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PARLIAMENTARY DEBATES
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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 7 February 2017

2.30 pm

Prayers—read by the Lord Bishop of St Albans.

Lord Speaker's Statement

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, I would like to make a short statement following the statement in the House of Commons by the Speaker there on a possible speech to Parliament by the President of the United States. The procedure by which permission is given to speak in Parliament is long established. When the Speakers receive a request to invite a head of state to address Parliament, they both have to agree to issue an invitation, after consultation. The whole purpose is to seek consensus, ensuring that both Houses have the opportunity to consider a request. Yesterday in the Commons, Mr Bercow said that he was opposed to the President speaking. I should make it clear that I was not consulted on that decision or its timing. However, the Speaker contacted me this morning. He told me that, while he maintained his view on the issue, he was genuinely sorry for failing to consult with me. Obviously, I accepted that apology.

My view is that I will keep an open mind and consider any request for Mr Trump to address Parliament, if and when it is made. I do not intend to argue the case for or against Mr Trump's visit: that is not my role as Speaker. But allow me to say that I have spent the last 30 years campaigning against prejudice and discrimination, particularly for the rights of LGBT people and those with HIV/AIDS.

I would, however, like to make two further comments, which I stress are entirely on process. First, there will be other leaders coming to this country who may also be controversial. The procedure as it stands means that either Mr Speaker or myself can effectively veto any proposal for a visiting leader to address Parliament, at least as far as Westminster Hall is concerned. It is for Parliament to consider whether there is a better way in which such decisions can be made. Secondly, for the time being, there may be a situation where one of the Speakers decides that he cannot agree. Before we reach that point, there should be, at the very least, some effort to reach consensus and a serious discussion on what the decision should be. I hope that we can now return to that previous practice.

Transport: A1 Dual Carriageway Question

2.38 pm

Asked by Lord Beith

To ask Her Majesty's Government when they expect work to begin on the construction of new sections of dual carriageway on the A1 in Northumberland.

Lord Beith (LD): My Lords, I thank the Lord Speaker for the clarity of his statement and beg leave to ask the Question standing in my name on the Order Paper.

Viscount Younger of Leckie (Con): My Lords, as set out in the road investment strategy of December 2014, construction of the A1 dualling schemes between Morpeth and Ellingham is expected to commence in 2020. This is subject to completion of statutory planning processes and continuing to demonstrate value for money. The A1 in Northumberland programme will also benefit from a package of smaller-scale junction improvements, overtaking lanes and pedestrian improvements north of Ellingham. These are planned to start construction in 2018.

Lord Beith: I thank the Minister for his reply and ask him if it is the view of Her Majesty's Government that there should be a continuous dual-carriage A1 from London to the Scottish border. He indicated in his response, and perhaps he will now confirm, that although the commitment was made by the coalition Government in 2014 for substantial extra dualling, it will probably not start until after the next general election.

Viscount Younger of Leckie: I applaud the persistence of the noble Lord in raising over many years the issue of upgrading the A1 up to what I believe is his old constituency in Berwick. I reassure him that it is very much part of the plan to dual the road right up to the border, but he will be aware that these road plans can be very complicated and need to be done in stages. This programme will start in 2020 and is due to be completed on time and on budget by 2023.

Lord Vinson (Con): My Lords, the upgrading of the A1 would have a hugely beneficial effect on bringing about the northern powerhouse, which we are all keen to happen. But equally the A69, which is the link road between Carlisle and Newcastle, is appalling as it goes down to 16 feet wide at Warwick Bridge. If that road was improved, a huge amount of the Scottish and Irish traffic currently going further down the country would cross over to Newcastle, revitalising the port there and bringing real additional prosperity to the city, just as the A1 does to the area. I hope that this upgrade will also be considered a high priority.

Viscount Younger of Leckie: My noble friend makes a good point. Of course we are talking about the A1, but this is all part of the new interconnectivity up in the north and the north-east. We are bringing forward junction improvements on the A69 which should be complete by 2020. Every key junction on the A69 between Hexham and the A1 at Newcastle will be grade separated.

Baroness Quin (Lab): My Lords, I urge the Minister to act more swiftly in the dualling of the A1. People have campaigned for this for 20 or even 30 years and there is huge public support in the region for it, partly on safety grounds because of the number of head-on collisions given the confusing mixture of single and dual carriageways, partly on economic grounds to help an area of the country that would very much welcome such an economic boost, and partly on political grounds given that most of us welcome the fact that Scotland voted to remain part of the union. The A1 is a hugely important communications route between both London and Scotland and Northumberland and the Scottish borders.

Viscount Younger of Leckie: The noble Baroness is absolutely correct and I stress again that we are on time with this project. However, she will know that these major road schemes have to go through particular stages, including strong consultation. We have consulted on both stretches—the dualling and the improvements north of Ellingham. Along with the improvements from Morpeth up to Ellingham, a development consent order with statutory timescales is required, so there are some necessary steps to go through to be sure that we do this work effectively.

Lord Geddes (Con): My Lords, while warmly supporting the Question asked by the noble Lord, Lord Beith, I will follow up the supplementary put by my noble friend Lord Vinson. Will my noble friend on the Front Bench refute a comment made to me some years ago by the then spokesman for my party in this House on transport, in response to a supplementary question, that it was quicker to go from Newcastle to Edinburgh via Carlisle?

Viscount Younger of Leckie: I am not sure that I am in a position to comment on something that was said many years ago, but speed is of the essence here. When we complete this particular upgrade of the A1 on time, freight, tourists, locals and everyone else who wants to use the road will at last be able more speedily to reach the border—and I hope beyond, but that is up to the Scottish Government.

Lord Steel of Aikwood (LD): On that last point, would the Minister be kind enough to consult his opposite number in the Scottish Government, Mr Yousaf, with a view to making sure that the benefit of these works extends right the way to Edinburgh?

Viscount Younger of Leckie: The noble Lord is absolutely right and I can confirm that consultation is going on. We are very much hoping for, but have no influence over, the decision that the Scottish Government will make.

Lord Rosser (Lab): The Minister said that the project will start in 2020. Could he explain why the Highways England website shows the start date as “TBC”, which could be “transparent broken commitment” but I assume means “to be confirmed”? Why does the Minister have a different view of the start date from Highways England?

Viscount Younger of Leckie: I will have to check the website, but I confirm that we are on track to start this project in 2020. I can perhaps add a bit more gravitas to that by saying that the consultation process, which finished at the end of last year, is also on track. We are looking at the views expressed by those who contributed to that process. The next stage will happen very quickly and the decision will be made in late spring or early summer.

Lord Spicer (Con): Is my noble friend aware that in 1966 I made a vain attempt to reduce the majority of 24,000 of Emanuel Shinwell in Easington on one issue:

the A1 north of Scotch Corner? Can we at least build the road to some sort of higher standard up to the Scottish border, where its pristine condition no doubt comes compliment of the English taxpayer?

Viscount Younger of Leckie: I think I made clear earlier that that is the intention. We are going full steam ahead in dualling the road up to Ellingham. North of Ellingham, we are producing the overtaking lanes. I say again that we cannot do everything in one go and I stress again that we are on time. But there are other projects. In fact, there are 112 other projects around England that we are focusing on. Upgrading the nearby A66 is one of the important projects we are pushing ahead with.

Viscount Ridley (Con): My Lords, would my noble friend accept that the people of Northumberland will be very glad to hear that this project is on target? Will it be possible for him to indicate as early as possible which of the three routes that have been tested will be used for the stretch north of Morpeth? I declare an interest as a landowner over whose ground it will go.

Viscount Younger of Leckie: I reassure my noble friend that the options for the routes are being looked at now. This is all part of the consultation process that is under way. It is indeed extremely good news not just for the locals in Northumberland, but for those wishing to travel through Northumberland up to the north.

Drugs Policy: Departmental Responsibility *Question*

2.47 pm

Asked by Lord Hylton

To ask Her Majesty's Government what consideration they have given to transferring responsibility for drugs policy and the rehabilitation of drug users from the Home Office to the Department of Health.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, responsibility for achieving the aims in the drugs strategy is shared across a number of departments. Drug treatment, which will include the rehabilitation of drug users, is the lead responsibility for the Department of Health. Successful delivery of the strategy requires effective governance and accountability, which is provided by the Home Office. There are no plans to transfer overall responsibility for the drugs strategy away from the Home Office.

Lord Hylton (CB): My Lords, I expected a slightly diffuse answer, but is the Minister aware that changes of the kind I suggested are strongly supported by the British Medical Association and the Royal College of Psychiatrists? What is more, they have already been implemented in such countries as Canada, Switzerland and Portugal, with good results. Will the noble Baroness use her personal influence to get policies that reduce harm to drug users and cut the profits of organised crime and pushers that are so necessary given the doubling of deaths from opiates in just four years?

Baroness Williams of Trafford: My Lords, I do not know how influential I am, but I certainly agree that the Government are absolutely clear that reducing the harms caused by drugs needs to be part of a balanced approach. That means acting at the earliest opportunity to prevent people starting to use drugs in the first place and escalation to more harmful use, and providing evidence-based treatment options that can be tailored to individual need. The noble Lord talked about the rise in certain drug deaths. It is very concerning. PHE will continue to work with the Government and local authorities in delivering tailored, effective responses according to specific local issues. The reasons behind some of the increases in drug-related deaths are multiple and complex, which is why we established an expert group that has made recommendations to curb the number of people dying from drug misuse.

Baroness Chisholm of Owlpen (Con): My Lords, a charity called the Nelson Trust goes into prisons to help prisoners with drug rehabilitation. Does the Minister feel that this is the way forward and that we ought to concentrate more on this? By the time prisoners come out, it is often too late to try to treat their addictions.

Baroness Williams of Trafford: I thank my noble friend for that question and respect her great experience in the area of health. It is absolutely right that prisoners should receive treatment for both prevention and their drug use, because when they come out of prison, it is very important that they have recovered from their drug use and the issues associated with it.

Lord Patel of Bradford (Lab): My Lords, between 2001 and 2008, investment in drug treatment increased from £250 million pounds a year to £750 million a year, ring-fenced. This resulted in the number of drug users in treatment rising from 80,000 to 230,000, which had a huge impact on drug misuse, drug-related deaths and acquisitive crime. The last eight years have seen a massive financial clampdown and huge disinvestment from local authorities. What steps are the Government taking to ensure that local authorities do not continue this disinvestment, which is going to reverse all the positive gains, especially in relation to drug-related death and acquisitive crime?

Baroness Williams of Trafford: The noble Lord raises an interesting point, because there has actually been a reduction in drug misuse among adults and young people compared with a decade ago. It has gone down from 10.5% in 2005-6 to 8.4% in 2015-16. The number of heroin and crack cocaine users in England has also fallen, to 294,000. Among 11 to 15 year-olds—a particularly vulnerable group—drug use has continued to fall since its peak in 2003. On the point about local authority investment in drug treatment, the amount that local authorities spend on treatment and rehabilitation is entirely up to them, because the budgets are devolved to them. Clearly, there are different needs in different areas and it is up to local authorities to deem how that money is spent.

Baroness Meacher (CB): My Lords, is the Minister aware that in April the United Nations challenged 50 years of prohibitionist global drug policy at the UNGASS when it declared that evidence-based public

health policy is here to stay? I know that the Minister is aware of the considerable evidence now available of the importance of medical cannabis to tens, if not hundreds of thousands, of very sick, chronically ill patients. If the MHRA is willing to work with the Home Office to develop ways in which cannabis medicine can be made available to these very sick patients, will the Minister enter into discussions on that issue?

Baroness Williams of Trafford: I thank the noble Baroness. She and I have had many discussions both within the Chamber and outside it on this very issue. I recognise the value of Sativex in the treatment of multiple sclerosis and other types of pain relief. The MHRA is open to considering marketing approval applications for other medicinal cannabis products, should a product be developed. As happened in the case of Sativex, the Home Office will consider issuing a licence to enable trials of any new medicine provided that it complies with appropriate ethical approvals.

Lord Rennard (LD): My Lords, last week a young man was shot dead outside a Liverpool chip shop in what was believed to be a drug-related incident. The Merseyside police say that they need many more officers to tackle the problems caused by gangs supplying illegal drugs. Does the Minister agree that it is also essential that we do more to break the link between those dependent on illegal drugs and the criminal gangs by increasing support and treatment for people with drug addictions rather than reducing it, as many local authorities are currently being forced to do as a result of reductions in expenditure imposed upon them by central government?

Baroness Williams of Trafford: I was actually talking to police officers in that area on Friday. Local authorities can spend what they deem appropriate on drug treatment and rehabilitation but I agree with the noble Lord's first point, that breaking the link between the criminal element of drugs and the users is essential.

Disabled People: Medical Records *Question*

2.55 pm

Asked by Baroness Burt of Solihull

To ask Her Majesty's Government what assessment they have made of the use of medical records of disabled parents in child custody cases.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the welfare of the child is paramount in court decisions about a child's upbringing. As well as any other matters, the court can take into account the medical record of a parent with disabilities if it considers such evidence relevant to the case. Judges must act in accordance with the principles of the European Convention on Human Rights, including those relevant to preventing discrimination on the grounds of disability.

Baroness Burt of Solihull (LD): My Lords, I am sure that noble Members will all agree that the welfare of the child must be paramount, but many disabled parents feel that they are unfairly discriminated against in child custody cases. Some fear visiting the doctor in case the use of their medical records in court might contribute to their being designated unfit parents. The Equality Act is silent on this matter, so will the Minister consider adding a clause to the Act to clarify the situation and to reassure disabled parents that they will be fairly treated in the family courts?

Lord Keen of Elie: I am obliged to the noble Baroness for her observation, however I fear that some confusion has entered the debate around the issue of discrimination. The Equality Act 2010 deals with the issue of discrimination on the part of individuals. Judicial decision-makers are exempt from the provisions of the Act on very reasonable grounds; however, any judicial decision-maker is bound, in any event, by the provisions of Articles 6, 8 and 14 of the European Convention on Human Rights, and is therefore bound never to discriminate against any party on grounds of disability.

Lord Beecham (Lab): My Lords, support for 3.7 million disabled people has been cut by £28 billion since 2012 under the Welfare Reform Act. Five years on, will the Government undertake a thorough review of the Act's impact on this important section of the community? In relation to medical records and reports, will the Government intervene to prevent general practitioners charging the victims of domestic abuse up to £175 for letters which are required to support applications for legal aid?

Lord Keen of Elie: I am obliged to the noble Lord for raising a series of questions unrelated to the original Question from the noble Baroness. The question of fees for reports is not a matter that is under immediate review but it is, of course, borne in mind in the context of legal aid provision as a whole. Not every general practitioner makes a charge for such a report.

Lord Marks of Henley-on-Thames (LD): My Lords, my noble friend's Question raises a difficult point about the use of medical records in litigation generally. The courts, of course, routinely order disclosure of medical records relevant to issues in litigation on the grounds that the public interest in disclosure outweighs the individual's Article 8 right to privacy. Has the noble and learned Lord's department considered issuing guidelines as to how courts might protect the confidentiality of medical records which are disclosed?

Lord Keen of Elie: I am obliged to the noble Lord. The position is that in determining the child's welfare needs the court will apply the factors set out in the welfare checklist in Section 1(3) of the Children Act 1989. Only where it is considered that the issue of medical condition would be relevant to the ability of a parent to care for a child would any order be made with respect to the disclosure of medical records. Those medical records may be disclosed in court but not beyond that.

Lord Elystan-Morgan: My Lords, does the noble and learned Lord agree that in most cases it will be very much in the interests of the child that that child

should be brought up by its natural parents, wherever possible and wherever that is consistent with the welfare of that child? Does he also agree that medical records relating to the parents should never be used as a weapon against the parents but should be used to try to see what assistance can be given to those persons so that they can bring up the child, wherever it is humanly possible for them to do so?

Lord Keen of Elie: I entirely concur with the observations of the noble Lord. I remind the House that the Children Act 1989 was amended by Section 11 of the Children and Families Act 2014, which determined that there would always be a presumption that a parent's involvement in their child's life will further the child's welfare unless the contrary can be shown.

Lord Rooker (Lab): Can we take it from one of the Minister's earlier replies that it is the firm intention of Her Majesty's Government to remain a signatory to and a member of the European Convention on Human Rights?

Lord Keen of Elie: My Lords, that is most certainly this Government's present intention.

Nursing and Midwifery: Student Applications Question

3 pm

Asked by Lord Watson of Invergowrie

To ask Her Majesty's Government what assessment they have made of the reduction in the number of applications by students in England for nursing and midwifery courses at British universities beginning in 2017 compared to courses beginning in 2016.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, at this stage of the application cycle, based on the data published by the Universities and Colleges Admissions Service on 2 February, Health Education England is confident that the NHS will be able to fill the number of nursing and midwifery places in England.

Lord Watson of Invergowrie (Lab): My Lords, the nursing and midwifery workforce already has severe shortages, fewer EU nurses are coming to work in the NHS because of the referendum, and by 2020 nearly half the workforce will be eligible for retirement. What do the Government do? They end the long-established practice of providing student nurses with bursaries and tell them to take out loans, which will amount to £50,000 by the time they qualify. Last week, that had the predictable outcome, despite what the Minister says, of 10,000 fewer applications being received than at the same stage last year—I stress that it is at the same stage—which is a 23% drop from last year. In Scotland, where bursaries still apply, the figure was 4%. The Minister is new to his post and therefore cannot be held responsible for this bursary decision, but will he bring fresh thinking to the nursing supply crisis and get the Government to reverse this disastrous policy?

Lord O'Shaughnessy: I am sorry to hear that the noble Lord no longer supports a higher education policy of loans and fees that was originally instigated by a Labour Government. He is right about the differing impacts in Scotland and Wales, which have different systems. He also knows that, whenever fees have been introduced in the past, there has been a dip and then a rebound. Two of those rises in fees happened under Labour Governments. There are around 37,000 applicants for around 23,000 places at this point in the cycle. As he knows, there will be further applications directly to universities and through clearing. He may also be reassured by the words of the head of policy at the Council of Deans of Health, which represents the universities affected. She said:

"The scale of the fall in application numbers is not the critical factor for universities or the health and social care sector. Courses that were previously heavily oversubscribed can survive a significant dip in application numbers as long as the quality of applicants is good, and our members report that this remains so".

Baroness Walmsley (LD): My Lords, filling the places is one matter, but the level of attrition is another, and that is dreadful. Apparently, one in four student nurses leaves during their training, and in the first two years after qualification two out of five leave the profession. Part of the problem is that the data are not consistently collected. If they were, we would be able to know which settings are very poor at keeping their young nurses. Will the Government do something about collecting those data in a consistent way so that something can be done about the level of attrition?

Lord O'Shaughnessy: The noble Baroness makes an important point about attrition. It is one of the reasons that, within the new package of support, there is extra support for living expenses, both for mature students, who feature particularly in the case of nursing, and in cases of hardship.

Baroness Butler-Sloss (CB): My Lords, has the Minister seen the fifth annual *State of Maternity Services Report* from the Royal College of Midwives—I attended its launch this morning—in which there are very careful data about the fact that too many midwives are aged over 50, a considerable number are over 60 and there are not sufficient to take their places? The Government should worry about this.

Lord O'Shaughnessy: I am grateful to the noble and learned Baroness for bringing up that issue. I have not seen the report, but I shall certainly look at it. It is true that, across the public sector, there is an issue with an ageing workforce. To some extent, that will be addressed by the fact that we will all be working until we are older. The Government will also be introducing increases to the number of training places, which was a critical reason for moving from a bursary to a fee-based system. The bursary system involved a cap; we are now able to release that cap and bring more numbers through in the training.

Baroness Chisholm of Owlpen (Con): My Lords, as a very old retired nurse, can I ask my noble friend what the Government are doing to encourage an alternative

route into nursing like the back to nursing course, which I took when my children were old enough to allow me to go back to work?

Lord O'Shaughnessy: I thank my noble friend for that question. There are a couple of new opportunities: one is nursing associates and the other, in common with changes across the public sector, is that there are up to 1,000 new nursing degree apprenticeships providing alternative routes into nursing for those who do not want to go down the university route.

Lord Campbell-Savours (Lab): My Lords, the Minister referred to clearing in his original reply. If, after clearing, there is still a substantial reduction in applications, will the Government then review the position?

Lord O'Shaughnessy: That is a hypothetical situation. Health Education England remains confident that we will fill the places. Critically, the universities—I mentioned the Council of Deans of Health—also think that we will still fill them.

The Earl of Listowel (CB): My Lords, is the Minister aware of the increasing concern about perinatal mental health for mothers and the great importance of this to the future well-being of their children? In this context, is he concerned that there should be continuity of care for such mothers and that we therefore must avoid at all costs finding ourselves in a situation where there are not enough midwives to give that continuity to these mothers?

Lord O'Shaughnessy: I thank the noble Earl for that question. He is quite right that continuity of care is important. That is why we have brought about these changes to lift the cap on the number of places and become less reliant on foreign nurses filling those positions. It is also the reason, as he knows and I hope would welcome, that the Government have introduced a mental health strategy and are spending considerably more on it, with a Green Paper to come later this year.

Lord Harrison (Lab): My Lords, given the ageing profile of the current midwives workforce, and given that the Minister has acknowledged this and said that he will go back and re-examine the figures, is it not a perilous time to change the basis of midwives' recruitment?

Lord O'Shaughnessy: The Government took the decision to change to a fee-based system precisely because a bursary-based system involves caps and only so many places can be commissioned. A fee-based system allows the cap to be removed, with the intention of increasing the places available by up to 10,000 people a year, which will increase the flow into the profession to address precisely the issue that the noble Lord raises.

Baroness Hayman (CB): My Lords, can the Minister tell the House whether his department undertook a risk analysis of changing the basis of the funding for nursing education at a time when the age profile was as has been described, and when the security of the EU

[BARONESS HAYMAN]

nurses on whom the NHS depends at the moment—and will do so for the continuing future—is so damaged by the uncertainty of their immigration status? If such risk analysis was not undertaken, might it be done now?

Lord O'Shaughnessy: As the noble Baroness will know, Health Education England is responsible for commissioning medical training places, and I am sure that all necessary impact and risk assessments would have been carried out at the time. As the noble Lord opposite recognised, I was not in post at that point, but I will certainly look at it. I would be surprised if that was not the case.

Housing White Paper

Statement

3.10 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, with the leave of the House, I will now repeat a Statement made in the other place earlier today by my right honourable friend the Secretary of State for the Department for Communities and Local Government. The Statement is as follows:

“With permission, Mr Speaker, I would like to make a Statement on the Government’s Housing White Paper, *Fixing Our Broken Housing Market*, copies of which I have placed in the Libraries of both Houses. I had hoped this White Paper would dominate the headlines this morning, but it seems someone else beat me to it.

Our housing market is broken. Since 1970, house price inflation in Britain has far outstripped the rest of the OECD. The idea of owning or renting a safe, secure place of your own is, for many, a distant dream. Over the past seven years, the Government have done much to help. We have taken action on both supply and demand, and the results have been positive. Last year saw a record number of planning permissions granted and the highest level of housing completions since the recession. Between 1997 and 2010, the ratio of average house price to average income more than doubled, from 3.5 to more than 7; but in the five years to 2015 it crept up only a little, to just over 7.5, but still heading in the wrong direction.

Behind the positive statistics are millions of ordinary working people. I am talking about the first-time buyer who is saving hard but will not have enough for a deposit for almost a quarter of a century, or the couple in the private rented sector handing half their combined income straight to their landlord. The symptoms of this broken market are being felt by real people in every community. It is one of the biggest barriers to social progress this country faces, but its root cause is simple: for far too long, we have not built enough houses.

Relative to population size, Britain has had western Europe’s lowest rate of housebuilding for three decades. The situation reached its nadir under the last Labour Government, when in one year work began on only 95,000 homes—the lowest peacetime level since the 1920s.

Thanks to concerted action in central and local government, last year 190,000 new homes were completed, but that is still not enough. To meet demand, we have to deliver between 225,000 and 275,000 homes every year. In short, we have to build more of the right houses in the right places, and we have to start right now.

Today’s White Paper sets out how we will go about doing so, but housebuilding does not just happen. Meeting the unique needs of different people and different places requires a co-ordinated effort across the public and private sector. This means there is no single magic bullet that can fix the problem; rather, we need action on many fronts simultaneously.

First, we need to plan properly so we get the right homes built in the right places. To make that happen, we are going to introduce a new way of assessing housing need. Many councils work tirelessly to engage their communities on the number, design and mix of new housing in their area, but some of them duck difficult decisions and fail to produce plans that actually match their housing need. It is important that all authorities play by the same rules. We need to have a proper conversation about housing need, and we need to ensure that every local area produces a realistic plan which it reviews at least every five years.

Once we know how many homes are needed where, we need sites on which to build them, so the White Paper contains measures that will help us to identify appropriate sites for development: not simply empty spaces, but usable, practical sites where new homes are actually required. Let me reassure the House that this will not entail recklessly ripping up our countryside. In 2015, we promised the British people that the green belt was safe in our hands, and that is still the case. This White Paper does not remove any of its protections.

Government should not be in the business of land-banking, so we will free more public sector land more quickly. We will increase transparency around land ownership, so everyone knows if someone is unfairly sitting on a site that could be better used. People need a say in the homes that are built in their area, so everywhere must have a plan in place and ensure communities are comfortable with the design and appearance of new homes.

The second area of focus is all about speeding up the rate of build-out. At the moment, we are simply not building quickly enough. Whether it is caused by unacceptable land-banking or slow construction, we will no longer tolerate such unjustified delays. We will speed up and simplify the completion notice process. We will make the planning system more open and accessible. We will improve the co-ordination of public investment in infrastructure and support timely connections to utilities. We will tackle unnecessary delays caused by everything from planning conditions to great crested newts. We will give developers a lot of help to get building, and local authorities the tools to hold developers to account if they fail to do so. Local authorities also have a vital role to play in getting homes built quickly, and I am therefore looking again at how they can use compulsory purchase powers. We will also introduce a new housing delivery test to hold them to account for housebuilding across their local area.

Finally, the White Paper explains how we will diversify the housing market. At present, around 60% of new homes are built by just 10 companies, and small independent builders can find it almost impossible to enter the market. This lack of competition means a lack of innovation, which in turn leads to sluggish productivity growth. So we will make it easier for small and medium-sized builders to compete. We will support efficient, innovative and underused methods of construction, such as off-site factory builds. We will support housing associations to build more, and explore options to encourage local authorities to build again, including through accelerated construction schemes on public sector land. We will encourage institutional investment in the private rented sector. We will also make life easier for custom builders who want to create their own home.

Together, these measures will make a significant and lasting difference to our housing supply, but it will take time, and ordinary working people need help right now. We have already promised to ban letting agents' fees, but this White Paper goes further. We will improve safeguards in the private rented sector, do more to prevent homelessness and help households who are currently priced out of the market. We will tackle the scourge of unfair leasehold terms, which are too often forced on to hard-pressed homebuyers. We will be working with the rental sector to promote three-year tenancy agreements, giving families the security they need to put down roots in their community.

In the past few years, we have seen almost 300,000 affordable homes built in England, housebuilding starts increase, and more people getting on the property ladder thanks to schemes such as Help to Buy. Now we need to go further—much further—and meet our obligation to build many more houses of the type people want to live in and in the places they need to live. That is exactly what this White Paper will deliver. It will help the tenants of today facing rising rents, unfair fees and insecure tenures; it will help the homeowners of tomorrow by getting more of the right homes built in the right places; and it will help our children, and our children's children, by halting decades of decline and fixing our broken housing market. It is a bold, radical vision for housing in this country, and I commend it to the House”.

3.18 pm

Lord Kennedy of Southwark (Lab): My Lords, I thank the noble Lord, Lord Bourne of Aberystwyth, for repeating the Statement given by his right honourable friend in the other place earlier today. I must say that after all the hype—the promise that it would be published before Christmas, then that it would be out in the new year and then that it was expected shortly, followed by a series of briefings to the media over the weekend and the noble Lord himself saying in Grand Committee yesterday that it was expected imminently—it is a disappointing and missed opportunity. It is not the first time we have been disappointed, but probably the first time with so much hype and so little in reality.

It will not come as much of a relief if you are a young family on the council house waiting list or a young couple living in a home that does not meet the basic fit-for-human-habitation standards, but of course

the Government have form here. The nearly 1,000 announcements on housing since 2010 include the following. In 2011, a housing strategy running to 78 pages from the then Prime Minister David Cameron was described as “radical and unashamedly ambitious”, and one that would “unlock the housing market”. In 2012,

“a major housing and planning package”,

again fronted by the then Prime Minister David Cameron, was designed to boost housebuilding and stimulate the economy. In 2013 there was a housing Budget from the then Chancellor, George Osborne, including Help to Buy, the mortgage guarantee scheme that has now been closed. There was a 2015 plan to radically redesign the planning system, commissioned by the then Chancellor, George Osborne. The Housing and Planning Act 2016 runs to 200 pages but the majority of it remains unimplemented eight months after it passed into law.

The independent House of Commons Library has confirmed that between 2010 and 2015, under David Cameron, we built fewer homes than under any peacetime Prime Minister since the 1920s. The number of new affordable homes built below market price to rent and to buy fell to the lowest level in 24 years, with the number of properties built for genuinely affordable social rent the lowest on record.

The number of rough sleepers has doubled since 2010. Just walk from Charing Cross, Victoria or Waterloo on your way to this House and you will see homeless people huddled in doorways. Enter the building through Westminster tube and you will see people sitting there trying to keep warm. The number of households owning their own home has fallen by 200,000 since 2010 and the number of people under 35 owning their own home has fallen by 344,000. One in four families with children now rent privately. Only one home in every six sold under Right to Buy has been replaced, despite all the talk from the Dispatch Box of like-for-like replacement. I very much agree with the Minister that the housing market is broken, but to repair it we need action to build across all tenures and provide homes that families can thrive in. This is more of a Lemsip, “There there, it will all be better soon” approach rather than the radical surgery needed to deal with the housing crisis.

I have a number of questions for the Minister that I hope he is able to answer. What caused the hold-up in the production of the White Paper? I can only assume it was what is not in the document today, rather than what is in it. Do the Government have a problem with council and social rented housing, rather than seeing the sector as part of the solution? Will the Minister confirm that local authorities will have the flexibility to build council housing or work in partnership with providers to build social rented housing instead of starter homes, if they can demonstrate that need in their area?

Why do the Government continue to rely on the unaffordable, so-called “affordable” rent model? Will they be taking further action to make homes fit for human habitation? Making a home safe, warm and dry at a price that can be truly afforded is what is needed here.

[LORD KENNEDY OF SOUTHWARK]

Do the Government think they have got the tenure balance right and, if so, how did they come to that conclusion?

I will study the White Paper carefully over the coming days and I hope it will provide solutions to our broken housing market, although so far my reaction is one of disappointment that the Government have again missed the opportunity to fundamentally deal with the housing problem, and have put dogma in the way of finding solutions.

Lord Shipley (LD): My Lords, I agree very much with the noble Lord, Lord Kennedy of Southwark. I welcome some of the proposals in the White Paper but it is not the ambitious, radical plan that is needed to solve the housing crisis. At the outset, I will ask the Minister a specific question. There is no mention in the Statement of the 1 million net new homes commitment by 2020 and there seems to be no new money for investing in the homes we need—yet the Government have an ambition in the Statement for between 225,000 and 275,000 homes a year to be built. Exactly how are the Government going to deliver those numbers?

I agree with the Government that our housing market is broken and I think we should be grateful for that admission. We should be grateful, too, for the admission that the country has not built enough houses and that millions of “ordinary working people”, in the words of the Secretary of State, are saving hard but will not have enough for a deposit for almost a quarter of a century and that, if they are in the private rented sector, they are handing half their combined income straight to the landlord, if they are a couple.

It is true, and the Government are right to say, that we need action on many fronts simultaneously—but I believe that they are not working on as many fronts as they should. There is an acceptance, which I welcome, that brownfield sites must be developed before green belt site. There is, rightly, an acknowledgement that the Government should not be in the business of land banking and that we must free up more public sector land more quickly. There is also an acknowledgement of the need to make it easier for small and medium-sized builders to compete, to encourage off-site factory builds, to support housing associations to build more and to “explore options” to encourage local authorities to build again, including through accelerated construction schemes on public sector land.

I am not clear why the Government are still “exploring options”, because they have had months to get on with permitting local government to start building again—I declare to the House my vice-presidency of the Local Government Association, which has campaigned for years on this matter. Local authorities can borrow prudentially under the prudential code against their housing assets or, quite separately, against their overall assets. I would like to hear from the Minister that there will be government support for local authorities to get building again.

The noble Lord, Lord Kennedy, referred to the changes that the Government seem to be making to the Housing and Planning Act—which was, I hope it is now generally conceded, a very bad Act. We have seen U-turns. To cite just four: the Government introduced

pay to stay for those in social homes and then abandoned it when they realised that it was impossible to manage, as they had been warned in your Lordships’ House; they extended the right to buy to housing associations and then made it voluntary; they refused to ban letting fees for renters because it was bad for the market and then changed their mind; and they cut funding for supported housing and then extended it for another year to think further about it. What other U-turns are on the way? What exactly is the position on the compulsory sale of high-value council homes?

Finally, the Government need to apply tests over the coming months to the White Paper. The tests I would apply are these: will it reduce homelessness? I remind the Minister of the Government’s own figures in December that almost 75,000 households are in temporary accommodation. Will it build more social homes for rent in the volume required? Will it make housing more affordable to those on low incomes, to enable those in work on the living wage to afford to live reasonably close to where they work? Will it definitely prioritise brownfield over greenfield development in practice, and will it get local authorities building in the volume they are capable of against their assets?

I have a final request. Not for the first time, I ask the Government to cease using the word “affordable” to describe housing that patently is not affordable for millions of people?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lords, Lord Kennedy and Lord Shipley, for their contributions, but I am rather amazed that neither of them welcomed many of the things that they have been asking for over the past three days in Committee which are contained in the White Paper. There is action on planning fees: a 20% increase for planning departments from the summer, with a further possible 20%, to which we are minded to agree, tied to performance. That is something that I am sure they would wish to welcome.

There are provisions on land banking, on which we were pushed continually in previous sessions on the Bill, and before that, as well as action on brownfield sites. It is also very clear, to answer the noble Lord’s penultimate point, that brownfield land is something that we specifically go for before greenbelt land in the White Paper.

I appreciate that noble Lords have probably not had long enough to study the White Paper, and therefore that some of these points may have been overlooked. They asked what we were doing in relation to councils. We intend to work with them, with all the levers that we possess. The reason there is no immediate action is that this is a White Paper that is out for consultation from today until 2 May. That is why this does not represent legislation. Noble Lords need to be careful what they wish for. There seemed to be an implied criticism from the noble Lord, Lord Kennedy, that there was too much legislation. Some of this we hope will result in legislation and some of it can be carried out without legislation—but this is not legislation but a White Paper.

Clearly, building 1 million new homes—to which the noble Lord, Lord Shipley, referred—is still very much our policy. It was in the manifesto and is still

very much there. We are going for a mixture of tenure—again, the White Paper makes that very clear. We are putting fresh new emphasis on the private rented sector and, indeed, we are working with the social rented sector. We provided extra money in the autumn Budget last year for the social rented sector by allowing it to lift the cap. That is also a very positive point about this White Paper. So I am amazed that noble Lords do not wish to welcome some of the points in the White Paper.

The test that the noble Lord, Lord Shipley, applies is a fair one. Will the White Paper reduce homelessness? I believe that it will. Also, of course, other things are happening with relation to homelessness. As we know, with all-party support, the Homelessness Reduction Bill will be an important part of that panoply of measures, and that comes before us after our Recess, towards the end of February, when it will get its Second Reading in this House.

I was asked what we were doing in relation to rough sleeping. We doubled the grant for that recently, as noble Lords will be aware. Another measure that we have, quite rightly, been encouraged to provide for is woodlands. Again, woodlands are featured here. We want to protect woodlands with measures in the National Planning Policy Framework. Again, this is in the White Paper.

There is an awful lot of radical stuff which, quite rightly, Peers across the House have been calling for and which is in the White Paper. So I think that the welcome given to it—if welcome it were—was far too muted as regards the content of the White Paper.

3.32 pm

Lord Rooker (Lab): Will the Minister confirm that the last Labour Government left 19,000 more hectares of green belt than they inherited and that the one thing we are not short of in this country is land? In England, the last time I checked, 15% of land is made up of areas of outstanding natural beauty—no one is talking about building on that—9% is made up of national parks, and no one is talking about building on that; while only 9% is actually built on, and 13% is green belt, most of which is rubbish land—collars around urban areas—which can be swapped. It can be built on because the infrastructure is there. This is nonsense—no one is talking about building over the countryside. Forty-six per cent of that, added to what I have just said, leaves 54% of land which is farmland and unprotected land. One thing that we are not short of is land—and the public sector, last time I checked, owns enough land to build 2 million homes. We keep being told about this but nobody is using it.

Lord Bourne of Aberystwyth: My Lords, I agree with the noble Lord about 13% of land in England being green belt. That is absolutely right; that figure has been constant for some years and we are determined that it should remain at 13%. I do not agree with the noble Lord about his classification of green belt land; it is absolutely vital that we maintain the green belt. But I do join him in saying that there is plenty of land that can be built on; 87% of land is not green belt, on that calculation, and there is much that we can do in relation to building on brownfield land and in relation to land that the Government hold—and, as I indicated

in the Statement, that we are releasing, because the Government, along with everybody else, should not be land banking. It is important that we do that, and it is also important that local authorities that have difficulty identifying land in their own area should discuss the issue with their neighbouring authorities to see whether they can do something together. All those things are highlighted in the White Paper.

Lord Naseby (Con): My Lords, is my noble friend aware that his Statement is timely and has bite, which is to be greatly welcomed? However, one area seems to have been overlooked. After decades of no action, is it time to look again at the development of new towns? One has only to look at the success of Milton Keynes and Northampton—which I had the privilege of representing for 23 years. Why is planning not being done? Can this not be added to the White Paper after the consultation?

Lord Bourne of Aberystwyth: My Lords, I thank my noble friend for his welcome for what we are doing in the White Paper. I understand why noble Lords would not have been able to digest everything in it in a short period, but there is provision for new towns and for the garden cities and garden villages which are currently being developed—16 and 10 of them respectively. We are looking at the possibility of transferring these to local planning authorities because, in pursuance of our policy of localism, we need to ensure that there is local control and involvement. We have been working with the noble Lord, Lord Taylor, and other noble Lords who are also keen on this, including the noble Lord, Lord Best, to ensure that we involve localities, and this is in the White Paper.

Lord Taylor of Goss Moor (LD): My Lords, I thank the Minister for his comments on garden cities, villages and towns, which I have taken an interest in. I draw the House's attention to my entry in the register of interests. As the Government reform the local planning process, will the Minister give a strong message—I hope it is reinforced in the White Paper—that it is vital for local authorities to take a long-term view of how communities will develop? Many thousands of homes will be needed over time; we cannot simply rely on a five-year supply, doing it piecemeal with tens, fifties or hundreds at a time. This leads to housing estates with no facilities or proper community which are often of very poor design quality, rather than creating a vision for the future which allows all the things the Minister talks about: a supply of plots for small businesses, affordable homes and much better quality place-making.

Lord Bourne of Aberystwyth: My Lords, I am happy to endorse what the noble Lord has said about local community involvement and taking a long-term view. The possibility of engagement on design is also featured in the White Paper. We want to ensure that local authorities discuss the importance of design with developers, so that is earmarked as well. The noble Lord is right and this is central to the developments which are bringing fresh housing in our garden cities and villages.

The Lord Bishop of St Albans: My Lords, on these Benches we are acutely aware of the huge crisis in housing. We hear stories about this from all around

[THE LORD BISHOP OF ST ALBANS]

the country and we share some of the concerns that have been raised from the Benches opposite. There are a number of things which we welcome hugely. Examples are the new powers for local authorities to prevent land banking, measures to encourage local authorities to work together over larger areas, and new requirements for local authorities to undertake a more thorough assessment of housing needs.

I will focus on one area in which I have a particular interest. Housing is a key issue for rural sustainability. What steps will Her Majesty's Government be taking, first to encourage the development of new homes in rural areas and, secondly, to ensure that any new housing developments are designed to meet the needs of local people and families, rather than continuing the worrying trend of large, expensive rural homes that are simply not meeting real local needs?

Lord Bourne of Aberystwyth: My Lords, the right reverend Prelate is right about the importance of the rurality factor. As somebody who used to represent a very rural area, I understand that. In the White Paper we reinforce the importance of rural housing exceptions. However, the point is a very good one and we will give proper weight to rural housing as the consultation—which, as I have indicated, ends on 2 May—goes forward. I hope people, institutions and local authorities will respond to it.

The Earl of Listowel (CB): My Lords, as someone involved in commercial and residential development, I warmly welcome aspects of the White Paper, particularly the attention it gives to the private rented sector; its encouragement of institutional investors in that area and the way it addresses land bank issues, including reducing the window after planning permission from three to two years. These are very welcome. Will the Minister examine closely Crisis's campaign and the comments of both the private rented landlords' associations to ensure that more homeless people can access the private rented sector? I am particularly concerned about young disadvantaged people without family support. Support for that campaign, a mortgage guarantee scheme and for private landlords implementing the right to rent scheme would be very helpful to the Government's endeavours.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Earl for that welcome, particularly in relation to the private rented sector, and for his comments on land banking. Crisis is a very valued partner. The point made about the importance of ensuring that the private rented sector frees itself up to the homeless much more than it has done previously is well made. As we take forward consultation on these areas, I hope that we can accommodate it.

Baroness Hollis of Heigham (Lab): My Lords, I welcome the White Paper as far as it goes given the disastrous Housing and Planning Act of last year, as has already been mentioned. I wish to put to the Minister a question and a suggestion. The question follows that asked by the noble Lord, Lord Shipley, which the Minister did not answer. Therefore, I would be glad if he would answer it now. It is not in the

White Paper. The Government are extending the right to buy with large discounts to housing association tenants. Does the Minister still expect those discounts to be funded by the forced sale of council homes as they become temporarily vacant between tenants, robbing social tenants in another tenure of the opportunity to rent their own affordable homes? Secondly, on the cost-free suggestion, those in severe housing need may qualify for housing benefit. As has been mentioned, social housing is seldom available. It has been sold off. Yet in the private rented sector many private landlords worried about reliable rents refuse to let to tenants on housing benefit. Where tenants and landlords wish it, will the Minister persuade his unsuitably rigid DWP colleagues to reinstate direct payments to landlords so that some of the most vulnerable have a chance to get a home?

Lord Bourne of Aberystwyth: I thank the noble Baroness, who has great experience in these areas. I apologise to the noble Lord, Lord Shipley, that I did not cover the point on HVA. There is a section in the White Paper on this. It correctly states that we are proceeding with pilots on the measure in relation to the right to buy and housing associations. That is the position. We want to see how the pilots play out. As I say, it is in the White Paper.

Baroness Hollis of Heigham: What is the page number?

Lord Bourne of Aberystwyth: My Lords, I am not aware of the page number. However, I am happy to meet the noble Baroness afterwards and point out where it is in the White Paper.

The point the noble Baroness made on housing benefit is beyond the scope of the White Paper. We talk to the DWP regularly and do not find its staff as hard-hearted and difficult as she does. However, she makes a very valid point and I will ensure that it is appropriately discussed, as it has been in the past.

Lord Lansley (Con): I thank my noble friend for repeating the Statement and draw attention to my entry in the register as chair of the Cambridgeshire Development Forum. As regards the provision of utilities and connections to support planning for housing, rather than waiting to see whether this is a problem will the Government step in and make it clear to utilities providers that they must put in the necessary connections to planned development alongside the local planning process rather than wait until the houses are given planning permission?

Lord Bourne of Aberystwyth: My Lords, once again, my noble friend is very experienced in this area. He is right to draw attention to the importance of utilities. That, of course, extends not just to the normal utilities, as it were, that we all recognise from the past but also to broadband, which, again, is mentioned in the White Paper. My noble friend is absolutely right; we need to ensure that these parts of the infrastructure are taken care of in moving forward with the plans for the additional housing.

Lord Scriven (LD): My Lords, paragraph 2.29 of the White Paper says that the Government are looking at, "options for reforming the system of developer contributions".

Can the Minister give an assurance to the House that that reform will not lessen the amount of contributions that developers give? This White Paper is about building communities, not just homes.

Lord Bourne of Aberystwyth: My Lords, I anticipate that it is looking at greater contributions—the wording is obviously broader than that, but my reading is that we are looking at ways to ensure that there is a more effective contribution. I look forward to the issue of contributions when we consult on that.

Lord Campbell-Savours (Lab): Will not private individual landowners all over the country be rubbing their hands with glee at the prospect of transforming, at the stroke of a planner's pen, land worth £10,000, £15,000, £20,000 or £25,000 a hectare, into land worth anything between £1 million and £5 million a hectare? Is not the price of land in the United Kingdom, and huge profit-taking by individual landlords when they secure planning permission on their land, at the heart of the problem? Until that problem is sorted out, we will never resolve the problem of housing in this country.

Lord Bourne of Aberystwyth: My Lords, the noble Lord is being a bit of an Eeyore. We are being encouraged to build more, which we are seeking to do here. If it is a question of supply and demand, the more supply there is, the more that would affect the price. There are also provisions in the White Paper with regard to landlords, which we are consulting on, and which landlords would not necessarily welcome—the bad ones certainly will not. We are looking across the board at unreasonable terms in leasehold provision, and at some where people think they are buying their own home only to find that they have a ground rent payment, for example, or things of that nature. Therefore, if the noble Lord studies the White Paper, he will see that it is extremely fair.

Baroness Gardner of Parkes (Con): My Lords, my noble friend just mentioned the leasehold system, which is quite iniquitous and very damaging. There should be encouragement for more freehold, or commonhold, properties in new build, because then people will own their houses instead of being indebted to someone who owns the land they live on.

Lord Bourne of Aberystwyth: My noble friend makes a valid point on the point I just made, and that is exactly what we are seeking to do. However, across the board we are going for a mixture of tenure. It is important that it is properly regulated; most landlords are perfectly honourable, obey the rules and are quite fair. We want mixed tenure and we are putting fresh emphasis on leaseholds, so that people realise what they are getting, rather than finding, when they thought they had purchased their own house, that they have a long lease with unreasonable terms.

Lord Beecham (Lab): My Lords, I refer to my local government interests. I have not read the White Paper in detail but I have certainly looked through it, and I can see no reference to two matters which I have raised on more than one occasion in your Lordships' House. The first relates to the rent increase imposed on local authorities of 1%, which will cost, as I have mentioned

before, £590 million, and which would otherwise have been invested in housing stock in Newcastle, either in existing or new properties. That will translate into billions of pounds nationally, yet it is not mentioned in the report. The other issue is to do with private tenancies. Is there any intention to promote and facilitate more selective licensing schemes to deal with landlords who are simply failing their tenants, not looking after properties, and all too often exploiting their tenants?

Lord Bourne of Aberystwyth: My Lords, the noble Lord is right that the issue of rent increases on local authorities is not covered by the White Paper. On the position of landlords who act unreasonably, he will be aware that we are bringing in, under previous legislation, the register of rogue landlords, which is due to happen later this year—perhaps he was referring to that point. That is mentioned in the White Paper and it is already scheduled to happen. However, in addition we are, as I have indicated, looking at where landlords are acting unreasonably and holding a consultation on that issue within the White Paper.

Baroness Altmann (Con): My Lords, I warmly welcome the White Paper and congratulate the Government on their decision to require local authorities to prioritise and make plans for accommodation for older people. The fastest growing group in our population is the older generation. I also welcome the building of the right homes in the right places and the encouragement for small and medium-sized firms. Too often, the very large builders make outsize profits at the expense of smaller ones, which often have the specialist knowledge to build homes suitable for older people. I also welcome the emphasis on institutional investors. Many insurance companies are now engaged in build-to-rent programmes. In the current low interest rate environment, that is a very fruitful avenue for them. Will my noble friend consider encouragement for local authority pension funds also to invest in housing in the build-to-rent sector?

Lord Bourne of Aberystwyth: I thank my noble friend very much indeed for her welcome of the part of the White Paper that relates to older people and disabled people. It was prompted by a Conservative Back-Bencher in the Commons but is supported, I think, across the other place and across this House as something that is very valuable. I have indicated to my noble friend my hope that as we take this forward she and others who have shown an interest—the noble Baronesses, Lady Andrews and Lady Greengross, who have great experience of this through institutions that they represent—will help us craft some thoughts on this. As was indicated in Committee by the noble Baroness, Lady Andrews, this is the first time there has been a provision like this in legislation. It is valuable. It helps not only those who are elderly or disabled but has the bonus that it will free up housing, although that is not the prime intention.

I will respond to a couple of the other points that my noble friend made. There are certainly provisions in the White Paper by which, again, we are seeking to encourage institutional investment in the housing programme. I believe that that will be fruitful and I

[LORD BOURNE OF ABERYSTWYTH]

echo the point she made about pension funds. We will make sure the message goes out that pension funds should, I hope, be included in the process of trying to encourage outside investment away from the public sector towards the private sector and the third sector.

The Lord Bishop of Chester: My Lords, I want to ask about the politics of all this. I speak as a fool in relation to that, but let us take the hypothesis that this policy is a great success, that we have lots more houses and that the price of houses starts to fall. Indeed, let us imagine that land prices start to fall in the way that the noble Lord, Lord Campbell-Savours, rightly pointed out. All the people who have bought houses in the past 20 years will find that those houses are worth less than they used to be. It seems to me that this is tinkering with a major problem. Do the Government seriously wish to get the average value of a house back down to 3.5 times average earnings? If so, what are the consequences going to be?

Lord Bourne of Aberystwyth: My Lords, the right reverend Prelate makes an interesting point. However, as noble Lords will know, I am not a wizard. I can seek to take forward measures that I believe will stabilise the position and mean that house prices do not rise as quickly as they should. That is good news for young people and people who are trying to buy their own house. I accept that, over time, if prices fall, that will not be good news for people who live in those houses. But the most important thing is delivering housing that is affordable. This is not a single policy; a whole raft of policies exists across the range, which is why it has taken some time to promote and produce the White Paper. Although they may not agree with all of it, anybody who has studied the White Paper in any detail will see that it offers a range of tools that can be used to help us build more and get more people on the housing ladder. I think that will be a fair response once noble Lords study the White Paper.

West of England Combined Authority Order 2017

Motion to Approve

3.54 pm

Moved by Lord Bourne of Aberystwyth

That the draft order laid before the House on 16 January be approved.

Relevant document: 23rd Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, this draft order, if approved and made, will establish for the West of England an elected mayor and a combined authority and will confer important new powers on to both the mayor and the combined authority.

The Government have already made significant progress in delivering their manifesto commitment to devolve far-reaching powers and budgets to large cities in England that choose to have directly elected mayors.

Since the first devolution deal with Greater Manchester was agreed in November 2014, we have passed the Cities and Local Government Devolution Act 2016, which provides new powers for the Secretary of State by order to devolve to a combined authority a Secretary of State function, and confer on a combined authority any functions of a public authority. I remind noble Lords that Parliament has approved orders establishing combined authority mayors in Greater Manchester, Liverpool City Region, Sheffield City Region, the West Midlands and the Tees Valley. Parliament has also approved an order conferring additional functions on to the Greater Manchester Combined Authority covering planning, transport and skills. Furthermore, orders conferring functions on to other combined authorities have been laid before Parliament, to be considered.

This order brings to life the devolution deal that the Government agreed with the West of England councils in March 2016. We are taking forward this deal with three councils—Bath and North East Somerset, Bristol City Council, and South Gloucestershire. As noble Lords may be aware, North Somerset Council was also initially part of the deal but later decided that it did not wish to go ahead with it. The deal agreed between the Government and the West of England means that the area will receive a devolved transport budget and transport powers to help provide a more modern, better-connected network; new planning and housing powers to manage planning across the region; new functions over skills and, in particular, responsibility for the adult education budget in the area; and control over an investment fund of £30 million a year for 30 years.

Noble Lords will want to know that the basis of the draft order before us today is the governance review and scheme prepared by the three West of England councils in accordance with the requirement in the Local Democracy, Economic Development and Construction Act 2009. The three councils—Bath and North East Somerset Council, Bristol City Council and South Gloucestershire—published this scheme in June 2016 and, as provided for by the 2009 Act, the three councils consulted on the proposals in the scheme.

The consultation ran from July to August 2016. It was primarily conducted digitally and included promotion through social media. In addition, respondents were able to provide paper responses, and copies of the consultation were available in public buildings such as libraries, citizen service points and other locations across the three councils' areas. As statute requires, the councils provided the Secretary of State with a summary of the responses to the consultation in September.

Before laying this draft order before Parliament, the Secretary of State has considered the statutory requirements in the 2009 Act. The Secretary of State considers that these requirements have been met in relation to proposals to establish a directly elected mayor for the West of England; to establish a combined authority across the local government areas of Bath and North East Somerset, Bristol City, and South Gloucestershire; and to confer functions on to that combined authority. In short, he considers that establishing the West of England mayoral combined authority and

conferring the functions on it would be likely to lead to an improvement in the exercise of the statutory functions in the areas that I have just set out across the West of England area. In this consideration, the Secretary of State has had regard to the impact on local government and communities.

Also as required by statute, the three councils have consented to the making of this order, and as required by the 2016 Act we have in parallel with this order laid a report before Parliament which sets out the details of the public authority functions that we are conferring on the West of England through this order. Noble Lords may recall that the requirement for this report was one of the additions that this House made to the 2016 Bill during its passage.

If approved by Parliament, the order will come into effect the day after it is made. The order gives effect to many of the proposals in the three councils' June 2016 scheme. If approved and made, it will establish the office of elected mayor for the West of England, elected by the people of the three council areas. The mayor will be first elected on 4 May 2017 and will then take office on 8 May 2017 for a four-year term. Second elections are to be held on 6 May 2021. The order will also establish a combined authority, chaired by the elected mayor with a membership drawn from the three councils, provide the combined authority with functions over transport, give the mayor the power to pay grants to the constituent councils and provide the mayor with the function of producing a local transport plan for the area.

It will provide powers on road improvement and maintenance, and for the mayor to pay grants to bus operators ahead of bus franchising as envisaged in the Bus Services Bill. A duty will be placed on the mayor to prepare a West of England spatial development strategy, enabling an integrated approach to spatial planning in the same way as in London. Councils will continue to prepare local plans and will remain responsible for local planning decisions. The three councils have also confirmed their intention to continue engaging with North Somerset as per their current working relationship.

The order will confer the ability to designate mayoral development areas, leading to the creation of mayoral development corporations on to the combined authority, to be exercised by the mayor. It will confer land acquisition, disposal and housing powers, including a compulsory purchase power for the mayor, the same powers as the Homes and Communities Agency and councils. No powers are being taken away from councils. It will provide the mayor and the combined authority with the power to exercise the general power of competence, allowing them to do anything an individual is entitled to do.

The order provides the combined authority with functions over economic development and regeneration, the powers which are held by the existing combined authorities, and provide for the constitutional and funding arrangements that will support the mayor and the combined authority to manage the investment fund. In particular, provision is made for the three councils to contribute to the funding of the mayor and combined authority's activities in an arrangement where the councils are totally in the driving seat of any decision about the level of contributions.

In conclusion, this order devolves brand-new, far-ranging powers to the west of England, putting decision-making in the hands of local people and helping the area to fulfil its long-term ambitions. The draft order we are considering today is a significant milestone, contributing to greater prosperity in the west of England and paving the way for a more balanced economy and economic success across the country. I commend this draft order to the House.

4 pm

Lord Beecham (Lab): My Lords, this part of the country owes a great deal to Conservative Governments. This is the third local government reorganisation that the Conservative Government have effectively imposed on the area in the last 40 years. We had the creation of Avon County Council in 1974, its abolition and replacement with a number of unitary authorities, and now we have the combined authority, while in addition of course we have an elected mayor in Bristol. It is an interesting case of an area being subjected to a number of experiments in local government.

As the Minister may have said, although I did not quite catch a reference to it, one council, North Somerset, ultimately declined to be part of the new organisation. It is interesting that the Secondary Legislation Scrutiny Committee has reported in some detail on the outcome of such consultation as did take place in the remaining three authorities. Bristol is a large and historic city with a population of around 400,000, and we also have South Gloucestershire and Bath and North East Somerset, with a total population of what I imagine probably runs to about 800,000 people, of whom something fewer than 1,700 responded to the consultation exercise—with rather different views. In Bath and North East Somerset, of those who did respond a small majority disagreed with the proposal to go ahead with the combined authority, but of course they were outvoted because the vote had been taken across the whole area by residents from Bristol and South Gloucestershire. In one sense there was a legitimate majority among the very small proportion of the electorate who voted.

This agreement is rather different from those we have discussed previously which have gone beyond the basic economic functions referred to here. There is definitely a good case for putting them together in any given area. In Greater Manchester, people are looking at health and social care as well as a whole range of issues that go further along the devolutionary model than this. However, I suppose that there is always the possibility of seeking further devolution in the future or, as is more likely, having it imposed upon them by the Government.

It is interesting to note that the pill, such as it is, is sweetened by the customary reference to additional funding over a 30-year period amounting to £30 million a year. This has been offered to a number of areas. It does not seem to alter very much in proportion to the number of residents in the area, or any other factor. It has to be seen against the background of what is happening to the finances of the local authorities that constitute the new combined mayoral authority. In Bristol, for example, an annual cut of £83 million a year was accumulated between 2014 and 2017. That will be doubled

[LORD BEECHAM]

by 2020; that authority alone will lose £166 million a year from its budget and services. I do not have the figures for Bath's losses to date, but it has projected a further loss of £37 million a year. South Gloucestershire had lost £56 million a year by the current year and will lose £27 million a year over the next couple of years. The total annual loss—annual cuts—imposed on these authorities, which are to be rewarded between them with £30 million a year, will be £280 million a year by 2020.

That is the background against which this wonderful devolution agenda is being progressed. It really is a three-card trick; I cannot find any other way of describing it. It is not to say that the bringing together of these authorities to work on strategic issues is not in itself valuable, but to describe this as a wonderful devolution of power is a grotesque misinterpretation, not by the Minister personally but by the Government as a whole, of the reality facing those councils and their communities under whatever system, mayoral or otherwise, they will have to live with. Frankly, the Government would do better to look at the main line funding of local authorities than by creating these structures with a fairly minimal contribution that in no way off-sets the problems they face.

Having said that, these Benches will not oppose the order. We cannot, because we have not tabled a Motion to that effect. This is a decision that has been taken locally. They think it is the best course for them and we have to accede to their view. The reality is that they will continue to suffer massively, notwithstanding the relatively small amounts the Government will provide by way of extra funding.

Lord Shipley (LD): My Lords, the west of England has actually seen the strongest economic recovery outside London since 2008. Its economic output is reported by the Resolution Foundation to be 7% higher than its pre-crisis peak, while the output in many British cities has yet to return to pre-crisis levels. Its employment, at 76.8%, is higher than any other city region in Britain. That is the background to this combined authority order. I think that the order will enable the west of England to build on the success it has had in riding out the financial crisis—but we need to note that, according to the Resolution Foundation, rising house prices and rents are swallowing up the gains in living standards made from the strong economic performance of the three councils that comprise it.

I have three specific questions for the Minister. I understand that North Somerset has made a decision not to be part of the combined authority. However, given its very close proximity to Bristol, I have not understood how the transport investment decisions will be made and who will be responsible for what.

Secondly, will the Minister confirm that the powers of the mayor for the west of England combined authority will be the same as those of the other combined authority mayors in other places? The legislation is slightly different because it covers slightly different matters. Therefore, I seek assurance that the mayor does not have any form of enhanced power against a comparison with, say, Greater Manchester or any of the others.

Thirdly, the mayor for the west of England has the power to pay grants; there are other powers, but there is a specific power to pay grants. I would like to be reassured that the same involvement of the combined authority in reaching decisions and the same rights and powers for each council separately have to be considered by the mayor. In other words, this is not simply a mayoral order where a single person has an absolute power, subject to scrutiny and audit, to make a decision without the agreement, first of the combined authority and, secondly, of the constituent councils.

Lord Cope of Berkeley (Con): My Lords, as the noble Lord said just now, this new authority covers most of the area of the former county of Avon. As it turned out, my time in another place neatly bracketed the existence of the county of Avon. It came into being under earlier Conservative legislation in April 1974, a month after I was first elected, and it was abolished in 1996, a few months before I left the House of Commons—involuntarily, I may say.

The county of Avon always made administrative sense in governing the area that it did, but it was much disliked from start to finish, and unlamented when abolished. That legacy lingers and was reflected in the consultation responses. Governments muck about with traditional loyalties at their peril. I do not think that this change runs the same dangers to the same extent, but it will require first-class leadership—and it will flourish only if the constituent councils co-operate. It could provide vision and the potential to pull together forces, both public and private, for the good of our area and to help it to continue to flourish—which, as the noble Lord from the Liberal Benches said, it is doing at the present time. I wish it every success.

Lord Berkeley (Lab): My Lords, I have a few questions for the Minister on this new authority. I support the concept of a combined authority, certainly in transport terms, for the whole area around Bristol and Bath. It is a great shame, as the noble Lord, Lord Shipley, said, that North Somerset is not there.

I start off with a basic question, as I live in Cornwall. Why is it called the West of England Combined Authority? What about the poor people of Cornwall, Plymouth, Devon, Torbay and the other bits of Somerset? Have they fallen off the edge of the map? The reason that I ask this question is that, as the Minister knows—because he kindly met us after this event that I am about to describe—his Secretary of State spoke at a conference of business people in Exeter in the autumn, and made it more than 100% clear that if any authority wanted extra money, it would have to have a mayor. The size of the authority did not seem to matter very much, so he was quizzed as to whether that could have been one region—I could almost call it a region if it included some of Somerset, all of Devon, Torbay, Plymouth, Cornwall and the Isles of Scilly—at one end of the spectrum, leaving aside whether it would ever be possible to elect a mayor for such an area, or the Isles of Scilly with a population of 2,500 on the other. The Secretary of State, however, was absolutely clear: if you want the money—and my noble friend Lord Beecham has made it clear that there is not very much money compared to what is needed, but it is still the same principle—you

have to have a mayor. So, now that we have bits of the west of England going into a combined authority, perhaps the Minister could explain whether his version of the settlement that he kindly explained at the meeting—that you do not really need to have a mayor to get more money; you just have to be properly organised as a council—is the Government’s policy, or whether, somehow, the rest of the west of England, if it has not fallen off the edge, has to create one or more mayors.

My second question relates to transport. The Minister said in his opening remarks that there is money for transport. That is certainly necessary, because the area around Bristol and Bath has suffered from having several different authorities arguing—in my perception, slightly from the outside—about what should be done to whom and how. This is a major step forward in that direction, if they get the money. But who chooses which bit of transport gets the money and where? Is it just the mayor, is there any discussion about it or how does the process work? I notice in Article 8(2) that the combined authority or the mayor does not get the penalties for bus lane contraventions, so presumably they will not be enforced and we will continue to see the traffic jams that happen so frequently in Bristol and other parts.

I rather like the new Part 1, covering what can be done by this combined authority: “surface rail”, “bus ways”, “rapid transit”, “public highway infrastructure”, “bridges” and “flood defences”. That is an enormous list, especially as there have been floods in the next-door county of the rest of Somerset for several recent years. Is this just pie in the sky, or is there going to be some really serious money available to help fund these very important developments?

4.15 pm

Lord Kennedy of Southwark (Lab): My Lords, I make my usual declaration as a local councillor and as a vice-president of the Local Government Association. I apologise to the House for not having made that declaration in the previous debate.

The order before us today creates, as we have heard, a West of England Combined Authority. I have no issue with the creation of combined authorities per se, and the order is standard in that respect and similar to those that have been agreed in many other parts of the country, all of which are going to the polls this May.

I shall confine my remarks to the report of the Secondary Legislation Scrutiny Committee, which raises a number of issues that the House will want some answers on. Does the noble Lord think that a sufficient level of support for this authority has been demonstrated? Does he regret that north-east Somerset decided not to implement the deal? The noble Lord, Lord Shipley, raised important points in respect of transport and how that is going to work. As he said, this is effectively the old county of Avon. Does the Minister agree that the period between 4 July and 15 August may not have been the best time to undertake a consultation and maybe some other time should have been thought of? Does he think that the feeling of some residents about not wishing to re-establish Avon, or the election of a “metro mayor” have been particular problems? I am

conscious that this is not a huge area and Bristol has recently elected a mayor. Bristol now has its second mayor, so there will be two mayors in quite a small area. Having real levels of support for the new governance model is of course really important. What does the Minister think about the conclusion of the report of the Secondary Legislation Scrutiny Committee, at paragraph 9, about the level of support? Has enough support been demonstrated?

I want this to succeed. As my noble friend Lord Beecham said, we do not intend to oppose the order today and we obviously wish the combined authority success, but when some orders that come before the House do not have as much support as others, that is a matter for concern.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on this draft order relating to the west of England. I shall try to pick up the points that were made.

The noble Lord, Lord Beecham, said that most of the local government changes that have happened have happened under Conservative Governments. That is probably because most of the time we have had Conservative Governments in this country, for reasons we all know. This is not being imposed, as he suggested. It is not being imposed at all. It is up to the relevant councils to agree to it. I wish they were all Conservative councils in places such as Teesside, Manchester and Liverpool, but that is far from the case. So this is not something that is imposed; it is something that those leaders and those councils have wanted.

Perhaps I might say gently that the Labour Party needs to make its mind up on whether it wants these deals or not. There did not seem to be much of a welcome, other than to say it will not oppose it. This has been carried out according to the letter, in every respect. Nevertheless, I will try to answer the points that have been made. I have the greatest respect for the noble Lord, Lord Beecham, and I am very fond of him, but he often appears to be, as I think I have said before, a Victorian undertaker praying for a hard winter. We had a somewhat dismal litany of points. There we are, counting the corpses as we speak. It is wholly misleading to compare the investment fund of £900 million over 30 years with our proposed overall finance settlement for local government, which is flat in cash terms for 2019-20. That is an invalid comparison.

The noble Lord, Lord Shipley, gave the order a warmer welcome. He referred to the strong economic performance of the area, which is absolutely right. He asked some specific questions, particularly concerning North Somerset—it is North Somerset that has decided not to participate, not north-east Somerset—and how this would be carried forward in relation to transport. The councils of the combined authority have given an indication that they want to work with North Somerset in relation to transport and many other functions. I anticipate that there will be a sort of associated status there. He also asked whether the mayoral split with the combined authority was the same as in other areas, such as Manchester and Liverpool. Each deal is bespoke but, *mutatis mutandis*, I think it would be the same sort of balance but with slightly different powers moving between the different bodies.

[LORD BOURNE OF ABERYSTWYTH]

I thank my noble friend Lord Cope, who indeed gave distinguished service in the other place as Member for Northavon and recalls very well the days of Avon County Council, for his warm welcome for what we are seeking to do. I very much appreciate that.

The noble Lord, Lord Berkeley, broadly welcomed the concept of the mayor. Cornwall has status here because we have had devolution in Cornwall. I suppose it is a combined authority, as I found out, because it combines with the Isles of Scilly in this respect. The point made by my right honourable friend in another place in relation to money for Cornwall was not, as perhaps was faintly suggested, that you get more money if you sign up to a mayor. If you have a mayor, the powers that will be devolved are that much greater. The Cornish settlement does not involve the transfer of as many powers as this one.

Lord Berkeley: Just for the record, the Council of the Isles of Scilly is not part of Cornwall or a devolved authority; it is separate.

Lord Bourne of Aberystwyth: So it is not part of the Cornish deal? In that respect, it could not be called the West of England Combined Authority because it is not combining with anybody so I do not think it can lay claim to that title. But I take the point, which was probably made slightly tongue in cheek.

Additional money was committed to Cornwall just last week—I know because I was the one who announced it—in relation to Cornish language and heritage, which I know the noble Lord would want to welcome. The point here is that added responsibilities will result in added money.

Not every devolution deal is in an urban area. Some deals are progressing in relatively rural areas, such as Cambridgeshire. I appreciate that the towns in Cornwall are perhaps not as large as Cambridge or Peterborough, but it is substantially a rural area. So there are rural areas that are interested in proceeding with this and we are very happy to talk to those that want to do so.

The noble Lord, Lord Kennedy, spoke about the timing of the consultation. I take the point that complaints are often made about consultations. It is difficult to get the timing precisely right. If I may correct one small point that I think he made, he said that all the elections are happening in 2017. I believe that, because of Doncaster, in Sheffield they will be in 2018 but that is a minor point.

If I have missed any points, which is always possible, I will pick them up in correspondence and write to noble Lords who have participated. This is something that the people of the area, through its elected councils, want. It will enhance what the West of England, an area of great success and great potential, is able to do. We should welcome the order and I commend it to the House.

Lord Kennedy of Southwark: We are very happy from these Benches for local government to agree arrangements that it is happy with—arrangements that can actually improve the service delivery in their area, bring economic development and grow and enhance

that area. Our particular issue is the paltry level of funding provided for these authorities, as my noble friend Lord Beecham highlighted.

Lord Bourne of Aberystwyth: I thank the noble Lord for that clarification but, again, many Labour councillors and Labour leaders in areas such as Liverpool, where there are perhaps not so many Conservative councillors and leaders, must be taking a contrary view. They must see some benefit to this or they would not be proceeding.

Motion agreed.

Health Service Medical Supplies (Costs) Bill Report

4.26 pm

Amendment 1

Moved by Lord O'Shaughnessy

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

“Remuneration for persons providing special medicinal products: England

In section 164 of the National Health Service Act 2006 (remuneration for persons providing pharmaceutical services), after subsection (8) insert—

“(8A) Regulations may impose requirements in relation to remuneration in respect of special medicinal products.

(8B) Such regulations may, for example, require determining authorities to ensure—

(a) that remuneration is to be calculated by reference to the outcome of prescribed procedures, or

(b) that determinations do not provide for or permit remuneration to be paid in prescribed circumstances.

(8C) Procedures prescribed by virtue of subsection (8B)(a) may include the person to whom remuneration is payable, a health service body or a determining authority—

(a) carrying out inquiries to ensure that remuneration is reasonable, or

(b) estimating an amount of remuneration that is reasonable (whether or not the estimated amount corresponds exactly to expenses in respect of which remuneration is to be paid).

(8D) Circumstances prescribed by virtue of subsection (8B)(b) may include circumstances in which special medicinal products are made available to persons who provide pharmaceutical services under this Part—

(a) by a health service body, or

(b) under an arrangement for the supply of special medicinal products to which a health service body is a party.

(8E) In subsections (8A) to (8D)—

“health service body” has the meaning given by section 9(4);

“special medicinal product” means a product which is a special medicinal product for the purposes of regulation 167 of the Human Medicines Regulations 2012 (S.I. 2012/1916).”

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, I am bringing forward this amendment and others in this group in response to the matters relating to specials

raised in Committee by the noble Baroness, Lady Finlay, who regrettably is not able to be here with us today, the noble Baroness, Lady Masham, and others. I must thank noble Lords for the work they have done to explore these issues by bringing them forward for debate in a most constructive manner. I also take this opportunity at the start of Report to thank noble Lords for the generally constructive debate in Committee, and in other meetings since then.

A special is a medicine manufactured to meet the specific needs of a specific patient. By nature they are bespoke and therefore do not have the same economies of scale during manufacture and distribution as licensed medicines. In Committee, the noble Baroness, Lady Finlay, presented a strong case that the current arrangements for reimbursement of specials are not sufficiently effective at securing value for money for the NHS. In England, reimbursement prices for the most commonly prescribed specials are listed in the drug tariff. Those reimbursement prices are based on sales and volume data, which the department currently obtains from specials manufacturers under a voluntary agreement. By setting a reimbursement price we encourage pharmacy contractors to source products as cheaply as possible because it allows them to earn margin, which in turn creates competition in the market. As a result, reimbursement prices decrease. Since these reimbursement arrangements were introduced in 2011, we have observed that in England the average cost for specials listed in the drug tariff decreased by 39% between 2011 and 2016.

Basing reimbursement prices on selling prices from more manufacturers than we do now would make the reimbursement system more robust. For specials, we currently rely on information from those manufacturers that have signed up to our voluntary agreement. There have been talks with NHS manufacturers to provide information on a voluntary basis. However, we have not been successful so far in securing data from NHS manufacturers on this basis. The Bill would enable us to retrieve information from all manufacturers, including NHS manufacturers. Once we receive data from NHS manufacturers, we will be able to assess whether it is appropriate to include them in calculating reimbursement prices.

However, through our very constructive debates on previous stages of the Bill and the further discussions I have had with the noble Baronesses, Lady Finlay and Lady Masham, I am persuaded that we need to do more. The unique nature of specials and their manufacturing arrangements means that we need to do more to ensure that the prices paid by the NHS represent good value for money for all these products. I am therefore bringing forward amendments that will enable alternative approaches to be developed to address this issue.

The amendments make changes to Section 164 of the NHS Act, which relates to the remuneration of persons providing pharmaceutical services. Proposed new subsection (8A) provides for a new regulation-making power in respect of special medicines. This would enable us to develop options that will secure the improved value for money that we all wish to see. Proposed new subsections (8B), (8C) and (8D) go on to provide illustrations of how that power might be used but do not restrict its application to those approaches.

A number of different options may be considered. The example the noble Baroness, Lady Finlay, gave in Committee, drawing on the Scottish experience of using a quotes-based system, may be one option, although we recognise the potential difficulties with such an approach—in particular, the burden it may place on the pharmacist, who has to seek the quotes, and the potential delay it may cause to patients getting their medicines. We will draw on the Scottish experience and the knowledge and expertise of stakeholders to develop and clarify the options.

I reassure noble Lords that we are legally obliged to consult the body that represents those providing pharmaceutical services—dispensing contractors—the Pharmaceutical Services Negotiating Committee, and will consult other interested stakeholders before making a decision.

I hope your Lordships will understand that, at this stage, I am bringing forward a legislative framework which I believe to be fully justified by the need for action that was so clearly expressed by the noble Baronesses, Lady Finlay and Lady Masham, and other noble Lords. The detail of any new arrangements will need to be drawn up and consulted on with those who represent providers of pharmaceutical services, but I can give every assurance that I fully intend to explore the options provided by these powers to improve value for money for the NHS, which I know we all wish to see.

I thank the noble Baronesses, Lady Finlay and Lady Masham, and other noble Lords for bringing this matter forward. I beg to move.

Baroness Masham of Ilton (CB): My Lords, I thank the Minister for his helpfulness and the work he has done on this amendment about specials. I also thank him on behalf of my noble friend Lady Finlay of Llandaff, who has to help her pregnant daughter who has had an emergency health problem. She had hoped to be here. I hope this amendment will help patients get the specials they need at a reasonable price.

Baroness Walmsley (LD): My Lords, the noble Baroness, Lady Finlay, is so grateful to the Minister that she asked two of us to convey her thanks for the time he has given to addressing her concerns. She is very happy with these amendments.

Baroness Wheeler (Lab): My Lords, I am the third person to congratulate the Minister. I add the support of these Benches for these amendments, which address unlicensed special medicines, and I congratulate the noble Baroness, Lady Finlay, on her tenacity in pursuing this issue and securing an important concession from the Government. I am sorry she cannot be here, but we can be pretty sure she will be reading *Hansard* to make sure we have got it right.

It has been hard to understand why the Government were refusing to recognise the need for urgent action on medicinal specials, particularly in view of the substantial price variation between hospital and community care, the many patients in community and primary care who are currently denied access to some specials, and the potential savings across the NHS that introducing a cheaper and more cost-effective whole-market procurement system will provide.

[BARONESS WHEELER]

We are very pleased that the Minister has now recognised the need for the Bill to address this important issue in England and Wales. I welcome the legislative framework he has presented. As he pointed out, he has an extensive consultation exercise to conduct on all parts of the Bill, and this will certainly be included in that.

Lord O'Shaughnessy: I am truly touched to have been thanked personally by proxy by two noble Baronesses. I am grateful for that, and I am grateful for the support for these amendments, which are a testament to the tenacity of the noble Baroness, Lady Finlay.

I do not think it is quite fair to say that the Government did not recognise the need for action. The amendments tabled by the noble Baroness, Lady Finlay, disinterred a work programme that had been put on pause in order to deal with the Bill and discovered that lots of interesting work and thinking was going on, so we have been able to bring that to the fore, which is a fantastic thing, and the way legislation should work.

Amendment 1 agreed.

Amendment 2

Moved by Lord O'Shaughnessy

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

“Remuneration for persons providing special medicinal products: Wales

In section 88 of the National Health Service (Wales) Act 2006 (remuneration for persons providing pharmaceutical services), after subsection (8) insert—

“(8A) Regulations may impose requirements in relation to remuneration in respect of special medicinal products.

(8B) Such regulations may, for example, require determining authorities to ensure—

(a) that remuneration is to be calculated by reference to the outcome of prescribed procedures, or

(b) that determinations do not provide for or permit remuneration to be paid in prescribed circumstances.

(8C) Procedures prescribed by virtue of subsection (8B)(a) may include the person to whom remuneration is payable, a health service body or a determining authority—

(a) carrying out inquiries to ensure that remuneration is reasonable, or

(b) estimating an amount of remuneration that is reasonable (whether or not the estimated amount corresponds exactly to expenses in respect of which remuneration is to be paid).

(8D) Circumstances prescribed by virtue of subsection (8B)(b) may include circumstances in which special medicinal products are made available to persons who provide pharmaceutical services under this Part—

(a) by a health service body, or

(b) under an arrangement for the supply of special medicinal products to which a health service body is a party.

(8E) In subsections (8A) to (8D)—

“health service body” has the meaning given by section 7(4);

“special medicinal product” means a product which is a special medicinal product for the purposes of regulation 167 of the Human Medicines Regulations 2012 (S.I. 2012/1916).”

Amendment 2 agreed.

Amendment 3

Moved by Lord Warner

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

“Duty to have regard to the life sciences sector and access to new medicines and treatments

In discharging, through the provisions established or amended by this Act, its responsibility to secure best value for the National Health Service in purchasing medicines and medical supplies, the Government must have full regard to the need to—

(a) promote and support a growing life sciences sector within the United Kingdom economy; and

(b) ensure that patients have rapid clinical access to new clinically effective and cost-effective medicines and treatments approved by the National Institute for Health and Care Excellence through their technology appraisal process.”

Lord Warner (CB): My Lords, Amendment 3, in my name and those of the noble Lords, Lord Patel and Lord Hunt of Kings Heath, and the noble Baroness, Lady Walmsley, is very straightforward. At the start of the Bill, it would lay a clear duty on the Government, in discharging the Bill's provisions, to have full regard to promoting and supporting a growing UK life sciences sector and to ensuring patients have rapid clinical access to new medicines approved by NICE through its technical appraisal process.

This is to ensure that the Bill does not just focus on driving down the price of NHS drugs regardless of other considerations—which, in my view, there is a clear danger of given the way the Bill is framed. I made absolutely clear at Second Reading and in Committee that I fully support the Government acting through the Bill to prevent the NHS being blatantly ripped off under the statutory scheme when a branded drug comes off patent, as happened with Flynn Pharma when a Pfizer anti-epilepsy drug came off patent. The ABPI has never challenged actions in cases of this kind. However, the broad wording of the Bill goes well beyond closing this particular loophole. The Bill gives the Government the power, in the statutory scheme, to replace a list-price discount system with one in which a company repays the Government a percentage of net sales, with as yet no clear indication of what this level will be.

That might well be an acceptable approach if the system was applied solely to the statutory scheme, but not if it is then used in the voluntary PPRS. The industry's concern is that this statutory scheme provision will create a precedent that could be applied later by the Government to the voluntary PPRS. My reading of the Bill is the same as that of the ABPI, namely that the legal precedent could enable a future Government to try unilaterally to apply the same approach to the voluntary scheme when a PPRS period ends, whatever assurances the current Minister may give. This would effectively abort a negotiated system of settling NHS drugs prices and encouraging research and innovation that has worked well for industry, UK plc and successive Governments for over 50 years. Ministerial assurances that this will not happen have not convinced the pharmaceutical industry or me that this could not happen. We both believe that stronger legislative safeguards are needed.

I think I can speak with some authority on this issue, having been a Minister with responsibility for the pharmaceutical industry and NICE, and having had, perhaps unlike the Minister, to negotiate a PPRS settlement with the industry, which achieved a 7.5% price cut in branded drugs prices for the NHS. I do not think anybody in the industry would see me as a soft touch for big pharma, but I knew that my job, like the Minister's, was to balance a number of factors and not just get the cheapest drugs for the NHS. These factors involve the safety and value for NHS money of new medicines, but they also involve helping the UK life sciences industry to grow and flourish and to secure speedy access for patients to new drugs approved by NICE.

The Government have not done a spectacularly good job with their consultations on the Bill in showing the industry that they understand this balancing act. They certainly have not convinced the industry, and suspicions have been raised by the inclusion of elements that were not in the 2015 consultation on the Bill. The effect has been to foster distrust within an industry that UK plc badly needs to nurture at this time of massive economic uncertainty. This has been made worse by a negotiation currently taking place with the industry to slow the introduction of NICE-approved drugs if they exceed a certain financial threshold. Why is this so important? Why should the Government not just focus on getting the cheapest drugs they can for the NHS at this time of financial constraint?

The pharmaceutical industry invests over £4 billion a year in R&D in the UK, more than any other sector. It employs 62,000 people with a geographical spread outside London and the south-east. Pharmaceutical manufacturing employees have the highest gross value added of any high-technology industry, at over £330,000 per employee. One in four of the world's top prescription medicines was discovered and developed in the UK. All this will be put at serious risk by Brexit, as the Prime Minister seems to recognise in the new industrial strategy that she recently announced.

We know that through Brexit the UK will lose the European pharmaceutical regulator, the EMEA, but there are also many other threats to the UK life sciences industry from Brexit. We could lose market access for our innovative products and there could be a flight of researchers and research. At such a time, the last thing this highly successful UK sector needs is a rather indifferent piece of legislation proposing what are in my view unnecessary regulatory burdens and creating uncertainty about the future arrangements of settling NHS prices for new drugs.

The second leg of the amendment covers the issue of speedy patient access to new drugs approved by NICE. I will not detain the House on this issue because others will probably want to say more about it. However, I remind the House that we already have a poor record on the take-up of new NICE-approved medicines. For every 100 European patients who can access new medicines in the first year that they are available, just 15 UK patients have the same access. Even when NICE has approved drugs and treatments, the NHS take-up still lags behind what it should be, despite the legal obligations.

To be fair to the Government, they seem to recognise the threat to the UK life sciences industry that Brexit poses. In the industrial strategy they identify life sciences as one of the five world-leading sectors that they wish to cultivate, and they have asked Sir John Bell—I can describe him only as brilliant—to lead work on early deals in this sector. That only makes the timing of this rather scrappy piece of legislation all the more surprising. However, we are where we are. The best thing we can do is put a protective overarching duty at the beginning of the Bill, and that is what Amendment 3 does. I hope the Minister considers that the amendment is helpful to the Government's industrial strategy and the work Sir John is doing, as well as being a reassurance to the life sciences sector. It also needs to be the first clause in the Bill. I beg to move.

Baroness Walmsley: My Lords, in supporting the amendment, I reiterate my support for the general purpose of the Bill, which is to ensure good value for the NHS. However, there is a danger that it could result in reduced access for UK patients to new drugs and treatments if badly handled by the Government in future. As usual, the devil is in the detail—and, in particular, how the Government use the powers given to them in the Bill. That is why I support the imposition of a duty to ensure the continued growth of the life sciences sector and to protect access for patients to new medicines and treatments.

I share the concerns of the noble Lord, Lord Warner, about the effect of Brexit, which I mentioned in my Second Reading speech. In the light of the hard Brexit on which the Prime Minister is intent—without a mandate—there are many hazards to this industry, on which we depend for a major contribution to our economy, and to the future of medicine in the UK, so it is vital that the Government have that in mind when operating the Bill when it becomes an Act.

I have in mind as an example the new biosimilar medicines that the noble Lord, Lord Carter, pointed out in his report have the potential to save the NHS a vast amount of money while providing the same or even better treatment. He said that one new biosimilar drug alone can save the NHS £60 million a year. These biologic drugs currently account for six out of the top 10 medicines by spend in the UK, and I gather that five out of the top seven biologics will come out of patent by 2020—so there will be enormous potential for the development of generic biosimilars for many diseases. These drugs cost about 100 times more to research and develop than other generic drugs, but the current pricing system does not take that into account. They are different and, because of their enormous cost-saving potential and the competitive environment in which they will be marketed, which could bring down the cost even further, I think that they need special consideration from the Government.

Amendment 7, tabled by the noble Lord, Lord Lansley, which I support, could achieve this if the Government were inclined to use it, but I think we need to go further and put at the heart of the Bill a duty on the Government to protect future cutting-edge medicines when they first come into the market. Unless that is done, UK patients could become the last in the developed world to get these medicines. We want to be first, not last.

[BARONESS WALMSLEY]

A healthy, competitive market will deliver tremendous cost savings to the NHS in the long term, but this requires sufficient—not excessive but sufficient—financial returns to compensate for the high cost of R&D. Otherwise, we will not have enough companies prepared to compete over a long period. This will prevent the NHS benefiting from the potential savings offered by these medicines. For those reasons, I support the amendment.

4.45 pm

Lord Hunt of Kings Heath (Lab): My Lords, first, as we are entering Report, I declare my interests as president of the Healthcare Supplies Association and of GS1, the barcoding organisation.

Like the noble Baroness, Lady Walmsley, and the noble Lord, Lord Warner, I make it clear that in supporting the amendment, the Opposition support the core purpose of the Bill. The recent fines imposed by the Competition and Markets Authority on two companies, which essentially exposed a loophole, left the Government with no option but to act—we agree with that. I have to say that it is interesting to note that the powers that the Government have taken upon themselves in the Bill will give them draconian influence over drug prices in future.

The Bill allows the Government to institute price controls. It states that the Government may have reached a voluntary agreement with industry over pricing but can none the less come in and impose price controls over that agreement. To cap it all, it massively extends the Government's powers to ask for information about any health service product sold to the NHS. Such information could cover prices, discounts, rebates, revenues and profits, and could apply to millions of products every year.

It is a socialist dream of state intervention. Speaking here as a great believer in central state intervention, my heart warms to the Minister's vigour and enthusiasm for regulation. It gives an idea of the nirvana of post-Brexit, light-touch regulation from this Government. Perhaps we should dream of EU directives in future, because this Government are so bent on their home-grown regulation.

We will come to the issue of proportionality, because many of our later amendments involve whether the Government have been proportionate. For me, this amendment is essentially about access, because I do not think you can talk about price controls on drugs without talking about patient access to innovative drugs and treatments. At the moment we are seeing an unprecedented level of rationing, both locally and nationally. Locally, clinical commissioning groups are making some really perverse decisions, ranging from cutting out health promotion programmes to being incredibly restrictive on operations and restricting access to innovative drugs.

A fairly recent report that I read by leading charities Breast Cancer Now and Prostate Cancer UK, for instance, showed that NHS cancer patients are missing out on innovative treatments that are available in any comparable country to the UK. One example is the PrEP drug. The reluctance of NHS England to fund

the use of this extraordinary preventive drug in relation to the treatment of HIV is another example of the problem that we have. When the previous Labour Government set up NICE, it was designed to speed up the introduction of innovative new treatments. But since 2010, access to new drugs approved by NICE has been increasingly impeded, which has culminated in the current consultation that if a NICE-approved treatment is expected to exceed a cost of £20 million in any of the first three years of its use, NHS England can ask for a longer period for its introduction.

We also have a consultation on the introduction of a QALY threshold of £100,000 for evaluating highly specialised technologies. My understanding is that no other country in the world uses such a threshold in evaluating ultra-rare disease treatment. The almost universal view is that this form of assessment is not appropriate and would effectively stop the flow of new medicines reaching patients with rare and complex processes.

Of course, the noble Lord, Lord Warner, is right that the drugs budget cannot be open ended and that the NHS must achieve value for money—and I, too, have engaged with industry over the years in seeking to get the drug budget down. We all understand that. The tragedy is that a ground-breaking agreement reached by the last Government in 2014 with drug companies could have led to many new drugs being introduced. The pharmaceutical industry guaranteed to hold down drug costs for a five-year period and, if the costs went over the agreed limit, the industry would pay back a rebate every quarter. To date, £1.5 billion has been handed over.

I know how irritating it is to point to Scotland and Wales and say that they are doing something better—but something like the Scottish fund that has been established from the rebates to fund the introduction of new medicines would have been a preferable way in which to go forward in the situation that we have in England, where restriction after restriction is taking place in the use of better drugs for patients.

You then have to link the issue to our investment in R&D and life sciences. Sir John Bell, regius professor of medicine at the University of Oxford and chair of the Office for Strategic Coordination of Health Research, who is playing an absolutely pivotal role in this area, spelled this out recently. As he said, the last 30 years have witnessed an unprecedented number of major innovations in healthcare that have resulted in significant extensions in life expectancy and quality of life. The problem is that the National Health Service has been unable to adopt this new innovation effectively and, as a result, many improvements in healthcare have been put in jeopardy.

This is not an easy issue. Sir John Bell says—and I agree—that one problem is that our current model too often layers the cost of supporting the innovation needed to help discover new healthcare innovations on top of existing practice. So, unlike in other sectors, in the health service innovation always seems to cost money. This is a very important issue when it comes to thinking about how we can afford the kind of changes that will fall to health and social care in future.

I will also quote Keir Woods, head of oncology at the major pharmaceutical company Merck. He points to that company's investment in the UK—20% of its global venture capital is invested in the UK—and he celebrates the UK's position as a global power in health, with our world-class universities, centres of excellence in clinical research and some of the top medical journals, which has a positive impact on investment. We are home to 4,800 life science companies, with the largest pipeline of new discoveries in Europe. That is something to celebrate. Dr Woods says that we can build on that, but there are two provisos. First, we have to be able to secure the cream of international talent. The discussions around Brexit are very important in relation to that. Secondly, we have to increase the uptake of these new innovations in the UK.

The frustration that I and many others have is that the UK is a wonderful place for innovative and ground-breaking new treatments and drugs, but the fruits are increasingly being enjoyed by patients in other parts of the world. Currently, the UK has developed around 14% of the top 100 global medicines. That is something to celebrate—but 20 years ago we were responsible for about one-quarter of the global medicines that had been developed. The noble Lord, Lord Warner, referred to the £4 billion invested by pharma R&D. However, up to 2011 it was £5 billion—so we are seeing a deinvestment that is very much linked to the hopelessly poor record of adoption of new medicines in this country.

I know that the Minister will talk about some of the initiatives he is taking and I am sure that he will mention the accelerated access review, which aims to make the UK the fastest place for the design, development and widespread adoption of innovations. This is entirely laudable, but the problem is that this approach will take a few items and accelerate access while the NHS goes about crudely rationing a whole host of other innovations and putting at risk our life sciences, R&D investment and, of course, the quality of patient care.

That is why this amendment is so important. We support the Bill and its aims, but what has been lacking so far is any recognition by the Government that there are three planks to this. The first is better value for money in terms of drugs and health service products; the second is the quality, range and health of our life sciences and R&D investment; and the third is access to treatment by patients. So far the Government have not been prepared to grip this last issue. That is why the amendment is so important and I support it.

Lord Lansley (Con): My Lords, I will speak briefly on this amendment, although there are later ones in my name which will allow me to say more about the way in which the Bill proposes that the Secretary of State exercises his or her duties. The idea that it is not part of government strategy—back in 2014 or now—to promote the life sciences sector through the structure of the PPRS is absurd. It is self-evidently the Government's intention, and was in 2014. The structure of a negotiated, voluntary PPRS was designed to achieve that. The issue that has emerged since 2014 and the application of the new voluntary scheme is that the industry was looking for stability for the Government in terms of the budget; freedom to price at introduction, and action on access to new medicines. It is in that third area

that there has been a lack of progress. In many ways, I agree with what noble Lords have been saying about the desirability of achieving that access. It has not been restricted since 2010, although the noble Lord, Lord Hunt, tended to construct it that way. For example, we introduced the cancer drugs fund in 2010 precisely because prior research by Mike Richards had demonstrated that patients in this country were failing to have access to new cancer medicines at the time when patients in other European countries did. It is not a new problem: it has been around a long time. The cancer drugs fund was intended to meet that gap by 2014 and the PPRS should have taken over, but it did not. After *Innovation, Health and Wealth* in December 2011, and the accelerated access review now, we are now seeing efforts to try to make that happen and they should be thoroughly supported.

The second limb of the amendment does not help, because it is just about access for patients to those new treatments which have been approved and recommended by NICE. That is only one part of a much wider issue about the adoption and diffusion of new technologies across the NHS more generally, often in circumstances where NICE has not been involved. I find the new consultation proposal on NHS England's budget impact threshold something of a double-edged sword. The measure could erect another hurdle to be cleared before patients can access new medicines, and we have to avoid that. However, it may have the positive effect of encouraging NHS England, as the budget holder, and NICE, as its pharmacoeconomic evaluation mechanism, to work together with companies at an early stage to arrive at a negotiated price at an early point. That would be much to the benefit of the industry and the NHS given that we are aiming, through this legislation and beyond, to obtain patient access to medicines on reasonable terms that the NHS can afford. If the measure were used in that way, it would have the right benefit. However, I fear that this amendment, particularly its latter limb, does not take us any further in that direction.

5 pm

Baroness Masham of Ilton: My Lords, there is considerable frustration on the part of patients and the industries when NICE approves new drugs which can be important for preserving life but which patients cannot get. We need to encourage the development of new drugs as there are so many complicated and rare conditions which need them. It takes time and effort to submit the drugs to NICE. Noble Lords can imagine the frustration when they are approved but then not used. I support Amendment 3.

Lord Patel (CB): My Lords, I support this amendment, to which I have added my name. I do not agree with the noble Lord, Lord Lansley, that the second part of the amendment is not crucial. I take a completely opposite view. I consider that that is the crucial part of the amendment. The proposed new paragraph (b) refers to the need to,

“ensure that patients have rapid clinical access to new clinically effective and cost-effective medicines and treatments approved by the National Institute for Health and Care Excellence through their technology appraisal process”.

[LORD PATEL]

The terms “clinically effective” and “cost-effective” are important. I would insert the word “thorough” so that the amendment reads “thorough technology appraisal process”. That is what NICE does. That is what we set it up to do. Parliament agreed that if NICE approved a drug that was cost effective and clinically effective, it should be available to patients. Now we are saying that that should occur only if certain provisions apply, and in certain circumstances they do not. So what are we saying? What message are we sending out if NHS patients cannot get medicines and treatments that are deemed to be clinically effective and cost effective, including drugs and treatments developed by our own scientists and produced by our own life sciences industry? People from our own industry have told me that when the NICE-approved drug is not available in the United Kingdom and we try to market it in other countries, their competitors say, “Why is it not available in your country when you’re trying to persuade us to use it?”. As has been said, many drugs are often available in countries such as Germany, France, Canada, Austria and many others that are not available in the United Kingdom. The noble Lord, Lord Hunt of Kings Heath, mentioned cancer drugs that are not available. Some would say that that leads to the poor cancer outcomes in our country compared with those in some other countries.

Recent proposed changes relate to the budget impact threshold of £20 million over two years. The noble Lord, Lord Lansley, is right that this sword has two sharp edges. Whichever way you tackle it, the patient gets hurt. Around 20% of new treatments with a positive NICE recommendation could have their introduction delayed if we adopt NHS England’s new proposals. For example, about 35,000 patients suffer from secondary or metastatic breast cancer. However, a drug costing £1.56 per patient per day would meet the budget impact threshold of £20 million. It would therefore be delayed for introduction to treat these 35,000 patients. For most of them, their life—quality life—could be prolonged by about six months to a year, but they will be dead before the drug is made available at a cost of £1.56 per patient per day. That is what this proposal of £20 million means. It is a budget impact threshold.

People with rare diseases will fare even worse. There are about 7,000 known rare diseases. Treatment exists for only about 5% of those patients. The British company Shire, for example, has about 30 products in its pipeline to treat rare diseases. But why would it manufacture them at some cost when it might find that it falls foul of the new arrangements even if the new drugs prove effective?

I recognise the economic challenges that the NHS faces. I have heard the 20,000 pages of evidence given to the committee that I chair on your Lordships’ behalf and which we will soon be publishing. We need a system that prepares the United Kingdom to deliver the next generations of innovative medicines, including gene and cell therapy. If we are going to do that, it is important that pharma and the industry have certainty of patient access. That is crucial when companies make decisions on new investments in research and manufacturing.

Regarding proposed new paragraph (a), I would simply say that as we prepare to leave the EU, the delivery of an internationally competitive industrial environment for the bioscience and life science sectors is more important than ever. By making it more difficult for patients to access highly innovative, first-to-market, cost-effective and clinically effective medical products, we not only deny our patients the treatment they need but risk the future of our world-leading life science industry. I am sure we do not want to do that.

The Prime Minister’s industrial strategy, which will invest in science, research and innovation, has already been mentioned. The life science sector—not the pharma industry, which the noble Lord, Lord Warner, mentioned—brings in over £60 billion a year and employs over 220,000 people. British science, with investment in genomics, gene sequences, diagnostics, and now the production of gene and cell therapy, is again investing huge sums of money. To promote this, the Higher Education and Research Bill, which is currently going through your Lordships’ House, creates UK Research and Innovation to do research and innovate therapies, all of it in life science. As to our charity sector, the Wellcome Trust invests probably in the region of £1.3 billion a year in science, which will go to innovation. Cancer Research UK is about to announce four grand challenges. It makes awards of £20 million to find causes and treatments for cancer, and the British Heart Foundation also makes an enormous investment.

Hitherto we have had a pact that operates for the public, the NHS, the scientists and the industry on the availability of medicines and treatments for both diagnosis and treatment, delivered at a cost that is fair, transparent and appropriate. When we break that pact by not making available treatments to patients even though they are cost effective and clinically effective, we are denying treatment to many patients. The fundamental basis of the pact—which Parliament approved when agreeing to how NICE should operate—is that if NICE deems that a medicine is cost effective and clinically effective, patients should get it. That is why I strongly support the amendment.

Lord O’Shaughnessy: My Lords, I am grateful for the quality of the debate on this amendment. Before I turn to the specifics of the amendment, I join noble Lords in reflecting on the success of the UK life sciences industry. The UK has a lot to be proud of. We have a world-class science base and an excellent reputation for the quality and rigour of our clinical trials and the data they produce. The UK has one of the strongest life sciences industries in the world, generating turnover of more than £60 billion each year. Indeed, it is our most productive industry. This Government are deeply committed to supporting that industry to flourish and, in doing so, to provide jobs and transform the health of the nation. That is why it was a Conservative-led Government which introduced the first life sciences strategy in 2011.

More recently, we have introduced a range of measures through the taxation system to create good conditions for business growth and to encourage business investment. These include: R&D tax credits for small and medium-sized enterprises; R&D expenditure credit for larger firms; the patent box; a permanent annual investment

allowance; and the seed enterprise investment scheme, the enterprise investment scheme and the venture capital trust scheme, as well as entrepreneurs' relief.

Take just one of those examples: the patent box. Phased in from 2013, under a Conservative-led Government, it incentivises companies to develop and manufacture new, innovative patented products in the UK by giving an effective 10% corporation tax rate on UK profits derived from the product's qualifying UK and EU patents and equivalent forms of intellectual property. In 2013-14, a total of 700 companies claimed relief under the patent box, with a total value of £342.9 million, with 64% of those in manufacturing. In 2013, GSK decided to invest more than £500 million in the UK after the patent box was announced. Its CEO Sir Andrew Witty said:

"The introduction of the patent box has transformed the way in which we view the UK as a location for new investments".

The Government's R&D tax credit is one of the biggest sources of financial support for innovative UK companies and one of the most competitive in the world. It is widely commended and, in 2014-15, almost 21,000 companies claimed tax relief, totalling £2.45 billion, with R&D expenditure used to make these claims reaching £21.8 billion. The Autumn Statement announced £4 billion of additional investment in R&D, specifically targeting industry-academia collaboration, which is so important in the life sciences. We would expect the life sciences industry to be a substantial beneficiary. I am sure your Lordships will agree that these are bold, new, high-value measures which demonstrate that the Government are serious about attracting inwards R&D investment into cutting-edge industries like the life sciences.

This determined action is reaping rewards. The UK ranks top in major European economies for foreign direct investment projects in the life sciences. Just last week, Danish drugs company Novo Nordisk announced a new £115 million investment in a science research centre in Oxford. This comes on top of £275 million additional investment announced by GSK in June and AstraZeneca reaffirming its commitment to a £390 million investment in establishing headquarters and a research centre in Cambridge. As the noble Lord, Lord Patel, mentioned, we are also working on the creation of UK Research and Innovation to enhance this further. These are examples of the positive policy changes that are supporting the life sciences industry and transforming the health of our nation.

Looking ahead, Professor Sir John Bell, whom several noble Lords have mentioned, has agreed to lead the development of a new life sciences strategy for the long-term success of the UK. The formation of the strategy will bring together broad representation from across the sector, including from industry, charities, academia and the health and care system. It is aligned with the industrial strategy announced recently by the Department for Business, Energy and Industrial Strategy. The strategy will outline what the life sciences industry can deliver for the UK economy and for UK patients and set out what actions government needs to take to set the framework on the road to success. Building on a sector deal for this diverse and complex sector, the life sciences strategy will be bold and ambitious as befits the needs of a global Britain. We will seek to

make the UK the global home of medical innovation, creating jobs, improving health outcomes and transforming the NHS.

As all noble Lords have mentioned in the debate today, the issue of access to or uptake of new medicines in the NHS must be a key part of that life sciences offer. I recognise and share the desire of noble Lords to ensure that the NHS is at the forefront of innovation, and that medicines which have been approved by NICE are made available quickly to the patients who could benefit from them. This Government have been very active in improving access, and have already taken a number of important steps to do so. The early access to medicines scheme, introduced in 2014, provides a platform for drugs that do not yet have a licence to get to patients at a much faster rate than before. We have now seen 29 promising innovative medicine designations, and 10 positive scientific opinions have been awarded by the MHRA, the regulator. As my noble friend Lord Lansley mentioned—and I must give him credit for the introduction of this policy—the cancer drugs fund, created in 2011 and renewed in 2016, has provided over 95,000 patients with access to innovative cancer drugs that would otherwise not have been available.

5.15 pm

NHS England's test beds programme, launched last year, is providing an opportunity to link new technologies with new ways of delivering care. It involves life sciences companies such as MSD, Phillips and Verily working with forward-looking NHS organisations to design new care pathways that support cutting-edge life sciences technology. We have also developed the innovation scorecard, to track the uptake of new medicines and benchmark different NHS organisations against each other. This is helping to support NHS England's RightCare programme, which is addressing variation in clinical practice across the country to ensure that high standards and access are consistently being met.

Several noble Lords mentioned NICE thresholds and the consultation on those. I repeat the point made by my noble friend Lord Lansley, who has great experience in these matters. The proposal not only balances the important considerations around the benefits of the life sciences industry and cost considerations for the NHS, but brings those discussions of cost into NHS England at an earlier point, and benefits can flow from that.

There is clear evidence that our work is having a real positive impact. The latest innovation scorecard, published in January, showed that in the 12 months to June 2016 the use of medicines to treat acute coronary syndrome increased by 19%, medicines used to treat multiple sclerosis increased by 76% and the use of new oral anti-coagulants in primary care increased by 110% and in secondary care by 37%. Of the 77 medicines on the scorecard that are measured individually, over half saw growth in uptake over 10% year on year. I make those points about access because I want to demonstrate that the Government not only take this issue seriously but are acting robustly, and we are seeing positive results. There is more to come, as we will publish our response to the accelerated access review as part of our plans for the life science strategy.

[LORD O'SHAUGHNESSY]

When discussing access to innovative drugs, it is only right that we also talk about costs. Noble Lords will know from discussion in Committee that my policy brief encompasses both life sciences and medicine pricing and regulation. There is a tension between those two considerations that I grapple with every day. We must be clear that, in a time of fiscal restraint, medicines spend is rising much faster than other areas of the health budget. Last year, overall spend on medicines, after payments from the PPRS are taken into account, rose by 5.5%. This year, spend is forecast to rise by 8.8%. This compares with an increase in overall health spend of 3.4% and 2.9% respectively.

To put it another way, 30% of the additional funding for the health system in England over the last two years is expected to have been devoted to additional spending on medicines, and most of this additional spend on medicines is going on newer drugs. So the NHS is making a real financial commitment to medicines, at a time when it is striving to make difficult decisions and efficiencies elsewhere. It is simply not accurate to say that the NHS is not supporting uptake. On the contrary, given the fiscal environment, it is going above and beyond its overall funding growth to support the adoption of new medicines, and that is because everyone involved in the healthcare of the nation understands that it has a positive and symbiotic relationship with a thriving life sciences sector.

I hope that I have been able to persuade noble Lords of the Government's commitment both to the life sciences sector and also to addressing the specific issue of access to new medicines. I now address the amendments specifically. As I have set out, I have a great deal of sympathy with the intent, but I am concerned that the amendment itself is not the right way to achieve it and would be damaging to the core purpose of this Bill.

The effect of the noble Lord's amendment would be to require the Government to design price control schemes in such a way as to deliver growth in the life sciences sector in the UK. I believe that we are united in our desire to see such growth, but the evidence suggests that the most important factor in attracting companies to invest in research in the UK is the availability of world-class scientific expertise. That will clearly be an issue that noble Lords will raise in our Brexit negotiations. It remains a key focus of the Government's effort to ensure that the UK remains at the forefront of global research and development.

Strengthening and putting beyond doubt the Government's ability to operate price control schemes is a core purpose of this Bill, and I am grateful for the reiterations of support for that core purpose that have come from all sides of the House. This amendment would undermine one of the core purposes of this Bill by undermining the ability of the Government to put effective price controls in place. That is because controlling the price of medicines cannot in itself promote the interests of the life sciences sector and deliver growth, so the effect of the amendment would be that any price control scheme could be challenged in the courts. The amendment would take a carefully struck balance that is already set out in legislation between, on the one hand, the need for medicines to be available on

reasonable terms to the NHS and to take account of the R&D costs of the life sciences industries, on the other, and overweight it in favour of industry. It would create an asymmetry that would lead to higher costs to the NHS, less money for patients and lower uptake of new medicines. This serves no one's purpose.

I turn to the second part of the noble Lord's amendment, concerned with the rapid uptake of new medicines. The Government share the desire to see NHS patients benefiting from swift access to new innovations, particularly those medicines which have been recommended by NICE through its technology appraisals. It is for that reason that NHS commissioners are legally required to fund drugs and other treatments recommended in NICE technology appraisal guidance, normally within three months of final guidance. Throughout our discussions on the Bill in both Houses, we have emphasised that its provisions and wider government policy relate to maintaining the supply of existing effective treatments and improving the uptake of new cost-effective medicines.

Concerns were raised in Committee that CCGs were rationing medicines, and the noble Lord, Lord Hunt, has raised the point again today. No CCGs should be rationing medicines approved by a NICE technology appraisal and we are not aware of this happening. However, if noble Lords have evidence, they must send it to me and I will raise it with NHS England.

As I have set out, the Government have strong ambitions in this area, but the uptake of medicines is dependent to a significant degree on the prescribing choices of individual clinicians, who need to be aware of new drugs and persuaded that they may be a better option for individual patients, taking into account other conditions each patient might have and other medicines they are taking. We need to change the culture and behaviour of those clinicians who may be reluctant to use innovative medicines, but legislation is not the right way to effect behaviour change. Rather, it is working with the NHS, regulators, arm's-length bodies and the medical colleges to create a professional environment that is more receptive to innovation, and of course continuing with a policy approach that supports uptake and access in other ways, as I set out earlier.

To conclude, I applaud the intent of the noble Lord in bringing forward the amendment. In their contributions, noble Lords have quite rightly drawn attention to policy objectives that this Government view as a critical priority and on which we are taking action. As I outlined earlier, a number of programmes are underway to influence prescribers and improve the uptake of NICE-approved drugs that are unrelated to pricing, but this amendment would undermine the core purpose of the Bill, which is supported in its main intent on all sides of the House, by undermining the ability of the Government to have effective price control schemes. I would therefore ask the noble Lord to withdraw his amendment.

Lord Mackay of Clashfern (Con): Did I understand my noble friend to say that, once a medicine or treatment has been approved by NICE through its technology appraisal process for clinical and cost effectiveness, it is supposed to be available to patients within three months?

Lord O'Shaughnessy: The treatments become available throughout the NHS from three months after the appraisal.

Lord Hunt of Kings Heath: My Lords, given that I took the order through Parliament many years ago, I can confirm that the whole intention was that the NHS had 90 days to prepare for funding a medicine that had been designated by NICE as both clinically and cost effective. The problem is that, subsequently, in particular over the past few years, clinical commissioning groups have done everything they can to avoid this responsibility. Alongside that, the purity of the 90-day rule is being eaten into, and that is at the heart of the concern of this amendment.

Lord Warner: My Lords, I am grateful to all my colleagues for the powerful support they have given to the amendment. I do not doubt the Government's commitment to the life sciences, which I acknowledge from what they have put in the industrial strategy and the person they put in charge of leading that work. However, they have not convinced the industry with the Bill. They seem to be sending out separate messages.

The amendment is meant to tackle the two issues of supporting a flourishing life sciences industry and guaranteeing patient access to drugs that have been approved by NICE. It is very clear that that second part is not working well and is getting worse. It does no harm whatever to reinforce that message in the Bill with this amendment.

On life sciences, I say to the Minister that it is a funny way to show he is supporting that industry, at a critical time for this country, by bringing along a Bill that, as the noble Lord, Lord Hunt, made very clear, overdoses on regulatory requirements, price control and information requirements. This is a pretty strange message to say to a load of international companies when you want them to settle here and do your research.

I have listened to the Minister very carefully. I am much more persuaded by my colleagues' supportive speeches, for which I am grateful. I wish to test the opinion of the House.

5.25 pm

Division on Amendment 3

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Amendment 3 agreed.

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5.40 pm

Clause 3: Statutory schemes

Amendment 4

Moved by **Lord Lansley**

4: Clause 3, page 2, line 32, at end insert—

“() After subsection (1) insert—

“(1A) When making a scheme under this section for controlling the cost of health service medicines, or determining any amount to be paid to him or her, the Secretary of State must take account of any voluntary scheme in force under section 261 (powers relating to voluntary schemes), and should seek, so far as is practicable and relevant, to secure comparable effects in relation to products in the statutory scheme as would apply if those products were participating in the voluntary scheme.”

Lord Lansley: My Lords, even though the House has just divided, the Bill has been characterised by a substantial measure of agreement on the purposes we are trying to achieve and I am sure that will be reflected in the further amendments that are to be discussed. I neglected earlier to draw attention to the register of interests and, in particular, to my position as an adviser to MAP BioPharma, which is not itself a participant in the PPRS in any way.

Let me make the purpose of Amendment 4 clear to noble Lords. The Government, in bringing this legislation, were prompted in part by the fact that expenditure on medicines was rising somewhat faster than the Government had anticipated, the amount of the rebate being achieved by way of payment back to the Government was less than was anticipated, and the difference was, in part, explicable by virtue of the transfer of certain products into the statutory scheme. In the statutory scheme they had a price cut applicable but no rebate scheme applicable and the Government did not feel that they had the necessary power to amend the statutory scheme to make a rebate apply.

The purpose of the legislation is to make the two schemes broadly equivalent. As the Minister told the Committee, the Government's intention was to make the revenues being rebated back to the Government from the two schemes broadly equivalent. However, in my view that would potentially have the perverse impact that certain products in the statutory scheme would end up with a much higher rebate percentage being applied to them as a consequence—or, alternatively, that products outwith the price control under the voluntary scheme, because they were introduced after December 2013, would have the price control applied to them under the statutory scheme. So a discontinuity would apply, potentially either way, by applying the broadly equivalent proportion of cost of sales being returned to the Government in the form of a rebate.

I have therefore suggested that it is a perfectly reasonable principle on the Government's part, as we explored in Committee, to try to make the two schemes equivalent so that there cannot be gaming, as it were, by moving into one scheme rather than the other. That should be applied, as the amendment specifies, by means of asking the Government, wherever a voluntary scheme is in place—which is an important caveat—to ensure that a statutory scheme should seek, so far as is

practicable and relevant, and it will not be precise, so I do not think it can be regarded as too rigid, to make it so that the equivalent effect is applied at a product level: not at a company level or a whole-scheme level, but in relation to the individual products. Individual products, whether they are in the voluntary scheme or the statutory scheme, should expect to have broadly the same overall treatment applied to them. The net effect would therefore be that the schemes will become equivalent and the scope for gaming will be reduced. I hope that explains the amendment and I beg to move.

Lord Hunt of Kings Heath: My Lords, the noble Lord, Lord Lansley, has raised a very important point. For me, the question is: what is the future of the voluntary scheme? Over the years it has clearly served its purpose well. In Committee, the noble Lord acknowledged the benefit of the PPRS, which is the voluntary scheme, and said that it showed how Government and industry could work together to develop solutions. I draw the noble Lord's attention to a piece written by Sir John Bell recently. When talking about what we have just discussed, the dynamic between access, cost and life-science investment and the problem the NHS has in investing in innovation, he said:

“A solution for both parties is necessary and must come from healthcare systems and innovators working more closely together, sharing risk and cost and attempting to use innovation to take cost out of health systems wherever possible”.

This is a wider issue than drug costs and PPRS, but it would be good to hear about the context in which the Minister thinks a potential new PPRS is going to be agreed. Many in industry think that the Government are not really committed to a new PPRS. It would be interesting to get some sense from the Minister as to where he thinks things are going.

5.45 pm

Lord O'Shaughnessy: My Lords, I am grateful to my noble friend Lord Lansley for bringing this amendment and for the opportunity to talk about the intentions of the Bill. He is quite right to highlight that the reason for bringing the Bill forward is to stop the behaviour of switching between schemes in order to reduce liabilities. That has characterised behaviour in the past few years and has had an impact on the successful operation of the PPRS. I will discuss the PPRS towards the end of my speech.

Amendment 4 is about the relationship between the voluntary and statutory schemes. I thank noble Lords for their views in this area. This amendment would require us to secure that, for any given product, the voluntary and statutory schemes would have an equivalent impact. It presents a slightly different approach to securing equivalence between the voluntary and statutory schemes, but I understand that, fundamentally, equivalence is what the amendment is seeking to achieve. I gave my views on this matter in Committee and I am happy to respond in similar terms on this occasion.

The Government's intention is for the two schemes to deliver a broadly equivalent level of savings as a proportion of the total sales covered by each scheme. However, to require the terms of each scheme to be the same, in so far as possible, is inappropriate and would restrict the scope of the two schemes to operate

[LORD O'SHAUGHNESSY]

in a complementary manner. Requiring equivalence to operate at product level, as the amendment suggests, would be even more restrictive.

The voluntary scheme is a matter for negotiation with industry. As such, there is scope to have a range of measures included that reflect the priorities of both sides at any point. It may be helpful to the House if I reiterate some of the examples I set out in Committee. The current voluntary scheme, the PPRS, includes a range of provisions, developed through negotiation with industry, that sit alongside the payment mechanism. This includes price modulation, which enables companies to put prices up and down as long as the overall effect across their portfolio is neutral. This has commercial value to companies, which may be willing to accept a higher payment percentage as a result.

In another example, while new medicines in the PPRS are excluded from PPRS payments, the PPRS payment percentage level itself is set at a level to achieve the agreed level of savings across both new and older medicines. This means that each company's share of the income due to government will vary depending on the balance of new and old products in their portfolio, with companies that have mainly new products paying less than companies with mainly old products. However, it would be very challenging to replicate this model in the statutory scheme, as many fewer companies are affected by the statutory scheme regulations than are members of the PPRS. As a result, there is a much smaller pool of companies with older products. To achieve the same level of savings overall from the statutory scheme as from the PPRS while exempting newer products would require an extremely high payment percentage. This provides an example of where minor differences in terms may be required in order to deliver an equivalent level of savings across the two schemes overall. As noble Lords know, as we discussed in Committee and as I now repeat, the detail of how any future statutory scheme will work will be subject to further consultation.

As was discussed here and in the Commons, the freedom to negotiate the voluntary scheme has been valued greatly by both industry and government. As the noble Lord, Lord Hunt, reminded us, I said as much in Committee. Our intention for the future of the PPRS is to work collaboratively and constructively with industry on future medicines pricing arrangements when the current PPRS comes to an end.

Lord Hunt of Kings Heath: This time, will NHS England be a full partner in the discussions and negotiations? Clearly, unless it owns the solution as well, you have the problem that an agreement can be reached but it does not quite translate itself into action on the ground. I realise that this is traditionally a negotiation between the Department of Health and the industry but it would be useful if NHS England were fully part of that.

Lord O'Shaughnessy: The noble Lord makes an excellent point. Clearly, as the budget holder, NHS England ultimately must be a key part of negotiations for any future schemes. We intend that any future

voluntary scheme should be established through negotiation in this way, but linking the payment mechanisms would inevitably place a restriction on that freedom.

I am grateful to my noble friend for raising this issue and I hope I have reassured him on equivalence, while also explaining why I believe the amendment goes too far by focusing specifically on products. On that basis, I ask my noble friend to withdraw his amendment.

Lord Lansley: I am grateful to my noble friend for his helpful response setting out the Government's continuing position. The exchange with the noble Lord, Lord Hunt, was also useful. I said in debate on the previous group that earlier engagement and development of NHS England's role in trying to assess what is a reasonable price and what is the value proposition in relation to new medicines that are being adopted by the NHS would be helpful at the same time in trying to develop the shape of a new voluntary scheme. I am sure that the industry, having been frustrated in the outcome of the 2014 PPRS, would want the principles for 2019 to be broadly similar: freedom of pricing and introduction; the ability to modulate prices in the way my noble friend referred to; the Government's desire for a stable overall budgetary outcome; but also access to new medicines and diffusion across the NHS.

If we are going to meet those principles together—and balance them, as we discussed in the last group—NHS England should be at the table when the scheme is being designed. I am sure it was frustrating in the previous scheme that Scotland and Wales had identifiable resources for access to new medicines and NHS England had those resources but not in an identifiable form. It would be helpful for the new scheme to see the rebate, if it is rebated scheme, being specifically directed towards promoting access. I do not think that that is an unreasonable objective.

That said, the Minister has very kindly reiterated that the Government consider it desirable to have broadly equivalent proportions of sales in the two schemes being rebated and not disaggregated to product level. I can see that if you disaggregate to product level, you have a problem with price modulation between products for companies. That is a practical issue. However, as an inevitable consequence of the Government's approach to equivalence, the schemes will not be the same. Generally speaking, once the legislation goes through, the statutory scheme will be less attractive.

That may well be the Government's intention. Indeed, the Government may well like to have a situation where they can encourage companies to provide the necessary payments back through the rebate in the voluntary scheme with the threat of putting them into the statutory scheme. That might be something that the Government have occasionally thought of doing. I do not think that it is a desirable situation. The effort—I put it at no more than that—to define the equivalence of the two schemes should be a continuing effort. I know my noble friend the Minister has that in mind. It is not his intention to create two schemes that diverge in ways that could potentially be difficult for the industry if the Government were so minded in that direction.

It has been a useful debate but I certainly do not want to pursue it any further. We have had two opportunities to explore important issues that, frankly, we should attempt to resolve in the design of the new scheme rather than in legislation. I beg leave to withdraw Amendment 4.

Amendment 4 withdrawn.

Amendment 5

Moved by Lord Lansley

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

“Report to Parliament

After section 264 of the National Health Service Act 2006 (statutory schemes: supplementary) insert—

“264ZZA Report to Parliament

- (1) Where the Secretary of State enters into a voluntary scheme under section 261, 263 or 264A, or makes a statutory scheme under section 263 or 264, he or she must lay a report before each House of Parliament, setting out how the scheme concerned will enable the Secretary of State to fulfil his or her statutory duties under section 266(4).
- (2) The report must also cover the impact of the scheme on the statutory duties of the National Institute for Health and Care Excellence under section 233 of the Health and Social Care Act 2012 (general duties).”

Lord Lansley: Amendment 5 refers back to the discussion we had on Amendment 3 about the duties that the Secretary of State must meet in relation to the scheme. This is another aspect of that but a more particular one.

In Committee, I explored the idea that the Secretary of State should pursue through the voluntary scheme—or indeed the statutory scheme, as necessary—pricing that was related to value. There were a number of criteria for what value is. In response to that, my noble friend said that many of the aspects that constitute value are reflected in existing statutory duties. For example, in Section 266(4) of the National Health Service Act, which is concerned with the price control mechanisms we are amending through this legislation, the Government are required to bear in mind,

“the need for medicinal products to be available to the health service on reasonable terms”—

the value proposition and access proposition that we have just been debating—and,

“the costs of research and development”,

which of course are important to the industry in promoting innovation. We do not need to replicate those. But my noble friend the Minister also said that there were other statutory duties: for example, that under Section 233 of the Health and Social Care Act NICE is required to have regard to,

“the broad balance between the benefits and costs of provision ... the degree of need ... and ... the desirability of promoting innovation”—

all of which are indeed very much part of the overall value proposition. But because they are statutory duties relating to NICE, they are not necessarily factors that the Secretary of State must have regard to in the formulation of the PPRS, which is what we are dealing with here.

The purpose of Amendment 5 is to say that there are these existing statutory duties applicable to the Secretary of State. Separately, there are statutory duties applicable to the National Institute for Health and Care Excellence. The Secretary of State, when making a scheme and reporting on such to Parliament, should state how those statutory duties, both in respect of the Secretary of State and as they might impact on NICE, could be met through the design of the scheme. In that sense, it is a mechanism for trying to ensure that the value proposition gets to the heart of the assessment of what the price control mechanism should seek to achieve. I beg to move.

Lord O’Shaughnessy: I am grateful to my noble friend for his amendment and for raising the issue of reporting requirements and how that relates to the responsibilities of NICE.

Under the current PPRS, the Department of Health regularly publishes information relating to the operation of the voluntary scheme. For a future statutory scheme, as my noble friend is aware, the illustrative regulations, which we have published alongside the Bill to assist in scrutinising the provisions, already include regulations for both the statutory scheme, in Regulation 32, and the information regulations, in Regulation 14, for an annual review of the regulations and a requirement to publish our report of each review. Our illustrative regulations require an annual review to,

“set out the objectives intended to be achieved ... assess the extent to which these objectives are achieved; and ... assess whether those objectives remain appropriate”.

These requirements will be tested through the consultation on the regulations and we will of course take account of those views.

I assure my noble friend that that review would take into account the duties under Section 266(4), which currently are,

“the need for medicinal products to be available for the health service on reasonable terms, and ... the costs of research and development”.

Of course, subject to further consideration of the Bill, there may be further duties. I accept that reporting is an important principle but setting out the requirements in primary legislation is too restrictive. Over time, it is to be expected that both the statutory scheme and the information requirements will be amended through their respective regulations to reflect changing circumstances. It is essential that the review and reporting arrangements be able to be similarly flexed, so that they remain appropriate to the schemes in operation. My noble friend has suggested that we report every time there is a new voluntary or statutory scheme. I believe the annual reviews as set out in the illustrative regulations would provide more frequent review than the amendment proposes, at least for the statutory scheme.

6 pm

Secondly, my noble friend has proposed that we would cover the impact of a price control scheme for the duties of NICE under Section 233 of the Health and Social Care Act 2012. In Committee, we discussed reporting requirements at length and in particular whether it would be appropriate for any report or review to address matters relating to the NHS duty to promote innovation. As I set out at the time, this would

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not be appropriate. Similarly, it would not be appropriate to address the duties that have been put on NICE through reports relating to the operation of the Bill, which is ultimately about controlling the cost of medicines and medical supplies.

The Health and Social Care Act 2012 puts duties on NICE in relation to its functions, including a duty to have regard to the broad balance between the benefits and costs of the provision of health services or of social care, and a duty to have regard to the desirability of promoting innovation. The Government's priority is to make sure that we get the best possible results for all NHS patients with the resources we have, which means using taxpayers' money responsibly and getting good value for money. NICE will continue to make its valuations on that basis and look at how best to promote access to effective medicines, through its recommendations and guidance to the NHS.

In developing its guidance, NICE of course takes account of all health-related costs and benefits, including benefits to carers. As I am sure my noble friend will recall, in 2014 NICE considered changes to its methods to capture better the wider costs and benefits to society of new drugs and treatments, known as value-based pricing. During the consultation some significant concerns were raised—for example, about the potential implications for products that offer limited life extension without associated gains in quality of life for those with terminal illnesses. The consultation highlighted a significant diversity of responses, demonstrating that this is a complex issue.

It is critical that stakeholders continue to have confidence in NICE's work. I agree with NICE that these issues require careful consideration before making changes to the way it assesses medicines. That is one of the reasons why I do not believe it appropriate for the reporting and reviewing structure of the schemes that could result from the Bill to incorporate the duties of NICE. The statutory scheme has no link to the duties that the 2012 Act places on NICE.

I hope I have been able to address the issues that my noble friend has raised. I know he is a passionate proponent of the importance of value-based pricing, and look forward to continuing to work with him to see how those considerations could be included not only in future NICE assessments but in the operation of any pricing control Bill. On that basis, I ask him to withdraw his amendment.

Lord Lansley: I am grateful to my noble friend. I entirely take his point about the structure of reporting and review proposed through the regulations, which I will not necessarily pursue. On the second limb, however, the duties relating to NICE, there is a gap. The reality is that the development of a value proposition through the structure of the PPRS, or outcome-based pricing—that may be the next iteration, to try to take out some of the complexities associated with the broader value-based pricing structures that were consulted upon—means having a direct relationship between the pricing structure under the PPRS and the ability of NICE to make recommendations that drugs are cost-effective. We have just had that debate and I will not go through it all again.

At the very least, to say that these things are unrelated therefore seems wrong. The Government should at least look at these regulations and say, "Given that there is a relationship between the structure of PPRS and the price control mechanism as it works—or the rebate mechanism, if there is one—NICE's ability to do its statutory job should be perhaps discussed, recognised, reviewed and reported upon". Having made that point, I know from the very helpful discussions we have had in Committee and separately that my noble friend is actively looking to promote that kind of understanding. I will leave it in his capable hands and seek leave to withdraw the amendment.

Amendment 5 withdrawn.

Clause 5: Control of maximum price of other medical supplies

Amendment 6

Moved by Lord O'Shaughnessy

6: Clause 5, page 4, line 6, at end insert—

"() In section 272(6)(orders, regulations, rules and directions subject to affirmative procedure), after paragraph (a) insert—

"(aa) the first order under section 260,"."

Lord O'Shaughnessy: My Lords, in Committee we debated the Government's existing powers to control the prices of medical supplies. I have listened carefully to the concerns expressed by noble Lords and tabled this government amendment to address them. Before I go into more detail about the amendment, I would like to take the opportunity to address some concerns raised in Committee about the definitions used in the Bill, including that of medical supplies.

The Bill refers to health service products, which is the overarching term for medicines, medical supplies and other related products used in the health service. The term "medical supplies" is used in the NHS Act 2006 and the existing definition covers a broad range of medical supplies, from bandages to MRI scanners. It could include ambulances, to answer a question asked in Committee by the noble Lord, Lord Warner. "Other related products" are those which are not medicines or medical supplies but are prescribed in the NHS—for example, vitamins. The Government have powers to control the costs of health service medicines and the prices of medical supplies. If the Government were to introduce any controls on those prices then we would, of course, need to define which supplies the control would apply to. This would be done within the regulations. Similarly, in the information regulations we will specify which medical supplies and other related products will be covered. These regulations will, of course, be subject to consultation.

The illustrative regulations published alongside the Bill give examples of the categories of medical supplies and other related products on which we would expect information to be kept, recorded and provided. For example, one category includes those medical supplies and other related products listed in the drug tariffs. As noble Lords know, the illustrative regulations are not

in their final form and have been provided to demonstrate how we would specify which products are covered by the regulations. We have already started discussions with representative bodies of the medical devices industry about how we could restrict the types of medical supplies and other related products that the regulations cover. It is not our current intention, for example, to include ambulances in the regulations. We will carry a formal consultation to consider the products that need to be covered.

While I am still on definitions—please bear with me—the Bill also refers to UK health service products and English health service products. This reflects that the Bill has some aspects that are reserved and others that are devolved. While medicine pricing is a reserved matter with respect to Scotland and Wales, reimbursement is a devolved matter. I acknowledge that the distinction between reserved and non-reserved matters adds complexities, not least for me, but I assure noble Lords that the definitions are consistent and in line with the existing provisions of the NHS Act 2006. I hope that this explanation helps noble Lords to understand those definitions.

Regarding Amendment 6, which I have tabled, I understand the views expressed by some Peers asking why the Government need the powers to control prices of medical supplies when they are not using those powers. In the words of the noble Lord, Lord Hunt, it is a question of proportionality. At this moment, the Government have no immediate concerns about the prices of medical supplies as it appears that the market is generally competitive. Nevertheless, noble Lords will be aware of the work of the noble Lord, Lord Carter, on efficiency and variation in the NHS—indeed, it has been referenced today—and the work being done to implement that report. He concluded that there is considerable variation between trusts on the value that they extract from the procurement of goods and services, so while the market may be competitive the NHS could be getting better value for money for the products it buys. This is one area where the information powers in the Bill, which will not be burdensome, could help the NHS to save money. Again, I know that we all share this goal.

We also know that markets can dysfunction for any number of reasons and that competition will not always operate to control prices. This is the unfortunate situation we have found ourselves in with unbranded generic medicines, which the powers in the Bill will help us to deal with. I continue to believe that the Government should have the ability to intervene but only when a market is not working. As noble Lords know, as part of the 2006 Act the Government already have the power to introduce price control schemes into the medical supplies sector but concern was expressed in Committee that these powers, and how they are developed in the Bill, are not proportionate. As I have set out, we have no concerns about the current operation of the medical supplies market, so noble Lords justifiably asked whether some additional threshold or hurdle should be required before the introduction of any price control scheme in this sector.

I have listened to their concerns, which have much merit, and so have tabled this government amendment so that the first order to control the prices of medical

supplies would be subject to the affirmative procedure. The order would then require the formal approval of both Houses of Parliament before it becomes law and there would be debates on the proposals, in which the Government would have to justify their case for action. This means that if the Government want to introduce a pricing scheme, they would have to convince Parliament that there were sufficient grounds for doing so. I am very grateful to many noble Lords for their engagement on this issue and I trust this amendment meets the concerns raised. I hope that noble Lords across the House will be able to agree to it.

Lord Warner: My Lords, I am grateful to the Government for taking some modest steps in the direction we were asking them to take in Committee. My sympathies are entirely with the Minister, who had to bring forward this amendment and explain it in the way he did. It shows what a tangle the Government have got themselves into by taking some powers which they are not sure they will need but which the noble Lord, Lord Carter, may suggest they need. It represents a decision by the Government that, when they think the NHS cannot tender and run a proper competition, they will be willing to step in to control the price of a product when the NHS has failed to do proper purchasing.

This is a pretty big step because the noble Lord, Lord Carter, has shown that chunks of the NHS are not terribly good at tendering and purchasing. Are we now going into the kind of Soviet era that the noble Lord, Lord Hunt, painted a picture of on a previous amendment, in which the Government are going to step in whenever they have evidence that there is a pretty lousy trust down in Little Cullompton or wherever and start to control the price of a number of medical devices? I do not think I have exaggerated where the Government are using this legislation to take them. It seems pretty peculiar. Can the Minister reassure me about whether the Government have big plans to go about this and tell me what evidence they have that it is a serious problem?

Lord O'Shaughnessy: I thank the noble Lord, Lord Warner, for the lukewarm endorsement of an attempt to improve the Bill. We seem to have zipped from socialism to communism, which for a Conservative is a fairly terrifying idea. The noble Lord raises an important point. I am not in a position to comment on the provenance of the Bill as I was not around. He is right to focus on the issues of procurement and competition. It must be the policy intention to make sure that competition works the best it can. In the generics market, we found an instance of where that is not working. Through the much-referred-to Sir John Bell, the industrial strategy is looking at issues around the manufacture of generics, biosimilars and so on, which, as the noble Baroness, Lady Walmsley, said earlier, has the ability to reduce prices through competition.

Equally with procurement, there is the NHS supply chain. The feedback is that it could do a lot better. A lot of work is going on on the future operating model—another piece of jargon. It is a thorough piece of work that is getting a lot of scrutiny to make sure that it can deliver the kind of savings that the noble Lord talks about. I agree that there are other things that a

[LORD O'SHAUGHNESSY]

Government must do to make markets work better. It is for that reason that I insisted that the amendments we have brought forward today should involve an affirmative resolution. When they introduce the first scheme, the Government are going to have to justify exactly what they have done to make competition work, why the procurement is not working and what is going on. Obviously, I cannot anticipate at this point what that might look like. Given the experience we have had with generics, I do not think it unreasonable for that power to be there. Indeed, the power is already in the 2006 Act. This Bill circumscribes that power and makes it more reasonable. I hope I have been able to persuade the noble Lord, Lord Warner, that we are not slipping into communism, that the Government are taking a reasonable approach that understands the importance of markets, and that this power would be used only in situations where it could be justified when interventions to improve competition and procurement have not worked.

Amendment 6 agreed.

6.15 pm

Amendment 7

Moved by Lord Lansley

7: After Clause 5, insert the following new Clause—

“Price control: exemptions

After section 264 of the National Health Service Act 2006 (statutory schemes: supplementary) insert—

“264ZA Price control: exemptions

In circumstances where the Secretary of State considers that the price or security of supply of any health service medicine or medical supply, or category of health service medicines or supplies, may be determined most appropriately through an open and competitive tender process, the Secretary of State may exempt that product, or category products, from the application of the scheme.””

Lord Lansley: My Lords, I am grateful for the further opportunity to touch on an interesting issue which we discussed in Committee. On Report, I have proposed a different amendment that tries to meet some of the considerations that were quite properly raised in Committee. This relates to where the method of procurement for a branded medicine or product to which the statutory scheme would apply would be through a tender process and there would be an expectation that the best available price would be obtained through that process. I completely accept that previously we were looking at possibly exempting tender processes generally. The Minister quite rightly said that sometimes the tender process is used not to secure the best price, but to secure supply or procure products which are not directly comparable and where price competition would not be expected to be available.

I completely understand that, so this amendment says not that the Secretary of State under any circumstances is obliged to exempt a tender which has delivered a price outcome but that he may do so. Why do I think it is useful to do that? It is because there will sometimes be products where, for reasons of security

of supply, it is important to undertake a tender process. At the moment, all companies in the statutory scheme or the voluntary scheme will have the implications of the PPRS pricing and rebate structure applying to them. As we have heard previously, the way that applies to individual products may be subject to price modulation depending upon how the company overall is affected by the scheme. It may therefore have a distorting effect on products that are offered through the tender. That is undesirable. We should want the tender process to be as transparent as possible and the price, supply and other considerations of the tender to be as self-contained as possible. That is perfectly possible to achieve if the Secretary of State has the discretion to exempt a tender process from the scheme.

As the Minister told us in Committee, the Government intend that framework agreements agreed before the regulations come into force will be exempted in any case. This amendment would helpfully give the Secretary of State the ability to exempt specific tenders from the application of the scheme. I do not want to anticipate too much, but the Minister may respond that the Secretary of State has the power to do that. If he says that the Government will actively assess where we may use such discretion to make it clear that tenders should be conducted in that way, I would be content. My noble friend instanced von Willebrand factor, where there are very similar products which are not necessarily competing on price. There is a general problem with plasma protein therapies because the cost structure that applies to them does not reflect the cost structure over the life of a product as it is reflected in patented, branded medicines generally. There is a good case for looking at an exemption in relation to products which have that high level of fixed cost rather than applying the price control and rebate in the way that happens now. I hope my noble friend will be able to say positive things about how we can maintain competition in the tender process and recognise the cost structures of certain medicines, because there is likely to be the application of the same principles to those products whether or not the company has opted into the voluntary scheme. Therefore the Government should be more willing under the statutory scheme to apply exemptions to those companies which have not opted into the voluntary scheme. I beg to move.

Baroness Walmsley: My Lords, as I mentioned in the debate on Amendment 3, I support this amendment because it gives the Secretary of State a bit more flexibility to take account of the specific circumstances of a company with very high fixed costs, in the interest of making sure that we have security of supply and patient access to the particular products that it produces. I do not think it undermines any of the objectives of the Bill in any way, and because of that, I hope that we will hear something encouraging from the Minister.

Lord Hunt of Kings Heath: My Lords, in Committee the noble Lord said that he did not think that biosimilars should be excluded from the voluntary or statutory pricing schemes, as competitive tendering would not generate sufficient levels of price reductions. I had a note from one of the companies involved, Sandoz, which says that one of the issues here, alongside the

fact that fierce competition is already driving significant price reductions for the NHS, is that development costs of generic medicines do not compare with those of biosimilars. Those costs can be up to 100 times those of generic medicines, partly because of the licensing process and the time needed for development. I hope the noble Lord will be able to address that and explain how the Bill aligns with recent NHS policy, which has expressed support for the uptake of biosimilar medicines, particularly through the intention for specialised services commissioning. The noble Lord's comments in Committee on biosimilars caused some disappointment, and if he could respond more positively now that would be helpful.

Lord Warner: My Lords, from time to time I have been approached by plasma companies and vaccine companies about supply issues, particularly where there have been changes in the structure of the industry and a reduction in the number of producers of some of these products, and sometimes on the point of whether British companies may start to go out of business because of some of those structural changes. My question to the Minister is whether the amendment would actually help enable the Secretary of State to deal with some of those supply problems when this becomes an issue. It becomes an issue for those patients who really need that particular product when no other will do. Is this the kind of amendment that would help with these supply problem areas, which to my knowledge have been experienced from time to time, particularly in plasma and vaccine areas?

Lord O'Shaughnessy: My Lords, I am grateful to my noble friend for his amendment and for providing the opportunity to talk about this important issue. It is important to note that the substance of this amendment is different from the substance of the amendment that was tabled in Committee, which would have given a blanket exclusion, while this is much more about providing the Secretary of State with the opportunity to exercise his or her judgment to exempt a product.

I absolutely appreciate the intent of the amendment, and reassure my noble friend that we believe it unnecessary. Due to the powers in the 2006 Act, the Secretary of State already has the ability to exempt individual products or groups of products from the terms of any statutory scheme, so this amendment would duplicate existing powers. For example, the Secretary of State uses these powers in the current statutory scheme to exempt products already under a contract or framework agreement. It is currently the Government's intention that under the new statutory scheme, products procured under framework agreements that were entered into prior to the regulations coming into force would be exempt from the pricing controls and payment mechanism. However, branded products procured after the regulations come into force would be subject to the pricing controls and payment mechanism. Like any other cost, companies would be able to take this into account when proposing a price in response to a new tender. The regulations will of course be subject to consultation.

The point here is that there may well be cases where an exemption is required, and noble Lords have given examples of what that might look like. I hope your

Lordships would agree that it would not be responsible for me to try and set out a list of them now, but clearly there will be occasions where that might be necessary. Any statutory scheme must of course also be sensitive—as indeed the legislation demands that it is—to the differing R&D costs that apply to the development of different medicines.

I hope that provides some reassurance on the points that noble Lords have made. We would be able to use the powers that already exist in the creation of the new statutory scheme for whichever purposes are desired at the time. On that basis, I ask my noble friend to withdraw his amendment. I hope those reassurances have done the trick.

Baroness Walmsley: My Lords, before the noble Lord sits down, is he able to respond to the issue about biosimilars, which I raised in an earlier debate and which the noble Lord, Lord Hunt, has just raised?

Lord O'Shaughnessy: I thought I had, when I talked about taking into account the differing R&D costs, which I think was the substance of the point made by the noble Baroness and the noble Lord, Lord Hunt. We have to take into account both getting a good price and the R&D costs, and that needs to be reflected within a statutory scheme, and would clearly apply to the case in point.

Lord Lansley: I am grateful to my noble friend and completely understand that at this stage it would be inappropriate to try and itemise in any way how the Secretary of State's discretion to exempt products or categories of products could be used. I am grateful for what my noble friend said because it is clear that while some companies opt into the voluntary scheme, we will arrive at a situation where, in effect—force majeure—other companies with other products are in the statutory scheme without any choice in the matter. They should come out of this debate with the confidence that they can make their case to the Government. We have seen some really good examples, and I am grateful to the noble Baroness, Lady Walmsley, and the noble Lord, Lord Hunt. Biosimilars clearly have a case to make about the structure of the scheme and how it applies to them in relation to this.

As the noble Lord, Lord Warner, mentioned, the cost structure of plasma product therapies and things of that kind is very different from the cost structure of many other branded medicines that enjoy their patent life. To that extent, recognising their cost structure might require an exemption from the PPRS as it stands at the moment. We cannot just seek some of those products, particularly some of the blood products we are talking about, in isolation in Britain. There is a limited supply. We import them from abroad, and there are sometimes higher prices in other markets. It is absolutely necessary for us sometimes to say, for security of supply reasons, that this product, this tender process or this framework agreement for the delivery of products of this kind is exempted from the PPRS in the future. It does not automatically follow that they will be included. However, I gather from what my noble friend says that the power is there to do

[LORD LANSLEY]

this and that this will be considered, as and when, on its merits. On that basis I certainly seek leave to withdraw Amendment 7.

Amendment 7 withdrawn.

Clause 6: Provision of information to Secretary of State and disclosure

Amendment 8

Moved by Lord Hunt of Kings Heath

8: Clause 6, page 5, line 35, leave out “revenue or” and insert “product revenue and aggregate UK”

Lord Hunt of Kings Heath: My Lords, I will speak very briefly to Amendment 8 and then allow the Minister to explain his amendments. I can then perhaps come back at wind-up to refer to my own Amendment 12 to his Amendment 11.

We have discussed whether the Bill is proportionate, and this is particularly apposite in relation to this clause. There is concern that the powers may be too intrusive in requiring companies to submit profit-level information on individual products, which I understand from many of the companies involved that they consider complex and onerous to provide, and not necessary routinely for the Government. My amendment attempts to deal with this in a way which I think is proportionate and not intrusive, but which should provide the kind of information the Government want. I will be very interested to hear what the Minister says about his amendments. I beg to move.

Lord Warner: My Lords, my name is on this amendment and I support it. I want to emphasise the point about the UK, which is in this amendment from the noble Lord, Lord Hunt. Members of the industry are concerned that they will be brought into a conflict between them and their headquarters over the pricing of particular products in the UK. The point that the noble Lord has made in his amendment about specifying the UK is extremely important.

6.30 pm

Lord O’Shaughnessy: My Lords, I am grateful to the noble Lord, Lord Hunt, for his amendments. I shall speak to government Amendments 9, 11, 25 and 26 relating to information notices and appeals, and will refer to Amendments 8, 10 and 12 tabled by the noble Lord.

We had a good discussion in Committee about the information powers. My noble friend Lord Lansley proposed information notices with a right of appeal; the noble Lord, Lord Warner, proposed to place certain restrictions around the Government’s ability to collect information on profits; and the noble Lord, Lord Hunt, proposed that those restrictions be in the form of “triggers”. As I hope noble Lords will know from the individual meetings that I have had the chance to have with them, I have been listening carefully to what has been said and I am conscious of the importance of proportionality in the Bill. In particular, I have reflected on the suggestion from the noble Lord, Lord Hunt,

that we may be able to combine these different ideas into a workable solution that would deliver the sort of safeguards that I believe noble Lords are seeking. The government amendments that I have tabled would do precisely that.

There was broad agreement in Committee that the Government should be able to collect the information required to reimburse community pharmacies and to operate our cost-control schemes for medicines as effectively as possible. That includes straightforward information about sales income actually received or the amount actually paid in relation to health service products at each point in the supply chain. We already collect much of this information now under a mix of voluntary and statutory arrangements, including scheme M, scheme W and the community pharmacy margin survey.

We have discussed previously that our current arrangements need to be strengthened. The changes proposed by the Bill would allow us to expand routine collections to inform reimbursement prices. They would enable us to use data from more companies, make the reimbursement of community pharmacies fairer and more robust and set reimbursement prices for more products. Setting reimbursement prices leads to more competition—whose merits we have discussed—as pharmacies are incentivised to source the products as cheaply as possible, allowing them to retain a margin. That in turn helps us to keep the drugs bill down.

However, I have heard the concerns raised by noble Lords in relation to the collection of information on the profits associated with particular products. The noble Lord, Lord Warner, spoke about his concern that it would be burdensome for the pharmaceutical industry to apportion certain operating, development or manufacturing costs to individual products. The government amendments that I have tabled would address that concern. Amendments 11, 25 and 26 would introduce the requirement in regulations for the Secretary of State to issue an information notice for the collection of information on the costs incurred by a producer in connection with the manufacturing, distribution or supply of UK health service products. The exception to that requirement would be information on the amounts actually paid for purchasing health service products from an organisation in the supply chain. As I set out earlier, our current routine collections already cover the acquisition costs of the products themselves, as distinct from the overheads incurred by an organisation in supplying them.

Amendment 9 makes clear that in order to collect information in relation to certain types of profit made by suppliers, the Government would by necessity need to collect information on certain costs. I know that the collection of information on profit has been of concern to some Peers. Taken together, these amendments therefore make clear that the Government would be required to issue an information notice before they could collect particular types of profit-related information.

I have sympathy for the amendments from the noble Lord, Lord Hunt, that would restrict the term “profit” to aggregate UK profit. However, this approach may mean that we would be unable to collect information on the purchase costs and sales revenues that we currently

collect and use to inform the reimbursement of community pharmacies and ensure that our reimbursement arrangements deliver value for money. I hope he would be willing to support the Government's approach, which addresses the concerns raised by the pharmaceutical industry without undermining our ability to reimburse community pharmacies effectively. It might be worth adding at this point that I have had the opportunity to meet a couple of representative groups and explain the approach that we were taking in order to provide proportionality, and that approach was welcomed by those groups.

I should point out that in drafting Amendment 11 the Government have omitted to reflect that under the voluntary scheme, on a routine basis, we already obtain information from companies on profits and costs, including the costs of manufacture, R&D and distribution. This is company-level information, not product-level information. I will therefore bring forward a small amendment to Amendment 11 at Third Reading to reflect this, which would enable the Government to obtain that information on a routine basis under a future statutory scheme. I believe this would also be in line with the intention behind Amendment 8 from the noble Lord, Lord Hunt, which distinguishes between company-level or aggregated information on the one hand and information on individual products on the other.

I turn to the circumstances in which the Government may wish to collect information on costs via an information notice. In Committee we spoke about triggers, and the noble Lord, Lord Hunt, has tabled amendments along those lines. I have thought about this carefully but have concluded that we cannot set particular conditions for when we issue information notices. First, we cannot predict all the circumstances where this or a future Government may need to investigate further the value for money of a particular product or supply chain. Secondly, we may want to issue an information notice when we have an information gap and cannot properly assess whether a product or the supply chain is delivering good value for money. It would be a Catch-22 situation if we were to have triggers for an information notice in legislation that would allow us to issue an information notice only when we already had the evidence. I trust noble Lords will understand the Government's concerns about triggers for an information notice.

However, in Committee I said I would provide examples of when the Government may wish to collect information about costs. These include where companies in the statutory scheme ask for a price increase for a particular product and we want to assess whether that is justified; where we have concerns about the high price of an unbranded generic medicine and want to assess whether the prices are warranted; or where the Government have no visibility over costs in the supply chain and want to assure ourselves that the market is working effectively. These are only some examples but I hope they illustrate where the Government may benefit from more information than that which is collected routinely to run our community pharmacy reimbursement system and to operate our cost-control schemes for medicines. The information notice would of course clearly set out what information would need

to be provided, the form and manner in which the information would need to be supplied, the period of time that that information would need to cover and the date by which that information would need to be supplied. It would inform those issued with an information notice of their right of appeal.

The government amendments would introduce a right of appeal for those served with an information notice, an important point made by my noble friend Lord Lansley in Committee. UK producers could appeal an information notice if they believed the request was beyond the powers in the NHS Act 2006. That is in addition to the existing appeal mechanism against any enforcement decision made by the Government when a company refuses to submit information.

I thank noble Lords, especially my noble friend Lord Lansley and the noble Lords Lord Warner and Lord Hunt, for helping to shape these amendments. I hope that through the government amendments I have reflected the concerns raised in Committee, and that the House will agree them. I also hope I have addressed the amendments tabled by the noble Lord, Lord Hunt, and I ask him to withdraw his amendment and instead support the Government's amendments.

Lord Lansley: My Lords, I reciprocate my noble friend's thanks. In Committee he said he was going to think very carefully about the subject of information and the circumstances in which it is required from companies. Having done so and engaged us in a conversation about it, he has come forward with an amendment that seems specifically designed to meet the concerns raised in Committee. From my point of view, and this is very simply put, there must be a general scheme to acquire information, but when one goes beyond it the company has a right to expect that the information notice must be specific, itemised and additional, and that, as is now provided for, there should be a right of appeal in relation to that. My noble friend has very kindly listened and brought forward an amendment to do in substance the things that we were looking for, so I am grateful to him.

Lord Hunt of Kings Heath: My Lords, I thank the Minister. I am grateful for his amendments, because he clearly listened to the debate. I just want to encourage him to go that little bit further. I am glad that we have a government amendment on Third Reading, because that means that we can continue this debate: his amendment is amendable, which is always the issue for noble Lords on Third Reading.

The Minister said on my Amendment 12 that he was anxious not to put particular conditions into the Bill, but my reading of his Amendment 11 is that he imposes particular conditions. Its first four lines state:

"Regulations under this section must require the Secretary of State to give a UK producer an information notice if information is required in respect of the costs incurred by the producer in connection with the manufacturing, distribution or supply".

All I want to do in my amendment is add the word "access". I am just taking his elegant drafting and adding a bit to it. I beg leave to withdraw Amendment 8.

Amendment 8 withdrawn.

*Amendment 9**Moved by Lord O'Shaughnessy*

9: Clause 6, page 5, line 37, at end insert “(including, in relation to profits, the costs incurred by the producer in connection with the manufacturing, distribution or supply of the products)”

Amendment 9 agreed.

Amendment 10 not moved.

*Amendment 11**Moved by Lord O'Shaughnessy*

11: Clause 6, page 5, leave out lines 46 to 48 and insert—

“(5) Regulations under this section must require the Secretary of State to give a UK producer an information notice if information is required in respect of the costs incurred by the producer in connection with the manufacturing, distribution or supply of UK health service products (other than costs which relate to any transaction with a UK producer for those products).

(5A) An information notice is a notice stating—

- (a) the period in relation to or for which, or intervals at which, information is required to be provided,
- (b) the form and manner in which information is required to be provided,
- (c) the time at which or period within which information is required to be provided, and
- (d) that a right of appeal is conferred by virtue of section 265(5A).

(5B) Regulations under this section may require information which does not fall within subsection (5) to be provided—

- (a) in relation to or for a prescribed period or at prescribed intervals,
- (b) in a prescribed form and manner, and
- (c) at a prescribed time or within a prescribed period.”

*Amendment 12 (to Amendment 11)**Moved by Lord Hunt of Kings Heath*

12: Clause 6, in subsection (5), before “manufacturing” insert “access to,”

6.42 pm

Division on Amendment 12

Contents 114; Not-Contents 190.

Amendment 12 disagreed.

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6.52 pm

*Amendment 13**Moved by Lord O'Shaughnessy***13:** Clause 6, page 7, leave out line 22 and insert—

“(l) such of the following as may be prescribed—

(i) an NHS foundation trust;

(ii) any health service body within the meaning of section 9(4)(not falling within any of paragraphs (a) to (k) above).”

Lord O'Shaughnessy: My Lords, I beg to move Amendment 13 and am grateful to the noble Baroness, Lady Walmsley, for putting her name to this amendment and to the others in my name.

The amendments relate to the report and recommendations of the Delegated Powers and Regulatory Reform Committee, and I am extremely grateful to the committee for its scrutiny of the Bill—which, I believe, together with the government amendments, will lead to improved legislation. In my response to the committee, I confirmed that the Government would accept all four recommendations and would table amendments to take forward these actions. Once again, I am grateful for the work of the noble Baronesses, Lady Walmsley and Lady Finlay, and the noble Lord, Lord Hunt, for continuing to highlight the issues raised in the report.

I shall take each recommendation in turn. First, the committee concluded that the general power in new Section 264B(1)(l) proposed in Clause 6 to prescribe in regulations any person to whom information may be supplied is too wide, with insufficient justification. The government amendment clarifies this issue by confining the ability to prescribe in regulations to any health service body already listed in Section 9 of the NHS Act 2006 and NHS foundation trusts which are not listed in Section 9. This would have the effect of enabling government to prescribe in regulations the sharing of data with other health service bodies such as clinical commissioning groups, but not enabling other persons to be included by means of subsection (1)(l). We have made this change, as we would want to be able to share information with local health bodies, such as CCGs or hospital trusts, if we had concerns about prices—but not with others.

The committee concluded that the power in Clause 7 to enable Welsh Ministers to make regulations that make provision for payment of a penalty if a provider of pharmaceutical or primary medical services contravenes regulations requiring them to record and provide information about health service products which are required for the health service in Wales, should be consistent with similar provisions in the 2006 Act. In particular, the committee recommended that the maximum penalty which may be imposed under what would be Section 201A of the National Health Service (Wales) Act should be set out in the Bill, and that a power to increase this maximum by regulations should be made subject to the affirmative regulations. I am pleased to say that, following discussions with the Welsh Government, an amendment has been tabled which would amend Section 201A(5) to introduce maximum

Amendment 11 agreed.

[LORD O'SHAUGHNESSY]

penalties into the National Health Service (Wales) Act 2006. We will amend the Bill to enable through regulations the power to increase the maximum penalty, and these regulations will be subject to the affirmative procedure.

Noble Lords will appreciate that, in the case of penalties, the powers in relation to Wales are different from those in relation to the UK as a whole in so far as Welsh Ministers will be able to impose penalties only on providers of pharmaceutical and primary medical services. By contrast, the 2006 Act allows for penalties to be imposed on manufacturers and distributors, and the size of any penalty should reflect this. It would therefore be disproportionate if the level of maximum fine allowed for in the 2006 Act were to be replicated in the NHS Wales Act. To address these concerns, the government amendment would limit the single penalty to £10,000 and the daily penalty to £100.

I turn to the amendment which would remove the provisions allowing Welsh Ministers to disclose information to persons prescribed in regulations. Welsh Ministers have agreed that the Bill should be amended to limit the types of bodies with whom information may be shared. The government amendment would specify the following persons to whom information may be disclosed by virtue of Section 201A. They include: a local health board or other person appointed under Section 88(3)(b) of the National Health Service (Wales) Act 2006 to exercise the functions of a determining authority under Part 7 of that Act; a National Health Service trust established under Section 18 of the National Health Service (Wales) Act 2006; any person who provides services to Welsh Ministers or to any person falling within paragraph (a) or (b); and any body that appears to the Welsh Ministers appropriate to represent Part 4 providers or Part 7 providers, as defined by Section 201A(8).

I turn to the amendment from the noble Lord, Lord Hunt, which seek to put those bodies that represent UK producers on the face of the Bill instead of in regulations. The Government will prescribe these bodies in regulations; the illustrative regulations we published merely provided some examples of representative bodies that the Secretary of State may disclose information to, and I assure the noble Lord that further work will be done on this list. We will discuss the list with stakeholders and we will, of course, publicly consult on the list to ensure that we get it right. I know that that was a concern of his.

Finally, we are proposing to table technical amendments to the Bill at Third Reading to reflect the fact that the Northern Ireland Assembly was not able to pass its legislative consent Motion on the Bill before it dissolved, despite the relevant committee having approved it. We will seek to amend the Bill to enable the Northern Ireland components of the Bill to be commenced separately through regulations once it has been possible to secure legislative consent.

As I hope your Lordships will see, the Government have addressed the concerns of the DPRRC. I also hope that I have addressed the concerns of the noble Baronesses, Lady Walmsley and Lady Finlay, and the noble Lord, Lord Hunt. I ask noble Lords who have

tabled amendments not to press them and support the amendments in my name and those of the noble Baroness, Lady Walmsley.

Baroness Walmsley: My Lords, I am grateful to the Minister for what he has just said and for the conversations that we had about this group of amendments at Richmond House. As noble Lords will see, I have added my name to the government amendments in this group, because they achieve exactly what I was hoping to achieve when I tabled amendments in Committee. I am grateful to the noble Baroness, Lady Finlay of Llandaff, for supporting me in that intention. Unfortunately, when I withdrew my amendments in favour of the Government's amendments, my message to the noble Baroness, Lady Finlay, did not get through, so she has unfortunately failed to withdraw her name. That is why she has asked me that, when the amendments in her name come to be put in order, I should make it clear on her behalf that they are not moved, which will achieve our joint intention. I know that the committee is also grateful to the Minister for hearing our concerns and taking action.

7 pm

Lord Hunt of Kings Heath: My Lords, I am grateful to the Minister for the way he responded to Amendment 14 in my name. I am satisfied that the Government will consult closely on the list of bodies.

Amendment 13 agreed.

Amendment 14 not moved.

Clause 7: Provision of information to Welsh Ministers and disclosure

Amendment 15

Moved by Lord O'Shaughnessy

15: Clause 7, page 9, line 32, at end insert—

“(5A) The penalty may be—

(a) a single penalty not exceeding £10,000, or

(b) a daily penalty not exceeding £100 for every day on which the contravention occurs or continues.”

Amendment 15 agreed.

Amendment 16 not moved.

Amendment 17

Moved by Lord O'Shaughnessy

17: Clause 7, page 9, line 41, at end insert—

“(7A) The Welsh Ministers may by regulations increase (or further increase) either of the sums mentioned in subsection (5A).”

Amendment 17 agreed.

Amendment 18 not moved.

Amendment 19*Moved by Lord O'Shaughnessy*

19: Clause 7, page 10, line 11, leave out from “any” to end of line 12 and insert “of the following persons—

- (a) a Local Health Board or other person appointed under section 88(3)(b) to exercise the functions of a determining authority under Part 7;
- (b) an NHS trust established under section 18;
- (c) any person who provides services to the Welsh Ministers or to any person falling within paragraph (a) or (b);
- (d) any body which appears to the Welsh Ministers appropriate to represent Part 4 providers or Part 7 providers (as defined by section 201A(8)).”

Amendment 19 agreed.

Amendment 20 not moved.

Amendment 21*Moved by Lord O'Shaughnessy*

21: Clause 7, page 10, line 19, leave out “or 201B”

Amendment 21 agreed.

Amendments 22 to 24 not moved.

Clause 8: Consequential amendments**Amendments 25 to 27***Moved by Lord O'Shaughnessy*

25: Clause 8, page 11, line 13, after second “section” insert “(other than enforcement decisions falling within subsection (5A))”

26: Clause 8, page 11, line 13, at end insert—

“() After subsection (5) insert—

“(5A) Provision must be made by regulations for conferring on UK producers a right of appeal against enforcement decisions taken in respect of them in pursuance of section 264A and this section if the enforcement decisions relate to information notices given by virtue of section 264A(5).”

27: Clause 8, page 11, line 29, at end insert—

“(18) In section 203(6) of the National Health Service (Wales) Act 2006 (statutory instruments which are subject to affirmative procedure) after “section 25B(3)(c) or” insert “201A(7A) or”. ”

Amendments 25 to 27 agreed.

Clause 9: Extent**Amendments 28 to 30***Moved by Lord O'Shaughnessy*

28: Clause 9, page 11, line 33, after “Section” insert “(Remuneration for persons providing special medicinal products: England) and”

29: Clause 9, page 11, line 33, after “Section” insert “(Remuneration for persons providing special medicinal products: Wales) and”

30: Clause 9, page 11, line 33, after “7” insert “and 8 (18)”

Amendments 28 to 30 agreed.

Clause 10: Commencement**Amendment 31**

31: Clause 10, page 11, line 38, leave out “Section 7 comes” and insert “Sections (Remuneration for persons providing special medicinal products: Wales) and 7 come”

Amendment 31 agreed.

Brexit: UK-EU Security (EUC Report)*Motion to Take Note*

7.02 pm

Moved by Baroness Prashar

That this House takes note of the Report from the European Union Committee *Brexit: future UK–EU security and police cooperation* (7th Report, HL Paper 77).

Baroness Prashar (CB): My Lords, it is a real pleasure to open this evening’s debate, and I am grateful to the noble Lords who will contribute to it. We often talk about bringing expertise to bear when we explain what this House has to offer. That expertise will be very much in evidence this evening when we hear from a number of former practitioners, including: two former commissioners and a former deputy assistant commissioner of the Metropolitan Police; former Home Office Ministers and advisers; former Members of the European Parliament; a former justice of the Supreme Court; and my distinguished predecessor, the noble Lord, Lord Hannay. I thank the members of my sub-committee and its excellent clerk, Julia Labeta, for their hard work and commitment in ensuring that the report was produced in time for consideration.

In their White Paper *The United Kingdom’s Exit from and New Partnership with the European Union*, the Government emphasise that:

“The safety of the UK public is the top priority”,

and that must be right. It is also why we chose to look at police and security co-operation as the first of our Brexit-related inquiries and explore the options available to the Government for retaining or replacing them when the UK leaves the European Union. We wanted to make a constructive contribution to the development of the UK’s negotiating position and inform both parliamentary and public debate.

In view of the importance that the Government attach to the security and police co-operation aspects of the UK’s withdrawal from the European Union, we were very struck by the fact that in the referendum campaign these had not received the attention they deserved from either side. It is tempting to regard this as a technical subject that can be left to the practitioners. The evidence we heard during our inquiry left no room for doubt that the European Union tools and institutions used by our law enforcement agencies are integral to the day-to-day work of police forces and prosecutors up and down the country. What is more, the nature of the threats we face, particularly from terrorism, has made cross-border co-operation essential. Our own country’s security is enhanced by living in a

[BARONESS PRASHAR]

secure neighbourhood, and we will therefore always have an interest in the internal security policies of our nearest neighbours, even after we leave the European Union, and they in ours.

On the whole, that point is well understood, but it appears to have led to a slight sense of complacency, not necessarily in the Government, and certainly not in the practitioners from whom we heard, but in public debate about how negotiations on this aspect of our future relationship with the European Union will unfold. There seems to be a sense that, because the UK and the EU 27 share a strong mutual interest in sustaining police and security co-operation, a positive outcome is inevitable. However, having examined the practicalities of arriving at that positive outcome, we were not quite so sanguine, and for that reason I was not surprised to see the Government's White Paper listing,

"the way in which we cooperate on criminal ... justice matters", among areas where a phased process of implementation may be required.

The vital thing to bear in mind is that, when it comes to police and criminal justice measures, we have already been through a mini-Brexit. The UK exercised its block opt-out of pre-Lisbon police and criminal justice measures in 2014, and then rejoined a smaller subset of 35 measures. As noble Lords who took part in the scrutiny of and debate on that exercise will recall, each of those measures was thoroughly assessed, including in the two Command Papers published by the Government as part of that process. The 35 measures we opted back into were judged to be in the national interest, and deemed "vital" by the then Home Secretary, now the Prime Minister, in order to,

"stop foreign criminals from coming to Britain, deal with European fighters coming back from Syria, stop British criminals evading justice abroad, prevent foreign criminals evading justice by hiding here, and get foreign criminals out of our prisons".

Since the Lisbon treaty came into force, we have chosen to opt into some 30 further police and criminal justice measures, each individually assessed on their merits, including the passenger name record directive, the Prüm decisions, and the European investigation order.

Although the inquiry's mission was to look for opportunities and risks from Brexit, we had to conclude that, in this area, we were mainly looking at risks. This was because, in contrast to other policy areas and as a result of the UK's justice and home affairs opt-out, each of the measures that the UK participates in was, by definition, the subject of a positive decision and assessment when the country first joined—or rejoined—it, and those assessments were unlikely to have changed in the intervening few years. The word "suboptimal" came up time and again when witnesses described the options for future arrangements.

Our inquiry looked at the main tools and institutions that underpin our police security co-operation with the European Union, and there was a clear consensus among our witnesses on the measures they would like to see retained or adequately replaced. Europol, Eurojust, the second-generation Schengen information system, the European arrest warrant, the European criminal

records information system and the passenger name record were consistently listed as top priorities. Broadly speaking, measures fell into two categories: those where there were precedents for securing access to those tools or to credible substitutes from outside the EU, and those where no such precedents exist, or where the precedents that do exist would not be sufficient to meet the UK's operational needs.

Europol fell into this latter category. Our witnesses made clear that an operational agreement with Europol akin to those that other third countries have negotiated would not be sufficient to meet the UK's needs. We therefore concluded that the Government will need to devise, and secure agreement for, an arrangement that protects the capabilities upon which UK law enforcement has come to rely, and goes further than the operational agreements with Europol that other third countries have been able to reach thus far. While our report was in preparation, a bespoke arrangement was agreed for Denmark. I would be grateful if the Minister could tell us more about that arrangement and how relevant it may be to the UK's future needs.

On Eurojust, we judged that the third-country agreements that exist, particularly those which involve liaison prosecutors, may come closer to meeting the UK's needs than the precedents for third-country agreements with Europol. That is not to say that a lift-and-shift model would suffice, since any such agreement would ideally provide for closer co-operation than has thus far been available to other third countries—for example, by providing access to the Eurojust case management system. We were concerned that the role of the supranational EU institutions in providing accountability and oversight of the activities of Europol and Eurojust could present a political obstacle to forging the sort of operational partnership that might otherwise be advantageous to both the UK and the EU 27. I hope that the noble Lord, Lord Kirkhope, may be able to say more about that, as his evidence on this point was particularly helpful.

On data sharing for law enforcement, we were concerned to find that the two data-sharing tools that witnesses identified as the top priorities for the UK—the Schengen information system and the European Criminal Records Information System—were also those for which there is no precedent for access by non-European Union or non-Schengen countries. The law enforcement community was emphatic about how absolutely vital those tools were to its work. The National Crime Agency described the Schengen information system as,

"an absolute game-changer for the UK".

We did, however, accept the Government's argument that the starting point for the UK in seeking to negotiate access to these tools was different from that of any other third country because of the UK's pre-existing relationship with the EU 27 and the data it has to offer. Therefore, we consequently recommended that the UK should seek access to the full suite of data-sharing tools on which it currently relies, as well as those it is still planning for, while recognising that this would be a particularly ambitious objective.

Will the Minister clarify the remarks of the Secretary of State for Exiting the European Union in the other place last Thursday, when he appeared to imply that

the UK would withdraw from the Prüm decisions after we leave the EU? Are the Government saying that they will not seek continued access to Prüm after we leave, even though both Houses voted in favour of UK participation, on their recommendation, barely a year ago?

I turn to the European arrest warrant. We saw no reason to revise our assessment, and that of the Government in 2014, that the 1957 Council of Europe Convention on Extradition could not adequately substitute for the European arrest warrant. We therefore concluded that the most promising precedent for the Government to pursue would be to follow the precedent set by Norway and Iceland and seek a bilateral extradition agreement with the EU that mirrors the European arrest warrant's provisions as far as possible. However, we were discouraged to see how long it had taken to negotiate and implement that agreement. Therefore, the European arrest warrant may well be a candidate for an interim arrangement, bearing in mind that we cannot afford an operational gap.

We received less evidence on the other criminal justice measures, and in any event could not examine them in the same level of detail. It is, however, reassuring that the Justice Select Committee in the House of Commons has launched an in-depth inquiry into the criminal justice measures. The lesson we did take away was that some of the lower-profile criminal justice measures complement the higher-profile ones—for example, the European supervision order helps to mitigate some of the less satisfactory aspects of the European arrest warrant. Therefore, the Government need to be mindful of the risk that relinquishing less well-known measures could undermine the effectiveness of tools that are higher up in the list of priorities.

During the course of our inquiry, some overarching themes emerged. One was a real sense of achievement, sometimes tinged with sadness, when looking back at the UK's record in helping to build and shape the EU's institutions, policies and practice in this area. Major components of the current landscape, from Europol to the passenger name record directive, reflect the UK's influence and agenda setting. The Government will therefore need to examine what structures and channels they need to remain part of, or adequately replace, if they are to continue to influence the EU's security agenda in the future.

The second theme that emerged was the tension between two of the Government's objectives—that is, withdrawing from the jurisdiction of the European Court of Justice and maintaining strong security co-operation with the European Union. It seemed to us that, even with the utmost good will on both sides, there would in practice be limits to how closely the UK and the EU 27 could work together if they were no longer accountable to, and subject to oversight and adjudication by, the same supranational European Union institutions, especially the European court.

A third theme to run through much of the evidence was the need to meet EU data protection standards to be able to exchange data for law enforcement purposes with European partners after we leave the EU. At the point of exit, when we have identical standards, this may not be such a problem, but over time the UK can

expect to have to keep up with standards that it no longer has any role in framing or influencing. More generally, the police and criminal justice measures that the UK is currently part of, and may continue to have a stake in, are liable to be amended and updated with the passage of time when the UK is no longer at the table to influence the pace and direction of change. We recommended that the Government should explore from the outset how any agreement reached with the EU 27 at the point of exit could address this prospect.

With reference to the last two points, noble Lords will have seen that the Government's White Paper devotes quite a bit of attention to dispute resolution mechanisms and the Government's intention to seek, "a new approach to interpretation and dispute resolution with the EU".

There clearly are precedents for adjudication mechanisms and international arbitration in trade agreements, but it is not clear that arrangements along those lines would address the issue that the committee raised about the link between deep police and security co-operation—for example, the ability to search each other's police databases—and a common framework for oversight and accountability, such as that currently provided by the supranational EU institutions. Could the Minister tell us more about how the Government see the link and what implications it might have for the level of co-operation we can sustain in future?

I also invite the Minister to tell us a little more about what she expects to be negotiated as part of the withdrawal agreement and what would be part of discussions on the framework for a future relationship. For example, one might assume that extracting the UK from agencies such as Europol and Eurojust would be part of a withdrawal agreement, but could she shed some light on what other aspects of the current arrangements would fall within the scope of Article 50 narrowly construed?

Finally, the Government's White Paper mentions the great repeal Bill and the Government's intention that,

"wherever practical and appropriate, the same rules and laws will apply on the day after we leave the EU as they did before".

Could the Minister please explain how she envisages the process of converting EU law into domestic law working in the area of police and criminal justice?

I look forward to the Minister's reply and to the contributions of noble Lords.

7.19 pm

Lord Wasserman (Con): My Lords, I am delighted to be the first speaker after the noble Baroness, Lady Prashar, as it gives me the opportunity to be the first to congratulate her and her committee on this important report. Having had both the honour and the pleasure of serving on the Home Affairs Sub-Committee of the European Union Select Committee for two years under her chairmanship, I can attest to her skills in this capacity. She manages to pull together a diverse group of Members drawn from all parts of this House, each with firmly held views of their own, and to persuade them all to affix their signatures to a single document tackling a complex and sometimes highly politically charged topic with limited—although excellent—staff

[LORD WASSERMAN]

support and in a relatively short time. This in itself is quite an achievement. Even more impressively, she manages to do this gently, patiently and with good humour.

This report is a good example of a Prashar production. It is clear, concise and comprehensive. It provides your Lordships and the world beyond these walls with an extraordinarily useful supply of material on one of the most important subjects facing our country at this time. Speaking of time, however, if there is one word I would not use in describing this report, it is “timely”. For me, as a declared remainer, the report is about 12 months late. I am not saying that I believe the result of the referendum would have been different had this report appeared in December 2015, rather than December 2016. I do not think the electorate were in any mood to take notice of what the House of Lords had to say on this or any other subject, particularly on one which might call into question the benefits of “taking back our country”. But they should at least have had an opportunity to consider the matters discussed in this document and to think in a slightly more informed way about some of the possible consequences for the safety of their communities of voting to leave the European Union.

The sad truth is that most of the points made in this report about the value of EU institutions in the policing and justice field received little or no attention during the referendum campaign. How often did any of the leading figures on the remain side mention Europol or Eurojust, the EU information systems such as ECRIS, the second generation Schengen information system, Prüm and the passenger names records, or valuable EU criminal justice tools such as the European arrest warrant, the European investigation order and the European supervision order? As I said, I doubt that discussing these institutions and systems would have made a jot of difference to the outcome of the referendum. But should not the electorate have at least been aware of the role these institutions and systems play in keeping them safe, and the risks our leading policing experts believe we run in losing them?

Take Europol, for example. Should not the electorate have known that the country’s leading law enforcement professionals believe unequivocally that this organisation, headed by one of our own nationals, is a “critical priority” in keeping us safe? Or that the DPP believes that Eurojust is “essential” to the effectiveness of the Crown Prosecution Service? Or that access to the information and intelligence currently sourced through the EU’s data-sharing mechanisms is seen as,

“mission critical in protecting ... the citizens of the UK”?

Or that access to the second generation Schengen information system is described, as the noble Baroness said, as “an absolute game-changer” by our National Crime Agency, which said that access to it by UK police forces,

“is essential for mainstream policing ... to safeguard the welfare of people across the country”?

Or that the European Criminal Records Information System—ECRIS—which most people have never heard of, is “critical to volume policing” and that not having access to it would present,

“an ongoing risk to the UK”?

Or that the passenger name record is,

“incredibly important for the security of our border”,

that the European arrest warrant is “absolutely vital”, and that any period without it or a delay in replacing it would pose an “unacceptable risk”?

I very much regret that it took this report, available only in December 2016, long after the referendum votes were counted, to set out clearly in one place all these expert evaluations of the EU’s law enforcement and public safety arrangements and how they affect us day to day. However, there is no point looking back. What about the future? How worried should we be about the consequences for community safety of leaving the EU?

The first point is that the EU’s role in community safety, while important, is limited. As this report states in its very helpful summary, many of the EU measures the UK is now due to leave were deemed vital by the then Home Secretary in order to,

“stop foreign criminals from coming to Britain, deal with European fighters coming back from Syria, stop British criminals evading justice abroad, prevent foreign criminals evading justice by hiding here, and get foreign criminals out of our prisons”.

These are indeed major threats to the safety of our communities. But let us not forget that they are only a small part of the threats we face in our day-to-day lives, and tackling them represents only a small part of the work of our police.

It is worth remembering that 1,732 individuals—men, women and children—died on our roads in 2015 and a similar number are likely to die in traffic accidents this year and next. Let us not forget the many victims of serious domestic violence or the victims of the intolerable anti-social behaviour that blights so many of our cities, towns and villages. All these threats affect our communities each day and will continue to do so whether or not we are in the EU. Our police will still be expected to deal with them, and although Europol and Eurojust are not irrelevant to these threats, their contribution is marginal. I wanted to put that on the record. It is important not to overestimate the dangers to our community safety from leaving the EU with regard to the various institutions we shall be discussing.

However, having said that, let us get back to the EU and its contribution. On this I am generally optimistic about the future, because I share the Government’s view that we will be able to negotiate new arrangements with the 27 EU members that will be at least as good as those we have now. I believe that we will continue to participate in Europol and Eurojust and to use the various information systems which we played such a critical role in creating. I say this not because I am, on the whole, an optimist but because I accept the Government’s view, restated in their latest White Paper, Cm 9417, that:

“The safety of the UK public is the top priority for the Government”.

I note with much pleasure that the report we are debating today appears to take the same line. In paragraph 8 of its summary and conclusions, it quotes the Government’s statement in 2014 that they would,

“never put politics before the protection of the British public”.

The report states that in the committee’s view, this calculation has not changed. I very much agree.

I also believe strongly that the Governments of our 27 EU neighbours share this view. For these countries, and especially for France, Germany and Belgium after their recent experience, the safety of their citizens from international serious and organised crime and terrorism will remain such an overwhelming priority that I am sure they will ensure that Brexit does not put them at risk. Here again, I am delighted to be able to quote the support of this report:

“The UK and the EU-27 share a strong mutual interest in ensuring that there is no diminution in the level of safety and security afforded to their citizens after the UK leaves the EU”.

More importantly, I believe that our Government and the Governments of our EU neighbours understand also that serious and organised crime and terrorism cannot be tackled by national states on their own. Those who indulge in such activity do not recognise national borders, so dealing with them effectively must be approached internationally. That is why we and our EU partners developed Europol, Eurojust, the European arrest warrant and the various EU information systems. It is not in anyone’s interest, other than that of serious and organised criminals and terrorists, to damage or weaken these institutions and systems. I am sure that our policing professionals and their European colleagues will not let that happen. As the report concludes,

“there is considerable consensus among ... law enforcement agencies on the ... tools and capabilities they would like to see retained or adequately replaced”.

For me, this is the real reason for optimism.

Having spent most of my career working with police professionals, I have complete confidence that they will do everything they can to keep us safe. That is why I was so pleased when they spoke out so strongly when giving evidence to the committee. I believe that this is only the beginning of their engagement in this matter. Why did they not speak up earlier? I think because, like many of us, they did not believe that the British people would vote to leave. Why would they? From where the police sit, leaving the EU meant losing important weapons in the fight against crime. But now our police professionals are fully aware that the time has come to fight to preserve the institutions and systems they worked so hard to build. They are not going to walk away from this fight, police professionals never do—they run towards danger, not away from it.

Some will no doubt say, and this report gives them some justification for doing so, that this is wishful thinking. In the real world of hard political bargaining, such cross-border co-operation and new agreements are difficult, if not impossible, to achieve. Even where they are achievable, past experience has shown that forging such agreements takes a very long time, thus exposing us to dangers in the meantime. There is no doubt that experience in these matters is not encouraging; or to put it the way the report does, there are no precedents for believing that forging agreements will be easy or quick. Having served in the Home Office as an official for 27 years, I am very familiar with the arguments made based on precedents or lack of them. But I feel that anyone living today in the world of Brexit and President Trump knows that when it comes to judging the future on the basis of the past, all bets are off.

My faith is that our policing professionals and their European colleagues will come to our rescue. The police pride themselves on “getting things done”. As I said earlier, they will rise to the challenge—I am prepared to bet on it. That is why I welcomed this inquiry and welcome this report. It gave our police professionals a legitimate opportunity to speak out on issues which have hitherto been addressed mainly by politicians. I knew they would rise to this challenge and they have justified my faith in them. I am confident they will do so again.

7.32 pm

Lord Soley (Lab): My Lords, I start by commending the noble Baroness, Lady Prashar, for the quality of her chairmanship of this committee and for engaging fully with everyone. I also thank the staff of the committee, who also did an extremely good job. I want to say at the beginning that I welcome the very recent change in the language of the Government, particularly in Malta. For the first time, I heard members of the Government say rather more forcefully than they had in the past that we must have a very close, positive relationship with Europe.

My view is that the referendum has happened and there is no going back on it in the foreseeable future. Therefore, we have to make it work for both the United Kingdom and the European Union. Failure to do so will have severe consequences for everyone. The noble Lord, Lord Wasserman, who has a lot of experience of this from his work in the Home Office, knows that many of the things that will happen as a result of Brexit will not be fully understood by the British public because the information was not put before them. I understand that, but I agree with him that the outcome would not have been different had it been put before them. He pointed out that people might have thought differently had they known the implications for the security side of things, but I remind him that if politics were rational, frankly, we would not need politicians. That ought to be an exam question for anyone who is thinking of doing politics.

We now have a report that gives the Government a way forward. Security and policing is one of the top four objectives for the Government, as has already been said. In my contribution I will focus mainly on what I see as the most important part of the report. Paragraph 37 talks about the problem of linking up with the security and policing work in Europe. It ends by stating:

“This may mean trying to remain part of certain channels and structures, or finding adequate substitutes”.

For me, that is very important, and it ought to be one of the negotiating aims of the Government. For all the reasons given by the noble Lord, Lord Wasserman, the security of the people of the United Kingdom and the European Union will be at risk if the co-operative organisations and structures that we have now cease to work, and we will all be in greater danger than we would have been otherwise. That is why this is so important. It is worth saying that there are a number of ways of achieving this. I take the view that it is perfectly possible to work these matters out and come up with acceptable solutions that work. But it is not going to be easy and I rather doubt that it will be quick.

[LORD SOLEY]

In areas where we have to trade across borders— aerospace, cars and agriculture are good examples—there must be some sort of agreement on regulations. One advantage in those areas is the recent idea of equivalence; even if you do not follow the regulations precisely, you can have equivalence. The European Union could look at Britain's arrangements on any of these matters and decide that because they are equivalent to the EU regulations, it can co-operate—and vice versa. The important difference with security is that although we can have equivalence in certain areas, there is the problem that this is about people's liberty, about policing mechanisms and about the power of the security services. That means that the law is involved, and so everything has to be underpinned by the rule of law. That adds an important different dimension.

In my view, the primary aim of the Government should be the creation of new mechanisms for very close co-operation. Indeed, I have said elsewhere that I think we have to have a special relationship with the European Union and that we ought to start talking about it in that way. I visited Brussels in the middle of the inquiry and it struck me how many people were sad that we were leaving, but also how many people were angry. I understand that anger. Continental Europeans have always seen this as a political project. The British people have never seen it quite like that. We have seen it as an economic project. I have made the point before that for continental Europeans this is a superstate while for the British it is a supermarket.

We are now going down the road of what the Europeans rightly call cherry picking: we have picked this and that, and said we will take part in this but not that. I am reminded of the depth of the history of British culture in relation to Europe. It is very much a reflection of Lord Palmerston's famous statement, made in the middle of the 19th century. To paraphrase, he said that Britain had no permanent friends or enemies, only our own interests to pursue and that it was our duty to pursue them. In a way, that is why we have ended up going from being the most popular country in Europe, post 1945, to being probably the least popular. We are now seen as the bad boy of the class.

A number of the existing arrangements mean that the police and the security services can talk and act directly together. That is the message that came through from the noble Baroness, Lady Prashar, and the noble Lord, Lord Wasserman. Outside the European Union, that will not be the same. We will no longer have a seat at the top table, so we will not be discussing what the rules should be on all of these areas for policing and security. Yet, as indicated, they are vital, so we have to work out how we do that. On leaving the European Union we become a third country, which produces a position where there might be arrangements by international treaty, cross-border agreement, with individual countries or with the European Union. I do not need to spell that out in any more detail for noble Lords to realise the complexity. As I have said already, equivalence is one way forward on some of these matters, but it is not the complete answer.

I will give an example. The United Kingdom could apply to the European Union for adequacy status on data protection, because data protection affects all our

privacy. It often seems a rather dry topic, but if people are worried about privacy in their own lives, in business or other areas they need to worry about data protection. The EU could then decide if data protection in the United Kingdom was of an equivalent or adequate status in relation to that practised within the European Union. If it were, we could have an agreement that the exchange of data could take place. There would be safety in doing so. But there is a caveat because, although that could work, and it is one thing that the Government ought to be looking at in negotiations, I am not a lawyer but it occurs to me that if somebody felt that it was not appropriate in their particular case, they could challenge it in law. So again I emphasise the seriousness. But other countries have come up with adequacy arrangements with the European Union, so that could work.

When I visited the European Parliament during the course of this inquiry, I had some useful discussions with Members of the European Parliament, as well as the chairman and members of the various security committees from all of the other 27 countries who were present at the meeting. One thing that we were all concerned about was Europol and the whole issue of parliamentary scrutiny of the legislation passed. The European Parliament is now in the process of setting up what is in effect a rather large—and I suspect rather too cumbersome in the long run—Select Committee process for looking at the way that policing and security is done. We need to be linked into that. We cannot be members because we will be out of the EU, but we need to be closely involved in some way.

Our contribution in Brussels is remarkable. The chairman is Claude Moraes, whom I know well. He is a British Member of the European Parliament. Sir Julian King, the EU Commissioner for the Security Union, gave evidence to our committee and is also exceptionally highly regarded. Rob Wainwright is the director of Europol. He is a British police officer, again with a high reputation in Europe. All of these people are doing exceptionally good jobs. All of them will cease to be members when we leave the European Union.

There was a recent report of an extraordinary meeting of the conference of committee chairs with Mr Verhofstadt, a former prime minister of Belgium who is now the European Parliament's co-ordinator on Brexit. The notes of the meeting state:

"Linked to this is the question of the use of the European Arrest Warrant. UK has always been critical about the EAW. Entering an alert for arrest ... is equivalent to a provisional request for extradition ... It will have to be discussed whether UK will want to continue",

with the EAW. If we do, what do we do about the oversight of the European Court of Justice, because UK officials have pointed out that the jurisdiction of the European Court of Justice is a red line and that we will not accept that court's jurisdiction? So there is a complex area between the use of the European arrest warrant and how we resolve that problem without also putting ourselves in the situation of being outside the remit of the European Court of Justice—which I assume we will do, because it is a red line for the Government. So what other safeguards will we have? It is a complex area and that report is important.

There will be a limit to how closely we can co-operate if we do not recognise the European Court of Justice. We need to recognise that there will be some international treaties between the UK and the EU. There will have to be some structures, agreements and adequacy points, which I have already mentioned, that allow us to continue with the co-operation. In some ways we will have to rely on precedence for having access to some of these policing and security practices. Other countries have done that with bilateral agreements. The United States has a bilateral agreement on passenger name records because it regarded that as particularly important after 9/11. Norway and Iceland have an agreement on the European arrest warrant. But again, if we look at that closely, there are problems with it, so replicating it is probably not the best answer.

I will conclude where I began—by saying that the onus is now on the Government to negotiate new forms and new ways of making sure that co-operation between the EU and the UK continues. It is of such importance. It is not just a conventional thing in many people's minds—arresting someone in Belgium or Germany or vice versa in Britain and sending them over. There is also the whole question of terrorism and, as the noble Lord, Lord Wasserman said, we cannot solve that problem on a single-nation basis; we have to have close co-operation. That means exchanging vital information that will often be of a security nature.

In those circumstances, one thing that the Government will have to look at in their negotiating procedure is the legal safeguards. What legal challenges can they expect from people caught in that system who decide that the Government of the United Kingdom or the European Union do not have the legal power to do what they are doing and then challenge it in the courts? This is where the negotiations are critical. We will not see how they pan out for a few years yet, but they are really extremely important.

7.47 pm

Lord Paddick (LD): My Lords, I am not sure whether this is declaring an interest or providing background information, but I was a police officer in the Metropolitan Police between 1976 and 2007.

I thank the noble Baroness, Lady Prashar, for her comprehensive introduction to this debate. I welcome this report and congratulate the committee for isolating what I consider to be the most important implications for the UK of leaving the EU in relation to policing and security co-operation. In addition to reading the report, I have had the benefit of talking to David Armond, who is leading for the National Crime Agency on these issues, and to Lynne Owens, the director-general of the National Crime Agency. This is where I part company at an early stage with the noble Lord, Lord Wasserman. While he is quite right about the tenacity of police officers and police professionals to overcome obstacles, my experience from over 30 years in the Metropolitan Police is that I would not underestimate the ability of politicians to work in completely the opposite direction.

As the report concludes, and as the noble Baroness, Lady Prashar, said, the importance of many of the mechanisms that enable the UK and the EU to co-operate effectively in this area cannot be overstated. Some aspects

are equally if not more advantageous to the EU 27 than to the UK, and we would want such co-operation to continue, but the report also points out that that is not straightforward. In other aspects, of course, the UK is the major beneficiary. The UK uses Europol, for example, more than any other country, accounting for around 40% of the data flows.

I want to emphasise what I see as some of the major issues and, as noble Lords would expect, I shall concentrate on the policing aspects. First, in the past the UK was instrumental in shaping the nature of police co-operation and security matters, but it will no longer be able to exert such influence once it is outside the European Union. Having spent so long being in control as far as security and police co-operation are concerned, even if the UK is allowed to stay on board—over which there is some doubt—it will no longer be in the driving seat. Interestingly, the report highlights how the balance between security and privacy, when it comes to the acquisition and sharing of intelligence, may tip against the UK without it being able to influence that. Of course, many on these Benches would see that as a good thing, because the balance would inevitably tip in favour of privacy following the passing last year of the Investigatory Powers Act, but others may be more concerned.

Secondly, and more worryingly, the UK Government have stated that they intend to use their strong position on police and security co-operation as a bargaining counter in the overall negotiations with the European Union. In a situation where most commentators believe that everything should be done to maintain the current level of police and security co-operation, it is worrying that the Government might be threatening to reduce or end such co-operation should the UK not get what it wants in other areas.

The third issue is the necessity for common standards and adjudication arrangements when it comes to many of the most valuable EU-wide mechanisms. The essential element of all these mechanisms is the sharing of information and intelligence, for which there must be common standards of data protection, as the noble Lord, Lord Soley, has just mentioned. The need to meet EU data protection standards is not just an issue of the UK giving up sovereignty in this area, in that it will not be able to set its own data protection standards that fall short of those set by the EU. If in the future the EU decides to enhance those standards, the UK will have no say in that decision-making process. There is a clear trade-off here between UK sovereignty and UK security, and I hope that the noble Baroness can explain which of the two will be sacrificed. According to the report, in 2014 the Government said that they would,

“never put politics before the protection of the British people”,—
[*Official Report*, Commons, 10/11/14; col. 1224.]

so I am guessing that the UK will abide by EU data protection law.

Practitioners believe that something very close to full membership of Europol is essential, but Europol is accountable to EU institutions, including the European Court of Justice, and we have just heard from the noble Lord, Lord Soley, that it looks like the European

[LORD PADDICK]

Parliament is going to become more heavily involved in overseeing Europol. But the Government have made clear that they do not want to be subject to the ECJ. Can the Minister explain how this will work and tell us how many other mechanisms such as Eurojust, for example, rely on the jurisdiction of the ECJ?

There are other issues. There is no precedent for a non-Schengen, non-EU country to be a member of the second generation Schengen information system which, among other things, allows patrol officers in the UK to identify in real time people wanted under European arrest warrants and those who are of interest to counterterrorism agencies. The noble Lord, Lord Wasserman, talked about precedents and said that we should not be bound by the fact that, just because it has not happened in the past it should not happen in the future, but as the noble Lord, Lord Soley, said, it takes time to negotiate alternatives. The report helpfully gives the example of the extradition arrangements between Norway and the European Union. Bearing in mind that Norway is within the Schengen area, there are arguably stronger links between Norway and the EU than the UK will have after we leave. The negotiations for that extradition agreement started in 2001 and were concluded in 2014, and it has still not come into force. There is a real danger of there being a considerable gap in capability if we are not very careful.

No non-European Union country has access to the European Criminal Records Information System where, as the noble Lord, Lord Wasserman, said, the criminal records of EU nationals are shared between member states. I am also very concerned that, as the noble Baroness, Lady Prashar, mentioned, apparently the Secretary of State for Exiting the European Union has said that we would no longer be part of the Prüm decisions, which allows for the very rapid sharing of fingerprints, DNA profiles and vehicle number plates. Under Prüm, these take between seconds and a maximum of 24 hours, whereas the National Crime Agency says that alternative arrangements with other countries under Interpol take weeks or months, and indeed some inquiries are never responded to at all. It would be a very serious matter if the UK withdrew from the Prüm decisions.

There is little doubt that the Prime Minister's threat that she would walk away rather than accept a bad deal from the EU would have serious consequences if it included no deal on policing and security co-operation. Coming out of the single market and the customs union may slow growth in the economy, but walking away from policing and security co-operation would pose a serious risk to public safety. The Prime Minister has said that every aspect of our relationship with the EU is on the negotiating table. Perhaps the Minister would like to suggest to the Prime Minister that she should rethink that. This is one baby that we should not throw out with the bathwater.

7.57 pm

Lord Condon (CB): My Lords, I have the honour of serving on the EU Sub-Committee on Home Affairs, so ably chaired by the noble Baroness, Lady Prashar. She has set out eloquently the main points in our report. In view of the time and what other speakers have said, I am not going to go over the same ground, rather I will try

to emphasise from a former police background what I think are some of the important things we should be considering.

There are many exciting aspects to leaving the European Union. It will create exciting opportunities for the country, but this area is not one of them. Leaving the EU will open no new doors for police co-operation and it will create no new opportunities. It does not create space for us to become a better and bigger global partner in this area. That is not, I hope, a lack of imagination, resolve or determination on my part. As the report shows, it is the result of a forensic examination of the current position and the prospects as we leave the European Union. The Government will have to work extremely hard in their negotiations if there is not going to be a diminution in the safety and security of our citizens.

I spent quite a lot of the second half of my police career encouraging and setting up many of the embryonic stages of police co-operation in Europe, in particular in two posts. The first was as the chief constable of Kent Police, when I worked extensively on the planning for the Channel Tunnel right through from its inception to its completion, as well as the important establishment of two land frontiers with France at either end of the tunnel, concentrating on the juxtaposition of controls and working with European police forces in a very detailed way. Then, as commissioner for seven years in London, I encouraged and helped to set up Europol in the mid-1990s. I saw it through the early years of its birth, development and establishment.

When I retired in 2000 police co-operation around Europe was important, but it certainly was not a day-to-day activity and it did not challenge or get in the way of day-to-day policing. What we learned from our expert witnesses was how much has changed in the intervening time—developments in technology, the internet and mobile telephony; the threat from asymmetric terrorism and how terrorism has changed; and the movement of people throughout and into Europe, with 3 million EU citizens living in the United Kingdom. Police co-operation throughout Europe has moved from the nice and important to the essential day-to-day. That co-operation is woven into the fabric of day-to-day policing up and down our country.

I hear what the noble Lord, Lord Wasserman, said about other threats, but European co-operation, through full membership of Europol with unhindered access to the various databases, Schengen II, criminal records, Prüm, passenger name records and so on, and access to and use of European arrest warrants, Eurojust and all the other police and justice infrastructure means that everyday policing up and down the country relies on these very important relationships, institutions and databases, whether it is a terrorism detective in Scotland Yard or the National Crime Agency working on a sophisticated inquiry to thwart a terrorism threat, or a young patrol officer in Leeds, Bristol or Manchester stopping a vehicle and within seconds being able to check on vehicles, people and property in a way that only a few years ago would have been unthinkable. As the noble Lord, Lord Paddick, said, things are done in seconds now that previously took days, weeks, months, or never got done. We should not underestimate how

European co-operation on policing is, to use a horrible phrase, mission critical to everyday policing in this country.

I know that the Prime Minister is fully aware of that importance. As Home Secretary and Prime Minister, whenever she has spoken about Brexit she has emphasised the importance of strong and close co-operation. In the debate in the other place on 18 January about the implications for police and security, the Police Minister who opened the debate, the Brexit Minister who closed it and every single speaker was unanimous about the importance of this subject and maintaining the closest possible links.

Paragraph 11.7 of the Brexit White Paper sets out unequivocally that we need strong and close future co-operation—so far so good in recognising the importance of the subject. Where I digress slightly from the view of the noble Lord, Lord Wasserman, and from the Government is that I believe there is an overreliance in government circles on two facts that are constantly prayed in aid as reasons why we should be optimistic for the outcome of any negotiations. The first is mutual dependency. We all want to combat terrorism and serious crime. We all want to stop paedophiles and cybercrime. Surely that mutual interest will drive us to find a solution to these challenges. The second thing, which the Government constantly state, is that the United Kingdom has been at the heart of these co-operative arrangements and designed many of them, leads them and is a major user of them. The almost unspoken assertion is that the European Union cannot do without us. I fear there is an element of complacency that mutual dependency and the fact we are currently at the heart of these measures will see us through. The noble Lord, Lord Wasserman, is right that police throughout Europe have a can-do mentality and will want to find a way through this, but there are major impediments to progress that other noble Lords have already mentioned.

The first is the jurisdiction of the European Court of Justice. Police officers in any part of Europe can ruin people's lives by their actions. In the most extreme circumstances they can and do take people's lives. It is vital that their actions—acting alone, in collaboration or on a major operation—are subject to scrutiny and the highest challenge through political structures, accountable structures and most certainly through legal structures and the courts. Europol, the various databases, the infrastructure for the European arrest warrants and Eurojust are all quite properly subject to the jurisdiction of the European Court of Justice and, increasingly, to the European Parliament, the Commission and its institutions. We are pulling out of those. We want to be a member of the policing club with all the benefits, but at the moment we are saying that we are not going to adhere to or accept the jurisdiction that there currently is over those important mechanisms. The second important area, which could be a major impediment, is data protection standards, which other noble Lords have already spoken of. At the moment we are signed up to and quite properly part of the implementation of those data protection standards, but we will be leaving the club and our involvement with them.

How should we move forward? Clearly we must find a satisfactory way through this if we are to protect our citizens and our good friends in Europe. Section 12 of the Brexit White Paper talks about avoiding disruptive cliff edges and the consideration of phasing in the new arrangements. If ever there was a subject matter that should rely on those sentiments it is police co-operation and our membership of the infrastructure that delivers it. It is in the interest of the United Kingdom, the European Union and all their citizens that we maintain the status quo for as long as possible. There is no rush and no rhyme or reason why we should seek to unscramble or destabilise these arrangements—quite the reverse. It should be a government position and, I hope, an EU position that we should maintain the current infrastructure and the status quo for as long as possible. If that means being creative around accepting the jurisdiction of the European Court of Justice over some of these issues for a period of time, let us find a way to ensure that that takes place. Anything less than the status quo will be a diminution of the safety and security of our citizens. As we move forward, we must stay in the club on these issues and maintain the status quo for as long as possible. We know, however, that there has to be change, and in negotiating and preparing for that change, the United Kingdom negotiators should willingly offer progress on three important issues.

First, we must pay a reasonable contribution to Europol and for the databases and the European arrest warrant and infrastructures—all of that. Why would we not want to pay our way? We must make it clear up front that we will pay reasonable and sensible contributions for all of those institutions and databases.

Secondly, we should willingly show that we are going to match or exceed data protection standards. We can easily make the financial contribution. I say that even though it is not my money, but we can make that work. Data standards are something that we can make work relatively easily, and in recent weeks and months we have worked with the EU and signed up to four important developments on data protection: first, a general regulation on data protection for EU citizens; secondly, a general directive on law enforcement in the European Union; thirdly, a privacy shield signed between the European Union and the United States to enable data sharing primarily commercially between us; and fourthly, an umbrella agreement signed between the EU and the United States for law enforcement purposes. It is that fourth issue—the umbrella agreement that the EU has signed with the US—that is a model that will perhaps show us the way forward. We will certainly have to show that, in terms of data protection standards, we are matching or exceeding the EU standards that we are currently signed up to.

Thirdly, the most intractable problem is finding an acceptable way through once we have shown that we are no longer subject to the jurisdiction of the European Court of Justice. Other noble Lords have already pointed out that the White Paper and the Government have accepted that dispute resolution mechanisms will have to be developed. That is one area where I currently cannot see a way forward. However, I am sure that there will be a way forward; and that when we come out of the

[LORD CONDON]

jurisdiction of the European Court of Justice, we will have to show that we accept there has to be an adequate replacement.

As others have said, voters in the referendum last year did not really have a chance to consider these issues, but I am sure that if they had, they would not have wanted to make it easier for terrorists, paedophiles or serious criminals. It is in the interests of both the UK and the EU to maintain the status quo for as long as possible. However, as we move forward from that, the new arrangements will mean that we have to pay our way, maintain data protection and find dispute resolution mechanisms. I am honoured to serve on the sub-committee. I hope that we have made a contribution that the Government will find helpful and that, as we move forward, we will continue to seek ways to help the Government find a way through this vital topic for our country.

8.14 pm

Lord O'Neill of Clackmannan (Lab): My Lords, I am very pleased to follow the noble Lords, Lord Paddick and Lord Condon. It was rather like being on the committee, in the sense that we had a succession of police officers, some of whom were retired and some still in harness, so to speak. They come out with a consistent line, and this was exemplified by the last two contributions. As a relatively new member of the committee, I thank the noble Baroness, Lady Prashar, for the way in which she was able to conduct the business and ensure that those of us who were the lowest of lay people—if I may put it that way—were able to follow the proceedings, which were very intense and helpful, and were greatly assisted by the clerk and her staff.

As has been said, it would have been helpful if we had been able to have had a more sensible debate in the course of the referendum campaign. In fact, one has to say—although it would, perhaps, not be said from the Benches opposite—that the Home Secretary at the time could have played a more significant role in drawing attention to some of the difficulties that leaving would have. We have now begun to see some attention being given to them, but I do not have too much faith in last week's White Paper wish list. It has nodded in the direction, but it has not really given us anything like the kind of response to the points that have already been made this evening.

It is fair to say that we are beginning to appreciate the complexity and significance of the EU's role in security and police co-operation. This questions the assertion that we had to leave to secure our borders or to take back control of our laws and justice, because we see that so much of what is operating in our system at present is dependent upon this EU co-operation and will be made that much more difficult by our leaving. Witnesses repeatedly provided us with evidence of how much more difficult it will be to protect ourselves, and indeed our fellow European citizens, if we do not have full access to the agencies which our membership of the EU affords. I will look at two areas where our benefits and influence will be lost when we leave. These are not areas where the words "hard" or "soft" Brexit have much relevance. We are dealing here

with not national advantage or for that matter old score-settling, but simply matters which contribute to the operation of justice and our mutual security. I shall deal with Europol and Eurojust.

In 2014 a predecessor EU sub-committee recommended that the UK opt into what was then the new Europol regulation. Eventually, before Christmas last year, the Government did so. This will certainly put us in a better place when we come to negotiate our exit from the EU. These negotiations may not be as easy as some would imagine, since the UK's involvement in Europol is of a greater order than that of third countries such as the US, Norway and Albania: I do not put those in any particular order of significance. The Government has said—it has been quoted already but it bears repeating—that they would never put politics before the protection of the British public, but how is this going to be achieved in the context of the way in which Europol is moving, as envisaged in the new regulation?

The Government wish to free us from supranational European institutions, yet the new regulation seeks greater accountability of Europol, involving the Commission presence on the management board and a joint parliamentary scrutiny group involving reps from national parliaments and the European Parliament. If this is to be the case, and if we always have the bogey of the European Court of Justice in the background, so hated by the Brexiteers, UKIP-pers and the rest—it is difficult in these areas to distinguish one from another—it will create very great problems when it comes to getting a deal we can sell to this House and the other place.

The significance of Europol as a source of information and intelligence and as a means of co-operation was repeatedly stressed to us and we were told that these would be terribly dangerous to lose. Some access is afforded to countries which are not part of Europol but which enjoy third-country or third-party status. There are two forms; the first, which consists of strategic co-operation, includes Russia, Turkey and Ukraine, is limited and excludes personal data. Then, the US, Australia, Canada, Colombia, Norway, Switzerland and some of the Balkan states are operational partners but, as has been stressed, they are not on the board and do not determine the future way in which policy will develop. Indeed, it could be argued that Norway and Iceland might be classified as having Championship status, as against the Premier League status enjoyed by the 28 at the present moment.

This is not going to be good enough for a country which uses 40% of the capacity of SIENA, the Secure Information Exchange Network Application. This is the main data-protection conduit for information passing through Europol. We are the second-largest contributor to the European information system. We lead on four or five of the 13 EMPACT projects, co-ordinating member states and EU organisations against Europol-identified serious organised crime threat assessments. These are areas of great significance for the agencies and for the UK. All these would have to be conducted under data-protection protocols over which we will have no say. If we are on board, if we are alongside, we will not necessarily have any means of influencing this.

There may well be areas in which we have significant knowledge. Of course, we may make enemies in the course of this—by being a wee bit,

“smarter than the average bear”,

as Yogi Bear would say, we may put noses out of joint and scores will have to be settled. They could that much more easily be settled if the offending party is not in the room when the decisions are taken.

Such contributions and organisational involvement are crucial to the security and policing of the 27. I am conscious of what the noble Lord, Lord Condon, said about us being a wee bit complacent—that maybe they cannot do without us, that the 27 will look favourably upon us—but what will have to be arrived at are rather more pragmatic arrangements than have been envisaged hitherto. Also, we will have to recognise the examples of countries that have tried to negotiate their way into a position of good standing. For example, Denmark has had great difficulty in returning to Europol after its block opt-out, which has been at the expense of third-party status. Third-party status would appear to be very difficult to achieve quickly. We cannot find much consolation in precedent to suggest a speedy solution. As the noble Lord, Lord Condon, says, if we can skilfully stay in the club while we are trying to negotiate a deal, we may get the best of both worlds. But that will require a degree of skill being shown by our negotiators and it remains to be seen whether we have people with the requisite skills or whether a sufficiently high priority will be placed on this as against the economic and trade considerations, which, despite the words of the White Paper, will tend to be the areas that attract most attention. Accommodating the European Court of Justice could well be anathema for the more zealous Brexiteers.

As the report says, Eurojust is the agency responsible for,

“supporting and strengthening coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States”.

This covers mutual legal assistance, European arrest warrants, the joint investigation teams and the provision of,

“legal, technical and financial support”.

Much has been made of the suggestion that we will somehow come out of this Brexit process not having to pay the subscriptions, but I imagine that if we are going to command any attention or sympathy we will have to pay our way, and we may have to pay our way at a rather greater rate than is enjoyed by the normal members. That is very often the case with people who want to be, as it were, county members of particular clubs. We might want to be the offshore member of the arrangement.

These negotiating priorities are going to be difficult to achieve. People have stressed the advantages of co-operation and the opportunities to work multilaterally through joint investigation teams. There are arrangements for third countries and liaison prosecutors but they are of a different order from those enjoyed by the management board members such as the UK, and any new arrangements are likely to be inferior to what we now have. The cost of providing 27 UK liaison prosecutors and the time likely to be necessary to secure the

appropriate provisions will be daunting. Switzerland took seven years. Those large population centres of Liechtenstein and Moldova took five and six years respectively for bilaterals to be achieved.

I come back to the point made by the noble Lord, Lord Condon. It may be that while we are going through these negotiations it will be status quo ante and therefore it will be okay for a wee while. We might even think about re-joining in the intervening period. These problems are not necessarily insuperable but they will be difficult. The solutions will be complex and, even with the best will in the world, they will take time. We do not know what the impact will be on crime fighting and terrorism fighting in Europe, and on the international justice and security system. These things remain to be seen.

That is perhaps the single most worrying aspect of the outcome of our studies: we do not really know. We see pious words in White Papers, written because the court told the Government to write them—“This will be our third or fourth priority. This will be very important”—but we do not know the negotiating stances. We will not know for some considerable time how long the negotiations will take. We will certainly need far more information, perhaps on a quarterly basis, about what is happening.

I would like to think that a report of this quality will not be allowed to gather dust and that we will return to this subject repeatedly. This is perhaps my rather rough experience in the place along the road but there is nothing that officials dislike more than having their feet held to the fire by Select Committees, whose repeated returning to the subject means that they know almost as much about it as the officials do. I am not saying that I know as much about it as the officials do, but to paraphrase FE Smith, I may not be any the wiser but at least I am better informed than I was before. I am very grateful for the opportunity to have participated.

8.29 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, that we shall be leaving the EU must now be a given and although personally I was a remainer, I intend to speak and vote in the forthcoming debate, albeit with a heavy heart, in favour of authorising the proposed Article 50 notification. It is in that context that we now need to consider the vital issues that arise as to our future co-operation with Europe in the field of security and justice. On this I, too, pay tribute to the work of the noble Baroness, Lady Prashar, and her committee in producing this excellent and perceptive report.

I put my name down for this debate only late yesterday, when I noticed that there was close to a dearth of lawyers due to speak. Nor was there any member of the Lords ad hoc committee under the chairmanship of the noble Lord, Lord Inglewood, which two years ago reported on our extradition law and practice. It is principally upon that matter that I will concentrate today, and more particularly on the European arrest warrant which in that extradition committee we explored in the greatest detail—the noble Baroness, Lady Ludford, was one of many expert witnesses before us. In doing so, I should perhaps say that in my judicial capacity I

[LORD BROWN OF EATON-UNDER-HEYWOOD] have been involved over the years in a good number of extradition cases, including a number with the noble and learned Lord, Lord Hope of Craighead, who is almost in the Chamber. Latterly, they included that of Mr Assange—not that we have yet managed to extradite him.

To my mind, based on that experience it is really quite difficult to exaggerate the huge benefit of the EAW to the goal of attaining justice with regard to cross-border crime and so forth, and avoiding safe havens for criminals across Europe. Undoubtedly, it has promoted speedier, cheaper, more streamlined and, I would argue, fairer processes overall than previously existed. The DPP has described the EAW as,

“three times faster and four times less expensive”,

than the alternatives. Let us consider some basic statistics. Before 2004, when the scheme came into force, fewer than 60 people a year were extradited from the United Kingdom. Since 2004 more than 7,000 individuals, over 95% of them foreign nationals, who were either accused or already convicted of criminal offences, have been extradited from the UK to other member states, and more than 1,000 have been extradited to the United Kingdom from other member states to face justice here.

Following the attempted second Tube bombings on 21 July 2007 we managed to extradite one of those involved from Italy back here, under a European arrest warrant, in just 56 days. We should contrast that with the 10 years it took to extradite one of those convicted of the terrorist bombings in Paris from the UK to France under previous arrangements. Notice, too, Operation Captura between Spain and the UK, which again is illustrative: through the scheme it has, since 2006, procured 61 wanted criminals who were arrested in Spain and returned here. Paragraphs 126 to 128 of the report emphasise the huge value of the European arrest warrant in extraditions, as described by those principally responsible for criminal justice in the UK, and the deficiencies of the pre-existing system. As one noble Lord has already observed during the debate, that system was based on the Council of Europe’s 1957 convention on extradition.

Manifestly, Brexit notwithstanding, it is imperative that we maintain the benefits of the EAW scheme—but how do we achieve that consistent with the Government’s avowed intention to sever our link with the ECJ, nowadays called the CJEU—the Court of Justice of the European Union? Oddly, our submission to the jurisdiction of that court seems to be almost doctrinally central to the Government’s policy in implementing Brexit. As part of regaining our sovereignty, the Government appear to regard it as a core principle that in future our laws will be made in Westminster, not Brussels, and that any legal issues arising will be decided not by the ECJ in Luxembourg but by our courts.

It might be thought that as an erstwhile senior British judge, albeit now five years retired, I would enthusiastically welcome such a change: a restoration of final authority on legal disputes to the Supreme Court—although here, unlike in the States, it is always subject to Parliament’s legislative power to override the court’s decision. Indeed, it is, in some ways, satisfying

that we shall no longer be bound by rulings of the ECJ. On occasion, they are somewhat expansive rulings, open to accusations of judicial overreach in pursuit of an agenda of ever-closer union. Certainly, I am perfectly happy to think that, with regard to vast swathes of our law, we shall no longer be required to refer and defer to Luxembourg on any uncertainties as to the correct construction and application of EU provisions on VAT law, procurement law, planning law, environmental law, employment rights legislation, equality legislation, and on our attempts on public interest grounds to remove EU citizens who have committed a criminal offence here.

All these matters and, indeed, many more, are currently subject to Luxembourg rulings and so to innumerable EU-based regulatory schemes which, come Brexit and the so-called great repeal Bill, we shall either have to abandon or, more probably, incorporate in existing or amended form into domestic law. Inevitably, if we keep them, it will be as they have evolved and developed in the light of past ECJ judgments—but as for the future, they will presumably be subject only to rulings of our own courts, any subsequent Luxembourg decisions in point being merely persuasive rather than binding in effect.

That will be the general position. But—here I return to the European arrest warrant and various of the other 35 measures relating to police and judicial co-operation in criminal justice which we opted back into in 2013 of the 130 such third-pillar measures we opted out of post Lisbon—severing our link to the ECJ need not and should not be the position in relation to many of those measures, particularly those covered in the report: not only the EAW but, for example, Europol, Eurojust and various data-sharing and information-sharing arrangements. In this critical area of security and criminal justice, it is essential that the Government recognise the need to continue accepting the jurisdiction of the ECJ in this relatively narrow context.

That is the modest enough price to be paid for the huge benefits of operating—necessarily internationally—schemes to combat the ever-increasing tendency of criminals to operate and travel across borders. In this limited regard, I urge the Government to put aside their surely somewhat doctrinaire approach to the so-called recovery of sovereignty. Whatever supranational adjudicative tribunal we submit to, in this or any other area of international dispute, to that extent inevitably we are, if one chooses to look at it in this way, surrendering sovereignty. So what? It is for the greater good. The International Court of Justice and the European Court of Human Rights are just illustrations of this.

I know that the Government are hoping for some kind of bespoke supranational means of supervising the future operation of the EAW scheme, and no doubt of other such schemes that we have been discussing—but why on earth should the other 27 nations agree to this? Consider the suggested alternative to the EAW—the noble Lord, Lord Soley, has already touched on this—which Norway and Iceland had no alternative but to adopt because of course they are not member states. Paragraphs 129 to 133 of the report deal with this.

After 13 years of negotiation, the agreement with Norway and Iceland is still not in force. In any event, it includes the objectionable option of a state party being allowed to refuse to extradite one of its own nationals. It also contains an exception for political offences. It may, in any event, require the non-EU state to be a member of Schengen. Finally, and in this event of course decisively, it would appear to require the non-EU state to submit to the ECJ jurisdiction.

In conclusion, this is an excellent report, which rightly suggests that we need desperately to retain the links that it deals with. It is fervently to be hoped that the Government will now digest the report thoroughly and reflect it fully when they come to determine their future negotiating position on these vital topics.

8.42 pm

Lord Kirkhope of Harrogate (Con): My Lords, I refer to my entry in the Members' register as a practising lawyer. As one who not only gave evidence to your Lordships for your report while in my "metamorphist" state between the European Parliament and this place, but who has spent the last 10 of my 17 years as an MEP and party spokesman on these very subjects in Brussels, working constantly on getting ever-closer co-operation between Governments, police and intelligence agencies, I thought I would offer a few thoughts at this time.

I congratulate the committee on an excellent report, which demonstrates, as I have mentioned in many places and on many occasions, a thoroughness and quality almost unique to your Lordships and their excellent staff. There is so much to endorse, but in my limited time today—thus allowing other noble Lords perhaps a little more time to speak—I will concentrate on just the most critical areas, to my mind, which must be properly sorted out before the Brexit negotiations are concluded. My evidence to your Lordships' committee stands as a supplement to any remarks I make this evening.

It took me seven years as rapporteur to negotiate the EU PNR agreement between the 28 states, which incidentally is right now, as we debate this evening, being vigorously introduced. It took similar periods for other measures in which I played a leading role, such as the European Criminal Records Information System, which has already been referred to; Schengen; SIS II; the Prüm system for exchange of DNA and fingerprints; the joint investigation teams, which we introduced over 10 years ago in the European Parliament; Europol powers; and of course all the extremely complicated but necessary data protection legislation. I thought no job could get any tougher than the one I held when I was UK Immigration Minister in the 1990s, but that proved a little premature.

We have now reached a level of co-operation that has never been seen before but which is increasingly vital to keep abreast of terrorism and major criminality. We are now able to deal in "virtual real time" as opposed to historical exchanges of information or data necessitating bureaucratic or constitutional delays, which of course used to put us all at greater risk. However, real time comes with obligations. In order to maintain trust and confidence so that such material can be released, there have to be common rules and

ultimately common redress and accountability. Currently that lies in Europe or through its institutions, as well as in our national Parliament. The European Court of Justice, although, as we know, largely limited to treaty interpretation, has a vital role in ensuring that all participants operate with the same safeguards. Post-Brexit, how do we deal with a situation where the remaining 27 states are still obliged constitutionally to turn to those institutions but we are not?

Recently, we have heard a number of interesting remarks from Ministers, among them:

"As part of the exit negotiations, we will need to consider the full range of options to ensure effective cooperation after the UK leaves the EU".

That was my honourable friend in the other place, the Home Office Minister Ben Wallace, on 19 August last year. Last December my honourable friend David Jones said:

"Europol is of importance. As part of the exit negotiations, the Government will discuss with the EU and member states how best to continue co-operation on a range of tools and measures, including membership of Europol".—[*Official Report, Commons*, 1/12/16; col. 1655.]

And my right honourable friend Brandon Lewis said in January:

"In my conversations with colleagues across Europe, I have been encouraged by their view that it is essential to find a way for our shared work on security to continue, but we do have questions about how that should happen in practice and we need to work through answering them".—[*Official Report, Commons*, 18/1/17; col. 958.]

They are of course right to acknowledge the importance of getting this right, but how do they achieve it? It is definitely one policy area where a so-called hard Brexit or indeed any time vacuum is simply not a responsible option. There is no World Trade Organization equivalent in this vital area to fall back on.

Despite my known reservations, perhaps in a spirit of helpfulness I might offer a little advice. First, we need to recognise that our European partners will not and cannot yield the control of all these measures from the present intra-institutional arrangements. Secondly, as the *Economist* Charlemagne column has suggested this week in reference to a "Norwegian option", as it put it, we must recognise that even the great repeal Act will at best freeze the European legislation and its parameters at the date of its implementation, when in fact we need these measures to be dynamic, as I would term it, and tuned to future changes and safeguards; the article refers to that. All EU legislation is now designed to a lesser or greater extent to be dynamic, mostly as a result of the work we did after the Lisbon treaty of 2009 when the European Parliament acquired a greater say over all these measures.

So, even if my colleagues along the corridor and, I am afraid, some in this House turn apoplectic at times at the initials "ECJ" or "EP", in my opinion we should try to agree some new legal protocols. I myself was involved in the Protocol 36 mechanisms regarding our opting out of and then opting in, to various measures. Protocols are useful things. We will certainly need to agree a new legal protocol here so that we can accept changes when and if they are made subsequent to our adoption of European legislation through the great repeal Act.

[LORD KIRKHOPE OF HARROGATE]

Negotiating from this parallel position to find a means ourselves of changing such protocols needs skilful negotiation and a large dose of ongoing good will. Whether we can get round the strict ban in a number of areas on sharing information and data with third countries is a matter of real concern to me, but I believe it is achievable if the right device is found. A similar approach may have to be deployed in a large number of other areas where we plan at a specific date to take on large pieces of EU legislation.

At times, I wonder whether the extent of the post-Brexit challenges is totally appreciated by some people—obviously, I exclude my noble friend from this—particularly in this vital field. I know that the Brexit debate spends a lot of time on matters other than those we are debating, but I have given most of my recent political life to the cause of protecting our citizens, through co-operation with our European partners, from the fast-multiplying threats of terrorism, evil criminality and cybercrime, while ensuring, as far as possible, their freedoms and rights as individuals. Surely, that is the primary duty of us all in the undoubtedly difficult phase of national life we are now entering.

8.51 pm

Lord Judd (Lab): My Lords, like everyone else who has spoken, I put on record my tremendous appreciation to the noble Baroness, Lady Prashar, for what I think is a first-class report that is a hard-hitting report in the very best sense—as a focused report, it is a model—and tribute is therefore due to all the members of her committee, to the officials who worked with them and to the witnesses, who are tremendously important. I often think that in our debates here we do not look enough at the evidence given as the basis for the committee's conclusions, because often the evidence gives powerful argument.

In a reflective and wise intervention, my noble friend Lord Soley made almost in passing what is a crucial point, when he said that the approach in Britain to European matters has been that it is an economic initiative, whereas for almost everybody else in Europe it is a political matter. In the context of this debate, one reason that we are in the predicament that we are in is that we have never understood or embraced the concept that, when the original statesmen were founding the European Coal and Steel Community, it was important in itself as an economic and commercial matter but it was not the end; it was a means to an end. They were motivated and driven by the concept of the peaceful, secure Europe for which they were working. At every step which has taken place in the institutions, we have fallen into the self-deluding trap of saying, "We are looking at this just in economic terms". Historically, it has never been just economic; it has been about building a Community. Now, in a very specific and immediate area, we are faced with the consequences of that.

I must declare an interest, because I serve on the justice committee. As I have listened to the debate, and as I read the report, it strikes me how much in common we are learning on the two committees. In the justice committee, particularly in the realms of matters such as family law or commercial law, we have heard witness

after witness tell us that things are so much better, logical and helpful in the context of what has emerged than they were before.

This brings us to the issue of the referendum. Like everybody else, in this debate anyway, I accept that the referendum has happened. I deeply regret the outcome, but it has happened, and we have to approach things in the reality of that result. But that does not mean that we should shun the responsibility of learning from the experience of the referendum. The wicked reality of the referendum was that it was dominated by emotion and an absence of sufficient concentration on the reality of the situation.

Previously, I served on the home affairs committee under the noble Lord, Lord Hannay, and then the noble Baroness, Lady Prashar. What struck me when we looked at those matters at that time was that every single witness, as far as I could make out, who was operating in the sphere of policing and security said that it would be completely illogical to come out of the Community because, if they were to fulfil their task, what had happened and the co-operation taking place was essential to success. Some put it quite strongly, actually—I must commend them as officials.

It is a very serious matter, and we need to look at this. As a political community in this House, and in the Commons, irrespective of party, we bear a heavy historical responsibility because we have allowed the populist press to get away with running the argument and failed to communicate the reality, or even give the serious press the amount of information or support that they deserve.

I am not a lawyer and I have not served in the police or security services, although I have the utmost admiration for them. I look at these matters as a political animal. But what should we be learning from this? What does sovereignty mean in the age in which we live? How can we allow our debate and considerations to be dominated by this preoccupation with sovereignty? I cannot think of a single issue facing my children and grandchildren which can be properly solved in a completely national context. The way in which you look to the interests of British children, adults and the vulnerable is in an international context. Terrorism is international, as is crime and trafficking. None of those matters respects borders. Drugs are an international consideration.

How on earth does it advance the interests of the British people to say that we want to reassert our sovereignty and take back control for ourselves? That is not the way to look to the interests of the British people. We look to those interests by seeing that our future lies in our effectiveness in international co-operation and as leaders in international co-operation. When it comes to this business of wanting to free ourselves from the dominating and suffocating business of European law and European legal professions and the rest and take back these matters into our own hands, how many people realise that, in these new arrangements that are emerging to which I referred, so often it was British lawyers who took the lead in making them a success? Why is that not more strongly asserted?

I will conclude on this note. Clearly, we have some very hard work to do in the future, but an even greater challenge is enabling the British people to understand

the reality of the age in which we are living. It does not matter only in the realm of trafficking, crime or migration; it matters in the realm of climate change. How do you solve climate change as a sovereign island on your own? You meet the challenges of climate change in the context of your international approach. It reaches into every dimension of government and politics. I have no doubt that history—if it survives as a discipline, under the crude pressures that operate today—will judge us on how far we, as political leaders, have enabled people to understand their global interdependence and how we, as political practitioners, develop and strengthen global institutions, not just European ones, to meet the realities with which we are confronted.

The concept of global interdependence, and of our being judged by the success we make of realising this and fulfilling our destiny within it, is the future strength of Britain. After the experience of the referendum, all of us, irrespective of party, clearly have a very big task and challenge to get our heads down and make sure that we make that our priority.

9.02 pm

Lord MacLennan of Rogart (LD): My Lords, this is a very important report and the way the noble Baroness introduced it today was helpful and clarified the detail. We need to implement this absolutely excellent report. When will the negotiations start? If we have a hard-Brexit response from the members of the European Union it might be difficult to promote the detail of this report. This might be done in the lead-up to Brexit and we should accept the recommendations of the committee chaired by the noble Baroness.

The options available to the Government are, to some extent, contrary to what they have said. They have said that they want to legislate in Westminster, in place of the European Union. However, I think that the law enforcement agencies would like to see the current arrangements maintained. The evidence which the committee took was overwhelmingly in favour of the status quo. There is a mutual interest across Europe in ensuring that the safety of citizens is secured when the UK leaves the European Union. We would be wise to open discussions before we get into Article 50 and the arrangements for exiting the European Union.

The European Union institutions should be accessible to the United Kingdom to enable it to secure close co-operation with the police and law enforcement in the other 27 member states. Europol is a very strong organisation. Data show that Europol's response is much quicker than that under the previous arrangements. Given the existence of Eurojust, the Schengen information system, the European arrest warrant and extradition agreements, there would be no quick fix if we went back to the 1957 arrangements. The European arrest warrant has resulted in quicker extradition arrangements. The oversight and adjudication of the European Court of Justice should be accepted in these cases. However, that does not mean that the other measures of the European Court of Justice need to be accepted. British influence has helped develop policies in this area. We will lose out if the European Union develops policies with no contribution from Britain. When the United Kingdom leaves the European Union, it will also leave the 35 pre-Lisbon treaty police and criminal justice

measures that the Prime Minister described as vital when she was Home Secretary. I hope she will recognise that these 35 pre-Lisbon treaty police and criminal justice measures will require to be saved.

Bill Hughes, the former Director-General of the Serious Organised Crime Agency, warned that, "the UK is seen as a major and leading partner", in the development of security. That seems to be worthy of maintenance. To bring back control of the laws to Westminster would change what Bill Hughes put forward as worthy of continuing. It is incompatible to maintain the current access to law enforcement intelligence held in Europol if we do not accept the need to belong. Accountability now is to the European Commission, the Court of Justice of the European Union and the Parliament. These issues should be accepted by the nation.

On data sharing, the Schengen information system contains information that 35,000 people are wanted under a European arrest warrant. Each of the police and criminal justice measures that the UK rejoined in December 2014 are worthy of being maintained now. Extraditions these days under the European arrest warrant take days rather than months or years. The arrangements suggested by the committee are worthy of implementation, and before the Brexit negotiations occur.

9.12 pm

Lord Hannay of Chiswick (CB): My Lords, the report we are debating this evening about the implications of Brexit in the field of internal security and police co-operation is truly excellent. I congratulate the committee and its chair, my noble friend Lady Prashar, who introduced the report so eloquently this evening, on its quality. As one who is not a member of the sub-committee but was its chair some years ago, I can say that without self-congratulation but with the benefit of experience. Listening to the debate this evening, I get a slight feeling of déjà vu all over again, because of course we went through all this over Protocol 36, and quite a lot of the personae dramatis are still around, including the Home Secretary, who has of course moved into No. 10, and various other noble Lords around this Chamber this evening who were involved in that.

We should not forget that this report is of course one of a suite of six produced by the EU Select Committee. They are a standing reproach to the Government's failure until a few days ago to provide even the fairly skimpy indications given in the White Paper. The report spells out in detail why it is in the UK's national interest now to negotiate the closest possible relationship with the European Union in these policy fields, preserving if possible the great advances in law enforcement co-operation that have taken place over the last few years. I say that about the national interest without the slightest hesitation, because that was the conclusion of the House of Commons by an overwhelming majority and the conclusion of this House by unanimity, only two years ago in 2014. Having said rather a rude word or two about the White Paper, I recognise and welcome that the Prime Minister singled the sector out and endorsed that view about the national interest in her Lancaster House speech. The White Paper continues that work. As other

[LORD HANNAY OF CHISWICK]

noble Lords have said, the challenge now is to turn that into reality in the Brexit negotiations which begin next month. As the report says, that will neither be easy nor straightforward. Here are just a few thoughts on that.

First, we need to realise that there is a cliff edge in this sector if the two-year period provided for under Article 50 expires without any agreement on either a temporary or lasting solution. This cliff edge is far more real than it is in the trade field, where, as the noble Lord, Lord Kirkhope, said, we can always fall back on the plan B of WTO membership—although that is, in my view, likely to be quite damaging to this country's economy. But there is no plan B for justice and home affairs. If we go out then, we shall simply drop out of membership of Europol and Eurojust, and we will lose the European arrest warrant overnight. We will lose the ability to extradite wanted criminals out of this country back to the places they are wanted, in one direction, and back into this country when they have committed crimes here—there are many examples of people we have got back in that way. We will lose overnight the Schengen information system, the European criminal records system, the Prüm decisions on DNA and other information, and the passenger name recognition arrangements for civil aviation. That is an awful lot of things which we cannot afford to do without. However, on the day we leave without an agreement, that is what will happen. We should have no illusions about that.

Secondly, any negotiations for the new relationship will not be able to duck the tricky issue of a continuing budgetary contribution. After all, you cannot have this sort of co-operation for free, nor should we think that we can—it costs money. There will have to be some judicial mechanism, and here my noble and learned friend Lord Brown set out with wonderful clarity what the European Court of Justice means in this area and why we cannot simply demonise it, as the Government have been doing systematically for some months now. I have to say I find that fairly astonishing. Look at the 44 years in which we have been under the jurisdiction of the European Court of Justice. Of course there have been occasions when it has ruled in a way we have found inconvenient or even infuriating, but they are as nothing compared to the number of times it has struck down non-tariff barriers in other member states, ruled as illegal state aids that were preventing our firms competing, or removed all sorts of restrictive practices. Why on earth we feel the need to demonise it now, I do not know.

Frankly, whatever we do in the general sense, in this sector we cannot afford to ignore the need for some form of dispute settlement procedure. Such a procedure has to be not only between Governments, which could perhaps be based on a model of the EFTA court, but between individuals, because the European arrest warrant involves individuals. They may wish to take their case to a court, so we have to have somewhere for them to go. If we are to preserve the arrest warrant system, there has to be some recourse for our citizens and for other citizens in Europe to a court or dispute mechanism of some kind. We cannot avoid that. It is welcome that the Government have recognised in the White Paper

that there will have to be some form of dispute settlement procedure—having been in a state of denial up to now—but as yet, they have not got very far along the learning curve.

Thirdly, we need to face up to the issue raised by the noble Lord, Lord Kirkhope: we do not just want a static solution that works on the day we leave. We need to produce a living solution that will continue to work in the years ahead when we will be outside the European Union, and the European Union will be developing co-operation in these fields, hopefully in close concert with us.

We really need a process by which Britain can opt in to new measures when it wants to. If not, we will have the agony that was experienced at the other end of the Corridor every time a measure had to be adopted through the opt-in procedure. There was a great rampage about how awful it was that we were accepting this and accepting that; then, when they got into the Division Lobbies, there were about 25 votes against 530. We must try to avoid that. In the negotiations, the Government need to look for a simpler method of opting in to continuing with new legislation, because the criminals will not stop. The international dimension of their crimes will not stop and we will need to work with our former partners if we are to achieve anything like the results we want in this field. That aspect of this continuing issue needs to be taken into account.

The three points I have raised may seem daunting, and they are. I do not doubt that they are difficult for the Government. There will be plenty of naysayers in Brussels and in Westminster, but the mutual advantage—indeed, the mutual necessity—of sustaining close and effective co-operation on these matters should enable those obstacles to be overcome. I look forward to hearing from the Minister how the Government intend to set about doing that, and in particular her response to the three points I have raised. I hope our negotiators will remember one truth: our national internal security neither stops nor begins at the water's edge.

9.23 pm

Lord Davies of Stamford (Lab): My Lords, it is always a pleasure to follow the noble Lord, Lord Hannay, particularly in a debate on Europe, on which he knows so much and has so much experience. But I thought on this occasion that he was rather more optimistic than I was about the chances of the Government coming to some satisfactory negotiation with our European partners. I find rather more convincing the analysis that we heard earlier from the noble Lord, Lord Condon, and the noble and learned Lord, Lord Brown.

I add my voice to those who have already paid tribute to the noble Baroness, Lady Prashar, and her committee. It is an excellent report. It is not too long, thank goodness, which most reports in this House are. It is very lucid and well written, as most reports in this House are. It is decisive, which is essential, and it has given rise to a very useful debate.

Well, here we go. Not a week goes by without us suddenly having a new insight into the costs of Brexit and the wanton damage and destruction that this process will bring about for our country if it goes very much further. There is pretty much unanimity in the

House this evening on the matter of the costs of Brexit in this area. I think that in their analyses everyone has agreed in principle with the remarks of the noble Lord, Lord Condon, who said that anything less than the status quo will lead to a diminution of the security of all our citizens. That is an extremely serious matter. We are facing the prospect of actually diminishing our security. People's lives will be at risk, and it is quite extraordinary that any responsible Government of an ancient country like ours should seriously contemplate measures which run that risk, but unfortunately that is the truth. I think it is a truth which has been accepted by all speakers in the debate, sad and difficult though it is for many to acknowledge it, but it is a consensus to which I add myself.

I have to say that I do not share the view of most colleagues who have spoken on both sides of the House that we should just despair of this. There has been a sense of hopelessness: "Well, perhaps the British public did not look at the facts, and maybe they did not have the facts they should have had at the time. But it is too late now, it has happened and we have to make the best of a very bad job". I have never shared that view in politics. If one is heading for a disaster, if you can see that you are sailing into a storm, you change course. Moreover, if you believe in popular sovereignty, you must believe in the right of the people to change their mind if they wish to do so, and in the right of all of us to try to persuade them to change their mind if we think it is important that they should do so in our long-term national interests. I have no inhibitions about that.

I shall go briefly over the points that are most at stake in this case. I do not ask the House to accept my words. I shall rely entirely on the testimony offered to the committee, which is now before every Member of the House, and indeed the Government's own statements on the subject. Let us take first the issue of Europol because we all know how important it is. The report states:

"Our witnesses were unequivocal in identifying the UK's future relationship with Europol as a critical priority. They also made clear that an operational agreement with Europol akin to those that other third countries have negotiated would not be sufficient to meet the UK's needs".

That is a decisive and extremely well-thought-through conclusion. The report goes on:

"Achieving it, however, may be problematic".

In other words, we have a great asset in Europol since it is both useful and vital, but the Government are putting the whole thing at risk and we may not get any kind of deal which even begins to substitute for the utility of the asset we currently have.

Let us move on to some of the other issues about information exchange between police officers, which is obviously very important. I refer to the Schengen information system, known as SIS II. It was described by the National Crime Agency as,

"an absolute game-changer for the UK ... It is linked to the Police National Computer so that officers can stop a car with French plates and Hungarian nationals in it, undertake checks and find details of stolen property, wanted people, alerts and the like".

It is clearly an enormously useful instrument for policing which we may be on the point of losing. I turn now to the Prüm measures, which ironically came into force only just last year:

"The Prüm Decisions require Member States to allow the reciprocal searching of each other's databases for DNA profiles (required in 15 minutes), Vehicle Registration Data (required in 10 seconds) and fingerprints (required in 24 hours)".

Here again we risk taking away from the British police. I also refer to Professor Peers, who commented on SIS II.

The report is equally clear about the European arrest warrant, stating,

"the Government suggested that 'Norway and Iceland's Schengen membership was key to securing even this level of agreement', and that 'there is no guarantee that the UK could secure a similar agreement outside the EU given that we are not a member of the Schengen border-free area'".

The European arrest warrant, which we have heard is so important to policing, is itself at risk. The committee's view, which it is giving to the House this evening, is that there is no real likelihood of our being able to get anything as good as we have at present in any of these three areas.

In those circumstances, I put to the Government two questions. First, what is stopping us remaining part of this home affairs and justice system—of Europol, the Prüm system, the information exchanges and part of the European arrest warrant? Secondly, if nothing is stopping us, why do the Government not want to remain part of it? Is there a pragmatic reason in terms of national interest why we should not remain part of a system that, in the views of everybody who has expressed a view this evening, including some very expert people, is clearly essential to our security in those areas? If the Government are saying there is no practical reason why we cannot be a member of the system and it is simply that we do not like the European Court of Justice or the politics, I am afraid they are contradicting themselves. This has already been quoted many times, but the Government said in 2014 that they would,

"never put politics before the protection of the British public".—[*Official Report*, Commons, 10/11/14; col. 1224.]

If they are saying, "We have a very good system here protecting the British public—the best we have ever had. We want to get rid of it not for practical reasons, but mainly for political reasons", by definition they are in contradiction of their own commitment. I could use non-parliamentary language to describe the situation in which they proceed directly in contradiction with the description of their activities that they have given to the public.

Those two questions are very important. What is stopping us remaining full members of these institutions? If it is simply because the Government do not want to join them, why do they not?

9.31 pm

Lord Stevens of Kirkwhelpington (CB): My Lords, before speaking to your Lordships' House I declare an interest in that, after being Commissioner of the Metropolitan Police, I was chairman of the advisory board of Interpol for three and a half years.

[LORD STEVENS OF KIRKWHELPINGTON]

I pay tribute to the noble Baroness, Lady Prashar, and the outstanding work done by the sub-committee in the report. Time is moving on, and this report encapsulates some of the problems enshrined for policing in future if we depart from the EU, so I will not detain the House long. However, there are one or two issues I will draw attention to.

So many of the current arrangements and co-operative frameworks in place are, as we referred to, mission critical for UK law enforcement agencies. There is no doubt that exit from the EU places these at risk. We must absolutely underline that, potentially, this will make the United Kingdom less safe if negotiations are not made to secure optimal solutions to the changes that will result from our exiting the EU. The time the negotiations may take and the costs involved in setting up these new systems are surely a major factor. We have heard from the noble Lord, Lord Kirkhope of Harrogate, and the noble and learned Lord, Lord Brown, the time it will take to bring these things into place.

Let us make no mistake that over time the United Kingdom has been a key player in shaping Europol and all the agencies that now work so effectively in the United Kingdom and relate to the EU. By leaving the EU, we will lose an immense amount of influence unless steps are taken to ensure we do not. An issue of great importance is this: my experience over 9/11, which took everyone by surprise, was that we were used by the United States as an entry point into Europe for information and vice versa, because what had been set up by my predecessor as Commissioner of the Metropolitan Police and expanded during that period of time was essential to security, not just of this country and Europe, but worldwide.

The report says that we have a strong mutual interest in going forward with the EU and its organisations. There is a fair amount of optimism that these mutual interests will play a very big part in allowing us to continue with the structures that we have at the present time. However, I draw attention to the report's point that this could lead to a false sense of optimism with regard to the United Kingdom's strength in negotiation. With the UK departing the EU, we will no longer be accountable to the same oversight and adjudication as the EU 27, notably in respect of us working together with the EU. There is even doubt as to whether the EU 27 will be amenable to creating bespoke adjudication arrangements or whether such arrangements would be an adequate substitute for the existing arrangements. There will be tensions, which were outlined more eloquently than I can this evening.

For me, Europol is an example of why we should have a certain amount of optimism. We have been at the very centre of creating Europol; Europol is a success because of some of the inputs and leadership shown. At one stage—I do not know whether it is the case now—40% of Europol was staffed by United Kingdom police officers and staff. Nobody could say that Europol has not been a massive success in both arrests and protecting this country. There are mutual benefits both for those 27 countries in Europe and for ourselves. Of course there are, but we should not take that as an excuse for false optimism for the future.

It is on the data-sharing issue that I get particularly passionate. In 2014 and 2015, the Government and Parliament judged that it was in the UK's national interest—as has been outlined by my noble friend Lord Hannay—to participate in data-sharing platforms, such as the second generation Schengen information system, the European Criminal Records Information System, the Prüm decisions and the passenger name records. It means that police officers operating out there on the streets of London and around the United Kingdom and those operating within Europe have an ability to get information immediately. It means that someone stopped in Soho five to six years ago for murder was identified immediately because of these systems. It means that passengers going on to planes can be identified as suspects around the world and, particularly, within Europe. We need it: it is essential for our safety. It would be absolute madness to destroy that.

In relation to the European arrest warrant, which is critical to law enforcement capabilities, I believe—I could be wrong, but I hope that I am right; the noble Lord, Lord Paddick, referred to it—that the report recommends that the UK follow precedents set by Iceland and Norway in terms of bilateral extradition agreements with the EU, which mirror the existing provisions as far as possible. This agreement was signed over a decade ago and has still not come into force. If that is the way that we are going to be approaching our negotiations on where we are going in the future, it is an unacceptable risk. It creates unacceptable dangers and we must make sure that the Government do not fall into that trap.

The noble Lord, Lord Wasserman, spoke with great optimism about the police service and the security forces taking this thing forward on their own. I thank him for that: it is nice to know that there are people with confidence in policing these days. However, it needs political support at the highest level; it needs the negotiation skills that are in this Chamber now; and it needs these people to be pragmatic, direct and persuasive.

I have some questions for the Government before I sit down. Have they worked out how long it will take to negotiate the UK back into systems we may well be part of when we depart, perhaps in two years' time? Is the risk to the safety of the people of the United Kingdom which will arise out of operational gaps a priority? Surely, it must be.

Are the precedents laid out in this report in relation to the problems and the detail of those problems going to be taken into account? Someone referred to holding the Government's feet to the fire. I think we have an absolute duty to do so in this House. It is essential that we keep coming back to this report and, if I may say so, growing it in the way that we talk about in relation to our safety.

A further question is: should this negotiation phase be entered into, what will happen in the meantime, given the loss of data systems and databases that are absolutely crucial, as I have outlined, to our everyday policing? Without this work—you need only talk to officers on the street—the safety of this country could be hampered for years, and that is totally unacceptable. My noble friend Lord Condon talked about the status

quo. What is wrong in trying to hold on to the status quo until we have something else which is viable to take its place? If we do not do that, there will be a gap and a vacuum which is incredibly dangerous to the safety of this country.

What will be the cost of setting up new systems, which will run into millions of pounds? Have the Government looked into that, or into who will pay for it? Do the Government foresee years of expensive negotiation as the only way to settle these issues, or is there another way to secure essential EU relationships and fill operational gaps in order to maintain public safety? Surely, we need to address these questions.

It took an awfully long time to create what we have created. Some people have said to me as I go round the world that it is an exemplar of how the world should operate in the very dangerous environment that we are in now. Would it not be an absolute tragedy if this were destroyed overnight?

9.43 pm

Baroness Ludford (LD): My Lords, my noble friend Lord MacLennan reminded us, as does the report, that the Prime Minister, when Home Secretary, said that it was vital that we stayed in the 35 policing and justice measures. The noble Lord, Lord Kirkhope, with whom I worked for 15 years in the European Parliament, strongly backed this up. He and I did not always agree during those 15 years but I am glad to say that we do now. The report stresses that the measures we are talking about are part of a complex and interconnected network of agreements and arrangements that are difficult to compartmentalise, and of course they have been through a filter, as the noble Lord, Lord Hannay, reminded us. Just two years ago these were boiled down from 130 measures to 35 that the Government regarded as vital. How can they be reduced any further?

However excellent our police are, anything short of full participation is going to be less effective, more cumbersome and more long-winded and will therefore hamper our police and prosecutors in apprehending criminals and terrorists, as the noble Lord, Lord Condon, reminded us. Indeed, we could, in the words of the noble Lord, Lord Hannay, fall off a cliff edge in this area, which would be unacceptable. Of course, we were blessed with not one but two former Met commissioners in the debate. The noble Lord, Lord Stevens of Kirkwhelpington, has just stressed that the UK has been a key player in EU co-operation. The noble Lord, Lord Soley, listed almost all the Brits in top positions. We have also had several—two at least—presidents of Eurojust.

Other noble Lords have picked out adjectives in the report in order to stress the key importance of participating in all these measures. I will not repeat them. Europol is a “critical priority”. Of course, it is only as a full member of Europol that we get the full rights of direct access to intelligence and information, and the ability to share those. On Eurojust, the Crown Prosecution Service said that,

“they were heavy users of Eurojust, listing it among their top priorities for any forthcoming negotiation”, and that bilateral arrangements such as liaison prosecutors cannot,

“do what Eurojust does, which is to facilitate the multi-national co-ordination that is so important”.

The European arrest warrant is dear to my heart. My last work in the European Parliament was to write a report on the reforms that the European arrest warrant needed. This has not been pursued by the European Commission, to my regret. It could be improved but we need to work with what exists. The noble and learned Lord, Lord Brown of Eaton-under-Heywood—we were also blessed with a former Supreme Court Justice—said that it was impossible to overstate the importance of the European arrest warrant to securing justice. The report says that it is,

“a critical component of the UK’s law enforcement capabilities”.

The report also says that it would be,

“an abrupt shock to UK policing ... posing a risk to the safety of the public”,

if we were not involved in the data-sharing arrangements. The National Crime Agency was,

“emphatic about the operational significance of access to SIS II”.

It said that being in SIS was one of its “top three priorities” and,

“an absolute game-changer for the UK”.

One could go on.

The case is so powerful and has been made so strongly tonight that we must stay in these measures. What is stopping us? Essentially, the Government are putting their objections to the European Court of Justice above national security. One thing that we will need to comply with are the data-protection arrangements, as enforced by the European Court of Justice. The report says that this is going to be,

“a necessary pre-condition for exchanging data for law enforcement purposes”.

The outgoing Independent Reviewer of Terrorism Legislation, David Anderson, said:

“It should not be assumed that Brexit will relieve the UK from the need for compliance with standards of privacy and data protection set out in EU legislation”,

or by the European Court of Justice.

We must also expect greater scrutiny of our surveillance practices, which perhaps we have not had to the same extent as has the United States while we have been a member of the EU. I think we can expect the content of the Investigatory Powers Act to come under close scrutiny when we are seeking an arrangement with the EU without being a member, particularly if we are trying to avoid oversight by the European Court of Justice. The Government claim that security is a top priority but they simply cannot deliver the same level of functionality if we are outside the EU framework because they are not in fact making security a top priority; they are making the political red line that suits the Conservative Party—rejection of the ECJ—the top priority. There was an astonishing response which the Secretary of State for Exiting the EU, David Davis, gave to a member of the other place. I confess I had not picked it up but I looked it up online. He said that yes, we would have to pull out of Prüm—I think he was referring to other measures—because we had to avoid the jurisdiction of the ECJ. That is a very peculiar turnaround of priorities.

The report reminds us that there is this tension between the maintenance of strong security co-operation and refusing oversight arrangements—perhaps not only

[BARONESS LUDFORD]

those of the court but those of the European Parliament as well. We know that our police will do their best but it would be a dereliction of duty to fail to give them the support they need to work with their counterparts in other member states because of what I think the noble and learned Lord, Lord Brown, referred to as a doctrinal objection.

The Government will seek bespoke adjudication arrangements. We must hope that they will succeed however they can in keeping us close to practical EU co-operation, but there will be real problems in trying to step aside from the ECJ. The EU can act only in compliance with the European Charter of Fundamental Rights, and the court is the ultimate arbiter of that. It is impossible for the EU to sign an agreement with the UK that conflicts with either the charter or ECJ case law.

The agreement will have to be policed and enforced. If the UK acted in ways that breached the terms of our agreement, it might be open to an EU citizen to take a case to the ECJ and get the decision including the UK agreement annulled. That is what happened to the safe harbour arrangements with the US when an Austrian student, Max Schrems, went to the court because of concerns about US intelligence agencies. We need to think through what could actually happen. We will have to keep up with legal developments in the rest of the EU, a point that has been made this evening, because if we diverge from EU law a gap will open up and we will leave ourselves open to the potential of the agreement being annulled. It remains to be seen whether our EU partners will agree to set aside the ECJ in favour of a bespoke dispute resolution mechanism. But we do not seek just to stay in one measure, whether that is Europol, SIS, the EAW or whatever. We want to remain in the whole package and there is no precedent for the EU agreeing to sideline the ECJ with such a large agreement as we would seek.

I conclude that it would be truly extraordinary if the mantra of taking back control, interpreted by this Government as avoiding ECJ jurisdiction, ended up handing control over to the criminals and terrorists. When you have the experience that we have listened to this evening on the police and judicial side urging the Government to put safety first and back our police and prosecutors, it would surely be an unpatriotic neglect of national security to put political prejudice first and, in the words of the noble Lord, Lord Hannay, to demonise the court. That would involve being soft on crime, and I am sure the Government do not wish to do that.

9.54 pm

Lord Rosser (Lab): My Lords, I fear that most, if not all, of what I want to say has already been said a number of times this evening; nevertheless, I still intend to say it—in somewhere near 10 minutes, I hope.

Along with other noble Lords who have spoken, I, too, express my thanks to the noble Baroness, Lady Prashar, and her sub-committee for their very helpful and comprehensive report. The committee pointed out that it was only two years ago that many of the EU measures we are now due to leave with our exit from the European Union were deemed vital by the then

Home Secretary, to the extent that, having exercised a block opt-out from police and criminal justice measures from December 2014, we promptly opted back in to 35 of them from the same date, accepting, as well, that the enforcement powers of the European Commission and full Court of Justice of the European Union jurisdiction would apply in respect of those 35 measures.

The Government's recent White Paper declares an intention, after we depart from the European Union, to, "continue to work with the EU to preserve UK and national security, and to fight terrorism and uphold justice across Europe". The Government also state in paragraph 11.7 of the White Paper that they will,

"look to negotiate the best deal we can with the EU to cooperate in the fight against crime and terrorism",

and that:

"Public safety in the UK and the rest of Europe will be at the heart of this aspect of our negotiation".

That is not, of course, the same as saying that public safety will be paramount or the number one priority.

The report from the EU committee sets out some of the issues that will have to be addressed if the Government's objectives are to be achieved. Most significantly, the report states in its introductory summary:

"We caution, however, against assuming that because there is a shared interest in a positive outcome, negotiations will unfold smoothly. Even with the utmost good will on both sides, it seems inevitable that there will be practical limits to how closely the UK and the EU-27 can work together on police and security matters if they are no longer accountable to, and subject to oversight and adjudication by, the same supranational institutions, notably the Court of Justice of the European Union. There is, therefore, a risk that any new arrangements that the Government and the EU-27 put in place by way of replacement when the UK leaves the EU will be sub-optimal relative to present arrangements, possibly leaving the people of the UK—and their European neighbours—less safe".

Do the Government agree?

The committee also goes on to say in the summary of its report that in leaving the EU, we will lose the platform from which we have been able to exert influence on the development of EU agencies, policies and practice in the field of security and policing, and that this will result in an attendant risk to our ability to protect our security interests in future. The committee goes on to say that accordingly,

"the Government will also need to examine what structures and channels it should remain part of or find substitutes for in order to influence the EU security agenda, which will inevitably have implications for the UK's own security".

Do the Government agree?

The committee also says:

"There must be some doubt as to whether the EU-27 will prove willing to establish the 'bespoke' adjudication arrangements envisaged by the Government",

that this issue may prove particularly difficult in the negotiations on our future relationship with EU agencies such as Europol, and that it may also affect the likelihood of maintaining mutual recognition of judicial decisions in criminal matters. The Government told the committee that in future laws would be made in Westminster, not in Brussels, and would be interpreted by British courts, not the European Court of Justice. As a result, the Government had concluded that any new arrangements that have to be put in place, or which

may be put in place after our withdrawal from Europe, would have to be the subject of bespoke adjudication arrangements which, as the committee pointed out, rather begs the question of whether the EU 27 are likely to be willing to devise such arrangements in order to facilitate co-operation with the UK.

In the light of this, the committee considers it conceivable,

“that the Government will encounter a tension between two of its four overarching objectives in the negotiation—bringing back control of laws to Westminster and maintaining strong security co-operation with the EU”.

The committee’s view was that the safety of the people of the UK should be the overriding consideration in attempting to resolve that tension, and it urged the Government in its report to ensure that this is the case. Could the Government say clearly whether that would be their stance in such a situation?

The Government have a responsibility to provide firm assurances that our nation’s security and our ability to combat crime within our borders will not be compromised by our decision to leave the EU and what flows from that. I invite the Government to give that assurance tonight, not by saying that that will be an overarching objective, but by saying that it will actually and definitely be the case. The security threats we face are not confined to our national borders any more than they are in other European countries, which is why there is the current level of co-operation between European countries on security, policing and criminal justice issues. Whether we are confronting international terrorist networks, tracking down those seeking to evade justice, obtaining vital information on the activities of suspects abroad or seeking to maintain effective border controls, it makes more sense to act together.

Our ability, on our withdrawal from Europe, to continue to participate in the European arrest warrant arrangements, our continued future relationship with Europol and our future access to Europe-wide crime prevention databases, including the Schengen information system, are key issues affecting our nation’s security and are among the matters addressed in the committee’s report. Since the European arrest warrant was introduced in 2004, the United Kingdom has used it to bring more than 2,000 individuals from outside the UK to face justice, according to my information. We will have hurdles to overcome if we are to maintain the current arrangements when we are not in the European Union. The alternative is that we fall back on previous extradition treaties that are far more cumbersome and far less effective.

The committee says in its report that its witnesses were unequivocal in identifying the United Kingdom’s future relationship with Europol as a critical priority. However, that does not necessarily appear to be the Government’s stance, since the Secretary of State for Exiting the European Union said in the House of Commons a few months ago, when asked whether we could maintain our membership of Europol, that the Government’s objective was simply to preserve the relationship with the European Union on security matters as best we can. The recent White Paper does not appear to take us much further forward, except to say:

“We are driving, or co-driving, almost half of Europol projects against serious organised crime”.

That could be interpreted as the Government’s stance being that other European nations will therefore be clamouring to give us whatever we want in respect of our future relationship with Europol. Perhaps the Minister could say whether the Government share the unequivocal view of the witnesses to the EU sub-committee that our future relationship with Europol is a critical priority. If so, what criteria would have to be met for the Government to deem acceptable our future relationship with Europol once we have left the European Union?

Access to pan-European databases is particularly important for our police. Can the Government say whether we will still have access to these databases when we are outside the European Union, and if so, on what basis, bearing in mind that the most recent Home Office annual report said that strengthening data exchanges with our European allies was essential to combating terrorism?

We have real concerns that it will become more difficult for us to protect our citizenry when we leave the European Union because the complexities of maintaining the current cross-border co-operation between our police and security services will become greater. That will certainly be the case if the Government intend to stick rigidly in the negotiations to each and every one of their top four overarching objectives—particularly the control of laws having always to be at Westminster and always being interpreted by British courts, whatever the consequences. The Government need to remember that although the people of this country voted to leave the European Union, they did not vote to put at risk either their own personal security or that of the country as a whole.

10.04 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I take this opportunity to thank the EU Home Affairs Sub-Committee for producing its report, *Brexit: Future UK-EU Security and Police Co-operation*. In answer to some of the questions from the noble Lord, Lord Rosser, I say that the Government will respond specifically to the report. I am grateful to those who have spoken during today’s long debate and in particular to the noble Baroness, Lady Prashar, for securing it.

A wide range of views have been expressed from across the Chamber, but I am reassured by the broad consensus across the House that the Government should continue a high level of co-operation with our EU neighbours on security and policing matters. The Government are committed to strong practical co-operation on security, law enforcement and criminal justice now and after we leave. We will work with our European partners as we negotiate our exit to find solutions that promote security in the UK, across Europe and beyond. I am very pleased that my noble friend Lord Wasserman is optimistic about the future.

The perpetrators of crime and terrorism do not respect borders, and the threat that they pose is becoming increasingly transnational. We know that international organised crime groups exploit vulnerabilities such as inadequate law enforcement and criminal justice structures. Furthermore, threats such as cybercrime and online

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child sexual exploitation are by definition international in a technically interconnected world. In the face of these common threats, it is difficult to see how it would be in anyone's interest for exit negotiations to result in a reduction in the effectiveness of security, law enforcement and criminal justice co-operation.

Our relationship with the EU currently centres on a number of practical co-operation measures that have been developed in response to the changing shape of the EU and the evolving threat of international crime. We continue to value our co-operation and information sharing through measures such as the European arrest warrant, which so many noble Lords have mentioned, together with Europol, the European criminal record information system and the second-generation Schengen information system, in our effort to fight crime and prevent terrorism. The UK will continue to participate fully in all these measures while we remain a member of the EU.

Leaving will of course mean that our relationship with the EU will have to change. In the UK we are examining the mechanisms now in place to support practical co-operation in the fight against crime and terrorism, to help to identify potential options for how we might work with our EU partners in future. Looking ahead, we need to negotiate the best deal that we can with Europe, including thinking about the tools and mechanisms for co-operation with EU member states that help to keep all European citizens safe. The UK's future access to the practical mechanism through which we co-operate with the EU will form part of the wider exit negotiations. The UK is in a unique position, having taken a leading role in developing—

Lord Davies of Stamford: The Minister says that when we leave the EU our relationship with the institutions in the justice and home affairs field will have to change. Will they have to change because the Government want them to change, or in her view will it be because our European partners will insist that they change?

Baroness Williams of Trafford: My Lords, they will change because that is an inevitable fact of leaving the EU. We will no longer be members of the EU.

Lord Davies of Stamford: That is not an answer.

Baroness Williams of Trafford: Well, that is the answer that I am giving the noble Lord. Perhaps at this late hour he will indulge me until I get to the end, and he might be a bit more satisfied by the time I have finished.

Looking ahead, we need to negotiate the best deal that we can with Europe, including thinking about these tools and mechanisms with EU member states that help to keep European citizens safe. We are in a unique position, having taken a lead role in developing the practical co-operation measures now in place across the EU, and our expertise and drive for high standards are valued by our EU partners. That is why we will not seek to adopt a model currently enjoyed by another country; we are looking for a bespoke approach that works for the UK as well as for the EU.

Those negotiations will be complex and lengthy, and it would not be appropriate to pre-empt the outcome. I know that many noble Lords are anxious to understand the detail of the relationship that we may agree with the EU but, although the Government are keen to provide clarity where we can, it is also important that we do nothing to undermine our negotiating position.

What is absolutely clear is that this Government are committed to ongoing co-operation to keep all European citizens safe—a point that noble Lords have made—and that the desire to do what is necessary to keep our people safe is not one-sided. My ministerial colleagues have spoken to their counterparts in several EU countries, and I am reassured to hear that there is a shared understanding of the importance of effective ongoing co-operation.

I will now respond in more detail to some of the points that noble Lords have raised this evening. All noble Lords have talked about our relationship with Europol. As noble Lords have said, Europol's prime objective is to strengthen and facilitate co-operation in preventing and combating serious organised crime and terrorism. By providing a platform for members to share intelligence and information, and through a strong analysis function, it offers unparalleled opportunities to prevent serious crime and protect EU citizens, including those in the UK. The UK plays a lead role in Europol; indeed, the UK staffs one of the largest national desks in the organisation and is one of the biggest contributors of information to Europol systems. We value our participation, and will continue to play a role while we remain in the EU. The recent decision to seek to opt into the new Europol measure is testament to that.

As I said, our future practical co-operation will be subject to negotiation, and it is too early to say what shape our relationship with the agency will take after we leave the EU. The models of co-operation enjoyed by other countries, such as the US, illustrate the breadth of agreements that can be achieved with Europol, but the UK will be in a unique position as a former EU member with our history of working with Europol, so we will not be looking to replicate any other nation's model.

The noble Baroness, Lady Prashar, raised the point that while the report was in preparation a bespoke arrangement was agreed for Denmark, and wanted to know more about it and how relevant it might be for the UK's future. Denmark's situation is different from the position that the UK will be in once we leave the EU. It is a member state that does not participate in the new Europol measure but is seeking a special agreement from within the EU. Obviously, that presents a different set of challenges for the parties concerned. The Government are exploring options for Europol once the UK has left the EU, but it is early to speculate on what they might look like.

The noble Baroness and other noble Lords also asked about the relevance of the 2014 opt-in decision. The justice and home affairs opt-out in 2014 gave us the opportunity to consider the value of certain measures to the UK. While that decision provides a reference point, it is important to be clear that the situation

following the outcome of the EU referendum means that the context is now different. To state the obvious, we will no longer be a member of the EU so, unlike the 2014 decision, the question now is not whether we seek to rejoin certain measures as a member state; instead, we need to consider how we should interact with the EU security measures from outside the EU.

Quite a few noble Lords asked about Prüm in the context of my right honourable friend David Davis in the other place. During debate, he said that we were making new arrangements for data-sharing. The Prime Minister has been clear that one of her 12 negotiating objectives is to continue to work with the EU to preserve European security, fight terrorism and uphold justice across Europe. She is quite clear about that. As part of the negotiations, we will discuss with the EU and its member states how best to continue co-operation on security, law enforcement and criminal justice.

The noble Baroness, Lady Prashar, also asked about what we should read into the fact that the Government's White Paper says that in paragraph 12.2 the EU institutions are listed among the entities that will be part of a "phased process of implementation". The Prime Minister has been clear that she wants us,

"to have reached an agreement about our future partnership by the time the two year Article 50 process has concluded. From that point onwards, we",

expect a,

"phased process of implementation, in which",

Britain and the EU institutions and member states prepare for the new arrangements that exist between us. It will,

"give businesses enough time to plan and prepare for those new arrangements".

It is in no one's interests for there to be a cliff edge for business or, indeed, for the rest of the country, as we change from our existing relationship to a new partnership with the EU, but that does not mean that we will seek some form of unlimited transitional status. That would not be good for Britain and it would not be good for the EU. As the White Paper says,

"the interim arrangements we rely upon are likely to be a matter of negotiation".

The noble Baroness also talked about the precedents for adjudication mechanisms and international arbitration in trade agreements. Again, we need to negotiate the best deal that we can for Europe, including thinking about the tools and mechanisms for co-operation with EU member states.

The noble Baroness also asked about the great repeal Bill and made the point about the Government's intention that, wherever practical and appropriate, the same rules and laws will apply on the day after we leave the EU as they did before. She asked about how I envisaged the process of converting EU law into domestic law would work in the area of criminal justice. All government departments are currently reviewing the issues and opportunities arising from exit, including the requirements for legislation in addition to the great repeal Bill. We will bring forward a White Paper on the Bill, which will set out our approach to give effect to withdrawal on the domestic statute book, and we

will ensure that it is published in sufficient time to allow Parliament to digest its contents in advance of introduction of the Bill in the next Session.

The noble Baroness also asked about Article 50 negotiations. Under Article 50 of the Treaty on European Union, the arrangements relating to the UK's withdrawal are to be made between the UK and the EU in a withdrawal treaty. The content of the treaty will be a matter for negotiation and our efforts will be focused on getting the best deal possible for the UK in negotiations with the EU.

The noble Lord, Lord Soley, made the point about needing to have a special relationship with the EU and needing new mechanisms for co-operation. As the Government have made clear, one of the 12 objectives of the negotiations ahead will be to establish a new relationship which enables the UK and the EU to continue practical co-operation with other member states to tackle cross-border crime and keep our people safe. We are in a unique position; we are a valued partner in the EU and have played a leading role in the development of a number of the EU's security measures that are in place. That is why we will not be following any other nation's model.

The noble Lord also asked how we will operate outside the ECJ's jurisdiction. The Prime Minister has been absolutely clear that after withdrawal—as the noble Baroness, Lady Ludford, articulated—our laws will not be made in Brussels but in Westminster, Edinburgh, Cardiff and Belfast. The judges interpreting those laws will not sit in Luxembourg but in courts in this country. The authority of EU law in Britain will end. Until we exit the EU, we remain a full member of the Union and the CJEU will continue its work.

The noble Lord, Lord Paddick, talked about sovereignty versus security and suggested that we face a choice between the two. That is possibly overly simplistic. The UK is in a unique starting position, and we will need to negotiate the best deal we can with Europe while recognising that this process will not be brief or straightforward.

The noble Lord, Lord O'Neill, asked how we will secure a good enough relationship on Europol—that is, better than other third countries. We absolutely value the role of Europol in helping law enforcement agencies to co-ordinate investigation on cross-border crime but, looking ahead, we need to negotiate the best deal we can with Europe. We are in a unique position, but it is very early to speculate on what that will look like.

The noble and learned Lord, Lord Brown of Eaton-under-Heywood, made the point that the EAW is worth signing up to the ECJ and surrendering sovereignty for. As always, he set out a typically forensic and well-informed analysis on the question of sovereignty and the UK's future relationship with the EU, especially as pertaining to the European arrest warrant. I listened carefully to what he said, but it is too early to speculate at this stage on exactly what our relationship with the ECJ will be after we leave the EU.

The noble Lord, Lord Kirkhope, asked how we create a flexible future relationship with the EU. Are we underestimating the challenge of doing so? However, as the Prime Minister has made clear, one of the

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12 objectives for the negotiations ahead will be to establish a new relationship which enables the UK and the EU to continue practical co-operation with other member states to tackle cross-border crime and keep our people safe.

The noble Lord, Lord Judd, talked about trafficking and drugs and the fact that crime is international. In the modern age, we must cede some sovereignty and work with international institutions. I refer back to my answer to the point made by the noble Lord, Lord Paddick, on sovereignty versus security not being a binary choice. The Prime Minister has been clear that, after withdrawal, our laws will be made in Westminster, Cardiff, Edinburgh and Belfast, and the judges interpreting those laws will sit not in Luxembourg but in courts in this country.

The noble Lord, Lord Davies, identified the value of SIS II, Prüm and the EAW. He asked what is stopping us from remaining part of these and if there is nothing why the Government do not want us to join them. The UK's exit from the EU will put us in a unique position, seeking co-operation on security and law enforcement as a former EU member. We must now work with the EU to agree the way we co-operate on both security and law enforcement after we leave. Although the Government are absolutely committed to future co-operation, I cannot set out a unilateral position ahead of negotiations.

The noble Lord, Lord Hannay, talked of the risk of a cliff edge on the day we leave, with no plan B. We need to agree budgetary contribution and dispute resolution and we need a living solution to avoid a static relationship. The noble Lord identified some of the issues that would need to be considered before and during the negotiations. The UK and the EU have a shared interest in effective co-operation while we remain

a member state and after we leave, and the negotiations will need to consider the full range of options. It will be in all our interests to avoid any cliff edge in negotiating with the EU. We will need to reach agreement on a range of matters such as dispute resolution, and we will seek a relationship that is capable of responding to the changing threats that we face.

I am running out of time and I have three more noble Lords to respond to, which I will do in writing. In fact, it is two noble Lords—the noble Lord, Lord Stevens, and the noble Lord, Lord Rosser, in respect of his final point.

The Government recognise the challenge in negotiating a new relationship. However, we are absolutely committed to finding innovative solutions to enable us to continue to work together to keep our citizens safe and to achieve collective security in Europe and globally. Finally, I again thank all noble Lords who have taken part in the debate, particularly the noble Baroness, Lady Prashar.

10.25 pm

Baroness Prashar: My Lords, I thank the Minister for her response. It is reassuring to hear that the Government are committed to effective co-operation on these issues. The expertise around the House on this issue was very evident in the wonderful contributions to the debate. I very much hope that the Government pay heed, consult and talk to people who have that expertise when they proceed with their negotiations. That said, I thank everybody who has supported this debate.

Motion agreed.

House adjourned at 10.26 pm.