neighbourhood plan they have produced will actually stand the test of time. The second duty on the Secretary of State would be to ensure that local planning authorities had sufficient resources to enable them to own, implement and defend—a very important word—neighbourhood development plans.

This amendment is important and I hope that discussions may be held prior to the Report stage at which the Minister might give us some indication of what the Government are prepared to do to give greater force than is provided by the Bill to the development of neighbourhood plans which can stand the test of time. One problem we have had to date is that local planning authorities have not been as supportive as perhaps they ought to be, and as I said at Second Reading, there has been a problem about the creation of a five-year land supply. A neighbourhood plan, where it has been adopted in advance of the local plan being agreed, then finds itself under pressure which may, in the view of the Secretary of State, lead to it having to be revised.

[LORD SHIPLEY]

The noble Baroness, Lady Cumberlege, has said many wise things, one of which was to express her concern about poor-quality development in defiance of good planning principles. This Bill is about building communities, not just building houses. The noble Baroness reminded us of how the roles are confused between the Secretary of State, and through the Secretary of State the Planning Inspectorate, the local planning authority and the neighbourhood plan. This needs to be sorted out and I hope very much that the Minister will be agreeable to trying to find a way to do so that gives even greater weight to the statutory importance of neighbourhood plans.

Lord Greaves (LD): My Lords, I should declare my interests again as we begin a new stage of the Bill. I am the deputy leader of Pendle Borough Council and a member of a development control committee. I am also a member of the neighbourhood planning steering group for the parish of Trawden Forest, which may provide an interesting view of the planning situation from different sides, not the least of which is discussing a new piece of legislation about it today.

Neighbourhood planning is new, which I suppose is why the Government are feeling their way along with everybody else and why we seem to get an annual Bill to fettle the legislation a little. Although some 1,800 projects have been started, and some finished, around the country, it is still very much a minority pursuit throughout England—that is something I want to return to on another amendment.

It seems more and more important for local planning authorities and neighbourhood planning bodies, whether forums or parishes, to work closely together and have good working relationships. It is becoming clear that in some places where difficulties are occurring in getting neighbourhood planning off the ground or carrying it out it is because those relationships do not exist. From the planning authority point of view—the district, the borough, the unitary authority or whatever it is—there is not an openness and a willingness to change the way they work and to accommodate the whole idea of neighbourhood planning, which can make things a great deal more complicated.

The Deputy Chairman of Committees: My Lords, there is a Division in the Chamber. This Committee stands adjourned for 10 minutes.

3.56 pm

Sitting suspended for a Division in the House.

4.10 pm

Lord Greaves: My Lords, this issue is complicated. I think I was referring to the fact that for local authority planning departments the system is much more complicated if they have a series of neighbourhood plans taking place after their local plan has been dealt with, at the same time as it is being dealt with, or whatever. I think we have 18 parishes in Pendle—we are completely “parished”—three of which have their neighbourhood plans under way and at least two more which are making a serious start on them. This process requires a different kind of relationship between a

local planning department, local planning committees and people on the ground in neighbourhoods. The amendment would be extremely useful in getting things going. It refers to the, “provision of additional housing”. I am not clear whether this is additional to that set out in a local plan or is the additional housing required by a local plan. Either way, changing housing needs are at the core of a lot of the problems and difficulties that have arisen, and of this relationship. In our area the district council is just starting the second half of the local plan, which concerns site allocations.

Those of us working on neighbourhood plans are fortunate enough to work with the local authority and, we hope, align the two documents. The local authority has set out the number of houses it expects to be given planning permission in each parish over the period of the local plan. That is extremely helpful because it means we know how many houses we have to plan for as a minimum. The difficulty comes not with the housing allocations in the plan but with the five-year supply. Whereas the plans themselves appear to give certainty, the five-year supply suddenly does not give certainty as it is a moving dynamic that goes on from year to year and can suddenly result in more houses being needed than people are planning for, as we have seen following some appeals.

The five-year supply is worked out in technical, complicated ways. It is very difficult for people to understand how it is worked out, how it is implemented and how it changes. If they have been working on the neighbourhood plan, or indeed an ordinary local plan, it is difficult for them to understand why things suddenly change. The Government need to pull back from the whole concept of five-year supply. It is not necessary, complicates the whole process and renders how the system works opaque for most people—certainly most people who may be interested in planning applications or putting neighbourhood plans together. If it is in a plan, and if it is set out that those houses are needed over a certain period, that gives certainty and clarity—so long as that is stuck to. Perhaps the planning could be revised, maybe after five or 10 years, or whatever. Nevertheless, it gives clarity. This is an important issue. The five-year supply is not appropriate for producing good neighbourhood planning.

The only other thing I want to pick up is the suggestion in proposed new subsection (2) to enable local planning authorities to own neighbourhood development plans. Again, it is very important that once a neighbourhood plan has been adopted the local planning authority thinks it owns it, and not just the neighbourhood that put it together. That again comes back to the relationship between the two and the need to change the culture and attitudes of planners. These neighbourhood plans are not just a nuisance, an awkward complication to be tagged on to the local plan; they are a fundamental part of the overall development plan. Talking to people round the country, that change in culture has not yet occurred in quite a few local planning authorities.

4.15 pm

Lord Kennedy of Southwark (Lab): My Lords, as this is my first contribution today, I should refer noble Lords to my declared interests. I am an elected councillor

in the London Borough of Lewisham. I am also involved in developing a neighbourhood plan in my ward, Crofton Park. I am a vice-president of the Local Government Association.

Amendment 1, moved by the noble Baroness, Lady Cumberlege, would insert a new clause right at the start of the Bill which seeks to place a duty on the Secretary of State to uphold neighbourhood development plans. We all in this Grand Committee support neighbourhood planning. The amendment, which I am very happy to support, seeks to enhance the status of neighbourhood plans and prevent their being overridden except in exceptional circumstances. As the noble Baroness said, it is about building homes and strengthening communities. I also very much agree with the comments of Housing Minister Gavin Barwell, which the noble Baroness quoted. As the noble Baroness said, central government are there to deal with strategy and not to get involved in detail on a local level, but with the proviso that they are able to ensure schemes of national importance are not frustrated. That is a very important point.

The amendment goes further to place a specific duty on the Secretary of State to ensure that local planning authorities have sufficient resources to own, implement and defend neighbourhood development plans. Ensuring that local authorities have sufficient resources to deliver the additional functions required of them is something we will return to again and again in relation to this and other Bills before your Lordships' House. There is a problem where local authorities are prevented from recovering their full costs in respect of some local authority functions. Further burdens are placed on them with either no additional funding or sums of money provided that are not sufficient to cover those costs. The Government often announce, in the course of their business, £10 million, £20 million, £30 million or £40 million for this or that. Those are large sums of money, but when we divide them among the local councils involved they appear to be much smaller sums for each locality. We have seen this with the Homelessness Reduction Bill. It was allocated £61 million over two years, which will not be adequate for the additional responsibility placed on local authorities, but that is for another day—very soon.

Amendment 1 seeks to provide a pathway whereby the Secretary of State can override a plan but must, as far as possible, have regard to it, and must consult and inform. If there is a need to vary the plan, as the noble Baroness, Lady Cumberlege, said, this should not be a free for all for developers. The amendment would be helpful as it enhances the status of a plan but also provides for changes to be made if deemed necessary by, say, the Secretary of State for those schemes of national importance.

The final part of the amendment sets out that additional requirements for housing will be provided for. Again, I agree with the noble Baroness that where a local plan must be overridden, it should be the duty of the local authority, not central government, to decide where the new housing is delivered. I am sure the noble Lord, Lord Bourne of Aberystwyth, will give us a very detailed response. It may well be that I and other noble Lords will have questions for him on the back of that.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, first I thank the noble Lord, Lord Kennedy, for that build-up about the detail in the response. I am sitting here horrified because it is not incredibly detailed.

I have known my noble friend Lady Cumberlege since I came into the House. I thank her for how she has handled this and for her willingness to have positive engagement. This is the way forward. My noble friend has understandably tabled many amendments on this issue. I can reassure her that we are very keen to look at it, particularly in terms of dialogue with officials and those in the know before the neighbourhood plan is put together, because some of the problems that may arise relate to this.

Secondly, notwithstanding what my noble friend has said in relation to the incident about which she has spoken, my legal advice is to the contrary. I cannot speak about the specific case. I hope she will understand that I must be guided by this advice. All of us here support neighbourhood planning but, inevitably, in any new system there will be growing pains. To a degree, this has been the case in some of the circumstances arising in this area.

Amendment 1 raises a matter that noble Lords and those in the other place have spoken about at Second Reading and again today. I must stress that the law is very clear that decisions on planning applications must be made in accordance with the development plan, unless material considerations indicate otherwise. Of course, the neighbourhood plan is part of that development plan. Furthermore, measures in this Bill will bring forward the stage at which a neighbourhood plan has full legal effect. This is important to note.

The noble Baroness, Lady Andrews, raised the number of appeals. Out of 16,500 appeals, the number recovered by the Secretary of State was extremely small—just 75 in this context. I can reassure noble Lords that, where the Secretary of State has a more direct role in a small number of decisions—for example, through the appeals system and the call-in process—he or she uses these powers very sparingly—usually, where planning issues of more than local importance are involved. The Secretary of State's policies for both types of intervention are available on my department's website. During the course of this Committee, I will pick up on some of the points covered and write to noble Lords. For example, I will ensure that details of this part are on the website for noble Lords to look at.

The current policies for intervention strike the right balance between the national interest and local autonomy. On who can plan for housing in an area and how, the Government are clear. It is for local planning authorities, with their communities, to identify and plan for how to meet the housing needs of their area. Communities can choose to use a neighbourhood plan to address housing needs in their area. Where they do so, their local planning authority should share relevant evidence on housing need gathered to support its own plan making. If, over time, circumstances change and more housing is needed, again, communities may decide to update their neighbourhood plan or part of it. Just as in the initial

[LORD BOURNE OF ABERYSTWYTH]

drawing up of the neighbourhood plan, in the case of modification money is available from the fund set up for the purpose.

Our planning guidance is clear that, if a local planning authority also intends to allocate sites in the neighbourhood area, it should avoid duplicating planning processes that will apply to the neighbourhood area. The authority should work constructively with a neighbourhood planning group to enable a neighbourhood plan to make timely progress.

As well as the noble Lord, Lord Kennedy, other noble Lords have contributed and stressed the importance of neighbourhood plans. I thank the noble Lords, Lord Greaves and Lord Stunell, and the noble Baroness, Lady Andrews. I am grateful to the noble Lord, Lord Shipley, for his very constructive suggestion about engagement with officials and others to try to move this forward.

I understand why the noble Lord, Lord Kennedy, inevitably picked on the fees issue. This will be more than touched on in the White Paper, which we expect very shortly. I can confirm that we shall see the White Paper before Report and there will be an all-Peers briefing on it.

The Government's rigorous new burdens doctrine, which I failed to address earlier in response to a question from the noble Lord, Lord Beecham, ensures that local planning authorities will receive the relevant resources to meet their statutory obligations towards neighbourhood planning. Inevitably there will be differences of opinion between local authorities and central government about how much that funding should be, but also, inevitably and rightly, there will be a dialogue about it. As I say, however, the broader issue of funding will be addressed in the White Paper.

As to Amendment 1, perhaps I may once again reassure my noble friend Lady Cumberlege that we are approaching this in the spirit of wanting to ensure that neighbourhood forums, parish councils and local people are fully engaged in the process. We want to see that happen, but whether it is done in the Bill or, as is more likely, in planning guidance, is something we can talk about. In the meantime, I respectfully ask my noble friend to withdraw her amendment.

Lord Kennedy of Southwark: Can the Minister say a little more about why the Government will not accept this proposed new clause? It is a very good amendment and, while the noble Lord has talked about setting something out in guidance, he has not said why he is against it. It would be useful if we could understand a little more of the Government's thinking and why they will not just accept the amendment.

Lord Bourne of Aberystwyth: With respect I think I have explained that the present process provides the right balance of what is needed in planning procedures. However, I accept that occasionally a neighbourhood plan may have been developed that does not achieve what its framers wanted for it. Given that, it is important that there is a power at the centre, to be used only sparingly, in relation to appeals and the call-in process. As I have indicated, the number is 75 out of 16,500, so

it is not as if this is a major issue. It is therefore important that someone in the position of the Secretary of State will consider these matters, usually where the planning issues involved are of more than local importance. In practice, the vast majority of cases would be covered by that and we believe that the present process for this is correct, although overall we appreciate that there needs to be some discussion about the compiling of the neighbourhood plan, the provision of proper advice and so on.

Lord Kennedy of Southwark: Just to be clear, nothing that the noble Lord has said in his response means that he would not be able to accept the amendment.

Lord Bourne of Aberystwyth: With respect, I am not entirely surprised. The noble Lord wants this amendment and the Government do not. I hope we can disagree agreeably but this is not an amendment we can accept. As I have indicated, while it pays proper regard to neighbourhood planning, which is at the centre of the system, in the circumstances that I have set out across a range of amendments that have been tabled on this topic, we will look at how we can ensure that proper advice is given in the compiling of a neighbourhood plan, which I think will answer most of the points being raised.

Lord Kennedy of Southwark: I do not like to disagree with the noble Lord because I have great respect for him and the work he does. However, I am trying to understand what the problem is here, although we may well come back to it later. That is the aim of these questions because in many ways we are all in agreement.

Lord Bourne of Aberystwyth: With respect to the noble Lord, I am not sure we are. The noble Lord has been around the planning block a few times and he will know that occasionally planning decisions have national significance. Not least for that reason, we need to retain the power of the Secretary of State to recover appeals in limited circumstances.

Lord Beecham (Lab): Perhaps I may raise a slightly different point. The noble Lord has given a sympathetic response to the question of resources, but looking at subsection (3) of the proposed new clause set out in Amendment 1, there is an issue which I do not think he has addressed in his reply. It relates to the case where,

"it is deemed necessary to override a neighbourhood plan".

The amendment then calls for specific action. It says that,

"the Secretary of State must ... have regard to the policies of the neighbourhood development plan",

and,

"policies on employment opportunities ... and ... inform the local community of the number of houses and types of housing required".

That is not an onerous request. It may be that the noble Baroness would be satisfied with an assurance that that would be the Government's policy rather than necessarily writing it into legislation, but, with respect, the Minister should deal with those points. He

may consider that a letter would do. One way or another, it is rather a different point from some of those that have already been aired. The Government could be clear about it at a pretty early stage.

4.30 pm

Baroness Andrews: This point is very similar to the one my noble friend just made. It is very welcome that the Minister is prepared to talk along the lines suggested by the noble Lord, Lord Shipley. It is worth a conversation. The amendment strikes a balance between elevating the principle of local neighbourhood planning and reinforcing it; it does not take away the powers of the Secretary of State to intervene except in exceptional circumstances. I raised that point. There are other ways of reinforcing the importance and integrity of neighbourhood planning. Since the consultation on the National Planning Policy Framework is still in play, will it be possible to reinforce the importance of the plan and the nature of exceptional circumstances in the National Planning Policy Framework while it is being reconsidered?

Lord Bourne of Aberystwyth: My Lords, in response to the points made to the noble Lord, Lord Beecham, and the noble Baroness, Lady Andrews, it is right that the National Planning Policy Framework is still in play. I certainly do not rule out looking at issues such as this. I am addressing the amendment and saying that we certainly cannot accept it as it stands. I think I have made that point clear. I am very happy to look at the centrality of the neighbourhood development plan to see what we can do to consolidate it. It is indeed central to the process, but I will not concede the importance of a role for the Secretary of State in exceptional circumstances. I am very happy to take away the points made and look at them in the context of the general issue raised by the amendment.

Lord Kennedy of Southwark: I am very happy that the Secretary of State retains an overarching position. That is absolutely right and I have no problem with it at all. However, the noble Baroness, Lady Cumberlege, included that in the first part of her amendment. It is absolutely clear. It says:

“The Secretary of State has a duty to uphold neighbourhood development plans ... except in exceptional circumstances of national importance”.

I am surprised and find it odd that the noble Lord does not think that gives the department and the Secretary of State what they need. It is very clear.

Lord Bourne of Aberystwyth: My Lords, we have to be careful that we do not lose sight of the importance of the need for fresh housing. It is very easy for noble Lords to accept the general point about the need for more housing and then, when an issue comes up, say, “Not here; not there”. We would suddenly whittle it away and there would be nothing left. It is important that the Secretary of State retains a power relating to housing development because of the need to create more housing. I suspect we may disagree on the centrality of that, but I will have a look at this in the context of ensuring that the neighbourhood plan has particular significance.

Lord Greaves: My Lords, this is the important, high-level stuff. I raise what might be called the low-level stuff about the nature of the relationship between the local planning authority and its staff, its members and the neighbourhood planners. Does the Minister agree with my assessment that in some places it works very well and in others there is quite a lot of tension, difficulties and resistance on the part of the local planning authority? Would he comment on what might be done, without being too heavy-handed, to get local planning authorities to change their attitude where necessary?

While I am on my feet, the amendment refers to resources. As I understand it, the resources that the Government make available to a neighbourhood planning group, and whether it is a parish or forum, as the Minister referred to, is the same whatever the size of the neighbourhood. The neighbourhood may be quite a small village or a town such as Colne, which I know, which is embarking on neighbourhood planning. It has about 18,000 people and is quite a big town. People in small places are saying that the available grant does not pay for the process, so funds have to be found locally by a parish council or in other ways. Clearly, if my information is correct, the grant available in bigger places will not begin to cover this process, given that everything that the Government set out must be done for a neighbourhood plan costs money, as consultants may have to be brought in and so on. Will the Government look at that to make neighbourhood planning more financially viable than it is at present?

Lord Bourne of Aberystwyth: Some of these points go well beyond this amendment. Nevertheless, I accept that they are important. The noble Lord gave examples of how this process works at the coalface. I suspect that he is much closer to the coalface than I am in that regard. We need to be a little careful about setting up a system that stresses the importance of localism and these things being done locally, and then have central government stepping in and saying, “Do it this way”. As I say, there are growing pains. We may indicate in guidance how better relationships can be achieved. That is what I seek to do through the dialogue I am offering.

On the neighbourhood groups that may benefit from money for the neighbourhood plan and for modifications, I think there is money available if a case is made for an extra sum. If I am wrong on that, I will write to noble Lords. However, if a case can be made, I think there is access to additional funding. As I have indicated, the White Paper will say more about funding and the financial side more generally.

Baroness Cumberlege: My Lords, I thank Members of the Committee for their support for the amendment, which was gratefully received. I say to the noble Lord, Lord Shipley, who led the response to the amendment, that we are so lucky in this forum to have people with real knowledge of planning, local government and other matters. The noble Lord, Lord Shipley, took forward the then Localism Bill, and therefore knows it in detail, which is very good.

A noble Lord: Lord Stunell.

Baroness Cumberlege: I am sorry. I beg the Committee's pardon; it was the noble Lord, Lord Stunell. The noble Lord referred to me as a hard cop. I think that is the first time anyone has done that. He should talk to my three sons as they may agree but I think my husband would not.

I again thank the noble Baroness, Lady Andrews. I was very interested in what she said about sustainability and its definition. One of the issues I will come to a bit later is that of weasel words. It is very easy to put weasel words in legislation which sound nice but which people do not know the meaning of. On reading the *National Planning Policy Framework*, I was interested to see that the Minister involved with it at the time, Greg Clark, described sustainable development as being about,

"change for the better, and not only in our built environment".

That is nice. He also stated:

"Sustainable means ensuring that better lives for ourselves don't mean worse lives for future generations".

That is lovely. I agree with all that. Greg Clark added:

"So sustainable development is about positive growth—making economic, environmental and social progress for this and future generations".

We are beginning to get there but that is not really a definition. We use it in all forms of the services that the Government offer, such as the health service, education and so on. Therefore, it is a good idea to define it. My next amendment provides more detail on that.

As I say, I thank the noble Baroness, Lady Andrews, for her support. I agree with her that there is no ambivalence about the word "duty"; we know exactly what it means. Where we have a duty and there is no ambivalence, this enhances confidence among the people governed and, in this case, among those who have drawn up a neighbourhood plan.

It is interesting when we talk about local planning authorities that of course they differ hugely across the country. The noble Lord, Lord Greaves, is trying to instil that, probe that and find that. He also talked about the five-year supply of housing. I want to ask my noble friend the Minister a question on this. I remember the Written Statement produced on 12 December by his department referring to a "three-year supply" for housing. Where are we now on that? Was that policy? Is it something that should stick or are we back to the five years? That is important in drawing up neighbourhood plans.

The noble Lord, Lord Kennedy, spoke of finance. I am sure we will have a lot of talk about that. I think he must have been a barrister at one time as he put great pressure on our Minister. I thank him for saying that he felt the Minister should accept the amendment. When you come to these events, you have dreams and hope that the Minister might accept everything, but in your heart of hearts you know, especially here where we cannot vote, that we must negotiate. So I am not surprised by the resistance to this.

I thank my noble friend for the way he responded. It was very interesting when he talked about how sparingly the Secretary of State calls in planning applications when they have gone to appeal and so on. When that is done, it can have a devastating effect as the decision can undermine the whole neighbourhood

plan and leave it void. We have seen instances of that. I know it is not just the Secretary of State; it is the department and all the rest of it—and other Ministers. It is just that before these people in authority who govern us make these decisions, they really ought to do a bit more homework on the impact of the decision they are making. It can be absolutely devastating when a neighbourhood plan is rendered void.

I will haunt the Department for Communities and Local Government, which will be so fed up with Baroness Cumberlege: "Oh, she's not here again!". Fortunately, we all have busy diaries so it might not be so terrible. I will read *Hansard* and hold feet to the fire to be absolutely certain that the assurances given are kept. I am sure my noble friend has huge integrity and will live up to them. I thank noble Lords for their support and beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 1: Duty to have regard to post-examination neighbourhood development plan

Amendment 2

Moved by Lord Bourne of Aberystwyth

2: Clause 1, page 1, line 13, after "(2)(aza)" and insert "(but subject to subsections (3BB) and (3BC))"

Lord Bourne of Aberystwyth: My Lords, in speaking to this group, I will focus on important government Amendments 6 and 131, as well as discussing government Amendments 2, 3 and 4. There are some other amendments in the group which I will obviously respond to after those who tabled them make their contributions.

Amendments 6 and 131 put beyond doubt that neighbourhood planning groups which are well on their way to completing a neighbourhood plan will be aware of future planning applications in their area. These amendments also reaffirm the Government's commitment to ensure that neighbourhood plans are given proper consideration when planning applications are decided.

4.45 pm

The amendments stem from concerns expressed on this issue by noble Lords and by Members of the other place. Amendment 6 inserts new sub-paragraphs into paragraph 8 of Schedule 1 to the Town and Country Planning Act 1990 to require local planning authorities to notify neighbourhood planning groups automatically of any future planning applications or alterations to those applications in the relevant neighbourhood area after the neighbourhood plan has successfully passed independent examination. Amendment 131 will bring this measure into effect by amending the Bill's commencement clause, Clause 41.

Government Amendments 2, 3 and 4 are minor and technical amendments to Clause 1, which requires decision-makers to have regard to post-examination neighbourhood plans. The amendments clarify the definition of a "post-examination" neighbourhood plan to ensure that it applies to those plans which

progress through the new modification procedure set out in Clause 3 and that it continues to apply during the period between a decision being taken that a referendum is to be held on a plan and the plan becoming part of the development plan. I beg to move.

Baroness Cumberlege: My Lords, I also have amendments in this group. The first states:

“The Secretary of State must, by regulations made within one month of the coming into force of Part 1, define ‘modification’ for the purposes of this Act.”

The Whips’ Office decided to amalgamate this amendment with those of my noble friend the Minister because it is about definitions, as are some of his.

Legislation is very taxing—I suspect that we might feel a little older at the end of this Bill—but it is taxing because of the terminology. As a latecomer, I am only just learning planning speak and that is because of some of the weasel words—I referred to them earlier—that creep into it. It was Voltaire who urged, “If you wish to converse with me, define your terms”. I therefore ask my noble friend to define “modification”. Please can we have some examples? For instance, five houses in a hamlet on the wrong site could be devastating; five houses in a large town could easily be fitted in. So where is the line drawn on modification? What does that word mean?

My second amendment in this group, Amendment 8A, also concerns modification and depends a little on my noble friend’s answer to my Amendment 8. In Amendment 8A, I plead that every modification made need not be treated as significant or substantial, requiring a full-scale rewrite followed by a referendum—I hope that that will not be the case. Paragraph (b) states that any modification must allow scrutiny by the residents of the neighbourhood plan. Paragraph (c) states that only if the parish and town councillors deem it necessary and want confirmation again that what they are planning is acceptable to the local community should they have the opportunity to hold another referendum. I am therefore seeking to give authority back to parish and town councillors and ensure that they still have a locus when either the local authority or the examiner makes decisions which might negate the plan.

Baroness Parminter (LD): My Lords, my Amendment 64 is in this group. I think that is because part of it fits with the Government’s amendments, although mine in its entirety is somewhat broader about creating the conditions to encourage more local communities to prepare neighbourhood plans and to shape and build sustainable communities. I think everyone in the Committee can support that, whether we believe in the political ideology of taking decisions at the lowest possible level or, as the Minister rightly reminded us a few moments ago, because of the Secretary of State’s stated desire to build more homes, because we all know that neighbourhood plans deliver more homes.

Of course, this issue was raised in the Housing and Planning Bill, and the Bill before us is the Government’s response to it. I very much welcome Clause 1 and the government amendments that the Minister has just introduced, which are in part a response to the debate on this matter in the other place. But I contend that they still do not go far enough in giving neighbourhood

councils and parish councils that are drawing up neighbourhood development plans the reassurance that the time and effort they are putting in are worth while.

Clause 1 says that local authorities “must have regard” to neighbourhood development plans, but there are no sanctions. Furthermore, this applies only to post-examined plans, whereas case law says that draft plans should be taken into account. As I say, I welcome the government amendments made in response to the matter being raised in the House of Commons, which make it a requirement of local authorities to consult with neighbourhood planning bodies, but they are not clear about ensuring meaningful consultation; for example, by specifying how long it should take or, critically, what duty the local authority has to take any comments into account.

My amendment would make clear what the consultation with neighbourhood plans on a planning application would actually mean, as well as the duty placed on a local authority to take those views into account. If a local authority then ignores those views, the decision can be called in. That is a very limited right. It is a right not for individuals, but only for parish councils and neighbourhood forums whose neighbourhood plans have progressed to at least the point of formal submission to the local authority for examination.

To date 268 neighbourhood plans have been made, out of a potential 9,000. If we are going to secure more neighbourhood plans, the Bill has to strengthen the weight of communities’ views, expressed in neighbourhood plans, such that they should not be ignored by local planning authorities or the Planning Inspectorate. In the Housing and Planning Bill, the Minister kept saying that there had not been any examples of this. I am delighted to inform this Minister that after a bit of skimming on my part of some past applications, I found at least one in the space of one afternoon. In August 2014 South Oxfordshire District Council approved the planning application for the development of two new industrial units in Cotmore Wells Farm in Thame, despite the proposed development encompassing 50% more land for employment than had been allocated in the neighbourhood plan. But frankly, whether or not there have been cases is not the point. The point is that neighbourhood plans can be overridden if there is no sanction.

As my noble friend Lord Greaves and others have pointed out, we are asking volunteers to give their time and energy, over years, to pull these plans together. I welcome the commitment in the Bill to improve the level of resources at their disposal but some volunteers are working 20 or 30 hours a week, with extremely limited resources, particularly if they are not a parish council and do not have parish council resources and a parish council secretary to push the matter forward. Why should they do it if there is no redress when a planning application contrary to a neighbourhood plan is approved by a local authority—driving, as I have often said in this Room, a coach and horses through everything that has been agreed?

I ask the Minister: why do the Government feel that they should give a duty to local authorities to have regard to neighbourhood plans, as they have stated

[BARONESS PARMINTER]

quite explicitly in Clause 1, if there is absolutely no sanction if they do not? Do they really feel that that provides sufficient encouragement for more neighbourhood plans to be brought into being, which we all know we need and which will ensure that the houses we want to be built are built?

Lord Taylor of Goss Moor (LD): My Lords, I shall speak briefly in support of my noble friend's Amendment 64. As this is the first time I have spoken in Committee, I should declare my interests. Probably most relevant is that I am the president of the National Association of Local Councils, representing parish and town councils across the country. I have a number of interests around development, including my own consultancy. I am also a visiting professor of planning at Plymouth University and a visiting lecturer at Cambridge in the school of planning. So I have a range of interests in this area—some commercial, some unpaid. Perhaps even more significant is that I chair a neighbourhood plan process for Roche local council. That neighbourhood plan has now been examined successfully and we await a date for a referendum—yet another frustrating wait to get it addressed. That introduction is probably longer than anything I need to say.

I support the amendment, or at least its principles, because there is an issue where neighbourhoods have taken through a neighbourhood plan process and the local authority then approves something contrary to the wishes of that community. It does not happen with every application—it is only where the parish council itself opposes it. It then asks the Secretary of State to review it in a formal way. Of course, the Secretary of State has the power to intervene in any event, but it formalises a process. This is important for confidence.

I did not support Amendment 1. It did not recognise that there may be many reasons why a district authority might choose to support an application that is outside a neighbourhood plan. There may be wider strategic issues. The two processes of local plan-making and the evolution of the local planning authority's policies may not align with the neighbourhood plan process. The neighbourhood plan may be out of date for that particular application. It may not have anticipated a particular issue leading to a planning application. Most significantly, a neighbourhood plan is done in the context of that parish's needs, not in a wider strategic context, so neighbourhood plans do not always need to override these wider issues. This is not the point nor the understanding of neighbourhood planning where communities properly engage in the process. However, they have the right to expect that it is taken seriously. Sometimes there is a sense that the local planning authority does not take the neighbourhood plan seriously in the way that it should—when it suits it to do so, at least.

This formalisation of the process—the sense that there is someone that they can go to and have it looked at again—is a broad principle, although perhaps not quite the right mechanism, that the Government should be willing to accept. It would give some confidence to communities and answer those who feel that they are simply ignored and that there is nothing they can do.

Whether or not this is true, a sense of injustice can arise. Lord knows, I have done the process and it is an awful lot of effort to get a neighbourhood plan in place. There is a need for some sense that there is a proper system for review if a neighbourhood plan is not followed.

5 pm

Lord Horam (Con): My Lords, I will comment briefly on Amendment 64 in the name of the noble Baroness, Lady Parminter. We all understand and sympathise with her point about the time and effort put in by volunteers. In cases of which I am aware, it is very often a very small number of volunteers who really drive it. They find it difficult to pull in people from the wider community. They have to work very hard to get any real response. This is my problem with the wording of the noble Baroness's amendment. She talks about plans within an area,

"covered by a made or emerging neighbourhood development plan".

"Emerging" is the crucial word. She then defines an emerging neighbourhood development plan as one,

"that has been examined, is being examined, or is due to be examined, having met the public consultation requirements necessary to proceed to this stage".

In other words, it is very embryonic. We do not know what the final view may be.

To give an example, I know of a neighbourhood plan in the north-west of England where two or three people in the parish have got together some but not a lot of information about housing and development plans in their area—as much as they can find without much help. They then decided to hold a public meeting. They leafleted their entire parish and brought people together. Inevitably, although people said that they were interested and declared their concern, usually about the housing aspect, the people who turned up to the meeting were few in number, despite a large amount of effort. The people I am talking to became worried and said that they must broaden the consultation to community groups, which would take some time to get around to all the people they felt they should see. They thought they should make another effort at consultation, which might be attended by more people. They reckon that all this will take a year before they have a clear idea of what residents in their area want.

What is the amendment talking about? What stage of the planning and gathering of information is the noble Baroness talking about? It sounded to me as if it was early in the stage. What worries me about that is we do not necessarily know whether the initial ideas will be the same as the final ideas that come out of that prolonged process. Will she explain that to me?

Baroness Parminter: If I answer that question, perhaps the noble Lord might say, if I were to change my amendment to "post-examined", whether he would be prepared to accept it. There is a debate about what is the appropriate time to give due weight to the emerging plans. The Government have moved back. We obviously have a different Minister now, but during the consideration of the Housing and Planning Bill the Government were not talking about post-examined plans. They realised that we need to add protection from an earlier point in the process.

Lord Taylor of Goss Moor: It may be helpful to explain the point in time that the noble Baroness has proposed. At the point when you are awaiting examination, the process has already gone through all the community consultation stages. A final draft neighbourhood plan has been written. It has gone through the approval process with the local planning authority, which has to check that it conforms to the local plan and the National Planning Policy Framework. Any necessary amendment would have been made at that stage and it would also have gone through all the statutory consultees to then be submitted for examination. It then awaits examination prior to an examiner being appointed. At that point, all the processes have been completed. The only issue, and the only thing the examiner tests, is whether it complies with the national planning policy and the local plan.

Lord Horam: The noble Lord knows far more about these planning details than I do—I concede that. Speaking as a lay man, the amendment's language does not seem to convey what he said. It conveys something much earlier in the process than what the noble Baroness said. I am to some extent relieved but, none the less, if the language can be interpreted in different ways—I am neither a lawyer nor a planning expert—it would, frankly, worry me. I am therefore concerned about this amendment, although I understand the sensible motivation by which it is put forward.

Baroness Finn (Con): My Lords, I spoke strongly in favour of neighbourhood plans at Second Reading. It is great that there are so many champions of neighbourhood planning in all parts of the Committee. The plans embody the spirit of localism by allowing local communities to have control over their new developments and where they take place. While I therefore totally commend the spirit of the amendment tabled by the noble Baroness, Lady Parminter, I do not support its substance for the simple reason that I do not think it is necessary.

The Government have already acted to address substantively the concerns that the amendment seeks to address. I would argue that the measures in the Neighbourhood Planning Bill, together with previous reforms introduced in the Housing and Planning Act 2016, deliver much of what the amendment seeks to achieve. Clause 1 places a clear requirement on planning decision-makers to have regard to neighbourhood plans that are post-examination. That is clearly the right place and time to look at these as that is when plans will be sufficiently advanced. While decision-makers can take pre-examination neighbourhood plans into account, insisting that they should have similar regard to plans that might not yet take account of all material factors such as planning for necessary local growth and so on does not seem an entirely sensible way forward.

Again, the *National Planning Policy Framework* already clearly says:

“Where a planning application conflicts with a neighbourhood plan ... planning permission should not normally be granted”. The Written Statement in December further made clear that,

“where communities plan for housing in their area in a neighbourhood plan, those plans should not be deemed to be out-of-date unless there is a significant lack of land supply”.

That is under three years. This gives a degree of protection not previously available. I also welcome all the government amendments that require local planning authorities to notify automatically neighbourhood planning groups of future planning applications in their area. At present, they have a right only to request information but are not necessarily told. This amendment would greatly improve what is there.

Briefly, I will also address the proposal in the amendment to consult the Secretary of State if the local authority intends to grant planning permission that goes against an agreed neighbourhood plan. I would also argue that this is unnecessary. I understand the concern of the noble Baroness about the calling in but any neighbourhood planning group can currently request the Secretary of State to consider calling in a planning application to determine the outcome.

Baroness Parminter: My understanding is that they cannot do that unless it is a major application. Of course, in rural areas the majority of applications are not major ones because they are for fewer than 10 houses. That puts rural areas at a significant disadvantage because they cannot undertake that.

Baroness Finn: I concede ignorance but my understanding is that a number of planning applications have been called in. Perhaps that can be clarified. Basically, there has been significant movement on this and taken together all the current measures give sufficient protection to neighbourhood plans. The amendment proposed is simply not required.

Lord Greaves: I have a question for the Minister about Amendment 6, which he spoke to some time ago, while I also support my noble friend with her more ambitious amendment. Amendment 6 would amend paragraph 8 of Schedule 1 to the Town and Country Planning Act, and is about notifying parish councils and so on of planning applications. The inclusion of neighbourhood forums here is extremely welcome, giving them the right to have this. However, parish and town councils already have this right. Reading the amendment, I cannot quite understand what would be different in practice for parish councils from the rights they already have to be told about planning applications when they come in and to have their views on them taken into account—in other words, to be consulted. What is the difference? Why is all this extra wording needed for parish councils over and above what is there already?

Lord Shipley: My Lords, I found this a very helpful debate and conclude that if not now at some point soon the Minister will have to define words. The noble Baroness, Lady Cumberlege, drew our attention to an important issue around the definition of the word “modification”. When I read the Bill for the first time, I assumed that it would be really very minor in practice. However, it may not be and I am not sure that we can wait until a month after the coming into force of Part 1 for that word to be defined. It is material to what is in the Bill.

Clause 3(2) states:

“After subsection (4) insert ... A local planning authority may at any time by order modify a neighbourhood development

[LORD SHIPLEY]

order they have made if they consider that the modification does not materially affect any planning permission granted by the order”.

The word “materially” starts to become very important. What is the difference between affecting and materially affecting a planning permission? We need to get this sorted out so that we understand it, otherwise we will end up with a modification which I thought was minor actually having the potential to be much more substantial, as the noble Baroness, Lady Cumberlege, pointed out. In addition, I should like to be clearer about what a material effect would be on a planning permission granted by the order. I want to understand that before we reach the Report stage. However, the debate as a whole has been extremely useful.

Lord Beecham: My Lords, I declared my interest earlier as a vice-president of the Local Government Association, as I suspect are half of the Members present in this Committee, and as a member of Newcastle City Council, where 20 years ago I was for a couple of years the chairman of the planning committee. But I have to say that I defer absolutely to the noble Lord, Lord Taylor of Goss Moor, whose expertise is much more current than mine and, I would guess, more profound as well.

I want to raise just a couple of points. The noble Lord, Lord Greaves, referred to the provisions set out in Amendment 6 amending Schedule 1 to the Town and Country Planning Act 1990 by inserting new sub-paragraph (1B). I have a slightly different point to make. The provision states:

“The local planning authority must notify the neighbourhood forum of”,

a variety of matters. What I do not know is the extent to which a neighbourhood forum is under an obligation to notify residents about these matters. In an ordinary planning application, the usual practice is for the planning authority to notify the residents in an area within a reasonable range of a projected application of its existence. The assumption here seems to be that the neighbourhood forum itself constitutes the community for these purposes. While it may have a representative role, that does not imply that every resident will get to know of matters which would have been raised by the local authority with the neighbourhood forum. Perhaps, if not today then later, the noble Lord could indicate whether I am right in my assumption that the provisions of this new clause are meant simply to notify the neighbourhood forum and whether there is any further obligation on the neighbourhood forum or anyone else to notify residents and other people with an interest.

I turn briefly to the point made by the noble Baroness, Lady Parminster, about the remedy if things do not go well. Given that there is a statutory responsibility here if it is not carried out, I would have thought that the remedy is that of judicial review. That is not an inexpensive process, I am afraid, but I suspect that if there has been an omission in complying with the requirements of the legislation, it is the remedy available to those who have a grievance. Again, possibly after taking advice from those behind him, I hope that the noble Lord will clarify the position.

5.15 pm

Lord Kennedy of Southwark: My Lords, as we have heard, government Amendments 2, 3 and 4 are additions to Clause 1. The Minister said that they were in response to points raised in the other place and elsewhere. They may be technical but they are certainly not minor. They are actually bigger than the clause they seek to amend.

Government Amendment 6 deals with the procedures for notifying parish councils and neighbourhood planning forums of a planning application or permission in principle if there is a neighbourhood development plan that falls within part or all of an authority’s area. That is very important. The noble Lord, Lord Greaves, raised an important point regarding the rights of parish councils. He is absolutely right that they have these rights anyway. It will be interesting to see what difference the amendment makes, or whether it is just tidying up to bring in the neighbourhood forums. My noble friend Lord Beecham just raised the whole issue of neighbourhood forums and the obligations they may or may not have to notify local residents. I look forward to the Minister’s response to those points.

Amendment 8, in the name of the noble Baroness, Lady Cumberlege, seeks—I think, importantly—to require a clear definition of modification as it will apply to the Act. We all know, certainly in respect of planning, that being very clear about what you are doing is very important. There is a whole clause—Clause 3—which refers to the modification of a neighbourhood development order or plan. It is very important that we get this absolutely right. The Minister may tell us that the amendment is totally unnecessary. I hope that if he does do that, he will set out clearly for the record what is in the mind of the Government when they are talking about modification, or maybe that is something that will come in guidance. I look forward to the Minister’s response. The noble Lord, Lord Shipley, raised a similar point. As I said, this needs sorting.

Amendment 8A, again in the name of the noble Baroness, Lady Cumberlege, seeks to give greater authority back to local and parish councils, which is very welcome. I support Amendment 64, in the name of the noble Baroness, Lady Parminster. As we have heard, it sets out the responsibilities of the planning authority in relation to the things it must do.

I should be clear: I certainly want to build more houses. I am looking forward to the White Paper and hope that we will get some more council houses as well. But what we must do, when building more houses, is ensure that they are of good quality, they are well designed, they deliver sustainability, they are carbon-neutral, and they are homes for modern living, rather than badly designed homes on the cheap, which, as we know, we have suffered before up and down the country. We must never go back to that. I look forward to the Minister’s response. I might have one or two questions for him when he responds.

Lord Bourne of Aberystwyth: My Lords, first, I will deal—in no particular order—with some of the points that were raised in relation to the government amendments. In relation to a point raised by the noble Lord, Lord Greaves, about Amendment 6, previously it has been open to neighbourhood forums and neighbourhood

groups to ask for notification of planning applications. Amendment 6 makes it automatic. That is the difference: it will happen automatically; there is no need to ask. The concern has been that previously some things may have slipped through the net so that is the reason for that.

Lord Greaves: In relation to parishes, as opposed to forums, this is just a lot more words but it is no different from the present system.

Lord Bourne of Aberystwyth: It will be automatic notification. That is the key point.

Lord Kennedy of Southwark: I think the point that the noble Lord, Lord Greaves, made was that it is already automatic for parish councils.

Lord Bourne of Aberystwyth: Yes, but not for neighbourhood forums, I think. It does not make any difference to parish councils but for neighbourhood forums it becomes automatic.

In relation to a point made by the noble Lord, Lord Shipley, about modification and the impact of that, as set out in Clause 3(2), it is not a particularly strange sort of provision to say,

“does not materially affect any planning permission granted by the order”.

The important point is that this will mean that anything other than something minor will materially affect planning permission. I am happy to put that on the record if that is helpful but that is the important point there. Obviously that would be justiciable. If it is immaterial, it would not fall within that subsection.

On the matter raised by the noble Lord, Lord Beecham, the requirement for a neighbourhood planning forum to notify residents is covered under existing secondary legislation and development orders. I will get him chapter and verse of the particular provision and circulate it to noble Lords who participated in the debate. It is covered under existing legislation.

I turn to the three non-government amendments in the group, Amendments 8, 8A and 64. I shall deal first with Amendments 8 and 8A in the name of my noble friend Lady Cumberlege. I thank her for her helpful comments. On Amendment 8, the Government believe that a more proportionate way to modify neighbourhood plans is needed to incentivise communities to keep their plans up to date—this deals with some of the points I have just touched on, raised by the noble Lord, Lord Shipley. Clause 3 will achieve this by introducing two new modification procedures. The first allows a local planning authority, with the consent of the neighbourhood planning group, to make minor modifications to a neighbourhood plan or neighbourhood development order at any time, in the same way that errors can currently be corrected. These might, for example, amend the wording of supporting text to clarify the application of an existing policy, which previously would have entailed a referendum.

The second streamlined procedure could not apply where the proposed modifications to a neighbourhood plan were so significant or substantial as to change the nature of the plan the community has voted on. I understand the desire to provide clarity and reduce opportunities for ambiguity and litigation. However,

the amendment could unintentionally have the opposite effect. Whether a modification is considered under the new procedure will depend on the context of the overall plan. A modification that is significant or substantial in the context of one neighbourhood plan may not be in another.

I offer an example to assist noble Lords. The addition of sites to accommodate 50 new homes may not change the nature of a plan addressing the needs of an extensive urban area, but for a small rural village this same modification of a plan could have a much more significant and substantial effect on the plan and the local community. I welcome further discussion on any of these points and I am happy to meet with the noble Baroness and any noble Lord who would like more information on these matters, but I respectfully ask the noble Baroness not to press her amendment.

Amendment 8A, proposed by my noble friend Lady Cumberlege, concerns the more detailed procedure for modifying a neighbourhood plan that is already in force. Currently, any modifications to a neighbourhood plan or a neighbourhood development order beyond the correction of an error must go through the same process of producing a new plan, irrespective of the significance and scale of the modifications proposed. I reassure noble Lords that the procedure to which the amendment relates applies only where the proposed modification of a plan is minor. Any proposed modification cannot materially affect any policies in the neighbourhood plan or the planning permission granted by a neighbourhood development order. A local planning authority will need to have the consent of the relevant neighbourhood planning group to make such a modification. The local planning authority would also be required by Regulation 16 of the Neighbourhood Planning (General) Regulations 2012 to publicise any such modification on its website and in any other way it believes would make the local public aware of the proposal.

This is an important change as it will allow groups to, for example, amend the wording of supporting text to clarify the application of an existing policy, without the requirement to go through the same process used to produce a new plan. I hope this reassurance will convince my noble friend not to press the amendment.

On Amendment 64, I thank the noble Baroness, Lady Parminter, for her partial welcome of what we are doing with our new proposals. I thank her for raising the importance of community voices being heard in decisions about planning in their area. I also respect the points made by the noble Lord, Lord Taylor of Goss Moor. He is not in his place at present but I know he understands these issues thoroughly.

Clauses 1 and 2, which have been welcomed by the noble Baroness, together with provisions in the Housing and Planning Act 2016, the recent Written Ministerial Statement of 12 December 2016 on neighbourhood planning and the government amendments that were tabled last week address the concerns she has raised, thus, I believe, making her amendment unnecessary. First, perhaps I may confirm that it is a three-year housing supply that is needed, which was a point raised by my noble friend Lady Cumberlege.

[LORD BOURNE OF ABERYSTWYTH]

This amendment may inadvertently send a message that those elected locally to take decisions cannot be trusted to do so without the matter being referred to central government. That is the wrong message. However, I recognise the expertise and the intention of the noble Baroness and others who have spoken in support of her proposal. I am very happy to meet the noble Baroness between our Committee deliberations and Report, and indeed any noble Lord who would like more information on these matters. However, I ask her in the meantime not to press the amendment.

Lord Kennedy of Southwark: In respect of the amendments moved by the noble Baroness, Lady Cumberlege, does the Minister expect the department to issue any further guidance at some point on modifications and how minor they may be? I am conscious that government departments might say, “This is a minor modification”. I recently put down a Parliamentary Question to ask a number of government departments about reviews that are announced in Parliament from the Dispatch Box, and I have been told by a number of them that there is no definition of a review. I know that it is a bit odd, but if there is definitely going to be a review, when a Minister stands before us saying whether a modification is minor or not, what status does that have? Would he consider producing further guidance to help residents, neighbourhood planners and parish councillors to understand all of this?

Lord Bourne of Aberystwyth: My Lords, as I have indicated, the intention here is to ensure that we have flexibility because neighbourhood plans may vary in their circumstances, size and so on. There is a massive body of law that defines the word “minor” and judges will be able to put it in context. I have given an example of why we believe that we are answering the need for flexibility in the legislation and I think that the Government have got it right in this regard. However, if the noble Lord has any particular points that he wishes to raise subsequently in writing, I will be happy to look at them.

Baroness Cumberlege: My Lords, I welcome very much government Amendment 3 because we are having to use the Freedom of Information Act to get some of this information, but now it is a requirement and I really do welcome that.

While we are looking at modifications, be they minor or substantial, my noble friend cited the case of 50 houses in a rural area. If planning permission is granted for 50 houses that are outside the planning area and that would increase the number of houses being promoted in the neighbourhood plan, currently standing at 100, so now another 50 are added, which is a substantial increase, would that mean that the neighbourhood planners would have to go back to square one and start again because that would be a major modification, not just a minor one?

Lord Bourne of Aberystwyth: My Lords, I have to be very careful when responding to that question because as I have clearly indicated, there is an issue that is sub judice and therefore I cannot comment on

that particular case for obvious reasons. I have said in broad terms that 50 houses may occasionally be minor and occasionally major, depending on the circumstances of the case, but obviously there is also an issue around the interpretation of the relevant neighbourhood plan, which has to be seen in that context. I think that I have given a fair example and although I do not sit as a judge, I try to give particularly bold examples of what would be a minor provision in an urban area but may not be so in a smaller village situation.

Baroness Cumberlege: My Lords, I thank my noble friend for that. What happens if there is a change through, say, the examiner or some other process? For example, where a community has agreed to 100 houses and they have booked the sites and everything else, yet the examiner comes in and says, “No, it’s a minimum of 100 houses”, is that a major modification?

5.30 pm

Lord Bourne of Aberystwyth: With respect, I have already given an indication as a lay man in this context as to how this would play out. I have a legal background, but I am not an expert in planning law. I do not think I can be asked, “Is this minor or major?”, about a succession of situations. I would be giving what is essentially a lay view in planning law terms. All I have sought to do in setting this out—I hope helpfully—is to say that sometimes something would fairly obviously be major in the context of one neighbourhood plan, but very minor in another. Contrast, for example, a situation of high-density population in an urban area with a small rural village a long way from the nearest town. I hope this indicates the intention here.

Lord Kennedy of Southwark: The noble Lord has been very helpful. The noble Baroness’s question has highlighted that some situations can be very difficult. What somebody thinks is minor somebody else can think is major. Equally, there could be a situation where development could be in an urban area and it could be only 50 houses, but people could think that was an issue as well. I do not think the noble Lord can go much further, but this exchange has highlighted how difficult this can actually be.

Lord Bourne of Aberystwyth: My Lords, I do not agree entirely. I accept the point that it is not always easy at the margins, though I think it is far easier in extreme cases. We do not have all the facts of a particular community that is being referred to in front of us. So, in the abstract, it is much more difficult than it would be with some concrete examples from a particular community.

Amendment 2 agreed.

Amendments 3 and 4

Moved by Lord Bourne of Aberystwyth

3: Clause 1, page 1, line 22, at end insert —

“(c) an examiner has recommended under paragraph 13(2)(a) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (examination of modified plan) that a local planning authority should make the draft plan, or

(d) an examiner has recommended under paragraph 13(2)(b) of that Schedule that a local planning authority should make the draft plan with modifications.

(3BA) In the application of subsection (2)(aza) in relation to a post-examination draft neighbourhood development plan within subsection (3B)(d), the local planning authority must take the plan into account as it would be if modified in accordance with the recommendations.”

4: Clause 1, page 1, line 22, at end insert—

“(3BB) A draft neighbourhood development plan within subsection (3B)(a) or (b) ceases to be a post-examination draft neighbourhood development plan for the purposes of subsection (2)(aza) if—

(a) section 38A(4)(a)(duty to make plan) or (6)(cases in which duty does not apply) of the Planning and Compulsory Purchase Act 2004 applies in relation to the plan,

(b) section 38A(5)(power to make plan) of that Act applies in relation to the plan and the plan is made by the local planning authority,

(c) section 38A(5) of that Act applies in relation to the plan and the local planning authority decide not to make the plan,

(d) a single referendum is held on the plan and half or fewer of those voting in the referendum vote in favour of the plan, or

(e) two referendums are held on the plan and half or fewer of those voting in each of the referendums vote in favour of the plan.

(3BC) A draft neighbourhood development plan within subsection (3B)(c) or (d) ceases to be a post-examination draft neighbourhood development plan for the purposes of subsection (2)(aza) if—

(a) the local planning authority make the draft plan (with or without modifications), or

(b) the local planning authority decide not to make the draft plan.”

Amendments 3 and 4 agreed.

Amendment 5

Moved by Lord Stunell

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

“() In section 79 of that Act (determination of appeals), after subsection (1) insert—

“(1ZA) In determining an appeal on a planning decision under section 76E (applications under section 62A: determination by Secretary of State), 77 (reference of applications to Secretary of State) or 78 (right to appeal against planning decisions and failure to take such decisions), the Secretary of State must, in reaching his determination, give particular weight to any proposals contained in a neighbourhood development plan or a post-examination plan which includes all or any part of the application site.””

Lord Stunell: My Lords, I start by apologising to the noble Baroness, Lady Cumberlege, for suggesting that she was a hard cop. The apology is made slightly less sincere because she finished her remarks by saying she intended to hold the feet of the Minister to the fire. If that is the sign of a soft cop, I would not want to meet a hard cop.

My point was more that the new clause proposed by the noble Baroness was draconian in its requirements on the Secretary of State. Mine is much more of a light touch. This may be because I am indeed soft,

having been a Minister in the department myself. As I said to the House at Second Reading, Bob Neill and I were the two Ministers in the House of Commons who steered the Localism Bill on to the statute book and through Committee there. I remember seeing the first version, which was named very imaginatively by the civil service draftsman as the local government (no 2) Bill. We now know it much more accurately as the Localism Act.

In respect of planning, the then Bill was born out of a realisation, which did not require a great deal of research to establish, that practically nobody in the general public and very few councillors ever participate in the drawing up of what used to be a unitary development plan or a local planning authority's local plan. The level of engagement is very low. Consequently, when proposals come forward for development, it goes into a three-stage process: stage one, the developer proposes; stage two, the community opposes; and stage three, the planner imposes. This confrontational model is very destructive of public trust in the whole process. It builds in delay; it makes the whole process far from frictionless and very difficult indeed. The whole starting point of the neighbourhood planning proposition in the Act is to turn that round and put the community in charge of what goes on so that you have positive, community-based planning and not negative, developer-imposed outcomes.

At the time that the legislation was drawn up, the major concerns—echoed in some of the things said today—were that local planning authorities and local councillors would be hostile to the loss of some of their power and influence in the system, and that they would seek to frustrate or prevaricate when neighbourhood plans were developed. A lot of the provisions of the Localism Act relate to that. Several mentions have been made of external examiners. There was a strong lobby from local government planners that they should be the people who examined neighbourhood plans. Ministers were sceptical about that, believing it would be a powerful lever which malign influences in a district council planning authority could use to completely negate what a neighbourhood plan should be.

Of course, there were fierce criticisms of the whole proposal, principally—I heard this a lot—that it would be simply a nimby's charter which would frustrate all development. I am absolutely delighted that the statistics show that in fact the neighbourhood plan areas designate more housing in more appropriate places than the local plans in the relevant areas set out. The Housing and Planning Act strengthened and protected the neighbourhood planning process, building on the experience learned from the first few. This Bill does more, which is welcome, to make sure that at the local democratic level neighbourhood plans get a fair wind and are supported. I approve of all that. It is the way to go.

As I said at Second Reading, that in turn reveals something else happening. I am indebted to my colleagues at the Local Government Association—I do not have to declare an interest as a vice-president—who were kind enough to send me a link to the *Sussex Express* of 30 November last year, the headline of which is: “Councillors resign in protest against overturned planning decision”.

[LORD STUNELL]

This is a reference to a decision of the Secretary of State where, according to the report, he approved a case in relation to 50 five-bedroom houses over the heads of the neighbourhood plan and Lewes District Council, which is the local planning authority. It is hard to judge from the newspaper report whether there were exceptional circumstances, but one thing we can say is that that decision in itself makes no strategic impact at all on the delivery of 1 million homes by 2020, which is the Government's strategic objective for housing growth. However, we can say that it will have a deep strategic impact on neighbourhood plans.

In seven years we have gone from a position where Ministers in the department were doing all they could to defend neighbourhood plans from the predations of what were seen to be hungry local authorities reluctant to give up any power or influence to a situation where the Secretary of State is stepping in. We now find local planning authorities, in this case Lewes District Council, trying to prevent the Secretary of State from sabotaging neighbourhood plans. The problem here is that it is not just an individual plan that is affected. I do not particularly expect the Minister to be briefed on that case or even willing to talk about it. However, there is the risk—beyond the risk, the certainty—that cases such as this will undermine the whole concept of neighbourhood plans.

What is the point of working for two and a half years on a plan, getting it examined and signed off, if what then happens is that inspectors treat it as being of no account and the Secretary of State dismisses it out of hand? So I ask the Minister to come back to us or perhaps write to us and list the number of cases where the Secretary of State has issued a decision which overruled a neighbourhood plan. How many are there? If there is one, that is too many. If there are 10, it is a disaster. If there are 70, we might as well tear the whole thing up because the word will go round and nobody will trust the process and we shall go back to the confrontational model of proposes, opposes, imposes, which is exactly what the whole thing is designed to avoid.

What would Amendment 5 do? This is where I am the soft cop. Compared with the amendment in the name of the noble Baroness, Lady Cumberlege, it is very mild in its imposition on the Secretary of State. It says that when something comes in front of the Secretary of State, he or she shall have particular regard to neighbourhood plans which cover any part of the site being considered. That ought to be a wake-up call for the Secretary of State but it should and will be a wake-up call for the people I described at Second Reading as the rogue inspectors. The fact is that there is a planning establishment which just does not believe or trust in local communities taking decisions—these can properly be taken only by people who have university degrees in planning and 25 years' practical experience of delivering it in local authorities. That arrogant approach is putting at risk a way of handling planning which will answer a problem that has been with us since 1947: the complete lack of trust that the

normal person in the street and the average community has in the way that the planning process is supposed to work.

I very much hope that, given that I have come here wearing my velvet glove and that I have put on the table an amendment which is very modest and minor in its imposition on the Secretary of State, the Minister will take it as a very clear signal that unless he addresses this problem explicitly in the legislation that we are dealing with, the whole project will unravel and the whole strategic direction of the previous Government—and, as I understand it, of this Government—to turn planning into something that works with and is done by communities will be thrown away in a professionalisation of decision-making, which we have surely grown out of. I beg to move.

Baroness Cumberlege: My Lords, as has been referred to, my Amendment 20 is in this group. If we are serious about local people planning their local communities and making neighbourhood plans, we have to make it really plain in the Bill that we uphold the Localism Act. Where planning inspectors or the Secretary of State overrule a neighbourhood plan, we witness utter desolation among decent and honest people, who are often the leaders in their local community. In my area, six out of 10 parish councillors resigned as a result. I am concerned, as is the Local Government Association—I declare an interest in that I am not a vice-president of it and never have been, although I have great respect for the association—that the Bill would give the Secretary of State more powers to intervene in the local plan-making and plan-revision process.

We should have a much more conciliatory way forward. I am seeking a sector-led approach that would resolve the blockages. Such an approach would be much more beneficial in the longer term than the imposition of a plan. Having the Secretary of State or inspectors making decisions does the reverse. If we believe in localism, we should support the people making such neighbourhood plans. I fear that very often we do not and I do not think that the Bill is strong enough in ensuring it.

5.45 pm

Baroness Pinnock (LD): My Lords, I declare my interest as a vice-president of the Local Government Association and a councillor in the borough of Kirklees. I added my name to the amendment tabled by the noble Baroness, Lady Cumberlege, because I thought that the iron fist might be more effective in this regard than my noble friend's velvet glove. Those of us suffering as a result of appeals to the Planning Inspectorate and the Secretary of State have become as angry as the noble Baroness has with the situation that her village has faced.

The amendment highlights that the power of local people to determine the impact of planning on their area is constantly undermined, despite the Government's commitment to localism and neighbourhood planning. Many of the parameters surrounding new development are set by government: planning legislation and the National Planning Policy Framework. All that is already in hand, and it is within that context that the local

planning authority makes and determines through consultation decisions about its local plan.

It is interesting to remember how a local plan begins. It begins not with local people making decisions through their neighbourhood plan but with a call for sites, which means developers indicating which sites they would like to use and local landowners wanting to see the value of their land enhanced by putting it forward for development. I have no problem with either of those things; the problem I have is that they are the starting point. The whole purpose of the Bill seems to be to reverse that process and have neighbourhood plans as the foundation of a local plan. It puts local people in charge rather than developers and landowners.

When local councils come to determine the local plan, it includes not only land allocation but planning policies. In that is the formal consultation, which takes place several times, and then it is finally agreed. You would think that then, if the Government were sincere in their approach to localism, that would be the end of it: a huge document is produced which includes hundreds of detailed policies about what can be developed and where, and detailed maps of where land is allocated for business use, for housing, for flood prevention or whatever—and that would be it. After many years of consultation and consideration, one would think there would finally be an agreement, but no, that is not the end of it. Local people do not have a final say. There is then the examination by a planning inspector to test the development; for instance, on grounds of soundness. At that stage the developers have another go. Their site has been rejected so they bring it forward again. They obviously have a great advantage at that stage as they have expensive barristers at their side whereas local people just make their voices heard. Having gone through the earlier process, residents have a right to expect that their case should not be challenged any more.

Then we come to the question of appeals. Two points have already come up in our discussions today. The Minister said that a three-year housing supply is now the basis on which appeals can be made in regard to a lack of housing in a local plan. I seek clarification on whether that occurs only in relation to a neighbourhood plan or would cover the whole area of a local plan. That is very important, certainly in my district, where a number of appeals are going forward to enable developers to build on urban green space—the equivalent of greenbelt within an urban area—on the basis only of an alleged lack of a five-year supply, and despite the fact that a local plan has been agreed by the council and is awaiting examination. I hope that the Minister will clarify that critical issue because, as others have said, developers see a loophole enabling them to put forward plans on land that has in this case been set aside as urban green space for 40 years, and will continue to be so set aside in the next local plan, following its examination. However, a developer can put forward a planning application for that land and it is going to appeal—we await the result of that—on the basis only of this five-year supply issue. That is obviously due to the length of time that a local plan takes to go through the examination process.

As has been described, residents then feel thoroughly disenchanted with the whole process. Local residents who have been consulted through a local district plan, a neighbourhood forum or a neighbourhood plan have a right to expect that, having gone through all that and having made the compromises which inevitably and rightly take place so that development can occur, they should have their wishes upheld and not be undermined by what I regard as spurious claims by developers to override fundamental policies that have been agreed and contained in a local plan. That is why I support wholeheartedly the amendment of the noble Baroness, Lady Cumberlege, and I hope that the Minister will be able to clarify the situation as regards a three-year or five-year land supply.

Lord Porter of Spalding (Con): My Lords, I hope your Lordships will forgive me but I have not spoken in this Room before. It is my first time and if what I say is right, it is right, but if it is wrong, it is wrong. I declare my interests as the chairman of the Local Government Association until June—I hope—and as leader of South Holland District Council. In terms of what we are dealing with today, I am one of the four people who drafted the National Planning Policy Framework, so I know a little bit about what is in it and I certainly know what the intention was. It was to deliver sustainable development in places in the country where it is needed in a way that the people living in the local area could accept, to ensure that we get the homes we badly need in the most timely fashion.

I have to disagree with the noble Lord, Lord Stunell, that neighbourhood plans were not seen by all of us as the route for making that happen. I personally objected to putting neighbourhood plans in, but that was not because I did not want development, it was because I wanted to see more development and I thought that neighbourhood plans would be a route to slowing it down. But the Government pursued them, so it is incredibly bizarre that if a neighbourhood plan or a local plan has been drawn up in compliance with the NPPF, the Planning Inspectorate is allowed—and some would say sometimes encouraged—to overturn it. The inspectorate should not be able to do that.

There are people outside this Room who think that the Planning Inspectorate has gone feral. It is not working to direction from the Government because it has individual planning inspectors working to their own direction for their own aims. It is important that the Government should insist on the supremacy of the public's ownership of the planning system. If someone has gone through the pain of making a neighbourhood plan, even though I disagree with such plans in principle, if that is what the Government are intent on using as a way of encouraging development at the local level, once those plans have been tested in public by an inspector and are found to be sound and in compliance with the local plan, if one is in place, or at the very least in compliance with the NPPF, the Planning Inspectorate should never be allowed to overturn one of those decisions except on pain of some form of proper cross-examination by the Government.

We all know that even though the Secretary of State has signed off a planning appeal, it is very rare for the Secretary of State to be personally blamed for that

[LORD PORTER OF SPALDING]

appeal, because generally it does not get anywhere near them. If a neighbourhood plan or a local plan is in place and the inspectorate feels that for good strategic reasons it has to overturn it, there should be some insistence that the Secretary of State should actually take personal ownership of it so that people can be sure that there is political oversight of the bureaucrats working in the planning department. On that basis, I support the amendment in the name of my noble friend Lady Cumberlege.

Lord Kennedy of Southwark: My Lords, the amendment proposed by the noble Lord, Lord Stunell, is one that I am obviously happy to support. As we have heard, the purpose of the amendment is to place in the Bill a requirement, when the Secretary of State has determined an appeal against a decision, that due weight has to be given by the Secretary of State to any proposals set out in the neighbourhood development plan or a post-examination plan. The noble Lord, Lord Stunell, said that his amendment is much softer and he hopes to get a more positive response from the noble Lord, Lord Bourne, when he comes to reply. The noble Lord also highlighted the issue where people have worked hard to put together a neighbourhood plan only to have it overridden by the Secretary of State, which is very much the point just made by the noble Lord, Lord Porter, as well.

Amendment 20 in the name of the noble Baroness, Lady Cumberlege, seeks to give further strength to local development plans. If an application for planning permission is made to the local authority but is refused on the grounds that it is not in accordance with the local development plan, the assumption is that the Secretary of State will uphold that decision. It seems perverse that the Secretary of State would seek to overturn a decision which, as we have heard, is in line with the NPPF, so it is important that that point is made clear by the Minister. I hope that he will also respond to the points made by the noble Baroness in respect of localism.

I will leave my remarks at that but I may have one or two questions for the Minister when he comes to respond to the debate.

6 pm

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on the amendments in this group. Before I respond to the specific amendments from the noble Lord, Lord Stunell, the noble Baroness, Lady Parminter, and my noble friend Lady Cumberlege, I shall make some introductory remarks that I hope will set out the context.

It is right that unsuccessful applicants can seek to have their planning application reviewed through an impartial planning appeal process. This is a strong belief of the Government, as it has been of successive Governments. I want to get that on the record. This recognises the control the planning system places on the use of land. This should be an option even when the proposed development is not in accordance with the development plan. A planning appeal should be lodged only if issues cannot be resolved with the

local planning authority and if an applicant considers, in the light of the facts, that planning permission should have been granted.

Turning to Amendment 5, tabled by the noble Lord, Lord Stunell, and the noble Baroness, Lady Parminter, I thank them for the opportunity to discuss this matter. In this case, when considering an appeal that relates to a neighbourhood plan, the Secretary of State must know the importance of that neighbourhood plan. The law is very clear that decisions on planning applications must be made in accordance with the development plan, unless material considerations indicate otherwise. Reference has already been made to the number of call-ins that have been made by the Secretary of State for the last year for which figures are available—75 out of 16,500. This idea of a super-bureaucratic system running riot with call-ins is overstated and wildly hyperbolic.

Lord Stunell: Is the Minister in a position to say how many of those 75 came from neighbourhood plan areas?

Lord Bourne of Aberystwyth: I thank the noble Lord for that intervention. I do not have those facts in front of me but I shall endeavour to see if we can provide that information in the letter that I have promised to noble Lords. If the information is there, I will gladly supply it.

We should also be clear that the rules on call-ins were made in 2008, ran throughout the last Government and into this Government. The suggestion that this is somehow something new is wrong. I am also happy to circulate the parliamentary Statement that contained those rules to Peers who have participated. I accept that the amendment tabled by my noble friend Lady Cumberlege and the noble Baroness, Lady Pinnock, acknowledges that there are issues of national significance. We can all think of examples of compliance with climate change policies, world heritage sites, green belt and so on. So I would have to take issue with the idea that a call-in is never appropriate, which I think one or two noble Lords got close to saying. When we look at planning, there is always room for and, indeed, an importance to a national dimension. This is what we are seeking to preserve.

I was asked once again about the neighbourhood planning Written Statement. I will also circulate this so that noble Lords have it in relation to the three-year supply of deliverable housing sites. This Written Statement, in the name of my honourable friend the Minister of State for Housing and Planning in another place, Gavin Barwell, indicates:

“The Government confirms that, where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted”, provided that,

“the local planning authority can demonstrate a three-year supply of deliverable housing sites”.

I am putting this in a shorthand form, but I will ensure that it, or the link, is circulated to those who have participated in the debate.

Baroness Pinnock: I thank the Minister for that clarification. However, what I was seeking to understand was whether the three-year supply referred only to

where a neighbourhood plan was in place or whether it would be for the whole of a local plan. If that is not the case, we have a serious discrimination between those areas—often rural areas, at the moment—with a neighbourhood plan and those without. For one, a three-year supply would be sufficient; for another, a five-year supply is required.

Lord Bourne of Aberystwyth: I confirm that it applies only to neighbourhood plans. It is just one other reason that it is very good to have a neighbourhood plan in place. I do not see anything inconsistent in that. If we are strong believers in neighbourhood plans, that is quite appropriate.

Baroness Pincock: How can that be fair?

Lord Bourne of Aberystwyth: I will cover the point in the letter but I am sure that it is the case, as I indicated, in the Written Ministerial Statement—it was on 12 December 2016—that this is in relation only to neighbourhood plans.

If I might proceed, the Government are equally clear that we must allow those taking decisions, including the Secretary of State, to do their job and exercise their judgment when considering the planning merits of the case before them and the evidence for and against an appeal. By the way, the Secretary of State does not necessarily have to uphold the decision of the inspector in this regard. That does not necessarily follow. This provides the necessary flexibility that is at the heart of our planning system, which the amendment, if accepted, would remove. For these reasons, I ask the noble Lord to withdraw Amendment 5.

Turning to Amendment 20, tabled by my noble friend Lady Cumberlege and the noble Baroness, Lady Pincock, we place great importance on local development plans. They provide the local community's vision of how it sees its area developing. It is right that they should be given the weight they deserve within the planning appeals process. As I have said, where a development plan's policies are material to an appeal, a decision must be taken in accordance with the development plan, unless material considerations indicate otherwise. This does not mean that a planning appeal that is not in accordance with the local development plan will always be dismissed. It means that the appeal should not normally be allowed and that planning permission should not normally be granted. However, we cannot, and should not, fetter appeal decision-makers by requiring them to dismiss appeals that are contrary to the development plan. Instead, we must allow planning inspectors to do their job and exercise their independent judgment.

Significantly, planning appeals can be made in a number of circumstances, not just when a planning application is refused. They can also be submitted when a planning application is not decided within the statutory timescale or if conditions the applicant deems unreasonable are imposed on a grant of planning permission. If accepted, the amendment could affect these appeal rights. An applicant who was refused permission would not have their appeal heard in certain circumstances because the amendment would require it to be dismissed. This is not acceptable. In conclusion, I ask my noble friend to not move her amendment.

Lord Stunell: I thank the Minister for his reply. I also thank the noble Baroness, Lady Parminter, for her support. I particularly valued the comments of the noble Lord, Lord Porter, if I may say so, because he was very clear in explaining that he does not necessarily believe that neighbourhood plans are the way to promote development and growth, and he started off at least as a deep sceptic. Nevertheless, he has championed the need to make sure that neighbourhood plans, once made, are treated as serious documents which carry very considerable weight in subsequent decision-making. That is exactly the view that I put and it is exactly the way that I have expressed it in my amendment, which is not to fetter the discretion of the Secretary of State but simply to insist that he gives particular weight to a neighbourhood plan in reaching a decision. I think that links up with one of the remarks of the noble Lord, Lord Porter. He said that some planning inspectors have gone “feral”.

Lord Porter of Spalding: Can I clarify that? I did not actually say that; I said some people out on the street are saying it.

Lord Stunell: I will let the record stay as it is on that. At Second Reading, I referred to the fact that there are some rogue inspectors. Perhaps I can make clear that I am not accusing them of a breach of their duties under the seven principles of public service, but there is a continuation of the implementation of a policy which, at the latest, was discontinued by the Localism Act in 2010. That is resulting in insufficient weight being given to a statutory process—the establishment of neighbourhood plans—that should and could have the same weight as adopted local plans and any views that an inspector might seek to impose on the situation.

I referred to this at Second Reading and will do so again, but until 2010 the direction of travel was in one way, towards a professionalised planning service that did not give sufficient weight or an effective voice to local communities. In 2010, through the Localism Act, that was turned round completely in its intent by having plans established and developed by local communities and then allowing developers to implement them. Despite the scepticism at the time—the noble Lord, Lord Porter, might even concede this—neighbourhood plans delivered growth and more housing sites. I see the Minister nodding. This is not a question of the nimbys triumphing or an example of a wild political theory with malign consequences. It is working, delivering the results that everybody wants to see and it is in danger of being sabotaged by what I think is a continuation by some people—perhaps some senior civil servants in the department and certainly some inspectors—of a policy that was changed in 2010. They have not caught up with it. In that sense, it is quite right that they should be exposed. To use the phrase of the noble Baroness, Lady Cumberlege, perhaps some feet need to go on the fire where that is concerned.

I thank the noble Lord, Lord Kennedy, for his support. I think the Minister can provide us with a little more information about those 75 cases. How many of them related to overthrowing neighbourhood plans? Of the 75, how many were upheld? In how many cases were the inspector's recommendations

[LORD STUNELL]

endorsed and in how many were they overturned? Let us get some idea of what we are talking about here. Of course, I was not alleging that the Secretary of State is overturning hundreds of thousands of cases of either neighbourhood or local plans. I made the case that we have a very new animal in the neighbourhood plan, which takes a gestation period and a good deal of effort to be delivered. If at the end of that process it is simply to be—I must choose my words carefully—disposed of, people will not invest their time in doing them. The whole strategic idea lying behind neighbourhood planning will fall into disuse and discredit.

I believe my amendment addressed that, giving a strong prod to the system to ensure that there was an effective and powerful impetus to giving validity to neighbourhood plans at the expense of developments that were clearly out of order. I am sorry that the Minister does not agree with that. I noted his emollient words in relation to Amendment 1 and I hope they apply to Amendment 5 too. I look forward to constructive discussion to see what we can resolve. If it makes him feel any better, I will not personally hold his feet to the fire. I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Clause 1, as amended, agreed.

6.15 pm

Amendment 6

Moved by Lord Bourne of Aberystwyth

6: After Clause 1, insert the following new Clause—

“Notification of applications to neighbourhood planning bodies

(1) Schedule 1 to the Town and Country Planning Act 1990 (local planning authorities: distribution of functions) is amended as follows.

(2) Paragraph 8 (duty to notify parish council of planning application etc) is amended in accordance with subsections (3) to (5).

(3) After sub-paragraph (3) insert—

“(3A) Sub-paragraph (3B) applies to a local planning authority who have the function of determining applications for planning permission or permission in principle if—

(a) there is a relevant neighbourhood development plan for a neighbourhood area all or part of which falls within the authority’s area, and

(b) a parish council are authorised to act in relation to the neighbourhood area as a result of section 61F.

(3B) The local planning authority must notify the parish council of—

(a) any relevant planning application, and

(b) any alteration to that application accepted by the authority.

(3C) Sub-paragraph (3B) does not apply if the parish council have notified the local planning authority in writing that they do not wish to be notified of any such application.

(3D) If the parish council have notified the local planning authority in writing that they only wish to be notified under sub-paragraph (3B) of applications of a particular description, that sub-paragraph only requires the authority to notify the council of applications of that description.

(3E) For the purposes of sub-paragraphs (3A) to (3D)—

“neighbourhood area” means an area designated as such under section 61G;

“relevant neighbourhood development plan” means—

(a) a post-examination draft neighbourhood development plan as defined by section 70(3B) to (3C), or

(b) a neighbourhood development plan which forms part of a development plan by virtue of section 38(3) or (3A) of the Planning and Compulsory Purchase Act 2004 (plans which have been made or approved in a referendum);

“relevant planning application” means an application which relates to land in the neighbourhood area and is an application for—

(a) planning permission or permission in principle, or

(b) approval of a matter reserved under an outline planning permission within the meaning of section 92.”

(4) In the opening words of sub-paragraph (4) for “the duty” substitute “a duty under this paragraph”.

(5) In the opening words of sub-paragraph (5) for “their duty” substitute “a duty under this paragraph”.

(6) Paragraph 8A (duty to notify neighbourhood forums) is amended in accordance with subsections (7) to (9).

(7) After sub-paragraph (1) insert—

“(1A) Sub-paragraph (1B) applies to a local planning authority who have the function of determining applications for planning permission or permission in principle if—

(a) there is a relevant neighbourhood development plan for a neighbourhood area all or part of which falls within the authority’s area, and

(b) a neighbourhood forum are authorised to act in relation to the neighbourhood area as a result of section 61F.

(1B) The local planning authority must notify the neighbourhood forum of—

(a) any relevant planning application, and

(b) any alteration to that application accepted by the authority.

(1C) Sub-paragraph (1B) does not apply if the neighbourhood forum has notified the local planning authority in writing that it does not wish to be notified of any such application.

(1D) If the neighbourhood forum has notified the local planning authority in writing that it only wishes to be notified under sub-paragraph (1B) of applications of a particular description, that sub-paragraph only requires the authority to notify the forum of applications of that description.”

(8) In sub-paragraph (2)—

(a) before the definition of “neighbourhood forum” insert—

““neighbourhood area” means an area designated as such under section 61G;”, and

(b) after the definition of “neighbourhood forum” insert—

““relevant neighbourhood development plan” means—

(a) a post-examination draft neighbourhood development plan as defined by section 70(3B) to (3C), or

(b) a neighbourhood development plan which forms part of a development plan by virtue of section 38(3) or (3A) of the Planning and Compulsory Purchase Act 2004 (development plans which have been approved in a referendum or made).”

- (9) In sub-paragraph (3) for “(3) to (6)” substitute “(3) and (4) to (6)”.
- (10) Section 62C of the Town and Country Planning Act 1990 (notification of parish councils of applications made to Secretary of State) is amended in accordance with subsections (11) and (12).
- (11) In subsection (2) after “paragraph 8(1)” insert “or (3B)”.
- (12) In subsection (3) after “Schedule 1” insert “or notifications received by the authority under paragraph 8(3C) or (3D) of that Schedule.”

Amendment 6 agreed.

Amendment 6A

Moved by Baroness Cumberlege

6A: After Clause 1, insert the following new Clause—

“Duty on Examiner in making recommendations

- (1) Schedule 4B to the Town and Country Planning Act 1990 (process for making of neighbourhood development orders) is amended as follows.
- (2) After paragraph 9(2)(a) insert—
 - “(ab) in any case where the examiner is minded to recommend deletion of a policy relating to a specific site or sites in the neighbourhood area and indicating a presumption in favour of housing or economic development, or”.
- (3) After paragraph 10(3) insert—
 - “(3A) Before recommending modifications in the form of deletion of draft policies in a draft neighbourhood plan, to take account of national policies and advice contained in guidance issued by the Secretary of State or for other reasons, the examiner should endeavour to find alternative wording that would achieve the goal of the qualifying body, if necessary by convening a hearing for that purpose.”

Baroness Cumberlege: My Lords, I turn to Schedule 1, which has been amended to include new Schedule A2. I have tabled a number of amendments on this. I shall discuss my Amendments 9, 10 and 11 before I discuss my Amendments 6A and 6B in this group.

I am very worried about sub-paragraphs (1) and (2) of paragraph 12 on page 38 of the Bill. They ensure that the examiner can sit in his office, away from the world he is examining, and immerse himself in documents and papers which give him little sense of place, neighbourhood and geography and, above all, the people who live and work there. These people cherish and care about their community, look after it and make it a dynamic place. They run myriad organisations. They understand what works in their area and what does not. As has been said, this is not a charter for nimbyism; on the contrary, it has stimulated housing and other development.

My amendments seek to give makers of neighbourhood plans a voice and a right to be heard and to enable them to explain face-to-face what makes the plan worthy of their community, and what they seek to achieve in strengthening it. Christopher Lockhart-Mummery QC of Landmark Chambers says that, “any significant Neighbourhood Plan really requires a hearing”.

In my view, the Government’s steer in discouraging hearings is too strong. So much is dependent on what the examiner is minded to recommend through written representations. We need to be sure that the policies

are not fundamentally altered without the plan-making body having the right to explain its objectives at a hearing, and the examiner suggesting better words to them to achieve their goals. After years of work producing a plan—in some cases this lasts up to five years; in my area, it was two and a half years—and then getting it agreed at referendum, the parish or town councils are at the mercy of the examiner. They can only watch while further representations and views of the local planning authority are gathered together and put to the examiner. It is not an inclusive process, and I think it should be.

My Amendment 6A is more specific. It concerns the situation where the examiner deletes a policy relating to a specific site or sites in favour of a commercial or economic development. As a nation, we need more sites for housing. Where a community has researched and identified its needs and proposed a significant development in terms supported by the landowner and the developer, is it right for the examiner to simply delete the proposed policy on the grounds that some of the wording of the policy is not clear? Should he not make every effort to help the community get its words right?

Amendment 6A would put a greater responsibility on an examiner who finds that a plan policy falls short of meeting the basic conditions. Instead of recommending the deletion of such policies and therefore denying us the housing sites we need, the examiner would be required to hold a hearing when he proposes to delete, add or significantly amend any draft policy that makes provision for a specific development, which would include housing development on a site identified in the plan. It would be a specific requirement.

Amendment 6B is also concerned with the examiner. Plan makers are at the mercy of others and can only watch while further representations and views of the local planning authority are gathered together and put to the appointed examiner. There is no recourse if the parish or town council is not satisfied with the work of the examiner. Examples might be because the examiner has recommended modifications that they do not believe are soundly based on evidence, or because the examiner has recommended deleting policies that could readily be remedied by a less dramatic modification. The amendment is designed to provide the makers of a plan with the right to a say in the action to be taken after the examination. It would achieve this by requiring the examiner to deliver a draft report for consideration by the local planning authority and the plan makers. Before finalising the report, the examiner should take into account and consider any points made by those bodies.

There have been suggestions—I suspect my noble friend might also make them—that this would further complicate the process or cause more delays in the planning system. I understand that some examiners already proceed in this way, but do so informally. The amendment is a modest way of ensuring a continuing engagement with the plan makers in the final stages of creating their own plan. Ideally, examiners should not recommend fundamental changes or deletions without first engaging the town or parish council in a hearing to understand the goals, and then fine-tuning the recommended changes.

[BARONESS CUMBERLEGE]

This is a probing amendment and a way of attracting the attention of my noble friend in order to open a dialogue and discussion about how we can ensure that the confidence and faith of local plan makers is enhanced and does not deteriorate. I look forward to my noble friend thinking about the way we can ensure that that happens and I look forward to his response. I beg to move.

Lord Beecham: May I ask the noble Baroness, in reference to Amendment 6B, about the time limit that she has included in the amendment? We know that local authority planning departments are under great pressure, and in those circumstances, 28 days seems a little tight for the local planning authority to consider, “new evidence, new facts or a different view”.

Is she prepared to be flexible about the period for the response because it seems too short?

Baroness Cumberlege: My Lords, I accept the suggestion but my concern is that these things can drag on and on, and unless one has a cut-off time, I fear that while the issues continue to be talked about and worked on, nothing actually happens. I am quite anxious to have a deadline and times within which people have to deliver their responses.

Lord Shipley: My Lords, I express my support for the amendments in the name of the noble Baroness, Lady Cumberlege, but I want to speak in particular to Amendments 9, 10 and 11. They are important because once again they are about the definition of words. We discussed earlier the meaning of “modification” and “material”, and now we have to define “significant”, “substantial” and “exceptional”. The noble Baroness, Lady Cumberlege, has drawn our attention to the fact that these words can be interpreted in different ways.

First, paragraph 12(1) of new Schedule A2 refers to the “general rule”. If a rule is a general rule, it means that sometimes it is not. I think a rule needs to be rule. The elimination of the word “general”, which leads to doubt, seems the right thing to do. I hope the Minister will take the point that that word should be removed. Looking very closely at the Bill, paragraph 10(1) of the new schedule says that it is for the examiner to, “determine whether the modifications contained in the draft plan are so significant or substantial as to change the nature of the neighbourhood development plan which the draft plan would replace”.

There we have the introduction of the words “significant” and “substantial”. However, it is then left with the examiner to proceed by the written representation route. So a substantial or a significant change is to be dealt with by the written route and, in paragraph 12(2), only the examiner can,

“cause a hearing to be held for the purpose of receiving oral representations ... in any case where the examiner”—

but not anybody else—

“considers that there are exceptional reasons for doing so”.

So there are substantial and significant changes but unless the examiner thinks they are exceptional, there cannot be a formal hearing.

We need to get this right. I foresee a lot of trouble arising if those who have taken part in developing a neighbourhood plan are suddenly told that a substantial

or significant change to it can be dealt with only by the written procedure, whereas they may have things that they wish to say and to be heard. If the process is to be sound, we should be encouraging more oral hearings where people can listen to the evidence and contribute to the discussion. I hope the Minister will take on board that these definitions really matter. Something that is significant or substantial should have an oral hearing; something less important than significant or substantial could have written representations. But simply to say that it must be exceptional in the eyes of the examiner does not seem right.

Lord Cameron of Dillington (CB): My Lords, I support Amendments 6A and 6B. For the purposes of this Committee, I declare an interest as a farmer and landowner. Both amendments are about ensuring that the procedure governing an examiner’s report on a neighbourhood plan allows the neighbourhood to meet him halfway, as it were, or allows him to make helpful compromise amendments rather than full-scale deletions, which I gather is all too often the case.

As has been said frequently today, planning is a very complicated subject for the average lay man—that very definitely includes me. The noble Lord, Lord Horam, said that he was not a planning expert. If he is not a planning expert, I am a babe in arms. I have heard planning described as a minefield covered in a mist. In spite of this, villages, communities and neighbourhoods work really hard to master this misty minefield and over a long period of time—two years, five years, whatever it might be—they try to get to grips with the complications of the planning system, not to mention the complications of the diverse needs of their community and the divergent local views on how it should be developed, in line, of course, with the local plan and the NPPF. That point has been made several times and I thoroughly endorse it.

6.30 pm

The noble Baroness, Lady Cumberlege, and I have been in communication with a friend of mine, one Richard Wakeford from Winchcombe Town Council in north Gloucestershire. He is a trained planner and used to work for the department. He worked with me in the Countryside Agency as well. He said that he helped his community and town council to develop a neighbourhood plan. It involved developing lots of houses but those houses were then knocked off the plan. His letter to me says:

“In Winchcombe, for example, the Town Council proposed a significant development site to meet the needs of older people. Close to the centre of town, a development of small housing units and an associated care home—in line with an emerging Joint Core Strategy—would have helped to attract residents to downsize, freeing up homes for families”.

He went on to explain that the plan was co-ordinated with the local planning authority, the developer and the town. It was almost a done deal. His letter continues:

“And yet, the Examiner recommended the policy for deletion—not as a matter of principle but because some of the words used were not defined clearly enough ... there were suggestions ... that the development could not be viable given the number of conditions set out in the draft plan. The community’s constructive engagement with the proposed developer”—

and the local planning authority—

“was simply written off with the stroke of a red pen”.

He goes on to say that the examiner simply deleted large elements of the plan. The town council essentially had no further say because reinstating the proposed development site would require another 12 months' work. They had assumed that the examiner would make amendments if necessary and that if he needed further information to understand their wording he would have arranged a hearing. They were pretty disillusioned, which is not very surprising.

It seems very wrong that after often two or three years—or more—of work it should all be undermined at the stroke of a pen without any discussion or comeback. That may take a few days longer but then we in this House indulge in issues such as ping-pong and on the whole the result we get is better for that. Some sort of ping-pong ought to be allowed between the examiner and the relevant neighbourhood planning body, which is very often the town or parish council. The examiner should not have the right to summarily undermine the whole neighbourhood plan without giving the neighbourhood a chance to amend or alter the plan in line with his views to make it acceptable to him. If only there were a bit of discussion, I am sure they could make the plan fit. However, there does not seem to be any need for discussion and that is what these two amendments try to put right.

Lord Kennedy of Southwark: My Lords, I very much support the amendments in this group tabled by the noble Baroness, Lady Cumberlege. Clearly, they are probing amendments and I look forward to the response from the noble Lord, Lord Bourne, to the points raised.

It is important that we ensure that communities are consulted and that they have confidence that if they are to make a local plan it should have some validity, particularly once they are into the process. These amendments seek to ensure that. Amendments 9, 10 and 11 look at the modification procedure and give the opportunity to move it from a written to an oral procedure. That is important. It may well be that it should be much more either/or, but at the moment it is much more towards the written procedure apart from exceptional circumstances. I am interested to hear what we get back from the noble Lord in respect of that.

We have also begun to mention a number of words in the debates on the Bill, such as “modification”. Words are important, particularly to planning. Planning is complicated. I am not a lawyer. I am a councillor and I am on a planning committee, but I rely heavily on the advice we get from our planning officers on looking at applications. Rules are also important, and the noble Lord, Lord Shipley, mentioned “the general rule”. What worries me is the flexible rule, which might be so flexible that it is not a rule at all. We need to be very careful about what we are doing here.

I would also like the noble Lord to tell us a little about the examiner. The examiner will look at an application and will want to determine and pass it properly, so we must hope that he is working to soundly based rules as well. It would be useful to learn about the rules they operate under. It seems odd that an examiner can simply throw out a proposal that has been agreed, especially having heard about how important these processes are from the noble Lord, Lord Taylor

of Goss Moor. So it will be interesting to hear about exactly what takes place and what the examiners are told. I am conscious that these are probing amendments and I look forward to the noble Lord's response, at which point I may have one or two more questions for him.

Lord Bourne of Aberystwyth: My Lords, perhaps I may say as I crawl across the minefields in the mist having been battered by iron fists and with my feet held to the fire, that I will try to deal with some of the issues that have been raised quite fairly by noble Lords relating to this group of amendments. It may help if I first try to put this in the context of what the Government have done to promote and improve neighbourhood planning—just so that we do not lose sight of what is important.

The measures introduced by the Housing and Planning Act have sped up and simplified a number of processes, with, for example, new time limits being imposed on planning authorities and more transparency in committee reports. We have provided £22.5 million-worth of support for neighbourhood planning groups and have provided more than 1,800 grants to the value of over £10 million. Also, some £13 million has been paid out to local planning authorities to help them meet their responsibilities. I have referred to the Written Ministerial Statement of December 2016, which was provided to address the issue raised by communities about the transition problems around the operation of the five-year land supply requirements. This Bill will put it beyond doubt that decision-makers must have regard to neighbourhood plans that have passed examination—it is important to nail that. It also makes clear the advice and assistance that local planning authorities are able to provide to neighbourhood groups and it will bring neighbourhood plans into legal force as part of the development plan at an earlier stage, all of which is important.

Before I turn specifically to the amendments tabled by my noble friend Lady Cumberlege, perhaps I may address a couple of points raised by the noble Lord, Lord Shipley, in the context of Schedule 1 relating to the procedure for examination as set out in new paragraph 12(1). The words “the general rule” replicate the language used in the Localism Act 2011 under the coalition Government. I appreciate that that is not the whole of the answer, but the phrase has been put in for good reason in that there is a substantial amount of case law that defines what “the general rule” is. I will endeavour once again in the compendium letter that I will send round to give examples of how it would operate.

I would also say to the noble Lord that new paragraph 12(2) makes it clear that it is not just the examiner who can initiate an oral hearing, or at least that it may be but he would be required to do so under new paragraph 12(2)(b),

“in other such cases as may be prescribed”.

It is not as if he has a totally unfettered discretion. Indeed, we may want to examine this heading when we discuss the specifics because it does provide for cases to be prescribed.

Lord Shipley: Can the Minister explain what and who it is who will do the prescribing?

Lord Bourne of Aberystwyth: The prescribing would certainly be done by the Secretary of State, but obviously the Bill has not yet passed into law so no cases would be prescribed at the moment. Again, perhaps I may give an indication of the sort of circumstances where we anticipate it may be used.

I turn now to the amendments and again I thank my noble friend Lady Cumberlege for raising this important matter, and the noble Lords, Lord Cameron, Lord Shipley, Lord Kennedy, and briefly the noble Lord, Lord Beecham, who is not in his place at present, for their contributions. It may help noble Lords if I first explain the current examination process for a neighbourhood plan. The person appointed to examine a neighbourhood plan must be independent of those who prepared the plan and of the local planning authority, and have no interest in any land that may be affected by the plan. They must have appropriate qualifications and experience. The noble Lord, Lord Kennedy, raised the issue of rules in relation to this. Perhaps I can provide a link in the letter, but they clearly must have appropriate town and country planning qualifications and experience. There will certainly be rules under which they will have to operate. Noble Lords may perhaps want to do a more detailed examination of these.

The examiner's role is to consider whether the plan proposal meets a set of basic conditions and other legal tests. Neighbourhood planning groups must submit various other documents to the local planning authority with their neighbourhood plan proposal. These include a statement setting out how the plan proposal meets the relevant tests. This statement provides the opportunity for those who prepared the plan to demonstrate that their neighbourhood plan proposal meets those tests. Those wishing to make their views known to the independent examiner, or to submit evidence to be considered, can submit written representations to the local planning authority during the statutory publicity period for the draft neighbourhood plan. The local planning authority must send to the independent examiner the draft plan proposal, any other document submitted by the neighbourhood planning group relating to the plan proposal, and a copy of any representations made.

My noble friend Lady Cumberlege's Amendment 6A concerns the modifications that an examiner may recommend to a neighbourhood plan. It is already the case that the examiner of a neighbourhood plan must make a report on the draft plan. This must recommend either that the plan is submitted to a referendum or that modifications are made to the draft plan so that it meets the basic conditions and other legal tests for the plan as modified to be submitted to a referendum. It is only where an examiner is unable to make such modifications that they would have to recommend that the plan proposal is refused. With this clarification, I would ask my noble friend to withdraw that amendment.

I apologise to my noble friend that I have not taken her amendments in the same order as she proposed them. Amendment 6B would give an opportunity to provide further details on the procedure for examining neighbourhood plans. It is currently the case that, where a new neighbourhood plan has been examined,

a local planning authority must reach its own view on whether the plan meets the basic conditions and legal tests required. The authority must do so having considered the recommendations of the examiner. It is then for the authority to decide whether a neighbourhood plan proposal, with or without modifications, should be put to a referendum.

Our planning guidance is clear that we expect local planning authorities to constructively engage with the community throughout the neighbourhood planning process, including when considering the recommendations of the independent examiner of a neighbourhood plan. Again, these are important matters raised by my noble friend Lady Cumberlege on which I will carefully reflect ahead of Report.

My noble friend's Amendments 9, 10 and 11 concern the method of examination. The Government maintain that the process of examining neighbourhood plans by written representation in general provides a proportionate, appropriate and robust scrutiny. It is certainly an appropriate approach for plan modifications that make use of the new streamlined modification procedure in the Bill. By definition, such proposals will not substantially change the nature of the plan. Nevertheless, for new plans or for modifications to plans where the examiner considers it necessary to ensure adequate examination of an issue, or to give a person a fair chance to put a case, they must hold a hearing. In these cases, neighbourhood planning groups are entitled to make oral representations. I want to reassure noble Lords that the legislation is very clear. Communities already have the opportunity to have a say in writing throughout the examination process and, where appropriate, at an oral hearing.

Ahead of Report—and I shall endeavour to do this for all noble Lords—I think it appropriate that I set out the procedure whereby there is interaction between the examination and the neighbourhood plan. In setting out that procedure in discussion with my noble friend Lady Cumberlege and others, we can see where there are gaps where we may need to plug the legislation, if I can put it in the vernacular in that way. I accept that something must be going wrong with some plans. I am happy to look at that to see how we might address it. The general position is satisfactory, but I accept that something can obviously be done to make it more watertight. I thank my noble friend for saying that these were probing amendments, but with the reassurance that I have sought to give I ask her not to press them.

6.45 pm

Baroness Cumberlege: My Lords, I thank noble Lords who have taken part in this mini-debate. Some really interesting issues have been raised. Although my noble friend the Minister has tried hard to explain that the system is working well, I understand that he realises that a few holes need to be filled.

It is not right that the examiner should decide when there should be an oral hearing. I was a magistrate for many years. I know that when you have people before you—the defendant, the prosecution, et cetera—you can really get to grips with what they are talking about; you can understand the people there before you. I do not think that that comes through in just

documents or written representations. It should be an opportunity for those who have spent years—in some cases, five years—drawing up a neighbourhood plan to explain to the examiner, “This is why we’ve included this. This is why we’ve done that”. In our case, the examiner ruled out all sorts of things because he did not understand the locality, the people, the history or what we were trying to achieve. I can understand that the examiner has to work with a certain language—the planning language—but we who are volunteers and lay people are not versed in that language. I am sure noble Lords have realised that in my amendments I am using lay person’s language and not the proper language used in planning circles. Because sometimes the words are not right, the inspector has ruled out the policy that people really wanted, which really made that community tick and made it what it is.

I feel strongly that there should be an oral hearing. It is not up to the examiner but to the makers of the plan to decide whether or not they want an oral hearing—if it is something very modest, they may not want it. I am trying to shift the power away from bureaucracy to the people and the communities that we govern. The more we can do that, the more we instil trust in our population. I could go on a lot about trust, but I shall not.

I look forward to working with my noble friend and his officials to strengthen some of the provisions to make them work and to ensure that we are not reducing democracy by way of these laws. I beg leave to withdraw the amendment.

Amendment 6A withdrawn.

Amendment 6B not moved.

Clause 2: Status of approved neighbourhood development plan

Amendment 7

Moved by Baroness Cumberlege

7: Clause 2, page 2, line 16, at end insert—

“() A neighbourhood development plan may include a phasing condition on development which is agreed with the local planning authority.”

Baroness Cumberlege: My Lords, I understand that the Grand Committee is a place where noble Lords cannot move a Motion that a noble Lord be no longer heard. Your Lordships have my sympathy and I apologise that I am again on my feet. This amendment is really important and is about a neighbourhood development plan including a phasing condition on development.

I have tabled this amendment because we have already seen communities being overturned, which can cause real social problems. Phasing is important to assimilate people coming into a community. However, on a practical level, the Bill is part of a vehicle to enable the Government to announce the building of a record number of houses. It will coincide with the inevitable changes that Brexit will bring, many of which we still know nothing about. They are incalculable. Some may be good, others may not be so good. We may see jobs leave the City, for instance. I was interested

to read in the *Times* of 25 January a headline on financial clearing houses which stated that loss of clearing would cost the City 85,000 jobs. Of course, that may or may not be the case. However, if a loss of those jobs on anything like that scale occurs, it will make a huge difference to developments that are in train or have already been built.

We must also consider what will happen if we have fewer immigrant builders. What will be the effect of that on the housing market, which has traditionally had its ups and downs? We do not want new buyers to be plunged into negative equity or find they have new homes that they cannot sell. That would serve nobody well. Developers are business people and I am sure that they will not be seduced into building homes that they cannot sell. They would prefer a longer-term strategy, and I support them in that. At this very uncertain time, it is judicious not to try to break records for the sake of political expediency. I strongly believe that building cosy nests on a rotten bough can end in tears. The phasing of developments makes sense. I hope that my noble friend will agree that it should be incorporated in the Bill on Report. I beg to move.

Lord Shipley: My Lords, the noble Baroness, Lady Cumberlege, has moved a very wise amendment. I hope that the Minister will accept it in due course.

Baroness Scott of Needham Market (LD): My Lords, I, too, support the noble Baroness. I assure her that she need not apologise for anything as she has raised some very interesting issues in the course of the Grand Committee, and has done so with great passion and commitment.

I raise a related, but perhaps slightly tangential, issue concerning the impact of having a lot of development all at once. Currently, developers argue that Section 106 or community infrastructure levy contributions should relate only and very specifically to the development they are undertaking. That may sound a reasonable argument but it is highly problematic as it completely fails to take into account the cumulative effect of a number of developments taking place around a village, or, indeed, taking place over time. It is very difficult to argue with legal certainty that the need for a new school, for example, is related simply to one development as opposed to the cumulative impact of a number of developments. Therefore, that issue needs to be looked at as it goes to the point about the acceptability of development to local communities. They also need to feel that the funding mechanism will be there. Furthermore, developers often argue that the money should be used only for very narrow purposes and not for the benefit of the wider community. The Government need to look at the acceptability of development in this regard.

Lord Bourne of Aberystwyth: My Lords, I thank my noble friend Lady Cumberlege for moving this amendment. Before I look at the substance of it, on housing need generally I think it will be borne out by statistics that even if all migration were to stop now—it will not because the Prime Minister made clear that we will still very much need the brightest and best for specific areas of activity in the country—there is still a

[LORD BOURNE OF ABERYSTWYTH]

truly massive backlog of housing that needs to be supplied. There is no gainsaying that. There is a massive catch-up operation to be done, and all political parties over the years contributed to this problem by not building enough. There is little doubt of that. I part company with my noble friend on that specific point.

On Amendment 7, moved by my noble friend, local communities within a designated neighbourhood area are responsible for deciding which policies they want to include in their neighbourhood plan. They can, if they choose, include policies on housing delivery and housing sites if they consider them appropriate for their area. They will develop their housing policies by considering the types of development needed for their area and will identify suitable locations for housing development. If the policies and proposals are to be implemented as the community intend, a neighbourhood plan must be deliverable.

Where a neighbourhood plan is used to allocate sites for housing development, the local community must assess whether those sites are deliverable and developable. Paragraph 47 of the *National Planning Policy Framework* provides details of what needs to be considered. As part of this consideration, those preparing the plan must take realistic decisions about the timescales for delivering those houses and the issues that might affect this, such as the area's infrastructure needs. This might require them to consider phasing the delivery of development to ensure that they have a realistic plan for delivering their housing policy within required timescales. It is certainly open to neighbourhood groups to do that now and for that to be part of the neighbourhood plan. Where communities consider this necessary, they should of course have clear evidence as to why there should be a restriction on when a specific site or sites will come forward for development.

These are important matters but should essentially be left to the judgment of local communities. Maybe we need to make clearer that that is a possibility but then it is a matter for the relevant neighbourhood, advised by their local planning authority. These people are best placed to make such decisions, which are more appropriately addressed by policy documents and guidance than legislation. As I previously indicated, the Government set out their policy on these matters in the *National Planning Policy Framework* and in planning guidance, to which both local planning authorities and those preparing neighbourhood plans must have proper regard.

I hope I have reassured my noble friend on this point. Just before I leave this particular amendment, the noble Baroness, Lady Scott, raised an issue regarding funding from community infrastructure. We shall come to this in the next group but, just briefly, I think 25% goes to the relevant parish council or neighbourhood group. It is up to them how to spend that; it does not have to be related to the infrastructure for which the levy was paid. As I say, we will come to that on Amendment 26 and can look at it in more detail then. In the meantime, I ask my noble friend to withdraw her amendment.

Baroness Cumberlege: I very much thank the noble Baroness, Lady Scott, and the noble Lord, Lord Shipley, for supporting this amendment. We go back to the situation of the examiner. My noble friend the Minister said that already you can have phasing but we wanted it and it was completely crossed out by the examiner. I do not know what advice is given to examiners but something like this really needs strengthening. As the noble Baroness, Lady Scott, said, this is about more than housing or bricks and mortar; it is about the people who live there. It is about trying to get diversity in our population because we know that that strengthens it. It is about schools. It is about health centres. It is about all the infrastructure that we need. Phasing can help that.

Years ago I was involved in this area and we built 171 houses. It was a huge development but we also ensured that the infrastructure was there to support it. If we do not have some phasing, we will end up in a real mess. I take the point about negative equity. Once you get negative equity, you get a very disenchanted population. Phasing is important. I look forward to working with the Minister. I hope I will not have to bring this back on Report and that we can come to some accommodation. For the moment, I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Clause 2 agreed.

7 pm

Clause 3: Modification of neighbourhood development order or plan

Amendments 8 to 8A not moved.

Clause 3 agreed.

Schedule 1: New Schedule A2 to the Planning and Compulsory Purchase Act 2004

Amendments 9 to 11 not moved.

Schedule 1 agreed.

Clause 4 agreed.

Clause 5: Assistance in connection with neighbourhood planning

Amendment 12

Moved by Lord Beecham

12: Clause 5, page 5, line 9, at end insert—

“with reasonable payments made by local authorities for the purposes set out in paragraphs (a) and (b) to be recovered from the Secretary of State.”

Lord Beecham: My Lords, Amendment 12, in my name and that of my noble friend Lord Kennedy, relates to Clause 5, which is headed, “Assistance in connection with neighbourhood planning”. We have heard a good deal about the need to support local communities in developing their local plans and seeing them implemented. The amendment seeks to ensure that they have the wherewithal to do that.

Clause 5 is the Government's initiative to ensure that support is given. It prescribes that as part of the process:

"A statement of community involvement must set out the local planning authority's policies for giving advice or assistance", for the making or modification—a word that has been much used this afternoon—of neighbourhood development orders and neighbourhood development plans. Of course, this is a matter which requires considerable experience and skill. The assumption, therefore, is that the local authority will provide the resources for the local community to obtain advice and support in going through the process.

I suppose in one sense this could be regarded as a new burden and therefore should or could fall into the general position that is purported to apply to the imposition of new burdens; namely, that if it is a requirement of legislation, the Government will ensure that local authorities' costs in meeting that obligation are met. But in my experience it is as well to be explicit about this and that is the purpose of the proposed new clause, which would require the full recovery of costs in connection with the development of a neighbourhood plan. The local authority would support the community in its commissioning of works but the cost ultimately would be met by the Government.

Given the tenuous position within local authority planning departments, of which we have heard much in the Chamber and today, it is imperative that the matter be adequately resourced. As we have heard so many times, planning departments are under huge pressure. As the noble Baroness pointed out, they have lost staff to private concerns. It is difficult to recruit and retain staff. In some ways happily, the volume of work is growing, which we want to see. The Government have now come round to conceding, particularly on the housing front but also in other areas, that considerably more investment and building need to take place. In the context of that shortage of staff, it is particularly important given the competing pressures on departments that communities should be assisted in securing whatever help they need in the process. I hope therefore that the Minister will concede that this is right way forward if we are going to have properly developed neighbourhood plans with local communities fully engaged and equipped to make a contribution to the ultimate decisions, which without that professional support would not take place. I beg to move.

Baroness Cumberlege: My Lords, this is my swansong; this is the last time that your Lordships have to endure me. I have an amendment coupled with this one, but I say to the noble Lord, Lord Beecham, that I so agree with him. It is really important that we do not try—to use an expression appropriate for a planning Bill—to make bricks without straw, because it does not work; we need resourcing.

My amendment is a little different, being about the community infrastructure levy, which it would increase. It is a probing amendment, but if it is intended to continue the direction of travel towards localism and the greater empowerment of parish and town councils, we have not only to find some financial incentives for communities to accept development—although many of them do at the moment—but to encourage planning

permissions for the building of houses. That was a significant feature of the coalition Government's housing and planning reforms and a source of funding to principal councils.

One such initiative was the community infrastructure levy, which came into force in April 2010. It allows principal councils to raise funds from developers undertaking new building projects in their area and to fund a wide range of infrastructure needed as a result of the development. The community infrastructure levy-charging authorities are required to transfer to the parish or town councils 15% of the levy receipts arising from development that takes place in their area, rising to 25% for areas with an adopted neighbourhood plan.

Unfortunately, research suggests that local councils have been passed only 1% of the community levy receipts—just £92,000 despite principal councils collecting more than £9 million between April 2013 and June 2014. That is largely because it is not mandatory for principal councils to have a community infrastructure levy scheme in place and it has the effect of communities accepting development but not benefiting from the share of the levy to invest in local infrastructure needs and priorities.

It is vital that communities which are pro-growth benefit financially from policy incentives such as the community levy so as to invest in locally identified infrastructure needs and other community priorities. The first part of my amendment would address this issue by requiring local planning authorities to introduce the community infrastructure levy within 12 months of the day on which this Act is passed. I am sure my noble friend the Minister has more recent and up-to-date information about how this policy is being delivered, so I look forward to his response.

Paragraph (b) of my amendment is simply intended to increase the incentive for communities to embark on the development of a neighbourhood plan. At present, areas with an adopted neighbourhood plan are entitled to 25% of the levy. However, it does not happen everywhere. I should like to see neighbourhood planning grow, and for more communities to get involved and take a positive approach to future development in their area. To accelerate the uptake, I think a further range of measures is needed to build on efforts to date and, in particular, to ensure that communities benefit financially from development. Increasing the amount of the community infrastructure levy would provide an enhanced incentive. It would also have the added benefit of relieving some of the pressure on the parish precept as the principal means of income to invest in local projects, assets and infrastructure. I am sure my noble friend has other ideas as to how some of this could be achieved. This is a probing amendment and something that I think is worthy of discussion.

Lord Greaves: My Lords, I understand the reasons behind this amendment and I sympathise very much with them. However, to force all local authorities to impose a community infrastructure levy—a CIL—is actually not practical. I speak as a member of one authority that does not impose a CIL, and there are quite a lot. There are parts of the country where the viability of development is marginal. Whether it is infrastructure, commercial or housing development,

[LORD GREAVES]

the difficulty is making it stack up financially. In my part of the world, there would be more development allowed, promoted—and welcomed to some extent—if it were financially viable. If it is not financially or only marginally viable, imposing a CIL would simply result in less development. It cannot be imposed everywhere, nor should we look at areas that can impose CILs with green eyes—as we look at a lot of the country with green eyes on financial matters. We have to survive in the environment that we are in. From that point of view, I cannot support the first part of this amendment although, where CILs are imposed, the second part might well be reasonable.

Baroness Scott of Needham Market: In the debate on the last amendment, I raised the question of the community infrastructure levy and Section 106 because that amendment was more about what the planning authorities can get. This amendment is about what the neighbourhood planning areas will get. I quite understand that the Minister will want to wrap up his responses, so there is the question that I raised on the earlier amendment about the impact of having to be directly attributable on the ability to access this money. I am also told there is a problem in that many developers insist on having specifically costed projects before they will sign an agreement for Section 106 or CIL. That is a problem if this is the first of a number of sequential developments. A local area may very well not have a detailed specific cost, but they are, in effect, building up a pot. In my local area we did that for a new relief road, though it took five years and something like four phases of development to reach it. Specifically, to the point of neighbourhood planning areas, I have also been told that some planning authorities are insisting that the neighbourhood planning areas have to have a general power of competence in order to be able to spend CIL money.

The points I have raised have all been raised with me by the National Association of Local Councils. Perhaps, rather than go into too much detail in his reply, it would be helpful if the Minister could undertake to meet that body again to go through those concerns and make sure that everybody is on the same page. It could then disseminate the information using its networks.

7.15 pm

Lord Bourne of Aberystwyth: My Lords, I thank all noble Lords who have participated in the debate on these amendments. I turn first to Amendment 12 tabled in the names of the noble Lords, Lord Kennedy and Lord Beecham. I understand the desire to ensure that adequate funding is available for local planning authorities.

I hope that I can reassure the noble Lord, Lord Beecham, that the Government's rigorous new burdens doctrine ensures that local planning authorities receive the relevant resources to meet their statutory obligations under the neighbourhood planning process. Since 2012, more than £13 million has been paid out by the department to enable local planning authorities to meet their neighbourhood planning responsibilities. Some 104 different local planning authorities have submitted claims for the current financial year, and

under the current arrangements where applicable, these authorities could have claimed £5,000 for each of the first five neighbourhood areas and the first five neighbourhood forums that they designate. For those authorities where a referendum date was set, they could also claim a further £20,000 to cover the costs of an examination for each referendum.

Evidence compiled by my department in August 2015 found that the current funding arrangements adequately cover the neighbourhood planning costs for the majority of local planning authorities. I appreciate that that is almost 18 months ago but I would be happy to share this evidence with noble Lords and I will ensure that it is sent on to those who have participated in the debate. We continue to review the level of funding available to local planning authorities and I can confirm that funding will continue to be available for the next financial year. Further details will be announced shortly, ahead of the next financial year.

I now turn to Amendment 26 tabled by my noble friend Lady Cumberlege. I share her desire to support neighbourhood planning, and that is why we currently allocate a proportion of community infrastructure levy receipts to those areas with an adopted neighbourhood plan, as she correctly acknowledged. It is a local choice, as the noble Lord, Lord Greaves, pointed out, for areas to introduce the levy based on economic viability and infrastructure need, and of course that will vary from area to area. Take-up has increased by 144% since April 2015. The current number of authorities which have adopted the community infrastructure levy is 132, and a further 86 have taken substantive steps towards it, which totals 64% of local authorities. However, I emphasise that this is a local choice. There are clear benefits in many cases and it may be that we need to look at publicising those more widely, but of course it is not for everyone.

It is also important that local areas have a choice over how the money raised by the levy is spent. The 25% neighbourhood share already allocated for communities with neighbourhood plans provides a real opportunity for those areas to have a say over how the levy is spent in their area. Communities can also influence how the levy is used across their local authority through participating in the development of the local plan and the charging schedules which set out the local authority's infrastructure priorities.

I thank the noble Baroness, Lady Scott, for her contribution more widely in relation to the community infrastructure levy and I am happy to agree to the meeting she has suggested in order to understand and consider some of the detailed concerns. That would be beneficial to me as well.

I turn now to the issue of how best to continue to incentivise communities, and I understand the wishes of my noble friend Lady Cumberlege in this area. The Prime Minister has made clear that this is a particular priority for the Government. An independent review of the community infrastructure levy has recently reported to my department. The review group considered a wide range of issues including the take-up of the levy and the use of the neighbourhood share. We are currently reviewing its recommendations and once again I will provide further information on exactly where we stand on that.

With the reassurance that the Government are already considering the recommendations and the need perhaps to publicise the benefits of the community infrastructure levy more widely by giving evidence of how communities can benefit from the development of their area, and continuing to review the level of funding available to local planning authorities—the White Paper will have something to say on that as well—I would ask the noble Lord, Lord Beecham, to withdraw his amendment.

Lord Beecham: My Lords, I am grateful to the Minister for his constructive response. I was rather taken with his notion that the Government have a rigorous policy towards meeting new burdens. I would have thought “rigor mortis” might be a more appropriate description of their performance in that area but he is clearly well intentioned and we hope to see some evidence of that as the legislation goes forward.

Significantly, the figures he quoted on the community infrastructure levy were quite alarming in many ways. From what he said, authorities are not necessarily taking full advantage of what is currently available. Has the Minister considered talking to the Local Government Association about that? This matter should be taken forward in that way. I will certainly ensure that the points he made today are heard. I hope that process can be tackled. It is for the noble Baroness to comment more specifically on that subject since she raised it but there seems to be an issue here. One way or another, the system does not seem to be working adequately, yet apparently the goodwill is there on the government side to ensure it does. Perhaps after the event we could look at ways to promote the use of what should be a helpful instrument for both local authorities and the communities they represent.

Lord Greaves: We have had this discussion on previous Bills. In my authority, for example, it is not through lack of willingness or knowledge of CIL that we do not impose it. It is simply that if we impose it, it will make particular brownfield sites even less viable. On brownfield sites, we have to subsidise housing development to get it going and apply a kind of negative CIL, paid for by the council. That is the only way to do it. There is a mismatch here between different parts of the country.

Lord Beecham: I am not suggesting that all local authorities are able or would wish to impose the levy, for the very reasons that the noble Lord has just given. The question is whether there are authorities that could do so without the kind of impact the noble Lord described on his authority but have not yet taken advantage of it. It is pointless to speculate on the nature of those authorities but I suspect that some district councils, for example, might not have the officer resource to deal with what ought to be something that would benefit them. That matter should be looked at by the Government and the LGA together. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Clause 5 agreed.

Amendment 13

Moved by Lord Beecham

13: After Clause 5, insert the following new Clause—
“Approval of draft neighbourhood development plans by referendum

(1) Paragraph 14 of Schedule 4B to the Town and Country Planning Act 1990 (referendum) is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) The outcome of such a referendum shall only be valid if the turnout is equal to or greater than 40%. ””

Lord Beecham: My Lords, this amendment is in my name and that of my noble friend Lord Kennedy. It deals with referendums. We now have some experience of referendums in this country—perhaps rather regrettably. Of course, the position in the local scene is that it is an issue which would test the degree of support for local initiatives of the kind that the Bill envisages. I do not know but perhaps the noble Lord is in a position to say what kind of turnout has been engendered in the referendums that have been held. I understand that they are not required to be held and there are other means of consultation. However, it seems important to secure and recognise a substantial degree of public support, as reflected through a reasonably pitched turnout.

Forty per cent does not seem excessive, but it would show a degree of engagement and interest on the part of the local community which ought to be recognised. I suggest that it would give an incentive to local communities and their authorities to debate issues very fully. I should have said that the amendment has the support of the Local Government Association, as did the previous one. In the circumstances, I hope the Minister will acknowledge that this measure would be an incentive to authorities and local groups to engage fully with their communities to ensure a turnout that adequately reflects public engagement with an important process. I beg to move.

Lord Shipley: My Lords, I do not support this amendment as it implies that a huge amount of work in developing a neighbourhood plan could be lost if 39.9% of the electorate turned out to vote on it. We have in this country a history of assuming that those who do not vote are abstaining. It seems to me that the current system works perfectly well. If some people—perhaps a majority of the electorate—decide not to vote, that is their right. It would be very wrong if all the work of a lot of people over a substantial period of time could be lost because an arbitrary figure of 40% was imposed. The noble Lord, Lord Beecham, has not justified that figure. I would remind him that a large number of local councillors would not have been elected to local government if a 40% turnout figure had been imposed. Indeed, I remind him that he himself in 2014 was elected in the Benwell and Scotswood ward of Newcastle upon Tyne with a turnout figure of 32.1%. However, I do not think that anybody in your Lordships’ Chamber would wish to say that that result was not valid. I hope that the noble Lord will think very carefully about proposing a requirement that there should be a 40% turnout of the electorate on a referendum relating to a neighbourhood plan.

Baroness Cumberlege: My Lords, I share the views that have just been expressed but do so reluctantly as I have had a lot of support from the noble Lord, Lord Kennedy, and others. At the last local elections the turnout was 30.9%. I wonder why the 40% figure has been proposed. I do not know enough about these referendums. Do you have a postal vote in a referendum? Do you have a means of voting in a referendum without actually being there? If that is the case, how about the old, the lame, the housebound, those in hospital, those on holiday or those away from home on business? They might be just as interested in what is going on in their local community but not able to take part in a referendum. I do not know whether there is a postal vote or some other means of taking part. If there is, that is a very good thing. However, I still think that the figure of 40% needs to be justified. Why 40%? Why not 20%, 30% or 50%? I am sure that the noble Lord, Lord Beecham, knows the answer and that he will tell me.

7.30 pm

Lord Stunell: My Lords, I was quite surprised to see this amendment, which takes me back to the Commons Committee stage on the Localism Bill when a long succession of amendments were proposed by Labour Members that could be summed up as wrecking amendments designed to disable the process, but they were swept aside. I had thought, from what I have heard from Labour Members in this House and Labour spokespeople in the House of Commons, that it had now become part of the accepted culture of the Labour Party that the neighbourhood planning process is a beneficial one for local communities and should be supported.

That made me look at the numbers which are being talked about. It is 40%. If we divide it by 10, we have 4%, and that would still be more than 10 times as many local residents involved in a local plan than are involved in a district local plan or what used to be a unitary development plan. In fact I could probably add another nought to that because the percentage of local residents in an area who have actively participated in the standard pre-existing planning process is minute. They become engaged only after the plan has been signed off and when a developer puts in a proposal. That is precisely what is wrong with the current situation and is what the neighbourhood planning system is designed to overcome. So there should be no threshold, or perhaps it should be more than the number who contributed from the planning area to the preceding local plan. It would be so small a number that we would not need to consider it.

Lord Kennedy of Southwark: My Lords, I intervene only briefly because I made reference to turnouts in my speech at Second Reading. It may well be that the figure of 40% is too high, but our concern is that a plan can be approved on a very small turnout, which itself could cause problems. That is why we have put this amendment forward for debate, but it is certainly not an attempt to wreck anything. As I have explained before, I am a councillor in Lewisham where we are actually producing our own neighbourhood plan. We are about a year into it because it is a very complicated

process, but it has definitely involved many members of the local community and I am supportive of that, as is my noble friend Lord Beecham.

Perhaps there should be a discussion about what would be a legitimate figure. Would a turnout of 1%, 2% or 5% be legitimate? At what point would a plan genuinely have community backing when it is put to a referendum? That is the point of the discussion today, rather than any attempt to wreck the provision. I think that we have had a useful discussion that has covered a range of issues.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lords, Lord Beecham and Lord Kennedy, for raising this matter. I am not sure whether they believe in the 40% figure, 4% or 2% because that is not entirely clear. Perhaps I may say that I do not think that their hearts are quite in it. The most alarming thing about the debate is that on this basis, Newcastle would have been deprived of the noble Lord, Lord Beecham, and Lewisham possibly deprived of the noble Lord, Lord Kennedy, to the detriment of our national life. I would have thought that the presence of the noble Lord's name on the ballot paper would have ensured a really high turnout. More seriously, this is not something that we can pursue.

Lord Shipley: Just to assist the noble Lord with further information. In fact, the noble Lord, Lord Kennedy of Southwark, was elected on a turnout of 40.61%.

Lord Bourne of Aberystwyth: My Lords, I think we now know why the figure of 40% appears in the amendment.

In all seriousness, clearly we would all want to see higher turnouts, but regrettably much of our national life turns on low turnouts. In May 2016 the overall turnout in English local elections was 33.8%—the noble Lord, Lord Kennedy, bucked the trend. The average turnout for neighbourhood planning referendums is 32%. The principles of neighbourhood plan and neighbourhood development order referendums are consistent with all referendums and elections in our country. People are given the right to vote but are not obliged to do so. With this in mind, we cannot support the 40% threshold. The Electoral Commission's data show that the overall turnout in English local elections since 2007 has exceeded 40% in only three years.

As the Minister for Housing and Planning, Gavin Barwell, highlighted in the other place when a similar amendment was tabled in Committee, of the approximately 240 neighbourhood planning referendums that had been held at that point, around 170 had had a turnout of less than 40%. The amendment would drive a coach and horses through the legislation and could jeopardise the whole neighbourhood planning process and the hard work of so many people and communities to produce neighbourhood plans, which the Government support. With this clarification, I hope the noble Lord will withdraw his amendment.

Lord Beecham: My Lords, it is interesting to be identified by the Liberal Democrats as having a low polling achievement, when at the general election, was it 8% or 9% that the party of the noble Lord, Lord

Shipley, managed to achieve? However, to my mind the issue was not so much about a particular figure as about trying to ensure that there is significant involvement of local people in making a decision.

I did not know the statistics that the Minister referred to and I am grateful to him for answering my question about that. Those figures suggest that there is in many places a reasonably high demand—30% or so, whatever it might be, is a good response to something such as this. But the object ought to be to encourage as much as possible a turnout on these decisions. I am not wedded to the 40% figure. Perhaps a different approach might be to provide financial and other support to promote referendums, without necessarily imposing a limit, but to work with local authorities—

again, perhaps with the LGA—to develop a scheme to maximise the involvement of local people in a system which is supposed to engage them in evolving policy which will affect their communities. Perhaps it could be looked at afresh from that perspective without identifying a particular figure, which I accept is very much an arbitrary one. But we are all concerned to see public engagement increasing as much as possible. There may be ways to do that.

In the circumstances, of course I beg leave to withdraw the amendment, and I hope that the turnout in the next elections in Newcastle will be somewhat higher.

Amendment 13 withdrawn.

Committee adjourned at 7.38 pm.

