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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

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

House of Lords

Wednesday 29 March 2017

3 pm

Prayers—read by the Lord Bishop of Winchester.

Lord Speaker's Statement

3.06 pm

The Lord Speaker (Lord Fowler): My Lords, I would like to make a short Statement about Parliament's response to the tragic events of last Wednesday.

As would be normal after such events, we are seeking to make sure that any lessons are learned. We will do this through two reviews. First, Mr Speaker and I are commissioning an external independent review of how the perimeter of the Parliamentary Estate, including outbuildings, is secured and protected. We plan to produce a preliminary report by the end of April.

Secondly, at the same time, the Clerks of both Houses are commissioning an externally led review of the lessons learned from the operation inside Parliament of the incident management framework. This is to report by the end of June. All Members will shortly receive an invitation to contribute their views and their experiences of that day to aid these reviews.

Members will be aware that today marks exactly a week on from the shocking events of 22 March. Once again, we send our condolences and sympathies to all those affected. Our thoughts will be, in particular, with the Metropolitan Police as they mourn their colleague, PC Keith Palmer.

Elections and Referendums: Spending Rules

Question

3.07 pm

Asked by ***Lord Rennard***

To ask Her Majesty's Government what assessment they have made of the case for reviewing legislation concerning spending rules in elections and referendums.

Lord Young of Cookham (Con): My Lords, we are considering carefully the conclusions and recommendations of a number of relevant reports on election and referendum spending, including the Electoral Commission's reports on elections held in 2015 and 2016, and on the EU referendum. While investigations by the police and the Electoral Commission are ongoing, it would not be appropriate for the Government to come to any conclusions.

Lord Rennard (LD): My Lords, reports by the investigative journalist Michael Crick and by the *Daily Mirror* and others suggest that it was possible at the last general election for political parties to spend several hundred thousand pounds within individual constituencies in order to change the outcome of the election within those seats and avoid previously enforced legislation which prevented the purchasing of particular seats. The defence against this charge is that the law is ambiguous about what is local and what is national spending. If so, should not the law be changed to prevent abuse of the democratic process in this way?

Lord Young of Cookham: I am grateful to the noble Lord for the way he put that question. He will understand that I cannot respond to the particular instances that have now been referred to the police and prosecution authorities. The legislation—the Political Parties, Elections and Referendums Act—sought to make a distinction between national spending on the one hand and constituency spending on the other. As I said a few moments ago, I think it makes sense to wait until the investigations by the Electoral Commission and the police are completed. Then, of course, we should stand back and look at the legislation to see whether we need greater clarity for all political parties in interpreting how that distinction should be made.

Lord Hayward (Con): I welcome what my noble friend just said on this particular convoluted collection of legislation. The process of conducting elections has moved on dramatically over the last 20 years. In reality, the law in all its guises has been in need of reform throughout that period. May I also make a quick reference to the third Question on the Order Paper, and say that that may include treating?

Lord Young of Cookham: I am grateful to my noble friend. He is right to say that there are a number of reports—the report from Sir Eric Pickles on fraud in local elections, the report from my noble friend Lord Hodgson on third-party campaigning, and the interim report of the Law Commission—which have an impact on the legislation on elections. As I said a few moments ago, it makes sense to stand back, look at all the recommendations and, in consultation with the Electoral Commission and all the political parties, see how best to take this forward in order to restore public confidence in the democratic system.

Lord Kennedy of Southwark (Lab): Recently, during the consideration of the Bill of the noble Lord, Lord Tyler, the Minister told the House about the willingness of the Government to look at areas where agreement can be reached and incremental changes agreed. Can the Minister update us further in this regard, and will he look at involving those Members of the House who can bring valuable experience to those discussions?

Lord Young of Cookham: Again, I am grateful to the noble Lord, who took part in that debate on 10 March on the Private Member's Bill of the noble Lord, Lord Tyler. At the end of that debate, I indicated that the Government were anxious to see if there was a consensus on some of the measures that might be brought forward. I indicated that the Minister for the Constitution, Chris Skidmore, was anxious to meet noble Lords who took part in that debate to see whether we can take incremental reforms forward on a cross-party basis.

Lord Tyler (LD): My Lords, again I thank the Minister for taking this initiative to make sure that these discussions do take place and then fulfil, of course, the promise in the 2015 Conservative manifesto. I remind him that during that debate on 10 March I made specific reference to some of the discrepancies in referendum election expenses, to which he referred just now, because of course those are not subject to the difficulties that might occur with those matters that are possibly going to go before the courts. He will have seen the report from the Electoral Commission yesterday, which has some very good recommendations for looking at some of these issues. Will he confirm that that could be part of the discussion that is due to take place shortly?

Lord Young of Cookham: The noble Lord is quite right to refer to the recent report on the referendum by the Electoral Commission, which recommended that some of the provisions made for the recent referendum should be incorporated into PPERA—the Political Parties, Elections and Referendums Act—and would cover all referendums. The report came out only yesterday. He will understand that consideration is at an early stage. But it is perfectly possible to take those recommendations forward on a separate track.

Lord Tebbit (Con): Will it be possible at some time in one or other of all these inquiries to look at the scale of the spending of public money by the BBC and the gross bias which has been evident to anybody who has listened to its programmes?

Lord Young of Cookham: I take this opportunity to wish my noble friend many happy returns of the day. The issue he raised falls outwith my remit. I think we are debating the BBC later today and it may be that with this advance notice, my noble friend Lord Ashton may be able to provide more details on the specific question that has been raised.

Lord Lexden (Con): Does my noble friend feel that enough is being done in schools to familiarise our young people with the full range of electoral issues, particularly in the light of the Institute for Digital Democracy's recent recommendation that political education might become compulsory?

Lord Young of Cookham: It is important that those of us in public life, whether Members of this House or the other House, take the initiative in visiting schools, colleges and universities in order to encourage people to take an interest in public life and joining our democratic system, and explaining some of the parameters. I know that down the other end Mr Speaker has taken a number of initiatives to bring more schoolchildren in to the Palace of Westminster to expose them to the political process. I think everyone in this and the other House has a role to play in encouraging the next generation to take part in the democratic process.

The Earl of Sandwich (CB): My Lords, while we are on referendums, does the Minister agree that a large number of the public were surprised that a decision of such constitutional importance was taken by a simple majority? Is there no precedent in Parliament for it to be altered through legislation?

Lord Young of Cookham: The noble Earl may remember that during the passage of the relevant legislation amendments were tabled to secure certain thresholds in turnout and majorities, and I think those amendments were defeated after a debate.

Channel 4

Question

3.15 pm

Asked by ***Baroness Bonham-Carter of Yarnbury***

To ask Her Majesty's Government when the Department for Culture, Media and Sport will announce its conclusions on the future status of Channel 4.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, moving seamlessly from the BBC to Channel 4, I congratulate the noble Baroness on the timing of her Question. The Government want Channel 4 to have a strong and secure future. As a result, the Secretary of State has announced this afternoon that Channel 4 will remain in public ownership and that the Government will launch a consultation to look at how the channel can increase its impact in the regions outside London. This consultation will seek the broadest range of views so that we can open a new chapter of success for Channel 4 as a publicly owned public service broadcaster making a greater contribution to the country as a whole.

Baroness Bonham-Carter of Yarnbury (LD): I thank the Minister and the Secretary of State for responding to my Question. I congratulate the Government on rejecting privatisation. As the Minister said, the Government are now launching a consultation on how Channel 4 can increase its regional impact, which we also welcome. In looking at the suggestion that the channel's headquarters should be moved outside London, does the Minister not agree that Channel 4 is a publisher, not a programme maker, that what is important is that production takes place outside London by companies from outside London and that the expense of moving those who commission programmes would potentially take money away from what is most important: namely, the making of programmes in the regions by the regions?

Lord Ashton of Hyde: My Lords, I do not accept that. We are having a consultation to look at exactly these questions. At the moment, Channel 4 is required to commission 35% of new programmes on its main channel from outside London. It spends about twice as much on programmes made in London as on those made in the rest of the UK combined—so there is something well worth consulting on there.

Lord Stevenson of Balmacara (Lab): My Lords, we welcome very much the announcement that Channel 4 is not to be privatised. Can the Minister confirm that this matter is now resolved beyond peradventure?

However, the decision to carry out a further review of Channel 4's regional focus and, I gather, its funding models casts a long shadow. How precisely does this second review—carried out by Ministers, I understand—square with the statutory independence of the Channel 4 board, guaranteed by an Act of Parliament originally passed by a Conservative Government?

Lord Ashton of Hyde: My Lords, the statutory requirements do not mention where, for example, the headquarters is. We want to make sure that Channel 4, as a public service broadcaster with the taxpayer as lender of last resort, is able to contribute around the country. At the moment, we think that there is a case to answer there. Of course, having a consultation means that we will be able to take all views, and no doubt the noble Lord will be able to contribute to it.

Viscount Colville of Culross (CB): My Lords, I declare an interest, having just made two Channel 4 programmes. I welcome the announcement that Channel 4 will not be privatised. Are the Government looking at other options, such as the sale of a minority stake in Channel 4 to a strategic partner?

Lord Ashton of Hyde: No. At the moment the Government are not looking at that. They have made their decision clear; the current ownership will stay the same. There is a prospect of looking at a potential increase in the share of any independent production company that Channel 4 can own. It is currently limited to 25%.

Lord Hamilton of Epsom (Con): My Lords, would not the independence of Channel 4 have been much more guaranteed if it had been privatised?

Lord Ashton of Hyde: My Lords, I do not agree with that.

The Lord Bishop of Southwark: Does the Minister agree that the United Kingdom has benefited enormously from publicly owned broadcasting and that this benefit is too little acknowledged in public discourse?

Lord Ashton of Hyde: My Lords, I agree that public service broadcasting has benefited this country. When we see that Channel 4's remit states that it is required to produce:

"High-quality and distinctive programming … innovation, experimentation and creativity",

and provide,

"alternative views and new perspectives".

in order to:

"Appeal to the tastes and interests of a culturally diverse society",

we can see why that is the case.

Baroness McIntosh of Hudnall (Lab): My Lords, taking the Minister back to the question asked by the noble Baroness, Lady Bonham-Carter, does he not take the point that Channel 4's headquarters is a publishing house—it does the commissioning, not the producing—and that to move that particular unit out of town would be very expensive and have no particular benefit to the region to which it went? The important thing, if there is gain to be made, is to concentrate on the production facilities being spread more evenly around the country and programmes being produced there.

Lord Ashton of Hyde: I absolutely take that point. In terms of expense, of course, having a big headquarters in London has a value all of its own—although that is not the point. That is why we are consulting on exactly these issues.

Baroness Brinton (LD): My Lords, the Minister has already talked about the public sector broadcasting role of Channel 4, with its high-quality and distinctive output. He also mentioned diversity. Last year, in its year of the disabled, in addition to the Paralympics and "The Last Leg", Channel 4 doubled the number of disabled people appearing on screen and ring-fenced more than 50% of its apprenticeships for young disabled people. Can the Minister assure the House that any future steps to move or relocate any of the business will not get in the way of its very important role in highlighting the role of disabled people and in ensuring that they get access to work in the media?

Lord Ashton of Hyde: Of course, I completely agree with the importance of that—and when we have the consultation, it will be one of the things that can be taken into account. Channel 4, along with other public service broadcasters, has a responsibility to look at diversity and take it very seriously.

Lord Holmes of Richmond (Con): My Lords, will my noble friend agree that, in essence, the mission of Channel 4 is pretty clear: optimisation of revenue to deliver on a very clear remit? To this end, anything which seeks to maximise that should be considered; anything which would detract from it should not be considered. Perhaps the best example of the channel doing something which probably no other channel in the United Kingdom could do was the 2012 and 2016 Paralympic Games coverage. In asking this question, I declare my interests as set out in the register.

Lord Ashton of Hyde: My Lords, I do not completely agree that its object is to maximise revenue. As a public service broadcaster that is commercially funded, mainly at the moment by advertising, of course it has to stand on its own two feet, with the Government as the lender of last resort. However, I absolutely endorse my noble friend's words on its excellent job as far as the Paralympic Games are concerned.

Electoral Fraud

Question

3.23 pm

Tabled by ***Lord Greaves***

To ask Her Majesty's Government what steps they are taking to prevent electoral fraud in the local elections on 4 May.

Baroness Pinnock (LD): My Lords, on behalf of my noble friend Lord Greaves, and at his request, I beg leave to ask the Question standing in his name on the Order Paper.

Lord Young of Cookham (Con): My Lords, the Government will continue to provide support to returning officers, who have responsibility for ensuring the integrity of 2017 polls, with a view to preventing electoral fraud. This support has previously included providing funding to the 17 authorities most at risk of fraud allegations to develop best practice that can be applied at subsequent elections. We will work closely with our partners to support the successful conduct of 2017 polls, to ensure a secure democracy.

Baroness Pinnock: I thank the Minister for his response. Would he agree that postal-vote harvesting and fraud are the most serious threats to the integrity of the ballot? What steps are the Government intending to take to ensure that postal votes are completed by the individual in whose name they are acquired and not organised and collected by families and political activists?

Lord Young of Cookham: I am grateful to the noble Baroness for her question. On her final point, there is already guidance stating that postal votes should not be harvested by campaigners or activists. We are considering whether we should introduce a ban on handling of postal votes by specified people or groups, which would tackle the inappropriate conduct that she referred to.

The Pickles review considered postal voting and came up with a number of recommendations, one of which is that the offence prescribed for when people vote in person—namely, that it should be in secret and there should be no undue influence—should also be applied to people who vote by post, which it does not at the moment. We are considering how that might best be done. There were other recommendations about postal voting, one of which was that it should not last for ever: it should be renewed every three years. We understand the concern and a number of measures are in train to address it.

Lord Kennedy of Southwark (Lab): My Lords, what discussions have taken place between the parties, the Electoral Commission and the police in the 18 areas identified by the review carried out by Sir Eric Pickles with regard to the measures that should be in place for the local elections where those specified areas have local elections this May, prior to the ID pilot scheme coming into force in May 2018?

Lord Young of Cookham: I am grateful to the noble Lord for that question. The Electoral Commission is concentrating resources on those local authorities where there is seen to be an undue risk of fraud. It is in touch with the single point of contact, which is a police contact in that area, to ensure that it has all the necessary information and, where appropriate, it holds additional training courses. Resources are being applied to the 18 areas identified as at risk by the Electoral Commission to minimise the risk of fraud.

Baroness Chisholm of Owlpen (Con): My Lords, when I was standing where my noble friend is now standing—he is doing such a fantastic job—I remember talking about pilot schemes that we planned, which I feel would help us decide the way to go. Can he reassure me that they will still take place?

Lord Young of Cookham: My noble friend is much missed at the Dispatch Box when questions are asked about electoral matters. We plan to go ahead in 2018 with a number of pilots to test voter identification. This is a recommendation made several times by the Electoral Commission: that when you vote, there should be some evidence that you are you say you are. We plan to pilot that next year and hope that some of the local authorities which have been identified as being at risk will apply to be part of that pilot.

Baroness Lane-Fox of Soho (CB): My Lords, is the Minister aware of the work that Estonia has done with the two-step verification process, which it has used with electronic and online voting, dramatically reducing fraud? Someone has to show that they have voted but can also check that the vote is their vote—it is an unusual system. With a population of just 3 million, it seems to me that this would be an effective pilot system, similar to use in a local election?

Lord Young of Cookham: I am grateful to the noble Baroness. I am not familiar with the electoral system in Estonia. When we pilot a number of projects next year, we will be looking at various means by which the voter can identify themselves at the polling station. This might be a bus pass, a bank card or an NUS card, but in order not to exclude those who do not have those forms of identification, we are also looking at non-photographic identification. I will see that the helpful information that the noble Baroness has given us about proceedings in Estonia is fed into the options.

Lord Blunkett (Lab): I wonder whether the excellent Minister will reflect on a practice which involves freepost by a political party, encouraging those who have signed a postal vote to send it back to the party's local headquarters. Does he feel that that is totally inappropriate, as I believe it was in the 2015 general election, practised on behalf of the former Deputy Prime Minister?

Lord Young of Cookham: Without getting involved in Sheffield politics, it is certainly inappropriate for postal votes to be handled in that way. As I said in response to an earlier question, that practice is already discouraged in guidance from the Electoral Commission. There have been recommendations that it should be banned for precisely the reason that the noble Lord explained, and the Government are deciding how best to take that forward when legislative opportunities present themselves.

Lord Wallace of Saltaire (LD): My Lords, could the Government ensure that the police take sufficiently seriously examples of electoral malpractice during elections, both local and the 2015 general election? In Bradford, there were a number of allegations during

the last campaign across the parties about gatherings of young men outside polling stations and about party workers going into polling stations. The police did not follow these up as fully as perhaps they should have done. Can the Government make sure that the police are aware, for local as well as general elections, that these are serious offences?

Lord Young of Cookham: The noble Lord is quite right. This was one of the problems identified by Sir Eric Pickles in his review; he recommended that there should be a sort of cordon sanitaire around polling stations to prevent the intimidation to which the noble Lord refers. My understanding is that the Electoral Commission has taken that recommendation forward in guidance to stop intimidation in polling stations for the reason that the noble Lord has given.

Lord Campbell-Savours (Lab): My Lords—

Lord Pearson of Rannoch (UKIP): My Lords—

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, it is the turn of the noble Lord, Lord Pearson.

Lord Pearson of Rannoch: My Lords, does the Minister agree that our first past the post system in local and national elections ensures that their results are democratically fraudulent?

Lord Young of Cookham: We do not have first past the post in many local elections. If the noble Lord is familiar with the election of the Mayor of London, for example, he will recognise that there are alternative systems—and likewise for some of the other elections. As for moving away from first past the post, it has been discussed several times, certainly down the other end. Indeed, I think that we had a referendum on the matter, and the country decided that it wanted to remain with first past the post.

Divorce Legislation

Question

3.31 pm

Tabled by ***Lord Marks of Henley-on-Thames***

To ask Her Majesty's Government what plans they have to review divorce legislation.

Baroness Burt of Solihull (LD): My Lords, on behalf of my noble friend Lord Marks of Henley-on-Thames, and at his request, I beg leave to ask the Question standing in his name on the Order Paper.

Baroness Buscombe (Con): My Lords, the Government are considering what further reform may be needed to the family justice system so that it better meets the needs of separating couples and families and can achieve the best possible outcomes for them. Options for reviewing divorce law are part of that broader consideration. We will publish a Green Paper with our proposals on family justice in due course.

Baroness Burt of Solihull: I am very grateful to the Minister for that Answer. She will have seen reports over the weekend of a woman being denied a divorce despite there being no prospect of or desire for reconciliation. The judge had no choice in this matter because the law does not allow for no-fault divorce. Is it not high time to change this outdated law, which can trap men and women in unhappy marriages against their will?

Baroness Buscombe: My Lords, I do not wish to discuss individual cases. Suffice it to say that the case of Owens, to which I think the noble Baroness refers, is just one of 2% of divorces in which one spouse opposes the divorce petition of the other. It is a high-profile case in the Court of Appeal and not representative of the 98% of divorces decided in the family court every day without the need for any hearing involving the parties. Indeed, in the vast majority of divorce petitions, the evidence put forward by the petitioner will be accepted by the court as sufficient to demonstrate the irretrievable breakdown of the marriage. The debate about removing fault from divorce is long standing, and the Government acknowledge the calls for reform and will consider them alongside other potential family justice reforms.

Lord Beecham (Lab): My Lords, in House judgment in the Court of Appeal case, Sir James Munby, the President of the Family Division, said that,

"the law which the judges have to apply and the procedures which they have to follow are based on hypocrisy and lack of intellectual honesty".

That is a damning criticism of the present system. Would the Minister confirm that it really is time to recognise that five years of separation is too long a period to be made a minimum before a no-fault decree can be pronounced? Will the Government consider a shorter period—perhaps two years, although there may obviously be different choices—and, when there are children under age, the possibility of a slightly longer period and a requirement for mediation?

Baroness Buscombe: My Lords, it is fair to say that the timing that the noble Lord has referred to is just part of a review of the overall justice system that has been undertaken by my colleague Sir Oliver Heald QC MP in another place. Any proposal for legislative change to remove fault from divorce would have to be considered as part of this wider review. We feel strongly that it would not make sense to take forward one aspect of law reform in isolation without consideration of its fit within the family justice system. Divorce can be a life-changing event for many people and has consequences for people's financial arrangements and for any children that they have, as the noble Lord referred to. It is important that the Government consider any proposals in the context of how the family justice system supports people to reduce conflict, resolve their disputes and reach agreement.

Lord Harries of Pentregarth (CB): My Lords, when the noble and learned Lord, Lord Mackay of Clashfern, was Lord Chancellor, he brought forward a divorce law that had no-fault as its basis and would certainly

[Lord Harries of Pentregarth]
have met the needs of the present couple. For some reason, a subsequent Government did not enact that. Would the Government look again at the legislation they previously brought forward, which was supported by both Houses of Parliament?

Baroness Buscombe: I thank the noble and right reverend Lord for his reference to the proposal that was brought forward by my noble and learned friend Lord Mackay of Clashfern. As he said, that change in the law did not come to fruition. The Government are considering potential reforms to divorce law and at this stage have not reached any conclusions. We acknowledge, however, that some people will not wish to divorce without being able to cite a fault, particularly if their faith requires them to do so. The Government are committed to improving the family justice system and to making the courts more efficient. Current divorce law has been in operation for over 40 years and past attempts at reform have not been without difficulty. Indeed, in the recent case, the case of Dodds v Dodds was cited—I think it was one of the first cases I had to consider as a law student—which dated from 1906 and talked about the law being full of anomalies, injustices, inequalities and some absurdities. The truth is, we need to consider all these aspects with care.

Lord Kirkhope of Harrogate (Con): My Lords, I refer to my entry in the register as a lawyer. I was a little surprised today and looked twice at this topical Question; I thought it might even have been answered by my noble friend Lord Bridges of Headley but, luckily, it is on a another theme—an important theme in terms of divorce. I have often said that, even with the best intentions, divorces very rarely end in an amicable manner. Can the Minister confirm that, in any reforms and any review that takes place, there will be a full understanding of the complexity of relationships; an intention to make sure that as much flexibility as possible remains in our court system in settling matters between parties in divorce cases; and, in particular, the interests of children will always be looked to as a priority?

Baroness Buscombe: I thank my noble friend for his question. He is absolutely right: children should be at the heart of any reforms. Clarity and predictability must be balanced with the need for flexibility—with the possibility that flexibility in these circumstances, when reconsidering the whole issue of the family justice system, can sometimes bring fairness that certainty precludes.

Brexit: Triggering Article 50

Statement

3.38 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Prime Minister in another place. The Statement is as follows:

"Mr Speaker, today the Government act on the democratic will of the British people and act, too, on the clear and convincing position of this House. A few minutes ago in Brussels, the United Kingdom's Permanent Representative to the EU handed a letter to the President of the European Council on my behalf, confirming the Government's decision to invoke Article 50 of the Treaty on European Union.

The Article 50 process is now under way and, in accordance with the wishes of the British people, the United Kingdom is leaving the European Union. This is an historic moment from which there can be no turning back. Britain is leaving the European Union. We are going to make our own decisions and our own laws. We are going to take control of the things that matter most to us. And we are going to take this opportunity to build a stronger, fairer Britain—a country that our children and grandchildren are proud to call home. That is our ambition and our opportunity. That is what this Government are determined to do.

At moments like these—great turning points in our national story—the choices we make define the character of our nation. We can choose to say the task ahead is too great. We can choose to turn our face to the past and believe that it cannot be done, or we can look forward with optimism and hope and to believe in the enduring power of the British spirit. I choose to believe in Britain and that our best days lie ahead, and I do so because I am confident that we have the vision and the plan to use this moment to build a better Britain, for leaving the European Union presents us with a unique opportunity. It is this generation's chance to shape a brighter future for our country, a chance to step back and ask ourselves what kind of country we want to be. My answer is clear: I want this United Kingdom to emerge from this period of change stronger, fairer, more united and more outward looking than ever before.

I want us to be a secure, prosperous, tolerant country, a magnet for international talent and a home to the pioneers and innovators who will shape the world ahead. I want us to be a truly global Britain, the best friend and neighbour to our European partners but a country that reaches beyond the borders of Europe too, a country that goes out into the world to build relationships with old friends and new allies alike. That is why I have set out a clear and ambitious plan for the negotiations ahead. It is a plan for a new deep and special relationship between Britain and the European Union: a partnership of values, a partnership of interests, a partnership based on co-operation in areas such as security and economic affairs and a partnership that works in the best interests of the United Kingdom, the European Union and the wider world. But perhaps now more than ever, the world needs the liberal, democratic values of Europe, values that this United Kingdom shares. And that is why, while we are leaving the institutions of the European Union, we are not leaving Europe. We will remain a close friend and ally. We will be a committed partner. We will play our part to ensure that Europe is able to project its values and defend itself from security threats, and we will do all that we can to help the European Union prosper and succeed.

So in the letter that has been delivered to President Tusk today, copies of which I have placed in the Library of the House, I have been clear that the deep and special partnership we seek is in the best interests of the United Kingdom and of the European Union too. I have been clear that we will work constructively and in a spirit of sincere co-operation to bring this partnership into being, and I have been clear that we should seek to agree the terms of this future partnership alongside those of our withdrawal within the next two years. I am ambitious for Britain and the objectives I have set out for these negotiations remain. We will deliver certainty wherever possible so that business, the public sector and everyone else has as much clarity as we can provide as we move through the process. It is why, tomorrow, we will publish a White Paper confirming our plans to convert the acquis into British law, so that everyone will know where they stand, and it is why I have been clear that the Government will put the final deal that is agreed between the UK and the EU to a vote in both Houses of Parliament before it comes into force.

We will take control of our own laws and bring an end to the jurisdiction of the European Court of Justice in Britain. Leaving the European Union will mean that our laws will be made in Westminster, Edinburgh, Cardiff and Belfast, and those laws will be interpreted by judges not in Luxembourg but in courts across this country. We will strengthen the union of the four nations that comprise our United Kingdom. We will negotiate as one United Kingdom, taking account of the specific interests of every nation and region of the UK.

When it comes to the powers that we will take back from Europe, we will consult fully on which powers should reside in Westminster and which should be passed on to the devolved Administrations. But no decisions currently taken by the devolved Administrations will be removed from them. It is the expectation of the Government that the devolved Administrations in Scotland, Wales and Northern Ireland will see a significant increase in their decision-making power as a result of this process.

We want to maintain the common travel area with the Republic of Ireland. There should be no return to the borders of the past. We will control immigration so that we continue to attract the brightest and best to work or study in Britain, but manage the process properly so that our immigration system serves the national interest. We will seek to guarantee the rights of EU citizens who are already living in Britain, and the rights of British nationals in other member states as early as we can. This is set out very clearly in the letter as a priority for the talks ahead.

We will ensure that workers' rights are fully protected and maintained. Indeed, under my leadership, not only will the Government protect the rights of workers but we will build on them. We will pursue a bold and ambitious free trade agreement with the European Union that allows for the freest possible trade in goods and services between Britain and the EU's member states; that gives British companies the maximum freedom to trade with and operate within European markets; and that lets European business do the same in Britain. European leaders have said many times that we cannot cherry pick and remain members of the single market without accepting the four freedoms that are indivisible. We respect that position, and as accepting those freedoms is incompatible with the democratically expressed will of the British people, we will no longer be members of the single market.

We are going to make sure that we can strike trade agreements with countries from outside the European Union too. Because important though our trade with the EU is and will remain, it is clear that the UK needs to increase significantly its trade with the fastest-growing export markets in the world. We hope to continue to collaborate with our European partners in the areas of science, education, research and technology, so that the UK is one of the best places for science and innovation. We seek continued co-operation with our European partners in important areas such as crime, terrorism and foreign affairs. It is our aim to deliver a smooth and orderly Brexit, reaching an agreement about our future partnership by the time the two-year Article 50 process has concluded, then moving into a phased process of implementation in which Britain, the EU institutions and member states prepare for the new arrangements that will exist between us.

We understand that there will be consequences for the UK of leaving the EU. We know that we will lose influence over the rules that affect the European economy. We know that UK companies that trade with the EU will have to align with rules agreed by institutions of which we are no longer a part, just as we do in other overseas markets. We accept that. However, we approach these talks constructively, respectfully, and in a spirit of sincere co-operation. For it is in the interests of both the United Kingdom and the European Union that we should use this process to deliver our objectives in a fair and orderly manner. It is in the interests of both the United Kingdom and the European Union that there should be as little disruption as possible. And it is in the interests of both the United Kingdom and the European Union that Europe should remain strong, prosperous and capable of projecting its values in the world.

At a time when the growth of global trade is slowing and there are signs that protectionist instincts are on the rise in many parts of the world, Europe has a responsibility to stand up for free trade in the interests of all our citizens. With Europe's security more fragile today than at any time since the end of the Cold War, weakening our co-operation and failing to stand up for European values would be a costly mistake. Our vote to leave the EU was no rejection of the values that we share as fellow Europeans. As a European country, we will continue to play our part in promoting and supporting these values, during the negotiations and once they are done.

We will continue to be reliable partners, willing allies and close friends. We want to continue to buy goods and services from members of the EU, and sell them ours. We want to trade with them as freely as possible, and work with one another to make sure we are all safer, more secure and more prosperous through continued friendship. Indeed, in an increasingly unstable world, we must continue to forge the closest possible

[Baroness Evans of Bowes Park]
security co-operation to keep our people safe. We face the same global threats from terrorism and extremism—that message was only reinforced by the abhorrent attack on Westminster Bridge and this place last week—so there should be no reason why we should not agree a new deep and special partnership between the UK and the EU that works for all of us.

I know that this is a day of celebration for some and disappointment for others. The referendum last June was divisive at times. Not everyone shared the same point of view or voted in the same way. The arguments on both sides were passionate. But when I sit around the negotiating table in the months ahead, I will represent every person in the whole United Kingdom: young and old, rich and poor, city, town, country and all the villages and hamlets in between—and, yes, those EU nationals who have made this country their home. It is my fierce determination to get the right deal for every single person in this country.

For, as we face the opportunities ahead of us on this momentous journey, our shared values, interests and ambitions can, and must, bring us together. We all want to see a Britain that is stronger than it is today. We all want a country that is fairer so that everyone has the chance to succeed. We all want a nation that is safe and secure for our children and grandchildren. We all want to live in a truly global Britain that gets out and builds relationships with old friends and new allies around the world. These are the ambitions of this Government's plan for Britain—ambitions that unite us so that we are no longer defined by the vote we cast but by our determination to make a success of the result.

We are one great union of people and nations with a proud history and a bright future, and now that the decision to leave has been made and the process is under way, it is time to come together. For this great national moment requires a great national effort—an effort to shape a brighter future for Britain. So let us do so together. Let us come together and work together, and let us together choose to believe in Britain with optimism and hope. For if we do, we can together make the most of the opportunities ahead. We can together make a success of this moment, and we can together build a stronger, fairer, better Britain—a Britain our children and grandchildren are proud to call home. I commend this Statement to the House".

3.52 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for repeating the Statement. It is now over nine months since the result of the referendum was announced and the Prime Minister has sent the letter that starts the process of our withdrawal from the European Union after a relationship of over 40 years. Just like any other divorce, there will be some who rejoice and look forward to new opportunities, but others will despair over the shared past and lost love. A few will fondly recall the marriage, divorces and remarriage of Richard Burton and Elizabeth Taylor with some hope, but, through it all, the only people to get rich were those trying to unravel those 40-plus years of relative harmony—the lawyers.

Through it all there will be one common emotion—uncertainty about the future, because the Prime Minister herself has to concede that no one can yet know what the final deal or arrangements will look like. So we now have to focus on what comes next, and what comes next is complex. While some fear for the worst, we will all work for the best. As I have said previously, the debates and negotiations cannot be left to those who have no doubt. We have to engage the talent, experience and wisdom of our whole nation together in the national interest.

Today's letter specifies our negotiating position with the European Union. The Labour Party has set out six tests by which the Government will be judged on the final deal. They include migration, national security and crime, employment and social rights, and the need to support all regions and nations in the UK as we develop our future relationship with the remaining 27 countries in the EU. The sixth test is the Government's own, as set out by David Davis to the House of Commons on 24 January: that on trade, the Government's aim is to deliver,

"a comprehensive free trade agreement and a comprehensive customs agreement that will deliver the exact same benefits as we have".—[*Official Report*, Commons, 24/1/17; col. 169.]

That is a pretty high bar, but it is a bar set by the Government and one that the Government will be held accountable to.

Today, I set one further test for the Government. It is not controversial and I hope that it will be willingly accepted by the Government and the noble Baroness the Leader of the House. The seventh test is the one that will set the tone for the debate, the negotiations and the mood of the nation in accepting and understanding the outcome. This test is the test of complete honesty. As the Prime Minister and her team enter into the negotiations, there will be good days and there will be difficult days; there will be days when everything seems possible and days when nothing goes right. The Prime Minister has, on many occasions, been clear about her confidence that she can and will negotiate a good deal in the interests of the UK. But there are others who are confident that any deal, or even no deal, is better than where we are now. We totally reject that. This process must not be so ideologically driven that the Government accept anything and claim it is a good deal. That is where honesty comes in. If the Prime Minister is disappointed or dissatisfied with the negotiations or the outcome of agreements, she must in the national interest be prepared to say so. If there is to be a truly meaningful vote at the end of this process, it has to be undertaken with the certainty that Parliament has the information needed to make an informed decision in the best interests of this country.

I want to raise some specifics on the Statement and the letter. On the devolved Administrations, despite the Prime Minister's warm words that she intends to strengthen the four nations of the UK, I have to say that that is not how it feels at the moment. I have three questions on the significant increase in the decision-making powers of the devolved Administrations. What discussions have there been so far? Can the noble Baroness give an assurance on the ongoing consultation, particularly

given the concerns already raised by the First Minister of Wales? Will any of these powers require primary legislation?

I am pleased that in her letter to President Tusk the Prime Minister specifically mentions Northern Ireland and the Northern Ireland border. It is right that she sets this as a priority, and I believe that the issue, if not yet the solution, is also understood by the remaining 27 European countries. However, the Prime Minister refers in the letter to it being the only land border with the UK. While that is technically correct, I remind her that we have a land border between the British Overseas Territory of Gibraltar and Spain. I appreciate that a trigger letter could never include all of our negotiating issues, but I was extremely disappointed at the omission of any reference to the people of Gibraltar and their concerns in either the Statement or the letter. The Prime Minister says that she will take into account the specific interests of every nation and region. Can the noble Baroness the Leader give this House an assurance that we will not abandon Gibraltar and that its interests will also be represented?

The commitment to seek an early agreement to guarantee the rights of EU nationals in the UK and our nationals in the remaining 27 countries is welcome. The noble Baroness will be aware of the disappointment of your Lordships' House that our amendment to include a guarantee in legislation was rejected by the Government and the other place. The Prime Minister confirms in her letter that making this part of the negotiations is complex. I hope, therefore, that given the support of your Lordships' House, the Government will accept the Motion in the name of my noble friend Lady Hayter, to be debated next week, that the Government should report back to Parliament before the end of this Session on progress.

I also welcome the assurance in the Statement of what the Government call the "phased process" of implementation of the new arrangements and agreements. I know that the Government do not like talking about transition and call it instead an implementation phase. I am equally happy with either. What is important here is that change is practical, workable and pragmatic and not ideologically driven towards the cliff-edge scenario. I welcome that and thank the noble Baroness and the Prime Minister for their assurances on that point.

On Euratom, I understand from the letter that the Government consider that we must come out as part of our EU exit, but given the importance of this issue, I would have liked to have seen a commitment to seeking early agreement for a new practical partnership.

I want to register concerns about the misleading language where the Prime Minister appears to connect trade and national security in her letter to President Tusk. On page 3 of the letter, she makes reference to,

"a deep and special partnership between the UK and the EU, taking in both economic and security cooperation",

and I wholeheartedly endorse that. She then rightly points out that:

"If, however, we leave the European Union without an agreement the default position is that we would have to trade on World Trade Organisation terms".

So far, that is clear. But the very next sentence states:

"In security terms a failure to reach agreement would mean our cooperation in the fight against crime and terrorism would be weakened".

Because it is unclear which agreement she is referring to, the letter to President Tusk appears to state that if we cannot reach an agreement on trade, this will have an impact on security agreements. I am grateful for the reassurance and clarity from Downing Street that that was not the intention, but given the complexity and sensitivities of the negotiations that we are about to start, it is essential that there is no misunderstanding at all or lack of clarity. I suggest that, for the avoidance of doubt, in future issues such as trade and security are never linked. They are both essential in their own right and a responsible agreement on one is not dependent on the other.

Tomorrow, we wait with some anticipation the White Paper on repealing the 1972 legislation and enshrining EU legislation, in which we played our part, into UK law. However, noble Lords will have seen the comments from some on the Government Benches about this being an opportunity for deregulation or cutting so-called red tape—in other words, doing away with protections and rights for UK citizens. I seek an assurance from the noble Baroness that this is not the part of the so-called great repeal Bill and that the Government will resist any attempts to bring in such changes by the back door, thus seeking to avoid proper parliamentary scrutiny. In that she will have our support.

Finally, I welcome both the tone of the Prime Minister's Statement and the emphasis that she has placed throughout on partnership. Only the most ideologically driven have ever suggested that this process will be easy or problem free. It will not; it will be difficult and complex. The tone of the Prime Minister's remarks about our place in Europe may help to ease that path, but it will be important that the Government commit to being open and transparent with Parliament and the country. As we move forward, transparency, openness, engagement and honesty will be expected and will be essential.

Next week, the other Motion that we will debate, in my name, seeks to establish a Joint Committee of both Houses to work together to establish the best way to ensure that Parliament has the best information possible and the best processes to have a meaningful vote on the final agreement. I urge the Government to support this because, as the Prime Minister makes clear, we must all work together in the national interest.

4.03 pm

Lord Newby (LD): My Lords, today is for me and my colleagues an extremely sad day. It marks the point at which the UK seeks to distance itself from its nearest neighbours at a time when, in every area of public policy, logic suggests that we should be working more closely together rather than less.

But sadness is a passive emotion, and it is not the only thing that we feel. We feel a sense of anger that the Government are pursuing a brutal Brexit, which will rip us out of the single market and many other European networks from which we benefit so much. We believe that the country will be poorer, less secure and less influential as a result, and we feel that at every

[Lord Newby]
point, whether it be the calling of the referendum itself or the choices made on how to put its result into effect, the principal motivation in the minds of Ministers has been not what is best for the long-term interests of the country but what is best for the short-term interests of the Conservative Party.

We do not believe that the Government have the faintest clue about how they are going to achieve the goals that they set out in their White Paper last month or the Prime Minister's Statement today, and we have no confidence in their willingness to give Parliament a proper say either as the negotiations proceed or at their conclusion. We therefore believe that, at the end of the process, only the people should have the final say on whether any deal negotiated by the Government —or no deal—is preferable to ongoing EU membership. We will strain every sinew to ensure that outcome.

In her Statement today, the Prime Minister makes a number of rather extraordinary claims. She says that she is going to build on existing workers' rights rather than diminish them. Can the Leader of the House give just one example, or even a clue, of what that might mean and how it might be achieved? Can she also take this opportunity to repudiate the proposal by a number of leading Brexiters in recent days that the working time directive be either watered down or repealed altogether?

The Prime Minister says that the world needs the liberal democratic values of Europe more than ever. Far be it from me to claim any knowledge of liberal democratic values, but can the Leader explain how leaving the EU can do anything other than reduce Europe's ability to protect those values on the international stage?

The Prime Minister says that she will strengthen the union of the nations which comprise the United Kingdom. Given that to date the effect of the Brexit vote is to threaten the union at every point, what form do the Government expect this strengthening to take?

She says that membership of the single market will be jettisoned because it would be incompatible with the expressed will of the British people. Given that this proposition was not on the ballot paper, that it is the opposite of what was said in the Conservative Party manifesto, that many leading Brexit supporters left open or actually supported the continuation of our single market membership, and that all subsequent polling shows overwhelming support for our continued membership, on what basis is she making that assertion?

She says that Europe has a responsibility to stand up for free trade. Does she not think that the EU will find that a bit rich, coming from this country at the point when we are leaving the single market and customs union?

She says that she wants to be a committed partner of the EU, but when we are walking away from the EU because of the belief that membership of it is damaging to the country's interests, what can commitment mean other than a shrunken and grudging relationship?

Moreover, does the Leader of the House accept that when the Prime Minister says that when she sits round the negotiating table, she will represent every person in the UK, she is mistaken? She has chosen to promote an extreme version of Brexit and one which is completely at odds with her own views of less than a year ago. In doing so, she has chosen not to speak for the many millions who voted to remain in the EU and the single market, and she certainly does not represent them or me or my colleagues on these Benches.

The Prime Minister claims that Brexit will make us stronger, fairer and better, but it will not. The Government's approach will make us poorer, less generous and diminished as a nation. It is perfectly legitimate for the country to go down such a route, but it did not do so on 23 June last year, and the people should have the final say on whether this is the fate they really want.

Baroness Evans of Bowes Park: I thank the noble Baroness and the noble Lord for their comments. On the noble Baroness's first point, although the letter makes it clear that if we leave the EU without an agreement the default position would be that we have to trade on WTO terms, it also makes it clear that that is not an outcome that either side should seek. We want to work very hard to avoid that, and that is exactly what we will be doing.

I also reassure the noble Baroness that we will be working closely with all the devolved Administrations to deliver a Brexit that works for all parts of the UK. Part of that will mean working very carefully to ensure that as powers are repatriated from Brussels to the UK, the right powers are returned to Westminster and the right powers passed to the devolved Administrations. We will continue to work closely with our devolved colleagues.

On the noble Baroness's points on Gibraltar, I understand that the reason why Gibraltar was not mentioned in the letter is that it is not part of the UK for the purposes of EU law. However, we are very clear that Gibraltar will of course be covered in our exit negotiations and will be fully involved. We have set up a new joint ministerial committee with the Gibraltar Government to ensure their full involvement. In fact, my noble friend Lady Goldie met the Chief Minister and had a very constructive, positive discussion. The Gibraltarians are very positive about their engagement with the UK Government so far. We will continue to ensure that we work closely with them.

The noble Baroness and the noble Lord also mentioned the status of EU nationals, which we have discussed at length in this House. I repeat: securing an agreement to guarantee the status of EU nationals here and UK nationals in the EU is one of our top priorities. Indeed, it is set out explicitly in those terms in the letter. As Michel Barnier has said, this is also a priority for the Commission, so we will be doing all we can to ensure that we can provide the clarity that noble Lords have been asking for.

On security, I can absolutely confirm and reassure noble Lords that we are committed to ensuring that we continue working closely with our European partners on security, defence and foreign policy, as I said. We want a partnership where we can continue contributing to the security of Europe using our range of defence and security capabilities as well as our global standing, networks and influence, input into policy developments and information sharing. That remains of key importance to us.

The noble Lord and the noble Baroness referred to parliamentary scrutiny and involvement. Once again I reiterate that we have said there will be a Motion on the final agreement to be approved by both Houses of Parliament before it is concluded. We expect and intend that this will happen before the European Parliament debates and votes on the final agreement. We intend that Parliament's vote will cover not only the withdrawal arrangements but the future relationship with the EU.

The noble Lord talked about leaving the single market. I will read from the letter:

"Since I became Prime Minister of the United Kingdom I have listened carefully to you, to my fellow EU Heads of Government and the Presidents of the European Commission and Parliament. That is why the United Kingdom does not seek membership of the single market: we understand and respect your position that the four freedoms of the single market are indivisible and there can be no 'cherry picking'".

We have also been very clear that we will protect workers' rights. For instance, I point to the introduction of the national living wage, which has ensured an increase in income for some of our poorest paid.

4.13 pm

Baroness Quin (Lab): My Lords, the point has often been made in this House that people did not vote in the referendum to make themselves poorer. I believe that they also did not vote to break up the United Kingdom, threaten the peace process in Northern Ireland, or worsen the relations between Northern Ireland and the Republic of Ireland. If at the end of these negotiations it seems that there will be a choice between staying in the EU or breaking up the UK, will the Government think again and allow the people to think again?

Baroness Evans of Bowes Park: As the letter and the Statement make clear, from the start and throughout the discussions we will negotiate as one United Kingdom. Importantly, it is our expectation that the outcome of this process will significantly increase the decision-making power of each devolved Administration. We believe we will get the best deal for all parts of the UK and all parts of the UK will be involved in the negotiations.

The Lord Bishop of Winchester: My Lords, from these Benches we welcome the Prime Minister's Statement, especially the intention of both sides to work together as a priority to solve the complex issues of EU and EEA nationals, not least the many students and academics in our universities. Indications from Michel Barnier earlier this week implied that the EU will negotiate in full transparency, publishing all documents relating to the negotiations. Will Her Majesty's Government, while not wanting to give a running commentary, make the same commitment, enabling Parliament and the public to follow and scrutinise negotiation materials, given that such transparency will contribute to maintaining the strength of our union in the United Kingdom and future partnerships with the EU?

Baroness Evans of Bowes Park: We have been clear that we welcome and anticipate intensive parliamentary scrutiny, and we will be as transparent as we can, but we will not give away our negotiating hand or damage our negotiating stance.

Lord Boswell of Aynho (Non-Afl): My Lords, as chairman of your Lordships' European Union Committee, may I very much welcome the tone of the Government's Statement and of the letter to President Tusk, in particular the reference to the very first principle of negotiation: that we should engage with one another constructively and respectfully in a spirit of sincere co-operation? In the same vein, and having regard to the fact that the triggering of Article 50 is unprecedented within the membership of the European Union, will Her Majesty's Government undertake to sit down with the scrutiny committees in both Houses and with other representative parliamentarians and representative bodies to try to hammer out some middle-way approach to scrutiny which avoids, on the one hand, micromanagement or interference in the negotiating process, which I agree is inappropriate, but on the other hand does not simply leave us to comment semi-helplessly long after events have been set more or less in stone?

Baroness Evans of Bowes Park: I thank the noble Lord and once again pay tribute to the work of the Select Committees of this House, which have done an invaluable job already in investigating a number of very important issues and providing some very useful information. As the noble Lord will know, tomorrow we will produce the White Paper on the great repeal Bill, which will be the beginning of the discussion on the scrutiny of legislation going forward. I reiterate that key changes to policy will be brought forward in primary legislation, so this House will have the opportunity to be involved, but I know that my noble friend Lord Bridges and the Chief Whip have already been in touch with a number of committee chairs and will continue to have that discussion, as we will through the usual channels. I hope this House will accept that we have tried to be open; I know it has not always satisfied noble Lords, but we will do our best.

Lord Waldegrave of North Hill (Con): My Lords, may I join the noble Lord, Lord Boswell, in supporting the tone of the Prime Minister's Statement? I draw my noble friend's attention to the admirable article by my noble friend Lord Finkelstein in the *Times* today, which describes a successful negotiation as one in which both sides regard themselves as the winners. Does my noble friend agree that, in order to achieve such a negotiation, sometimes it will be necessary to ignore the advice of those who think that any element of disagreement means the end of the world, and of those who believe that any element of compromise or agreement will represent betrayal?

Baroness Evans of Bowes Park: My noble friend is right: these are going to be extremely complex negotiations, but we will approach them with the full intention of securing a deal that delivers the best possible outcome for the UK. Of course, as we enter negotiations, we will hear people saying—we have heard it already—"That is not workable; it is not achievable". But we are confident that we can secure a good deal, and we will go in optimistically. As noble Lords have previously said, the European Council has stressed that it wishes to work constructively for us, so I think we are starting off on the right foot.

Lord Davies of Stamford (Lab): My Lords—

Lord Liddle (Lab): My Lords—

Baroness Ludford (LD): My Lords—

Lord Taylor of Holbeach (Con): I am sorry, my Lords, but we do have a custom of going round the House, and it is the turn of the Liberal Democrats.

Baroness Ludford: My Lords, the Statement repeats the mantra that we are going to "take back control", but the Brexit Secretary, Mr Davis, expects the Government to use this control to continue with a large volume of EU migration. The Statement admits that the consequence of breaking the manifesto pledge to stay in the single market will mean UK companies having to abide by rules over which we have no influence. If we lose the right to the single market, including free movement for British citizens, at the price of less control and a series of betrayals, how is that a gain?

Baroness Evans of Bowes Park: I am afraid that I completely disagree with the noble Baroness, who I know approaches this subject with a pessimistic view. We have an optimistic view and I believe that we will prevail.

Lord Liddle: I welcome the tone of the Prime Minister's letter to the President of the European Council. However, there are still key confusions on key issues in the Government's position. David Davis, Secretary of State for Exiting the European Union, told us that this deep trade agreement or partnership would achieve exactly the same benefits as the single market. This morning, the Prime Minister talked about the best possible access to the single market. Those things are very different indeed. Which is the policy? While I welcome the statement in the letter that we should work very hard to avoid no deal, the Foreign Secretary last week claimed that that would all be okay. What is the Government's policy? Is it okay if we have a hard Brexit, or are the Government committed to avoiding that at all possible cost?

Baroness Evans of Bowes Park: We have been clear that we want the best possible deal with the EU and free and frictionless trade, and that we want a comprehensive and ambitious free trade agreement. The letter, of which I read out the relevant section, stated that if we did not come to an agreement, we would go to WTO terms on default, but it is not an outcome that either side should seek. We must therefore work hard to avoid it.

Lord Kerr of Kinlochard (CB): My Lords, while I admire the noble Baroness's optimism, I do not entirely share it. I admire the conciliatory tone of the letter, but the country will judge the outcome of the negotiations by the words of those on the Government Front Bench. Before the referendum, Mr Davis told us that there would be no diminution of trade with the EU if we left the European Union. This year, he has told us that the exact same benefits will be secured as if we had remained in the single market and the customs union. Before the referendum, Mr Johnson told us that there would be no change at the Irish border. This year, Mr Brokenshire has told us that there will be a "frictionless" border, even though that will be the border of the EU's customs union and it will be for the EU to decide the regime on it. Does the noble Baroness understand that, as this negotiation proceeds, the country will not forget what it was told, and Ministers will be judged by their own words?

Baroness Evans of Bowes Park: As I have said on many occasions, we are seeking an ambitious and comprehensive free trade agreement with the EU, which includes free-flowing trade in goods and services as part of a new, deep special relationship. We want Britain to have the greatest possible tariff-free and barrier-free trade with its European neighbours and to be able to negotiate its own trade agreements. There is a strong commitment between the UK Government, the Irish Government and the Northern Ireland Executive to make sure that we do not return to the borders of the past. I think that they are quite clear statements.

Lord Cormack (Con): My Lords, does my noble friend accept that while everyone who cares about the future of our country must wish the Prime Minister success, those of us for whom this is a sad day are concerned particularly about the future of the union of the United Kingdom? I urge my noble friend to speak to the Prime Minister and to draw her attention to what was said in this Chamber only yesterday: that she should give a degree of priority to the very delicate, fragile situation in Northern Ireland, because if the union begins to crumble there we could all live to regret it.

Baroness Evans of Bowes Park: First, we are absolutely committed to protecting and strengthening our union. I assure my noble friend that this Government take extremely seriously the issues in Northern Ireland and we are working with all parties concerned to try to ensure that we can come to a swift resolution. None of us wants to see that fantastic country go backwards. It has moved so far forwards over so many years.

Lord Wigley (PC): My Lords—

Lord Davies of Stamford: My Lords—

Lord Taylor of Holbeach: My Lords, I am sorry but I think we ought to hear from Plaid Cymru.

Lord Wigley: My Lords, does the noble Baroness understand that for some of us this is the blackest of black Wednesdays and that we will not rest until we have persuaded the people of these islands to reverse this retrograde step? Having said that, she mentioned—as the Prime Minister did—that the negotiations will be conducted on a UK basis but that they will listen to the devolved Administrations. Can she confirm in those circumstances that where discussions arise in relation to things such as the sheep meat regime and

the beef regime so important to Welsh agriculture that the Welsh Agricultural Minister can be part of the UK team in the same way as he and she have been in the past—on behalf of the UK but speaking as Welsh Ministers?

Baroness Evans of Bowes Park: I can reassure the noble Lord that we are working closely with the devolved Administrations. We have already taken forward technical discussions with both the Scottish and Welsh Governments on their proposals, in the White Papers they produced, to more fully understand and analyse their plans so as to get the best deal for Wales, Scotland, Northern Ireland and England. We will continue to do that and we will work closely with them because we are absolutely committed to achieving the best deal for all parts of the UK.

Lord Morris of Aberavon: My Lords—

Lord Maclennan of Rogart (LD): My Lords—

Lord Taylor of Holbeach: My Lords, it is the turn of the Lib Dems.

Lord Maclennan of Rogart: The European Union has brought an unprecedented 71 years of peace to western Europe. Have the Government given any thought to this historical reality?

Baroness Evans of Bowes Park: We certainly have. Indeed, when the noble Lord reads the letter sent to President Tusk he will see that that is explicitly recognised.

Lord Morris of Aberavon: My Lords, if the present Brussels responsibility for subjects such as agriculture is repatriated to it, will there be full financial recompense to Cardiff, Edinburgh and Belfast?

Baroness Evans of Bowes Park: My Lords, we are at the beginning of these negotiations. We said that we will devolve and expect further powers to be devolved. I cannot go into the outcomes of the negotiations but, as I said, we will look for the best deal for all parts of the UK. We will work closely with the devolved Administrations. I believe that we will come to a deal that works for all parts of the United Kingdom.

Lord Low of Dalston (CB): My Lords, the Statement makes much of the Government's desire to represent the whole nation in their negotiating strategy. However, would the noble Baroness the Leader of the House not agree that although many things could be said about the Government's Brexit strategy, the one thing that cannot be said is that it reflects the concerns of the whole nation? It certainly does not reflect the concerns of the 48%. It does not even reflect the concerns of the 52% now that the Secretary of State for Exiting the European Union has conceded that immigration cannot be expected to reduce consistently once we exit the EU.

Baroness Evans of Bowes Park: The Statement acknowledged the fact that for some people this is a day they have waited for but for many it is a day of great disappointment. The Statement also said that we need to bring the country together now and work for the best deal. We need to have an optimistic outlook for Britain because we are a great country and we can make a great success of our future.

Lord Davies of Stamford: My Lords—

Baroness Wheatcroft (Con): My Lords—

Lord Taylor of Holbeach: I apologise to the noble Lord but it is in fact the turn of the Conservative Benches so I think we will hear from my noble friend Lady Wheatcroft.

Baroness Wheatcroft: My Lords, the Prime Minister has made much of her intention to agree trade agreements around the world. Will my noble friend assure the House that Parliament will be able to scrutinise these deals before they are signed? After all, a bad deal may be worse than no deal.

Baroness Evans of Bowes Park: We have been very clear that we will be as transparent as we can, but we will not give away our negotiating hand.

Lord Davies of Stamford: The Statement mentions opportunities on several occasions but does not say what opportunities the Government have in mind. It just provides a string of vacuous adjectives and, in true PR style, mentions the word "together" about 15 times. Will the Leader concede that actually a very large number of opportunities are being destroyed—the opportunity to live and work in 27 other countries, the opportunity to travel in those countries while having the benefit of the local healthcare system, the opportunity for educational exchanges, the opportunity for leading scientific research programmes funded by the EU, the opportunities presented by 35 free trade agreements between the EU and other parts of the world, and the opportunities of the single market itself? Do the Government hope that the public will just forget about these important opportunities that are now being wantonly abandoned?

Baroness Evans of Bowes Park: As I have said, we are looking for a new, deep and special relationship with the EU and we believe it will be a very fruitful relationship. In terms of other opportunities, we are looking for excellent trade agreements with countries across the world. We have fantastic bilateral agreements with countries across the world. We are looking to be a global nation.

Lord Hannay of Chiswick (CB): My Lords—

Lord Campbell of Pittenweem (LD): My Lords—

Lord Framlingham (Con): My Lords—

Lord Taylor of Holbeach: We did say that we would try to do this in order. It is the Lib Dems' turn, and then perhaps we will hear from the Cross Benches.

Lord Campbell of Pittenweem: My Lords, it is axiomatic that Britain's withdrawal from the European Union will weaken it. Is it not all the more curious, therefore, for the Prime Minister to be extolling the virtues of European values at the same time as undermining the very institution that embodies them?

Baroness Evans of Bowes Park: Not at all. We have made it very clear that we share the same values and we want to see them remain strong. That is one of the things that we have in common and one of the things that will ensure that we continue to have a strong relationship with our European counterparts.

Lord Hannay of Chiswick: My Lords, I am one of those who think that today is a pretty sad day but I also do not think it is a day to carp or criticise. The Prime Minister and the Government are setting off down a road which can best be described as a magical mystery tour, the destination of which they have no clue—any more than the rest of us do. But I wish them well in this thing, and I would like to put two questions. First, while I very much welcome the very strong emphasis the Government have put on the mutual benefit of maintaining and, indeed, strengthening the co-operation against all forms of international crime, can the Leader say by what process of adjudication any disputes on those matters will be resolved? Secondly, yesterday the Prime Minister urged us to,

"get out into the world".

Can the Leader give us one example of circumstances where we are prevented from doing that by our present membership of the European Union?

Baroness Evans of Bowes Park: On the latter point, obviously we will be looking to negotiate new free trade agreements with countries across the world. On the noble Lord's first point, that will be a matter for negotiations.

Digital Economy Bill

Report (3rd Day)

4.34 pm

Relevant documents: 11th, 13th, 16th, 18th, 21st and 24th Reports from the Delegated Powers Committee

Amendment 32A

Moved by ***Lord Best***

32A: After Clause 81, insert the following new Clause—

"BBC Licence Fee Commission

(1) The Secretary of State must, by regulations made by statutory instrument, set up an independent body ("the BBC Licence Fee Commission").

(2) It is to be the duty of the BBC Licence Fee Commission to make a recommendation to the Secretary of State regarding the level of licence fee required to fund the BBC for the purposes set out in the Royal Charter and Agreement in respect of the settlement from 1 April 2022, and for each successive settlement thereafter."

Lord Best (CB): My Lords, I shall speak also to Amendments 32B and 32C, which are also in the names of the noble Lords, Lord Inglewood and Lord Stevenson of Balmacara, and the noble Baroness, Lady Bonham-Carter of Yarnbury.

In Committee we discussed several amendments from different parts of the House which all aimed to secure an improved process for setting the BBC licence fee. Those amendments were a response to the universal condemnation of the way the licence fee was settled in 2010 and 2015. The problem has not been simply about the so-called "raids" on the BBC's revenue to pay for other government priorities such as broadband rollout or free licences for the over-75s. Nor has the problem even been about the decisions reached, such as the seven-year freeze on the licence fee, which is now, thankfully, coming to an end. The problem is more fundamental. It is about the process itself.

This process has been variously described as "clandestine", "behind locked doors", "frantic", "purely political" and "fixed over a weekend". It gives the Secretary of State the power to impose a funding settlement on the BBC following secret talks and without any external checks and balances. No one believes that this is the best way to come to a considered, evidence-based, sensible decision on the vital question of a licence fee that millions of citizens will pay.

As the Culture, Media and Sport Committee in the other place, then chaired by John Whittingdale, MP, said:

"The 2010 settlement demonstrated that the BBC's independence can be compromised by negotiations with the government of the day that lack transparency and public consultation".

Your Lordships' Select Committee on Communications, which I have the honour to chair, condemned the process in its well-received report for the BBC's charter review, *Reith not Revolution*. Our report drew on the earlier work of the CMS Committee in the other place, which had concluded:

"No future licence fee negotiation must be conducted in the way of the 2010 settlement".

However, the process remained unchanged and we noted, in respect of the 2015 settlement, that Rona Fairhead, the well-regarded chair of the BBC Trust, found it equally unsatisfactory. Indeed, I note that Ms Fairhead spoke in support of the amendments before us today in her speech at the Oxford Media Convention earlier this month.

So what form should a more transparent and informed process take? Amendments 32A, 32B and 32C bring together the earlier versions and provide the package of measures to achieve this. On a technical note, when the Minister responds, will he kindly indicate that he accepts that the amendments are in a linked group? That is, if the first goes to a vote, then, irrespective of the outcome of the vote, the next two amendments will be treated as consequential and will not be subject to further Divisions but will be accepted "in the voices", as we say.

Amendment 32B proposes proper public consultation and debate by both Houses of Parliament. This sounds pretty uncontentious. However, we are told that, because the licence fee is regarded as a hypothecated tax, it cannot be subject to consultation: levels of tax, it is

said, must be left to the Chancellor, who in this case delegates to the Secretary of State for Culture, Media and Sport. I note in passing that Chancellors can run into problems in setting taxes without prior consultation with interested parties—but, recent events aside, it is surely the case that when the licence fee is reset in 2020, the Secretary of State would be much helped by getting feedback from the wider public, as was the case with the helpful White Paper consultation on the charter itself. Certainly the organisation, Voice of the Listener and Viewer, which works in the interest of the public at large, favours this amendment. Whether a licence fee is a hypothecated tax or not, it seems sensible, when deciding on the tricky question of the licence fee, to know what those who will actually pay the fee think about it.

The other two amendments here, Amendments 32A and 32C, address the question of providing the Secretary of State with some clear, impartial and expert guidance. My committee proposed earlier that Ofcom should be given the responsibility to draw up a clear recommendation on the licence fee. The Secretary of State could reject it, but, if so, would be required to publish the reasons. In our *Reith not Revolution* report, the Communications Committee suggested that Ofcom should then reconsider the position and, if necessary, offer a second recommendation. After that, the Secretary of State's decision would be final.

Several Members of your Lordships' House, including the Minister, pointed to the weakness of asking Ofcom to take on this role. This excellent organisation already has a huge workload and will now be extending its regulatory duties in relation to the BBC. Moreover, the Minister pointed out that it is unusual—although, I would say, not unknown—for a regulator to express an opinion on the price to be paid by the consumer for the service being regulated. In response to these comments, the amendments before us do not impose another duty on Ofcom, but instead adopt the approach first mooted by the Opposition Benches for a new, independent body: a BBC licence fee commission.

This body would not decide on the licence fee—that task would remain squarely with the Secretary of State—but the Secretary of State would have to look carefully at a recommendation from the new commission and give clear reasons for rejecting it, if that was what the Secretary of State decided to do. The licence fee commission would be able to draw upon a comprehensive range of financial and professional expertise to provide the basis for sound judgment. It would consider carefully the costs involved for public service broadcasters in fulfilling their obligations—and, most particularly, for the BBC in fulfilling its own very special public service role. Drawing on this input would surely help the Government avoid accusations either of undermining the BBC by setting the licence fee too low or of failing to control wasteful spending by setting it too high.

Importantly, bringing these matters into the open, creating a proper, transparent process, would moderate the unfettered life-or-death authority of the Secretary of State over the BBC's funding and therefore over its future. In doing so, the new process would reduce the chilling effect on the freedom of the BBC to act independently of government, which otherwise remains while the Secretary of State holds this sword of Damocles over the BBC's board and management. The only argument I can see against the establishment of an independent new body with this single task is that it will cost more than if the Secretary of State simply relied on the Government's own judgment. But the cost of a commission is surely insignificant when it is set against the several billions of pounds that the licence fee will raise over the years that follow this decision.

Indeed, I was heartened in our Committee debate by the Minister drawing attention to the commitment in the Government's BBC White Paper last year to,

"consider taking independent advice at the next settlement".—[*Official Report*, 8/2/17; col. 1757.]

The aim of these amendments is to put some flesh on the bones of that commitment. I hope therefore that the Minister will respond positively to the constructive proposals in these amendments, which are supported by a range of organisations, from the Voice of the Listener and Viewer to the National Union of Journalists, and clearly commend themselves to all sides of the House. I beg to move.

4.45 pm

Lord Lester of Herne Hill (LD): My Lords, I regret that my ill health prevented me from being present on Monday 20 March, when the noble Lord, Lord Inglewood, moved the amendment on the BBC's independence and funding late that evening. I am grateful to him for doing so, and I have read the speech by the noble Lord, Lord Wood of Anfield, and the Minister's reply. I agree with the critique of the noble Lord, Lord Best, but I will confine myself to Amendment 32E, included in this group. It is supported by the noble Lords, Lord Inglewood, Lord Pannick and Lord Alli, to whom I am grateful.

The noble Lord, Lord Ashton, accepted in his reply on 20 March that there are instances where it is desirable and appropriate for a charter to be underpinned by statute, but he said that the Government's view is that that does not apply to the BBC. He also said, intriguingly, that in practical terms there is little difference between the effect of the BBC's charter and accompanying framework agreement and an Act of Parliament because both are binding on the BBC and Ministers.

The modest purpose of Amendment 32E is to create a link between the BBC's charter and the Bill. It requires the Secretary of State to ensure, in accordance with the BBC's mission and purposes under the charter, that the BBC is funded so as to be able to function independently and effectively as a public service broadcaster. Unlike the amendment moved on 20 March by the noble Lord, Lord Inglewood, supported by the noble Lords, Lord Stevenson of Balmacara and Lord Pannick, and by me, Amendment 32E does not refer specifically to the licence fee. That is in the hope that being less prescriptive will be more acceptable to the Government. I see the Minister smile wanly, as he knows that I am an optimist.

Do the Government accept that they have the duty to ensure, in accordance with the BBC's mission and purposes under the charter, that the Secretary of State must ensure that the BBC is funded so as to be able to function independently and effectively as a public service broadcaster? If not—if the answer is no—what

[Lord Lester of Herne Hill]
do they accept as their duty in this respect? Remembering that on 20 March the Minister said that in practical terms there is not much difference between a charter and legislation, I ask this question irrespective of whether there is a charter or legislation. I repeat: do the Government accept that the Secretary of State has that obligation, whether under the charter or otherwise?

The amendments made to the Bill in this House will need to be considered by the House of Commons after it leaves here. I hope that at that stage, if not now—I would prefer now—the Government will respond positively with an amendment on the lines of Amendment 32E. I have in mind that by that time we will be coming near to the end of the Session, the Government will want the Bill to go through and that this will at the least be something that needs to be considered then, if not now.

I am grateful to the noble Lord, Lord Ashton, for having met me informally and suggesting that I might usefully meet the Culture Secretary. I would welcome that opportunity and would be grateful if the Minister could say whether that would be acceptable.

Lord Inglewood (Con): I refer briefly to our previous debate when the House was considering the Bill, when I raised my concern about the independence of the BBC and its relationship with the Government of the day, because there must be a relationship and it is important that it is both transparent and rules-based. That is why I have added my name to a number of the amendments; I do not want to elaborate further than that to explain clearly why I have done so.

I also owe an apology to my noble friend, because on that occasion I referred to the Government as behaving like Dick Turpin in respect of the licence fee. He picked me up on that point and said he thought that it was very wrong because a lot of money was being given back, so I apologise for suggesting that; instead, I should have said Robin Hood.

Baroness Bonham-Carter of Yarnbury (LD): I support the amendments. As I mentioned in Committee, I am a Member of the House of Lords Communications Committee, so ably chaired by the noble Lord, Lord Best, and I stand by our report, *Reith not Revolution*, although I accept the slight change in who should oversee the setting of the licence fee, as the noble Lord, Lord Best, mentioned.

The Minister referred more than once in Committee to the licence fee as a tax. As the noble Lord, Lord Best, said, it is a hypothecated tax, paid by the public to fund the BBC. As such, it is surely correct that in future there is clarity and public scrutiny and no more midnight raids, and that the licence fee is used to fund the BBC's functions and public services, not those of the Government. These proposals would, rightly, leave an elected Government with the final say in determining the BBC's revenue but would introduce an important element of accountability in the process, which is surely appropriate.

Lord Pannick (CB): I have added my name to Amendment 32E from the noble Lord, Lord Lester, and I agree with all the speeches that have been made in this debate. The process for setting the licence fee is manifestly inadequate; it lacks transparency, fails to identify—far less promote—any coherent principle, and allows and indeed encourages a last-minute political fix. Does the Minister really think that this is a satisfactory means of promoting the independence and efficacy of the BBC?

Baroness Kidron (CB): I am also a member of the Communications Committee. My noble friend Lord Best set out our position so well that I shall not repeat it, but I wanted to add one thing. I could not possibly exaggerate the feeling of those who came before us giving evidence that the BBC must not only be independent from the Government of the day but must be seen to be independent. That is really what these amendments are struggling to insist on—that it is truly seen by all parties to be seen as independent.

On a secondary point, while we did our review I was stuck by the huge number of duties that the BBC was given, many of which were very right-minded, about regions and nations and the types of programming that it must do, as well as about training. Those are all things with a cost, and a subset of the amendments is the suggestion that somebody independent gets to look at the duties of the BBC and set them against the cost of doing those duties. Perhaps we will have more reasonable conversations about what those duties ultimately are when we understand what they cost.

Lord Maxton (Lab): Can I just be marginally controversial? I accept the first amendment, which would establish a BBC licence fee commission, but the time has come when we have to look at the licence fee itself. We should remember that the licence fee was established way back in the days of Lord Reith—an awful man, but that is beside the point—based on the fact that you had one broadcasting unit in your house. The licence fee is for the house, not the individual, yet I stand here today with at least three devices in my pockets which allow me to view or listen to broadcasts by the BBC or, in fact, by any other organisation that cares to broadcast.

The time has really come when we must look at whether or not we have one licence fee for one household, which could include the very poorest single woman or man living alone in their house with one television or one radio to listen to. They pay exactly the same sum of money as another household with five people in it, all of whom have different devices. There are now four of us living in my household and each room has a television in it and a radio, we have radio in the cars, television on iPads and phones, radio on this, television on that—we have too many, maybe. But the same licence fee covers everything. It is the same licence fee for everybody, whatever—and I am not even talking about hotels or boarding houses or whatever else we can include with them. It is interesting to note that the Government themselves, when they looked at the licence fee, changed it to a live or nearly live licence fee. It is nearly live of course because if you watch television on your iPad, it is about 30 seconds behind, so it is not directly live. So this is the first thing that has to be said: it is time that this commission looked at the whole of the licence fee, not just the level of it.

Secondly, and lastly, this is a tax imposed upon everybody and we are entitled to know exactly how that money is spent by the BBC. I notice that an ex-director of the BBC is hoping to get into this debate —we know what his salary is and we know the salaries of every member of staff on the managerial side, but we do not know how much is paid to Mr John Humphrys, for instance, or to anybody else on the news side of it. I think that the BBC ought to be completely covered by the Freedom of Information Act, which is something that the commission could look at.

Lord Birt (CB): My Lords, it is hard to improve on the excellent summary by the noble Lord, Lord Best, of the glaring inadequacies of the last two licence fee settlements—the infamous midnight raids. I would add only one thing: it is important to recognise that in neither instance was the motive of the Government to do down the BBC, rather it was simply unscrupulous pragmatism, switching responsibility to the BBC for paying for services that had previously been funded by government. In both instances, the Government did this because they did not want to take the political hit of taking something away—the ill-considered gift of a previous Government of free licences for the over-75s, might I say—nor did they want to take the financial hit of continuing to fund the services for which they were switching responsibility.

In both instances, the Government were completely oblivious to the consequences for the funding of the BBC and the knock-on consequences for every kind of service. This is government at its worst, frankly. We all understand how it happened, but it was ill considered and Britain deserves better. There needs to be a proper, considered process to set the licence fee which takes, as others have said, every kind of circumstance into account before the licence fee is set. I strongly support this amendment.

5 pm

Viscount Colville of Culross (CB): My Lords, my media interests can be found in the register. As many other noble Lords have said, it seems to me that the run-up to the next licence fee deal must be the time to take politics out of the corporation's funding arrangements. This amendment is very welcome in creating a body that will do just that. The criticism of similar sorts of bodies is that they have been ignored by successive Ministers. However, the noble Lord, Lord Best, has dealt with this by recommending that the proposed commission should be considered by the Secretary of State, who should then explain his reasons if he is going to ignore it. That would provide a gold standard against which the public and politicians can measure any discussions and subsequent spin on the BBC's funding settlement. I ask the Minister to consider the idea very favourably.

As regards Amendment 32E, I add my admiration for the tenacity of the noble Lord, Lord Lester, in trying to put the BBC on a more independent footing. In Committee, I spoke in favour of statutory underpinning for the BBC. As the noble Lord said, this amendment is a watered-down version of that discussion. I understand that it will not be put to a vote but I hope that it will stir the Government to start a debate to free the corporation from ministerial diktat. That debate must involve all the stakeholders. I hope that the result will guarantee the corporation's future. Its position as one of the most effective public service broadcasters in the world has never been more important at a time when "fake news" threatens to suffocate the truth.

Lord Berkeley of Knighton (CB): My Lords, in supporting my noble friend Lord Best, I point out that the reprehensible situation in which we found ourselves the last time that the licence fee was discussed discredited not only the Government but managed to discredit the BBC as it put the director-general in a very difficult position for which he received a great deal of criticism. Nobody came out of that process very well. We must be able to find a better system that is more transparent and gives the BBC the possibility to plan ahead, but it has to be one that is fair to all parties.

Viscount Waverley (CB): My Lords, I observe only that if you wish to access the BBC on iPlayer, for example, when you live outside the United Kingdom, you are asked whether you have a television licence. If you do not, you cannot access it. That seems an opportunity for revenue for the BBC to consider in the future.

Lord Wood of Anfield (Lab): My Lords, I express the support of these Benches for the amendments of the noble Lord, Lord Best. I also support the intention behind the amendment of the noble Lord, Lord Lester.

It sounds obvious that the process of negotiating a charter and the process of setting a licence fee should be separated so that the licence fee is set at a level to ensure the BBC has the resources to do what the charter asks of it. However, those of us who have had some involvement in the process in the past know that this is not quite how it works. The connection between the two processes is indirect and shrouded in political pressures. As a result, the process of setting the licence fee is far too little about matching the funding of the BBC to its functions in the charter, and far too much about balancing a range of other considerations: the politics around the licence fee rate, interests of other broadcasters, and the temptation to smuggle government policy on to the BBC's books—midnight raids et cetera. Governments of all varieties—Labour, Conservative, whatever—like to play the game of pumping up the tasks that go into the charter and clamping down on the licence fee needed to fund it. The result of all this is bad not just for the BBC but for all parties concerned. It is a bad deal for the BBC because it faces increasingly intolerable pressures to deliver what is expected of it, and threats to its operational autonomy and independence. It is bad for the Government because of a growing suspicion of unwarranted political interference in the BBC, and it is bad for licence fee payers because the process of allocating funds to charter functions is surrounded in opaqueness and devoid of transparency.

Therefore, we support the amendments of the noble Lord, Lord Best. We think they are based on sound principles—the independence of the process, consultation with the public, transparency of the contents of the deal and requiring the Secretary of State to be accountable for turning his back on or challenging the express will

[Lord Wood of Anfield]
that comes out of consultation. We think this is a way of restoring the functionality and transparency of the licence fee setting process, and ensuring that the BBC can be funded to do what we all expect the foremost public service broadcaster to do.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, we return to an issue that I know interests a great many noble Lords: the funding of the BBC. I take this opportunity to remind noble Lords of what the Government have already committed to do to increase the transparency of the process whereby the funding of the BBC is decided. The BBC's new charter regularises, for the first time, the timing of BBC's next financial settlement, which will be in five years' time. The BBC has certainty over its funding for the next five years, having agreed a settlement with the Government whereby the licence fee will rise with inflation each and every year for the next five years.

On the amendment in the name of the noble Lord, Lord Best—in answer to his question, I accept that Amendments 32B and 32C are, if not consequential, linked—I make clear to the House how grateful the Government are for the contribution of the noble Lord and of your Lordships' Communications Committee, which he chairs, throughout the charter review. Indeed, the Government accepted most of the committee's recommendations for the new charter, such as making the next charter for a period of 11 years and the scope of the mid-term review.

The charter states that, in determining the funding settlement, the Secretary of State must assess the level of funding required for the effective fulfilment of the BBC's mission and promotion of its public purposes, consider an assessment of the BBC's commercial income and activities, and consult the BBC. For its part, the BBC is required to provide information and assistance to the Secretary of State ahead of the next licence fee settlement to inform the Secretary of State's determination of that settlement. It is therefore explicit that the BBC will be able to make its case and the Government of the day will have to consider that case.

However, the Government also stated in their White Paper, published last May, that they would consider taking independent advice at the next settlement should it be appropriate. While that will be a matter for the Government of the day, the sentiment behind it is right and sensible. In answer to the noble Lord, Lord Maxton, the licence fee itself may well be a question for the next charter renewal—in which I think I can say I will not be involved. Taking independent advice is an important factor, and I take this opportunity to set out what this may include. The Government may, for example, wish to seek independent advice to inform their assessment of the data the BBC will provide. They may commission experts to consider the BBC's likely commercial income for the coming years; the effect of population growth on licence fee revenue; the impact of sector changes on BBC funding needs; and, in turn, the impact of BBC funding on the wider sector.

The noble Lord, Lord Best, suggests that there should be a BBC licence fee commission. This is a departure from his amendment in Committee, which sought to give Ofcom a similar power, and I appreciate the thought he and other noble Lords have given this. However, at the risk of repeating myself, the licence fee is a tax, and the Government do not seek advice in this way for any other type of taxation. On the question of the licence fee being a tax, I know that not all noble Lords like this designation. However, we rely on the definition provided by the European System of Accounts, which is the system of national accounts used by the European Union. I will spare your Lordships more detail on this, which I could give. I reiterate that taxation is a matter for the elected Government. Only the Government have oversight of the balance of taxes from different sources; rates of tax are set, taking into consideration a range of factors, including wider economic considerations and spending decisions. It would therefore not be possible for an independent body to have oversight of the interaction between this tax rate and other tax burdens that the same group face.

Next, on public consultation on the appropriate level of funding for the BBC, I have already made my reservations clear on this aspect of the noble Lord's amendments in Committee. Funding a public service is not a straightforward topic for public consultation. The BBC's funding needs are a complicated and technical issue, as we have seen at every licence fee settlement—

Lord Maxton: Can the Minister tell the House what other form of taxation—I accept his definition that the licence fee is a tax—is not covered by the Freedom of Information Act?

Lord Ashton of Hyde: I do not quite know what the noble Lord means by taxes being covered by the Freedom of Information Act, but the BBC, as a public authority, is covered by that Act.

Lord Maxton: With all respect to the Minister, the BBC is not covered entirely by the Freedom of Information Act. The managerial side of it is covered by the Act but the part that concerns putting out programmes is not.

Lord Ashton of Hyde: I take the noble Lord's word for that because he knows more about it than I do.

Lord Inglewood: The Minister said that the Government did not consult on taxes in the way that has been suggested. I put it to my noble friend that there is not another hypothecated tax like this, so there is no precedent one way or another for this set of circumstances.

Lord Ashton of Hyde: The point that I made was that, when setting taxes, the Government have to take account of the overall revenue raising, and this is just one element of revenue raising. I agree that whether it is a hypothecated tax is another question, but the point is that it is a tax and the Government do not consult on taxes.

Perhaps I may continue. I was talking about public consultation. The BBC's funding needs are complicated and technical, as we have seen with every licence fee settlement, and agreeing the overall package is a finely

balanced act. The requirement to ask the BBC for information and seek external advice is a sensible way of ensuring that Ministers' decisions are well informed.

Despite what the noble Lord, Lord Best, said about consultations, the recent charter review found that, although almost 75% of the public consider the BBC's programming to be high-quality, just 20% said that they would like to see the licence fee rise even in line with inflation, thereby helping the BBC to maintain those high standards. At the same time, the BBC also needs to become more efficient from reducing layers of management and property costs.

Public consultation needs to be approached with due sensitivity. It is right that decisions that balance the funding needs of the BBC and pressures on family budgets are taken by Ministers, who are accountable for those decisions, and that they are not decisions strongly influenced by an unelected new body. In answer to the noble Lord, Lord Pannick, the Government's view is that it should therefore remain for the elected Government of the day to decide how to approach reaching an appropriate level of BBC funding in a detailed and extensive negotiation with the BBC. Despite the difficulties associated with the last licence fee settlement, as I have said, it resulted in what the noble Lord, Lord Hall, has said is a strong deal for the BBC, giving it financial stability, and we can see that the licence fee will rise for the next five years.

The noble Lord, Lord Lester, has tabled an amendment to put a duty on the Secretary of State to ensure that the BBC is funded to function effectively and independently as a public service broadcaster. I am pleased to see the noble Lord in the Chamber today—it was unfortunate that he was not able to participate in last week's debate on his previous amendment. Without repeating myself unduly, I remind noble Lords that the Government remain of the view that the BBC is best governed through a royal charter. A statutory underpinning, however limited initially, would leave the BBC under a constant threat of change from what parliamentarians of the day might see as the "national interest". Where a change might be genuinely required, the uncertain legislative timetable, party-political debate and pressure could all militate against resolving the issue at hand in an efficient manner.

Lord Lester of Herne Hill: The Minister has not answered my question, which was, quite simply, whether this Government—not one in five years' time—accept that the Secretary of State has a duty, whether under the charter or otherwise, to ensure that the BBC is so funded as to function independently and effectively as a public service broadcaster.

Lord Ashton of Hyde: I was aware of the noble Lord's question and was just about to come to it. The BBC charter already provides that the Secretary of State, in determining the funding settlement, must assess the level of funding required for the effective fulfilment of the mission and public purposes.

5.15 pm

Lord Lester of Herne Hill: What does that answer mean? The charter does not say what I have just asked the Minister. Is he saying that, in looking at the charter, the Government accept this obligation and that it is embodied in the charter? If so, I welcome that. However, I am not clear whether the Government accept this duty or not. My final question, which no doubt he will come to, is this: please can I come and see the Culture Secretary with him?

Lord Ashton of Hyde: I think I can answer that to the noble Lord's satisfaction. Yes, I will certainly talk to the Secretary of State and ask that the noble Lord can come and see him—with or without me, depending on his choice.

I do not want to dwell on this too much, but when we talk about sufficient funding and what the Secretary of State has a duty to do, of course the Secretary of State has a duty to abide by the royal charter in the same way that the BBC, the new unitary board and Ofcom do. I said:

> "The Secretary of State, in determining a funding settlement, must … assess the level of funding required for effective fulfilment of the Mission and promotion of the Public Purposes"—

which is what the charter says. I agree that the Secretary of State must do what the charter says. I hope that answers the noble Lord's question.

I will go further. The noble Lord's amendment talks about the independence of the BBC, but Article 3 of the BBC's charter already states:

> "The BBC must be independent in all matters concerning the fulfilment of its Mission and the promotion of the Public Purposes, particularly as regards editorial and creative decisions, the times and manner in which its output and services are supplied, and in the management of its affairs".

The question of enshrining parts of the BBC's royal charter in statute should be a matter for the Government of the day to decide ahead of the next charter review. Given noble Lords' ongoing interest and informed views, I am confident that the Government of the day will be minded to consider this carefully.

In summary, the Government have already increased the transparency of the way in which the BBC's funding settlements are agreed. We have given the BBC stability by regularising the settlement period, which is now removed from the election cycle. The BBC will be required to provide information to the Secretary of State on its funding needs, and the Government of the day will consider taking independent advice. The licence fee is a tax and the Government do not consult on taxes. The amendments could have unintentional consequences in constraining the ability of the Government—

Lord Pannick: I am puzzled by what the Minister has said, because he is saying two incompatible things. He is telling the House that the Government are going to take advice, but on the other hand he is telling the House that, because this is a tax, it is not possible for the Government to take advice.

Lord Ashton of Hyde: With respect, I did not say that. I said that the Government would not consult on taxes. Of course the Government can take advice. The Government take advice on taxes every day, whether they have asked for it or not.

Lord Birt: The Minister said a moment ago that the Minister—in this case, the Secretary of State—must do as the charter says. I remind him that the charter

[LORD BIRT]
before last said explicitly that the licence fee may not be used to fund the World Service. After the famous "night raid", where the BBC was required to fund the World Service from the licence fee, the Secretary of State simply went to the Privy Council and changed the charter. He manifestly did not do what the charter required.

Lord Ashton of Hyde: I do not completely follow the noble Lord. If the charter was changed, presumably the Secretary of State did follow the charter.

Lord Birt: I am sorry if was not clear. The charter clearly said that the licence fee may not be used to fund the World Service. The Government then required that it should—and retrospectively changed the charter in the Privy Council.

Lord Ashton of Hyde: I agree that a retrospective change in legislation of the charter is never a happy process—but, in a purely technical sense, if the charter was changed then it was being followed. But I take the noble Lord's point about that—and we will move on.

I have summarised the way that the funding deal has been changed to increase stability for the BBC. In light of all my remarks, I hope that noble Lords will allow the BBC to get on with its job under the agreed royal charter and therefore that the noble Lord will withdraw his amendment.

Lord Best: My Lords, I am grateful to the 10 noble Lords who spoke in support of my amendment. The only moderating voice was from the noble Lord, Lord Maxton—but even that, I think, was with approval as well. I will not reiterate the arguments that everybody brought forward. I thank the Minister for his response and accept that most of the recommendations from your Lordships' Select Committee on Communications were adopted by the Government, which we were pleased about, including the 11-year period for the charter. But there is only a five-year period for the funding of the BBC, and, although there is certainty for five years, this is not entirely new. We had certainty over the freeze in the BBC licence fee for seven years prior to that.

The Minister stressed that the Government will "consider taking advice" and "may consult experts" on the various aspects of this. I had hoped that the Minister might pull the rabbit out of the hat and that we might have something more to show for the debate tonight than we have. I understand that the Government do not consult on taxes—although, as the noble Lord, Lord Inglewood, said, this is a particularly obscure kind of tax. It is 100% hypothecated and we do not have many of those. The Minister mentioned that it was a complicated issue. That is why an expert commission could be so useful. Public consultation might well produce an answer that there would be reluctance to increase the licence fee, but there would be better understanding if these matters were all out in the open and transparent before the public came to that view.

Although I am grateful to the Minister for explaining the position as is, it is not the position that these amendments would establish in the Bill and I would like to test the opinion of the House.

5.22 pm

Division on Amendment 32A

Contents 268; Not-Contents 201.

Amendment 32A agreed.

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5.38 pm

Amendments 32B and 32C agreed to.

Amendment 32D had been withdrawn from the Marshalled List.

Amendment 32E not moved.

Amendment 33 had been withdrawn from the Marshalled List.

Amendment 33ZZA

Moved by ***Baroness Benjamin***

33ZZA: After Clause 82, insert the following new Clause—

"Provision of children's programmes

After section 289 of the Communications Act 2003 insert—

"Provision of children's programmes

289A Provision of children's programmes

(1) OFCOM may, if they think fit, publish criteria to be applied in accordance with this section to the provision of children's programmes.

(2) Where criteria are published by OFCOM, the regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that the provision of children's programmes meets the criteria.

(3) Any condition imposed by virtue of this section—

(a) must relate only to the provision of children's programmes on the licensed public service channel concerned;

(b) must take into account OFCOM's assessment of the provision of children's programmes on all related services.

(4) "Related services" in relation to a Channel 3 service means—

(a) that service,

(b) all other Channel 3 services, and

(c) all services within subsection (6) that appear to OFCOM to have a sufficient connection with any Channel 3 service.

(5) "Related services" in relation to any other licensed public service channel means—

(a) that channel, and

(b) all services within subsection (6) that appear to OFCOM to have a sufficient connection with that channel.

(6) A service is within this subsection if—

(a) it is available for reception in the United Kingdom, and

(b) it is provided without any consideration being required for its reception, disregarding any requirement to pay sums in accordance with regulations under section 365.

(7) For the purposes of an assessment under subsection (3)(b) no account is to be taken of whether a programme is provided on a licensed public service channel or on another service.

(8) Any condition imposed by virtue of this section must be the same for all regional Channel 3 services.

(9) Any criteria published under this section must be published by OFCOM in a statement setting out the criteria and how they propose to apply them.

(10) OFCOM may from time to time review and revise or withdraw the criteria by publishing a further statement.

(11) Where OFCOM revise or withdraw criteria, they must take any steps they consider necessary in consequence in relation to conditions imposed by virtue of this section.

(12) OFCOM must—

(a) carry out a public consultation for the purposes of any review under subsection (10);

(b) where there are no published criteria for the time being, carry out a public consultation before publishing criteria under this section.

(13) In this section "children's programme" means a programme made—

(a) for a television programme service or for an on-demand programme service, and

(b) for viewing primarily by persons under the age of sixteen.""

Baroness Benjamin (LD): My Lords, I declare an interest as per the register as I rise to speak to my Amendment 33ZZA, which is also in the names of the noble Lords, Lord Ashton and Lord Collins of Highbury, and my noble friend Lady Bonham-Carter.

This is an amendment to secure and protect the future of quality children's television. It is a safeguarding measure for years to come, which makes me so happy, as it is a legacy. I moved a similar amendment in Committee and since then, I have spent considerable time talking to the Government, the DCMS, broadcasters —including ITV and Channel 4—Ofcom and many noble Lords across this House. I am very grateful for the support that I have received in drawing attention to this vital issue, an issue which I have been highlighting for several years. I want especially to thank the Producers Alliance for Cinema and Television, or PACT, and the Save Kids' Content campaign for the enormous pressure that they have applied in this important matter.

I am also grateful for the support of the Government, the Secretary of State, the Minister and the Bill team in producing and agreeing today's amendment. I thank them for recognising the importance of the amendment and for realising that it was an issue that needed to be dealt with at this point. They should be congratulated on having the vision to do so, because this is a moment of great importance for the future of the children's production industry and of quality British content for

our children and our grandchildren. This amendment has the potential to revitalise the production sector and increase the amount of children's content which can be exported globally, which Britain has been known for over the years.

As I have said in this House many times, children's programming is in serious decline. Yes, some new platforms are coming to the marketplace and investing, but spending on the production of new British children's programming has declined by almost half since 2003, with spending by the commercial public service broadcasters falling by a staggering 93%. Quite shockingly, less than 1% of television hours available for our children are new, first-run British programmes; the rest are imports and repeats. It is our responsibility to make sure that this does not continue. Our children and our grandchildren are entitled to the provision of quality programming that was there for us. In many ways, that is even more crucial for children today, as television has the power to educate and inspire them for the future. As I always say, childhood lasts a lifetime. Instead of driving children towards watching unsuitable and inappropriate adult content, we need to ensure that appropriate content is available for them to identify with and to help shape their development and their imaginations.

Ofcom has recognised that there is a problem. In its last review of PSBs, it was clear that there is a "substantive risk" that PSB requirements for children's programming in this area will not be met. Despite this risk, Ofcom has repeatedly reported that it does not have the legislative tools to make changes.

We must recognise that nothing other than legislative change will lead public service broadcasters to commission more new British children's content. Therefore, we need to give Ofcom the tools to require new children's content to be commissioned and produced by public service broadcasters.

However, I have always understood and recognised throughout this process that PSBs may well have concerns about a legislative change. Through my many discussions, I also became aware that broadcasters had some reservations about the amendment that I tabled in Committee. I have also always been clear that my intention is not to place a huge additional burden on broadcasters. I know that there are pressures on PSBs for a variety of reasons and I understand that it is only by collaboration between all parts of the industry that we will achieve the change necessary to ensure that the level of new British children's content does not reduce further and indeed increases.

It is in the spirit of collaboration that my amendment today has been arrived at. It will give Ofcom the power to issue criteria addressing the provision of children's programming by broadcasters. It also allows Ofcom to take into account content broadcast on a main channel, a subsidiary channel or online. It gives flexibility. I do not want to dictate how, where or what programming children should watch. All I want, passionately, is to ensure that there is a range of quality British content available on all platforms that reflects our country's diversity and the diversity of our children so that they grow up happy and contented, knowing they belong to a great nation.

5.45 pm

This amendment also builds in a safeguard requiring Ofcom to conduct a public consultation before imposing any criteria on broadcasters. This is crucial. However, the amendment is just the start. The spirit of collaboration and flexibility built into the amendment means that it is essential that both Ofcom and the Government continue to stay focused on this issue. Given the state of play for new children's programming, Ofcom would need to urgently use the powers in this amendment to halt and steadily reverse the decline we have seen since 2003. It is vital that this amendment is implemented in the spirit in which it was drafted. We must keep a close eye on its delivery.

I ask the Minister for clarification on how and when the Government would anticipate Ofcom using the new powers in this amendment. In particular, is it the Minister's understanding that any criteria issued by Ofcom would be able to require a certain level of new British children's programming? We cannot have a situation where these criteria are satisfied by importing cheap programming from abroad. We have enough of this type of content already.

Subject to receiving some clarification from the Minister, I am extremely relieved that the Government recognise that this matter needs urgently to be addressed. I am grateful to the broadcasters for working with me on this as it gives them the opportunity to make a difference. I know that if all parts of the industry work together and if we get this right, we can lift the lid on a huge well of untapped potential existing in our creative industries and once again create the world-renowned programming—and even more of it—that our children and grandchildren deserve. It is my mission in life to make children's lives happy. It is with that commitment in mind that I beg to move.

Baroness Howe of Idlicote (CB): My Lords, briefly, I very much support this amendment and above all salute the work of the noble Baroness, Lady Benjamin, for all she has done over many years in making the case for the production of more and very much better-quality television programmes for children, whether by the BBC or other programme-makers. It is very good to see the name of the Minister on this amendment and I hope I am not wrong that as a result the Government fully support it. I hope we shall hear that soon.

Baroness Jones of Whitchurch (Lab): My Lords, I congratulate the noble Baroness, Lady Benjamin, on her continuous hard work on this issue. We also added a name to the amendment in Committee and here today. I very much share in her delight and happiness that progress has finally been made. As the noble Baroness said, this is effectively an enabling amendment for Ofcom. I hope that it will just sit on the statute book; we look now for action to follow it through. As the noble Baroness said, there is already sufficient evidence, which Ofcom has, of the huge decline and reduction in children's TV. There is no need for a pause while Ofcom finds evidence as to whether it needs to act. The evidence is already there. I hope that when Ofcom comes to consider the new powers we are

[Baroness Jones of Whitchurch]
providing, it will feel able to act straightaway. I hope that the Minister can reassure us that she will encourage Ofcom to do just that, that this will not just sit there as an enabling power but is something the Government will encourage Ofcom to act upon. Again, I look forward to the Minister's response.

Baroness Buscombe (Con): My Lords, Amendments 33ZZA and 35A concern the important issue of children's television, which I know this House, rightly, feels strongly about. I thank the noble Baroness, Lady Benjamin, in particular for her passion and enthusiasm—and a great deal of energy—on this subject. I also thank the noble Baroness, Lady Howe of Idlicote, who is always so strong on these issues and has been for many years.

The provision of a range of high-quality children's programming must be a priority for the UK's public service broadcasting system. The BBC remains a particularly strong provider of UK-originated children's content. The new BBC charter requires the BBC to support learning for children, and the framework agreement makes it clear that Ofcom must have particular regard to setting requirements for key public service genres such as children's programming.

However, the commercial public service broadcasters —ITV, Channel 4 and Channel 5—have collectively been doing less and less since the Labour Government's removal of children's quotas in the Communications Act 2003. By 2014 the BBC accounted for 97% of total spending by PSB channels on children's programmes. Clearly, this does not suggest a healthy market.

The Government share the view that this problem should be tackled, and we are committed to supporting the provision and plurality of children's content to meet young audiences' needs. To do this, the Government have extended the tax relief for animation and high-end TV programmes to UK children's programmes. We have also consulted on a pilot contestable fund for underserved public service content, with children's content as a potential area of focus. The consultation closed in February and we will publish our response in due course.

The Government hope that with this government support, the problem that the noble Baroness has identified over the past weeks and months will be resolved. Furthermore, we support the proposal to give Ofcom the power to look at this issue and, as a backstop, to introduce quotas on the commercial PSBs if it deems it necessary. The noble Baroness's Amendment 33ZZA gives Ofcom the power to look at the provision of children's content and impose quotas only if it believes there is inadequate provision. But, crucially, it does this in a way that works with PSBs' commercial realities, and younger audiences' needs.

As many parents will know, children now consume content on an increasing range of platforms, not just on the traditional PSB channels. Indeed, Ofcom has found that children watch a quarter less broadcast TV than they did five years ago, and that more than a quarter of children watch free on-demand services in a typical week. As a result, in giving Ofcom the power to consider imposing children's quotas on the main PSB channels via their broadcasting licences, the amendment requires Ofcom to consider the provision of content across a PSB's free-to-view UK portfolio, not just on its main channel. This means that Ofcom should consider children's programming on a PSB's main channel and its other UK free-to-view channels equally when assessing whether a quota may be necessary. Ofcom will also be able to take into account content on PSBs' on-demand players.

Indeed, while the BBC is rightly considered to be the market leader in children's TV content, its output is shown on its dedicated children's channels: CBBC and CBeebies. Therefore, while the amendment does not apply to the BBC, we think it is right that any assessment of children's TV provision by the commercial public service broadcasters is likewise able to take into account the provision on not only the main channels but their wider services, reflecting the changing nature of TV consumption for our young people and changing TV market dynamics.

Crucially, Ofcom will also be able to consider whichever criteria it deems appropriate in coming to a view on the provision of children's content. Those criteria will be drawn up, where Ofcom deems them necessary, following public consultation. For example, Ofcom may choose to set as one of its criteria that an appropriate level of new UK children's programming is available across the PSBs and their related services. This would help drive UK investment and ensure that younger audiences see themselves reflected in the programming that they watch.

It is the policy intention that Amendment 33ZZA will also work with Section 3 of the Broadcasting Act 1990. Under that section, Ofcom must allow a PSB,
"a reasonable opportunity of making representations",
about a proposed variation of its broadcasting licence. It is also the policy intention that the amendment requires Ofcom to set the same licence condition in each of the Channel 3 regional licences to ensure that the regime does not impose disproportionate burdens on ITV.

We will gladly support amendments that protect and enhance the UK's public service broadcasting system. That commitment from the Government will echo through this evening's debate, with support for the BBC and commitments on listed events and children's television. Again, I thank the noble Baroness for her vital contributions on this subject. The Government will support her amendments.

The noble Baroness asked about timings and content. It is very important that we leave the timings up to Ofcom. The content criteria are also a matter for Ofcom, subject to consultation, as I think I have already made clear. I agree with the noble Baroness, Lady Jones, that we hope that this will not just sit on the statute book. We hope that Ofcom has heard the message loud and clear but the onus is on Ofcom to take this further.

I should also say that Amendment 35A provides for commencement so that the Government cannot block Ofcom from acting. On that basis, we are pleased to accept Amendment 33ZZA.

Baroness Benjamin: My Lords, it is moments such as this that demonstrate the importance of this House, with everyone working together for the good of the nation, in this case especially our children. I thank the

Minister for her support for the amendment, and all noble Lords who have taken part in this debate—especially the noble Baroness, Lady Howe, who I greatly admire—and previous debates. In particular, I am extremely grateful to my noble friend Lady Bonham-Carter and the noble Lord, Lord Collins, for putting their names to the amendment. I also thank the noble Baroness, Lady Jones of Whitchurch, for her support both in Committee and today, and the noble Lord, Lord Stevenson of Balmacara, for his support to date.

As I mentioned in my opening speech, this is a crucial moment for the future of British children's television. If used properly, the amendment has the potential to halt and steadily reverse the decline of the children's production sector. It has been a long journey of persuasion, perseverance and determination so I am thrilled that we have reached a consensus that it is vital for Ofcom to urgently use the powers that the amendment will give it to deliver real change and to focus on the production of imaginative and creative new British programming for our children and grandchildren. I and others will be keeping a very close eye on the use of these powers to make sure that real change is achieved. I thank the Minister for her assurance on this point.

I feel so optimistic about the future of our children's programming industry, which I am so passionate about, and I look forward to seeing this industry deliver even more of the world-renowned programming it is capable of. I believe that if there are good programmes on PSBs, children will watch loyally and will not be driven away to other places. Content matters for children and they will stay with a channel and watch it. I hope that all the broadcasters will take ownership of this gift to our children and embrace this new legislation graciously and wholeheartedly. So it is with a joyful heart and a huge smile that I beg to move.

Amendment 33ZZA agreed.

6 pm

Clause 85: On-demand programme services: accessibility for people with disabilities

Amendment 33ZA

Moved by ***Lord Clement-Jones***

33ZA: Clause 85, page 89, line 4, after "impose" insert "proportionate"

Lord Clement-Jones (LD): My Lords, I apologise on behalf of the noble Lord, Lord Gordon of Strathblane, and my noble friend Lord Foster of Bath. Neither noble Lord can make today's proceedings, so I have been asked, as their inadequate first reserve, to move this amendment and to speak to the other amendments in this group.

The Minister will no doubt remember that in Committee the noble Lord, Lord Gordon, and I raised certain issues surrounding the amendment moved by the noble Lord, Lord Borwick, which is now incorporated in the Bill as Clause 85. We supported it, and that broadly is the position of the broadcasters. However, they have certain issues surrounding the wording of the clause. I am delighted to see that the Government have taken on board the Delegated Powers and Regulatory Reform Committee's points and that the government amendments incorporate a number of changes to the clause to reflect what the DPRRC had to say.

The broadcasters wish certain other aspects to be aired today. It is a question of the difference between delivering access services on on-demand services and delivering them on linear. Virtually all programmes are now subtitled on the main linear channels. Our public service broadcasters more than exceed the targets set for access services by Ofcom. Linear broadcasting is a mature market with standardised technologies, and it is relatively straightforward and economic to provide access services, but there is a big contrast with delivering services on demand. On demand is much more challenging and fragmented, and there is a huge array of different online platforms. Each platform has its own technological underpinning, and there is no common standard for delivering access services. Accordingly, if this clause is interpreted too broadly there is a danger that a one-size-fits-all approach which takes no account of the revenue, size, usage or length of establishment of a service or online platform would result in fewer online services for everyone because of the disproportionate cost of requiring access services to be rolled out across every platform, regardless of how practical or economic that is.

With the current wording, it is possible for the Government to put in place somewhat disproportionate and onerous regulations that could inhibit the development of services for everyone. The broadcasters are calling for an amendment to the wording to reflect the need for proportionate and progressive measures that take account of factors such as revenue, size, usage and length of establishment in setting obligations on content services or online platforms. I hope that the Minister will agree, whether at this stage or at a subsequent stage, to review the wording so that a degree of proportionality is introduced into this clause. I beg to move.

Lord Borwick (Con): My Lords, I thank the noble Lord, Lord Clement-Jones, for his comments on the amendment I moved in Committee. The trouble with his amendment is in the meaning of "proportionate". There will be quite a lot of consultation between all the parties about what will be required before the regulations are finally drafted, and adding "proportionate" would effectively add an extra layer of consultation in which people argue with each other about exactly what "proportionate" means in these circumstances. It would be much better if the clause was left as it is to make certain that, whatever the rules are, they are clear, having been discussed in the consultation. I must express my thanks to the originator of this clause as it came from a Labour Party proposal in another place, but we all support the right idea here, and I am sure it will help deaf people and blind people understand what is on television. This amendment, although no doubt worthy, is not necessary and will in practice get in the way of getting this change into law.

Lord Wood of Anfield: My Lords, I shall focus briefly on the principles shared by the amendments proposed by noble Lords and those suggested by the Government. They take a long-standing commitment to ensure accessibility and update the relevant rules

[Lord Wood of Anfield]
for an age in which on-demand services are becoming more essential to viewers. It is an approach we can all endorse, and I am sure the Government will be keen to take these principles forward when it comes to other issues, such as ensuring PSB prominence in on-demand services, which is in the next group.

I turn to another element of this group, which is the Government's concession on listed events, Amendments 33ZH and 36. This is another example of taking a long-standing commitment to ensuring access and taking steps to update regulations to respond to changing viewing habits. We are delighted that the Government have responded to the concerns we and other noble Lords raised in Committee. Lowering the threshold for qualification for screening listed events below the current standard is crucial if we are to prevent the development of the extraordinary situation forecast by all PSB broadcasters of not one channel qualifying on existing criteria in the listed events regime by the end of this Parliament. Giving the Secretary of State power to respond seems a very sensible move to allow the Government to respond in the light of the evidence in a quick and minimally disruptive way.

Without being churlish, I hope the Government will bear two considerations in mind as they think further about how to develop the new criteria for the existing regime. First, we need to bear in mind that the threshold must be lowered enough to enable channels to continue to qualify, but not so much as to threaten the idea that events that bring the country together should be available to as wide an audience as possible. Secondly, I hope the Government remain open to the idea discussed extensively in Committee that alternative measures of reach and access may be appropriate in an age in which increasing numbers of viewers access programmes online. Having an open mind about regulatory flexibility in this area, as in other areas, is crucial to achieve the purpose of the listed events rules, which are supported by us all.

Lord Addington (LD): I shall be very brief. I thank the Government about listed events. They are important for sporting culture and sharing sport. Taking that on board and making sure that we maintain the link in a manageable way is important, not only because it builds a sense of community but because it is an important link with the casual observer of sport, which helps in encouraging people to take part, mass participation and all those things. It is an important link in that chain, and if we lose it, we will damage part of our sporting culture. .

Lord Borwick: My Lords, I apologise to the House: I should have declared my interest as a long-standing trustee of the Ewing Foundation for deaf children, which is relevant to my speech earlier.

Baroness Buscombe: My Lords, I thank all noble Lords who have taken part in the debate. Government Amendments 33ZD and 33ZF relate to the Delegated Powers and Regulatory Reform Committee recommendations on the accessibility of on-demand programme services for people with disabilities. I once again thank the DPRRC for its recommendations. We have accepted the recommendation that the affirmative resolution procedure should be used instead of the negative procedure for regulations made under the clause, and Amendment 33ZF actions this.

With regard to the second recommendation, we have shared with the DPRRC the rationale for not identifying the appropriate regulatory authority in the Bill. We hope it is reassured by the explanation I have provided that we are following the existing drafting in Part 4A of the Communications Act 2003, which uses the phrase "appropriate regulatory authority", and defines that as Ofcom unless it has appointed another body as regulator. Ofcom has not currently appointed any such body and accordingly is the regulator of on-demand programme services in the UK. I am happy to clarify that to the House.

On the third recommendation, that the Government consult with on-demand programme services providers and other stakeholders, Amendment 33ZD places a duty on the appropriate regulatory authority—Ofcom—to undertake this consultation and then report to the Secretary of State on the outcome, along with any other matters it thinks the Secretary of State should take into account in drafting the regulations.

At both Second Reading and in Committee we heard concerns from a number of noble Lords that the listed events regime is under threat. I am pleased that noble Lords have welcomed government Amendment 33ZH, which will confer a power on the Secretary of State to amend the qualifying conditions for television programme services to which rights to broadcast listed events are made available. In the UK, the listed events regime operates to protect free-to-view access to the coverage of sports events with a national significance. Sport is a key element in our national identity, part of the glue that binds us together as a society, and we want to ensure that as far as possible everyone across the country is able to watch live broadcasts of the sporting events that matter most to society.

To be clear, the listed events regime is not under any immediate threat. However, modern viewing trends mean that the requirement for a television service to be received by at least 95% of the population may, depending on how this is interpreted in the future, become increasingly hard to meet—the noble Lord, Lord Wood, just alluded to this in his comments. With everyone's changing viewing habits, this has to remain under review and as flexible as possible. As more people, especially the young—and the noble Lord, Lord Maxton, of course—watch television content on phones and other streaming services, this could put the regime at risk in the future.

We want to safeguard against this and ensure the ongoing viability of the listed events regime. This clause will confer a power on the Secretary of State to ensure that, as media consumption habits change, the Government's policy objective to ensure that listed events are widely available on free-to-view services continues to be met. The clause confers a power on the Secretary of State to amend the percentage of the population by which a channel must be received in order to qualify. I hope that answers the questions of a number of noble Lords on this. It will enable the

Secretary of State to lower the relevant percentage to ensure that there continues to be a list of channels which meet the qualifying conditions. It also provides that any amendment to the percentage does not affect the validity of any existing contract to broadcast a listed event. Any amendment is not intended to invalidate existing agreements to broadcast listed events, which can last for a number of years. There is no intention at this stage to review or revise the list of events itself.

I thank the noble Lord, Lord Gordon of Strathblane, in his absence, for his amendments on the proportionality of accessibility requirements for on-demand programme services. I am sympathetic to their aims. I also assure noble Lords that the Secretary of State will already be considering the proportionality of the requirements that will be placed on such providers. The consultation that Ofcom is required to complete will provide the opportunity to ascertain the proportionality of the provision of accessible services and then report this back to the Secretary of State, so it can be considered when imposing requirements on providers. Furthermore, the SI will contain a review clause on the burdens on business, which will allow a post-implementation analysis of the burdens imposed, to assess whether they are proportionate.

The Government recognise that a balance must be struck between the interests of on-demand services and the interests of those with disabilities that affect hearing and sight being able to enjoy as much content on demand as possible. Achieving this balance will be at the heart of Ofcom's consultation. Service providers will be able to set out what they consider proportionate. I thank my noble friend Lord Borwick for his contribution to the effect that we should leave this part of the Bill alone. I also reassure the House that Ofcom has a good deal of experience now in the area of accessibility of services. It already publishes a code of practice for such services on linear channels and has a good record in ensuring requirements are ambitious yet not unduly burdensome.

I hope with that explanation that the noble Lord, Lord Clement-Jones, on behalf of the noble Lord, Lord Gordon, will kindly withdraw his amendment. I will move government Amendments 33ZD, 33ZF and 33ZH when the time comes.

6.15 pm

Lord Clement-Jones: My Lords, I thank the Minister, first, for the introduction to her very welcome amendments. I join the noble Lord, Lord Wood, and my noble friend Lord Addington in welcoming in particular the new ability to adjust the listing requirements, because that builds in, as the noble Lord, Lord Wood, said, the flexibility for the future that is very much needed, and may be needed rather more quickly than many of us anticipate.

I particularly thank the Minister for her very careful reply to the amendments in the name of the noble Lord, Lord Gordon, on proportionality. She gave a very full answer to the amendments, particularly on how Ofcom will consult and in saying that balance will be at the heart of its consultation and that the SI will contain a review clause on burdens on business. I do not think one can say fairer than that and, in the circumstances, I beg leave to withdraw the amendment.

Amendment 33ZA withdrawn.

Amendments 33ZB and 33ZC not moved.

Amendment 33ZD

Moved by ***Lord Ashton of Hyde***

33ZD: Clause 85, page 89, leave out lines 15 to 19 and insert—

"(3) The steps set out in subsections (4) to (6) must be taken before regulations are made under this section.

(4) The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including—

(a) providers of on-demand programme services, and

(b) representatives of people with disabilities affecting their sight or hearing or both.

(5) The appropriate regulatory authority must inform the Secretary of State of—

(a) the outcome of the consultation, and

(b) any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.

(6) Where OFCOM are not the appropriate regulatory authority, the Secretary of State must consult OFCOM.

(7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Amendment 33ZD agreed.

Amendment 33ZE not moved.

Amendment 33ZF

Moved by ***Lord Ashton of Hyde***

33ZF: Clause 85, page 90, line 42, at end insert—

"( ) In section 402(2)(a) (procedure for statutory instruments) after "411" insert "or regulations under section 368BC"."

Amendment 33ZF agreed.

Amendment 33ZG

Moved by ***Lord Wood of Anfield***

33ZG: After Clause 86, insert the following new Clause—

"Public sector broadcasting prominence

(1) The Communications Act 2003 is amended as follows.

(2) In the title of section 232, at end insert "and "electronic programme guide"".

(3) After section 232(5) insert—

"(5A) In this section "electronic programme guide" means a service which consists of a—

(a) linear electronic programme guide; or

(b) qualifying connected electronic programme guide."

(4) In section 232(6) before "electronic" insert "linear".

(5) In section 232(6)(b) after "for" insert "finding, selecting or".

(6) After section 232(6) insert—

"(7) In this section "qualifying connected electronic programme guide" means a "connected electronic programming guide" which is used by a significant number of its intended audiences as a means of receiving television programmes or TV-like content.

(8) In this section "connected electronic programming guide" means a service which consists of—

(a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and

(b) the listing or promotion, or both the listing and the promotion, of—

(i) some or all of the programmes included in any one or more on-demand programme services, or

(ii) some or all of the on-demand programme services, the providers of which are or include persons other than the provider of the guide; and

(c) the facility for finding, selecting or obtaining access, in whole or in part, to the programme service or services and the on-demand programme service or services listed or promoted in the guide.

(9) The Secretary of State may by order amend the definition of an electronic programme guide in this section.

(10) Before making an order under subsection 9 the Secretary of State must consult OFCOM."

(7) In section 310(1) for "from time to time" substitute "on 1 December 2017 and at intervals of no more than three years thereafter".

(8) In section 310(2) omit "such degree of" and "as OFCOM consider appropriate".

(9) In section 310(4)(a) after "BBC" insert ", including on-demand programme services,".

(10) After section 310(4)(h) insert—

"(i) any on-demand programme service provided by a public service broadcaster.

(4A) A service is an on-demand programme service provided by a public service broadcaster for the purposes of subsection (4)(i) if it —

(a) is provided by any of the following—

(i) a person licensed under Part 1 of the 1990 Act to provide a Channel 3 service;

(ii) the Channel 4 Corporation;

(iii) a person licensed under Part 1 of the 1990 Act to provide Channel 5;

(iv) the Welsh Authority; and

(b) provides access to programmes broadcast on a licensed public service channel."

(11) In section 310(5)(a) after first "service" insert ", including on-demand programme services,".

(12) After section 310(5) insert—

"(5A) In making any order under subsection (5) the Secretary of State must have regard to the desirability of investment in original productions.

(5B) In this section "original productions" means programmes commissioned by or for the provider of a service for the purposes of subsection (5) with a view to their first showing on television in the United Kingdom on that service."

(13) After section 310(7)(a) insert—

"(b) if the service is a public service channel dedicated to children, persons under the age of 16;".

(14) For section 310(8)substitute—

"(8) In this section "electronic programme guide" means a service which consists of the programme service or services listed or promoted in the guide."

(15) In section 311(2) for "310" substitute "232(5A)"."

Lord Wood of Anfield: My Lords, Amendment 33ZG has a simple purpose: to ensure that high-quality public service broadcasting content, paid for by licence fee payers, continues to be accessible and prominent to viewers as viewing habits change. PSB programming is not only a staple of cultural life in our country but one of the jewels of our world-leading creative industries. A crucial component of the regime surrounding PSB is the regulations to ensure that these programmes are widely available and easy to find. The current rules, established over a decade ago in a code of practice, ensure this by requiring that the main PSB channels—BBC1, BBC2, ITV1, Channel 4 and Channel 5—appear at the top of channel listings or electronic programme guides, EPGs, on all TV platforms. The code works well for traditional TV viewing, where it is watched in real time, but we live in a world in which viewing habits are rapidly changing and the platforms for providing programmes to viewers are multiplying and diversifying.

In the past decade, digital channels have proliferated, and viewing habits have moved on towards on-demand and online viewing. Three-quarters of adults now watch programmes through catch-up services, and about 16% of all programme watching is now time shifted rather than in real time. The problem is that in the face of this behavioural and technological change, it is becoming much harder to find the PSB content that viewers both like and pay for. On-demand players such as BBC iPlayer and All 4 are outside the scope of the prominence rules. New means for accessing these programmes apart from traditional channel listings, such as menus for catch-up and on-demand TV, are also not covered by the rules. In newer TV platforms, the prominence of PSB channels is being marginalised by new graphics and menus. On the new Sky box, Sky Q, you are greeted, when you turn your telly on, by a large box advertising top picks chosen by Sky, more than three-quarters of which is content broadcast by Sky channels.

What is the result of this failure of regulation surrounding PSB prominence to keep up with changing technological developments and viewer behaviour? It means that programmes such as Welsh and Gaelic language programmes are hidden in the digital weeds, often requiring many more than 10 clicks and a sophisticated knowledge of online platforms to reach. It means that the world-leading BBC children's channels, CBeebies and CBBC, are now below 12 US channels in the channel listing of the leading pay-TV platform, Sky. It means that viewers are increasingly being led to programmes whose prominence is paid for by commercial competitors to PSB channels rather than to PSB content.

Yet viewers' preference for PSB remains incredibly strong. Ten times more viewers want the TV guide at the top of their screen, in which PSB has preferred prominence, rather than the recommendations of the platform operator. More and more, viewers are not getting what they want.

There is widespread recognition that the rules need updating. In its 2015 PSB review, Ofcom concluded unambiguously:

"The current rules on schedule prominence for the PSBs were designed for an analogue broadcasting era. They need to be reformed to match changes in technology and ensure that public service content remains available and easy to find, in whatever way it is viewed".

This House's Communications Committee suggested extending the prominence rules to on-demand services and online menus. The TV licensing laws have already been updated to cover BBC on-demand services; the amendment simply demands that the same work be done for PSB prominence rules.

The amendment responds to the holes in the code in four ways: first, by adding PSB on-demand services to the list of services entitled to prominence; secondly, by extending the definition of an EPG beyond traditional channel listings to include connected and on-demand menus used by a significant number of consumers to access TV content. Note that the concept of "a significant number" is a robust one already in use under the 2003 Act, serving as a threshold test applying to Ofcom's powers under the must-carry regime, so it has precedent, it is workable and means that it would apply to a few major platforms and not serve as an impediment to emerging innovators in the TV platform market.

Thirdly, it strengthens the requirement for prominence of PSB children's channels specifically, so that parents and children can find the content they like and trust the most more easily, however they watch television. Fourthly, rather than seeking a legislative definition of prominence, it enables Ofcom to set prominence principles which the platforms would adapt as appropriate to their EPGs.

Some have argued that this proposal is unnecessary because the programmes and on-demand platforms that carry them prominently, such as BBC iPlayer, are thriving. This would be complacency of a high order, as well as ignoring the evidence of changes over time. Usage of iPlayer is indeed growing, but iPlayer's market share is reducing: Netflix and YouTube are now the market leaders. Pressure on iPlayer and All 4 will increase in line with the amount that US companies are increasingly prepared to pay to support prominence for their commercial product on UK TV platforms. Similarly, children's PSB programmes are indeed trusted and popular, but we know that platforms that display them prominently generate greater audiences than those, such as Sky, that do so less, so ensuring that the prominence rules cover those platforms is crucial to their sustainability.

What is at stake with the amendment is not an optional add-on to the regulatory regime around PSB, it is an updating of the prominence rules that is indispensable to the long-term sustainability of PSB in the face of changing technology. It is not just what consumers want, it is doing justice to the millions spent by licence fee payers on quality programming, to ensure that these programmes are not just made but watched.

Public service broadcasting cannot fulfil a public service if it is impossible to find or if it is crowded out by the sponsored content of wealthy and powerful commercial rivals. The amendment extends a principle that enjoys universal support for traditional TV viewing of the 2003 era, when the most recent Communications Act was written, to the more exciting, varied and complex world of TV viewing of 2017 and the years ahead. If we want PSB to flourish and remain at the centre of our national cultural life, rather than withering on the vine, we should support the amendment. I beg to move.

Baroness Bonham-Carter of Yarnbury: I support this important amendment. In Committee, the Minister rejected the need for change. He said,

"we have not seen compelling evidence of harm to PSBs to date".—[*Official Report*, 8/2/17; col. 1783.]

"To date": key words. What is needed is for them to be made up to date, to ensure that public service content will continue to be available and easy to find in whatever way it is viewed in a future-proofed way. The current rules on the prominence of PSBs have not kept pace with technological and market development. I shall be very brief because, as usual, the noble Lord, Lord Wood, has said all that I was going to say, and I do not want to be a parrot. The impact of PSB depends not just on producing high-quality, distinctive UK content but on providing easy access for people to consume it. It is still the case, as mentioned by the noble Viscount, Lord Colville, that the main and most trusted source of news is on TV. Given the rise of fake news, PSB content—impartial, well regulated, fact based—is more important than ever.

Prominence is one of the few sources of regulatory benefit to PSB providers, and we believe that in an increasingly complicated and fragmented digital world, its importance increases. As viewing habits change, reform is critical to preserve PSB in a digital age and sustain the creative powerhouse and global success that is UK broadcasting.

Viscount Colville of Culross: My Lords, I have added my name to the amendment because it is important to future-proof the prominence on the EPG of our public service broadcasters at a time, as the noble Lord, Lord Wood, said, of extraordinary change in the media.

In Committee, the Minister said that anybody could find the PSB digitally connected channels if they wanted to: the channels' very success showed that they did not need any boost to their prominence. However, one of the aims of the amendment is to push back on BSkyB's unique position in our media environment of being both a content provider and, via its satellite and broadcast services, a distributor. This means that it is in its interest to ensure that its content is more easily accessible than other companies' content. As the noble Lord, Lord Wood, said, on many of the new Sky boxes, its content is made as prominent as possible, while making the PSB channels—in particular the BBC's children's channels—more difficult to find. After the great success of the amendment of the noble Baroness, Lady Benjamin, we should do everything we can to encourage access to PSB children's channels.

The Minister said that children can easily find their way around the channel controller—we all know how adept children are with technology—but I hope that

[Viscount Colville of Culross]
he is not suggesting that children are given free rein with the channel controller to access anything they want. It needs to be carefully controlled and, I thought, given top prominence.

It is also clear from research by BARB, the audience research company, that prominence—or lack of it—affects consumption of programs. A like-for-like comparison shows that CBeebies secures a lower target audience share on Sky, at 28%, where it is more difficult to find, than on Virgin, at 33%, where it is listed in the top three children's channels.

I also understand that some noble Lords believe that an unintended consequence of the amendment will be to stop the prominence of the existing linear PSB channels: BBC1, BBC2, ITV and Channel 4. I assure noble Lords that this will not be the case. In subsection (3), the amendment confirms Ofcom's power to review the main linear channels and extends it to the new connected, or internet, channels. In subsection (8), it further strengthens Ofcom's power of review by omitting "such degree of" appropriate prominence. It simplifies and strengthens the duty on Ofcom to secure prominence, which will apply to both the main PSB channels on EPGs and the new PSB internet channels. It therefore gives Ofcom more rather than less scope to require prominence for all PSB services within the EPG.

Surely your Lordships' House will want to ensure a balanced broadcasting environment with a wide range of content on offer. I ask the Minister why he would not want to allow Ofcom, our world-class media regulator, to review this issue.

6.30 pm

Baroness Young of Old Scone (Lab): My Lords, I declare an interest as a past deputy chairman of the BBC. Public service broadcasting has been vital to our national broadcasting ecosystem in terms of raising quality and sustaining the mixed economy that has made our public service broadcasting admired across the world and indeed a player across the world. The amendment is important in particular for children's programmes, which sometimes lurk in the weeds, as I think my noble friend said. I do not think that some of these programmes lurk in the weeds at all; you have to scroll through vast quantities of channels that want to flog you jewellery or soft porn before you can get to some of them, on some of the platforms. It is interesting to see that both the BBC and the commercial public service broadcasters are of the same mind, as is Ofcom, and we owe it to them and to the public investment that the licence fee represents that they are given prominence on all platforms. I hope that the Government will seriously consider the amendment.

Lord Birt: My Lords, some time in the mid-1990s, I drove to west London to Sky's warehouse-style offices to be given the first privileged sighting to an outsider of the then embryonic Sky guide and set-top box. I was enormously impressed. In simpler times, it was very innovative and very helpful to the television viewer. Some decades later, not only Sky's but other guides appear frankly antiquated, and the whole EPG needs modernising very fundamentally. It is not of the digital age; it is hard to navigate and is miserably slow to search. You cannot personalise it, and the Channel 4 and ITV channels are not bundled together conveniently. I have tried very hard to remember where BBC1 HD is, but I have completely failed; I search for it endlessly and spend many wasteful minutes before I find it.

In an ideal world, we would have competing EPGs, and we would have contemporary innovation if we did. We need a much faster user interface than the clunky one that we have now. Plainly, it is no longer right to have EPG providers also being the main channel and service providers themselves. There is a conflict of interest; others have spoken of this. It is not right and at some point it should be ended. I favour a much more fundamental review of EPGs than is being discussed now—but, in this less than ideal world, we simply must protect the PSBs, and I support the amendment.

Lord Wigley (PC): I shall not repeat the comments that I made in Committee on this matter. I thank the noble Lord, Lord Wood, for introducing the amendment, which I certainly support. Two areas have been touched on already. The first is very close to my heart—the position of S4C in Wales and the Gaelic channel in Scotland. It is enough of a fight to try to ensure that there is language promotion and continuation without the struggles of going through reams of channels before reaching them. I accept entirely that some channels, such as Virgin, give the viewer an option to create their own priorities, but many viewers will either not have the drive or sometimes even the ability to use that facility in the way that it should be used. It may interest noble Lords to know that more people watch the Welsh language news on S4C than watch "Newsnight" in Wales. The language is thriving, but it needs to be equally accessible to the prime channels that are available on a UK basis.

My second point is on children. As a grandfather with five young grandchildren, I was amazed at the speed with which they could navigate their way to where the channels they wanted were located. But in doing so, they went through a whole plethora of other channels, which I was very glad that they skipped over quickly. We need to be able to help parents who need to safeguard their children from matters that they are too young to watch. For both those reasons, I very much support the amendment.

Lord Ashton of Hyde: My Lords, public service broadcasting prominence on the EPG is an issue that has come up at every stage of the Bill in this House, and Amendment 33ZG does so for this stage. The Government recognise the high-quality programming of our PSBs and their importance for maintaining the thriving and healthy UK broadcasting sector. We also recognise the strength of a mixed broadcasting ecology that features commercial broadcasters as well as commercial and non-commercial PSBs. We are showing our support for them in two ways that we have already debated: first, in the government amendment on listed events and, secondly, in our support of the noble Baroness, Lady Benjamin, in respect of children's television. Thirdly, although this is not in the Bill, we have announced that Channel 4 will not be privatised.

Our clear policy of supporting PSBs is why the Government gave considerable thought to the issue of the EPG prominence regime during the balance of payments consultation, the response to which was published last year, before this Bill reached this House. Our conclusion was that we had not seen compelling evidence of harm to PSBs to date and we decided not to extend the EPG prominence regime for PSBs to their on-demand services. This absolutely remains our view, and is supported by evidence, such as the success and continued growth in the popularity of the BBC iPlayer, which has no prominence at all and saw a record 304.2 million requests for TV programmes in January 2017—double the rate of five years ago. After the iPlayer, what are the most watched on-demand services in the UK? The answer is the ITV Hub and All 4, neither of which are currently subject to prominence requirements.

Additionally, PSB on-demand players already occupy the most prominent positions in the on-demand sections of major TV platforms such as Sky and Virgin. Why is that? Platforms make them prominent because they need to react to viewers' preferences. It takes, for example, a mere four clicks to get to the iPlayer from Sky Q's home page. As I stated during the last debate, when PSBs make excellent content, audiences will find it, whether it be catch-up or live content. A good example is children's PSB channels, of which many noble Lords have spoken. CBeebies and CBBC are the most watched children's channels by a considerable distance—which shows that there are no problems for audiences in finding these channels. The content is easily accessible on demand within the iPlayer itself.

Micromanagement of how audiences need to be guided through menus and sub-menus cannot be the answer when the technological landscape is shifting quickly. The fact is that platform operators respond to consumer feedback and needs in developing their products; therefore future developments in the EPG will be customer driven, not driven through legislative change. Further, it has been suggested by technology companies that, if this requirement was enforced, it would create a need for bespoke products in the UK. For example, smart TV manufacturers' user interfaces are developed with a global market in mind, but a separate product would need to be developed for the UK market.

Rather perversely, the amendment goes far beyond the prominence which Parliament has afforded to linear PSB channels, because it would give prominence to the PSBs' on-demand programme services, which include not only PSB content from commercial PSBs but also content originating from their non-PSB portfolio channels. We do not think that that is justifiable.

I confirm to noble Lords and to viewers who have found the BBC Parliament channel—the noble Viscount, Lord Colville, mentioned this, too—that, if this amendment is not agreed, the existing PSB regime will remain as it is today. People will still be able to switch on their ordinary TVs and find BBC1 and BBC2 at the top. But, if it is agreed by the House, it will remove it will remove Ofcom's discretion to require the prominence it considers appropriate for the linear regime; it will micromanage Ofcom's guidance; it will extend PSB privileges to non-PSB content; and it will affect worldwide manufacturers, many of whom operate in the UK, putting up prices for UK consumers—all against a background where iPlayer, ITV Hub and All 4 are already the most watched on-demand services. I therefore hope that the noble Lord will withdraw his amendment.

Lord Wood of Anfield: I thank all noble Lords for an excellent short debate; I will respond very briefly. I thank the Minister for his response but I am afraid that it has made me even more determined to push this amendment through, because his response seemed to be based on the premise that supporting prominence for traditional linear TV watching is a principle that the Government support more strongly than ever, but that somehow the principle falls into abeyance when viewing habits and technology change; and that, in the new future, there will be no need for further prominence rules because the choice of consumers will somehow magically replace the need for the current PSB protections in the prominence rules for linear TV.

I do not understand why the emphasis on prominence, which has been a cross-party principle for a long time, is suddenly thrown out of the window when on-demand and more sophisticated technologies develop. So I am afraid that I do not find the Minister's response at all satisfactory—and nor do I think that the threat of losing Ofcom's existing powers has any empirical basis whatever, by the way. So I would like to test the opinion of the House.

6.41 pm

Division on Amendment 33ZG

Contents 217; Not-Contents 188.

Amendment 33ZG agreed.

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6.54 pm

Amendment 33ZH

Moved by ***Lord Ashton of Hyde***

33ZH: After Clause 87, insert the following new Clause—

"Televising events of national interest

Televising events of national interest: power to amend qualifying conditions

In section 98 of the Broadcasting Act 1996 (categories of service), after subsection (5) insert—

"(5A) The Secretary of State may, by regulations made by statutory instrument, amend the percentage figure specified for the time being in subsection (2)(b).

(5B) An amendment made by regulations under this section does not affect—

(a) the validity of any contract entered into before the regulations came into force, or

(b) the exercise of any rights acquired under such a contract.

(5C) Regulations under subsection (5A) may make transitional, transitory or saving provision.

(5D) A statutory instrument containing regulations under subsection (5A) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Amendment 33ZH agreed.

Amendment 33ZJ

Moved by ***Lord Ashton of Hyde***

33ZJ: Before Clause 88, insert the following new Clause—

"Strategic priorities and provision of information

(1) After section 2 of the Communications Act 2003 insert—

"Strategic priorities

2A Statement of strategic priorities

(1) The Secretary of State may designate a statement for the purposes of this section if the requirements set out in section 2C (consultation and parliamentary procedure) are satisfied.

(2) The statement is a statement prepared by the Secretary of State that sets out strategic priorities of Her Majesty's Government in the United Kingdom relating to—

(a) telecommunications,

(b) the management of the radio spectrum, and

(c) postal services.

(3) The statement may, among other things, set out particular outcomes identified with a view to achieving the strategic priorities.

(4) This section does not restrict the Secretary of State's powers under any other provision of this Act or any other enactment.

(5) A statement designated under subsection (1) must be published in such manner as the Secretary of State considers appropriate.

(6) A statement designated under subsection (1) may be amended (including by replacing the whole or a part of the statement with new content) by a subsequent statement designated under that subsection, and this section and sections 2B and 2C apply in relation to any such subsequent statement as in relation to the original statement.

(7) Except as provided by subsection (8), no amendment may be made under subsection (6) within the period of 5 years beginning with the day on which a statement was most recently designated under subsection (1).

(8) An earlier amendment may be made under subsection (6) if—

(a) since that day—

(i) a Parliamentary general election has taken place, or

(ii) there has been a significant change in the policy of Her Majesty's government affecting any matter mentioned in subsection (2)(a), (b) or (c), or

(b) the Secretary of State considers that the statement, or any part of it, conflicts with any of OFCOM's general duties (within the meaning of section 3).

2B Duties of OFCOM in relation to strategic priorities

(1) This section applies where a statement has been designated under section 2A(1).

(2) OFCOM must have regard to the statement when carrying out—

(a) their functions relating to telecommunications,

(b) their functions under the enactments relating to the management of the radio spectrum, and

(c) their functions relating to postal services.

(3) OFCOM must within the period of 40 days beginning with the day on which the statement is designated, or such longer period as the Secretary of State may allow—

(a) explain in writing what they propose to do in consequence of the statement, and

(b) publish a copy of that explanation in such manner as OFCOM consider appropriate.

(4) OFCOM must, as soon as practicable after the end of—

(a) the period of 12 months beginning with the day on which the first statement is designated under section 2A(1), and

(b) every subsequent period of 12 months,

publish a review of what they have done during the period in question in consequence of the statement.

2C Consultation and parliamentary procedure

(1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it under section 2A.

(2) The Secretary of State must consult the following on a draft of the statement—

(a) OFCOM, and

(b) such other persons as the Secretary of State considers appropriate.

(3) The Secretary of State must allow OFCOM a period of at least 40 days to respond to any consultation under subsection (2)(a).

(4) After that period has ended the Secretary of State—

(a) must make any changes to the draft that appear to the Secretary of State to be necessary in view of responses to the consultation, and

(b) must then lay the draft before Parliament.

(5) The Secretary of State must then wait until the end of the 40-day period and may not designate the statement if, within that period, either House of Parliament resolves not to approve it.

(6) "The 40-day period" is the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House on the same day, the later of the days on which it is laid).

(7) When calculating the 40-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days."

(2) After section 24 of that Act insert—

"24A Provision of information before publication

(1) OFCOM must provide the Secretary of State, at least 24 hours before publication, with any information that they propose to publish.

(2) If exceptional circumstances make it impracticable to provide the information to the Secretary of State 24 hours before publication it must instead be provided to the Secretary of State as long before publication as is practicable.

(3) Subsections (1) and (2) have effect in any particular case subject to any agreement made between the Secretary of State and OFCOM in that case.

(4) The Secretary of State may by regulations specify descriptions of information in relation to which the duty under subsection (1) does not apply.

(5) Before making regulations under subsection (4), the Secretary of State must consult OFCOM.

(6) Information provided to the Secretary of State under this section may not be disclosed by the Secretary of State during the protected period, except to another Minister of the Crown.

(7) A Minister of the Crown to whom the information is disclosed under subsection (6) may not disclose the information during the protected period to any other person.

(8) A Minister of the Crown may not make any representations to OFCOM during the protected period that specify or describe changes that the Minister considers should be made to information that has been provided under this section when it is published.

(9) In this section—

"the protected period", in relation to information provided to the Secretary of State under this section, means the period beginning with the provision of the information and ending when either of the following occurs—

(a) OFCOM publish the information;

(b) OFCOM inform the Secretary of State that they consent to the disclosure of the information;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975.

24B Provision of information to assist in formulation of policy

(1) OFCOM may provide the Secretary of State with any information that they consider may assist the Secretary of State in the formulation of policy.

(2) Information with respect to a particular business that has been obtained in the exercise of a power conferred by—

(a) this Act,

(b) the 1990 Act,

(c) the 1996 Act,

(d) the Wireless Telegraphy Act 2006, or

(e) Part 3 of the Postal Services Act 2011,

is not, so long as the business continues to be carried on, to be provided to the Secretary of State under this section without the consent of the person for the time being carrying on that business."

(3) The duty under subsection (1) of section 24A of that Act does not have effect until the day on which regulations made under subsection (4) of that section first come into force.

(4) In section 393(6) of that Act (general restrictions on disclosure of information), after paragraph (a) insert—

"(za) prevents the disclosure of information under section 24A or 24B;".

(5) In section 111(7) of the Wireless Telegraphy Act 2006 (general restrictions on disclosure of information), after paragraph (a) insert—

"(aa) prevents the disclosure of information under section 24A or 24B of that Act;".

(6) In section 56 of the Postal Services Act 2011 (general restrictions on disclosure of information), after subsection (6) insert—

"(6A) Nothing in this section prevents the disclosure of information under section 24A or 24B of the Communications Act 2003."

Lord Ashton of Hyde: My Lords, during the passage of this Bill there has been debate on the state of the UK's fibre networks, the ability to switch communication provider, the quality of business connectivity and other matters vital to our economic future such as the new broadband universal service obligation. These issues rely on the Government's ability to formulate and implement policies effectively.

Amendment 33ZJ creates a new power for the Secretary of State to set a strategy and policy statement relating to telecommunications, the management of radio spectrum and postal services to which Ofcom, as the regulator, will have regard when carrying out its statutory duties. Ofcom's media and broadcasting functions are not included in this power, which recognises the importance of media independence from government. This measure will allow the Government to establish a clear policy direction to ensure greater coherence in an increasingly complex and interlinked environment. These changes also strengthen the already strong existing partnership between Ofcom and the Government. Introducing a strategy and policy statement for Ofcom's sectors brings it in line with the other regulators, Ofwat and Ofgem, and fulfils the Government's commitments to better establish the policy framework for regulators, as laid out in the *Principles for Economic Regulation* 2011.

This new clause also provides for Ofcom to disclose information to the Secretary of State at least 24 hours in advance of publication where appropriate, and improves Ofcom's general information-sharing powers. The new clause provides restrictions on disclosure to other persons, and representations cannot be made to Ofcom specifying changes to be made to any information provided.

The Government's ability to create and deliver effective policies is supported by Ofcom's expertise and research. In the past, even when it would have been beneficial for Ofcom to provide information, and it wanted to, it has been restricted by its existing statutory framework. This new clause supports the partnership between government and regulator by enabling early access to certain publications where that would be appropriate, and improving Ofcom's ability to share information where it deems it to be supportive of policy development.

This amendment therefore improves the policy-making process while also introducing greater transparency in the working relationship between government and Ofcom by giving clarity to the respective roles and responsibilities. This will ensure that policy decisions are taken by government—accountable to Parliament—and Ofcom, independently of government, undertakes the detailed application of regulation.

Should this amendment be agreed, existing Clause 9, which provides for a statement of strategic priorities relating exclusively to the management of spectrum, will no longer be necessary and the Government will table an amendment at Third Reading to remove it. I beg to move.

Lord Fox (LD): My Lords, as someone who has proposed amendments that go some way in this direction, I welcome this move, which in some part meets what we propose elsewhere. I have one question around the wording:

"OFCOM must have regard to the statement when carrying out",

its related functions. What exactly does that mean? Is that language replicated exactly for Ofwat and Ofgem? How should that regard be manifested by Ofcom?

Lord Stevenson of Balmacara (Lab): My Lords, rather like the last speaker, I welcome this measure but am a bit nervous about it. The idea that the Government of the day should be able to set out their forward thinking in a way which is helpful to the regulatory functions is a good one. However, as other external viewers have sought to point out, it raises worries about whether the regulator is truly independent of government in that mode, and whether the Government might be accused of setting an agenda which would then be imposed through a well-respected regulator which everyone thinks is doing a good job in a way that might not have been the case had the process of primary legislation followed by regulations been the approach taken. I hope that when the Minister responds he will confirm that there is no intention for this measure to circumvent the clearly established arm's-length relationships between the regulator and government. It would be helpful if he could do so.

In another Bill—I sometimes get confused, so I hope that I am discussing the right one—we talked about how the Secretary of State for Education has responsibilities in relation to the new body that is to be set up in higher education, the Office for Students. However, we think that it should be called the Office for Higher Education. In that Bill, the words "have regard to" the instructions given by the Minister are very much part of the way in which that system operates. However, that situation is different in the sense that the measure replaces an existing arrangement for a body which was not a regulator—HEFCE—and for which the only mechanism whereby higher education policy could be created was by letters of instruction. That usually takes the form of an annual letter to HEFCE which sets out the Government's wishes for the future year, sometimes for several years ahead. I make that point simply because it would be helpful if the Minister could make it very clear that the model here is one of improving an arrangement which will be for the benefit of the exercise of the powers that already exist, and does not add new layers of bureaucracy or new powers, and that the intention is not to set an agenda or to curtail the independence of Ofcom, as I think the system would not work without it. Otherwise, I welcome what is proposed.

7 pm

Lord Ashton of Hyde: My Lords, I thank both noble Lords for their qualified support; I hope that by the time I have finished, it will be unambiguous. I anticipate that from the noble Lord, Lord Fox, in particular, because of course these were the principles for economic regulation introduced by Vince Cable when he was Secretary of State. I can confirm to both noble Lords that there is nothing sinister here. Of course, when we talk about the fact that Ofcom must have regard to a strategic policy statement when carrying out its duties, it absolutely does not override any of Ofcom's existing general duties. It will continue to take decisions independently of government.

To allay any fears, there are further safeguards in this. A prior consultation must be run on the content of the SPS, which must include Ofcom and then be subject to parliamentary oversight. The implementation of a strategic policy statement does not change Ofcom's statutory duties at all—it is just one of a number of things that Ofcom has already taken into account when exercising its duties. I therefore hope that the safeguards and my assurance give some comfort to noble Lords.

Amendment 33ZJ agreed.

Amendment 33ZK had been withdrawn from the Marshalled List.

Amendment 33ZL

Moved by ***Lord Ashton of Hyde***

33ZL: After Clause 91, insert the following new Clause—

"Offence of breaching limits on ticket sales

Power to create offence of breaching limits on internet and other ticket sales

(1) The Secretary of State may make regulations providing that it is an offence for a person in circumstances within subsection (2) to do an act within subsection (3).

(2) Circumstances are within this subsection if each of the following applies—

(a) tickets for a recreational, sporting or cultural event in the United Kingdom are offered for sale,

(b) a purchase may be made wholly or partly by a process that the purchaser completes using an electronic communications network or an electronic communications service, and

(c) the offer is subject to conditions that limit the number of tickets a purchaser may buy.

(3) An act is within this subsection if it consists in using anything that enables or facilitates completion of any part of a process within subsection (2)(b) with intent to obtain tickets in excess of a limit imposed by conditions within subsection (2)(c).

(4) The regulations may apply whether the offer is made, or anything is done to obtain tickets, in or outside the United Kingdom.

(5) The regulations—

(a) may be limited to particular circumstances within subsection (2), and to particular acts within subsection (3);

(b) may provide for an offence to be subject to an exception or defence;

(c) may make different provision for different areas.

(6) The regulations must provide in England and Wales and Scotland for an offence to be triable only summarily.

(7) The regulations may not provide for an offence to be punishable—

(a) with imprisonment,

(b) in Scotland, with a fine exceeding £50,000, or

(c) in Northern Ireland, if tried summarily, with a fine exceeding the statutory maximum.

(8) The power to make regulations under this section is exercisable by statutory instrument.

(9) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(10) In this section "electronic communications network" and "electronic communications service" have the meaning given by section 32 of the Communications Act 2003."

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lord, Lord Stevenson, for adding his name to this government amendment.

For many years this House has rightly been concerned about the operation of the secondary ticketing market. In 2015, as well as placing new rules in the Consumer Rights Act, noble Lords acknowledged the complexity of online ticketing by requiring a review of consumer protection measures relating to online secondary ticketing. Professor Michael Waterson conducted that review, which was published last year, and two weeks ago the Government published their response, accepting his recommendations in full. The report was warmly welcomed by both Houses, by industry and by consumer representatives, so we should not rush to lightly dismiss the specific recommendations it makes.

Since the review was published, the Competition and Markets Authority has launched an enforcement investigation into suspected breaches of consumer protection law in the online secondary ticket market. The Government have also encouraged the event ticketing industry to set up a project group to take forward the review's recommendations, and have facilitated the sector's participation in the joint industry-government Cyber-security Information Sharing Partnership. In addition, we will ensure that resources are made available to National Trading Standards and Trading Standards Scotland to support the upcoming enforcement work on secondary ticketing. We are also working with industry to raise consumer understanding of the ticketing market.

Government Amendment 33ZL forms a key element of our response to the Waterson review, and is intended to address an issue within the ticketing market about which there is widespread support for further action, including from Professor Waterson. The amendment will provide the power for government to introduce a criminal offence to address the use of bots to purchase tickets for a recreational, sporting or cultural event in excess of the maximum specified. The intended offence will apply only to tickets for events in the UK, although it will cover activity to obtain tickets that occurs outside the UK. We believe that the amendment is needed to clarify the law and put beyond doubt the illegality of this practice and the need to report it.

Further, with the new offence on the statute book, the Government will work with industry to enforce it. An offence is only worth having if criminal acts are reported. We have industry groups in place that are now willing and able to take action in partnership with our law enforcement agencies. I hope that this amendment will find favour with the House, and I beg to move.

Lord Moynihan (Con): My Lords, I will speak to Amendments 33ZLZA, 33ZLZB, and 33ZLZC, which stand in my name.

I immediately thank the Minister for responding to a long-running campaign on the question of bots. I will say nothing further on that except that I am looking forward to the secondary legislation. His and the Government's decision to bring forward action against bots is important and necessary. These are the modern-day ticket touts which sweep the market by using software when the likes of noble Lords and their families are trying to obtain tickets to go to an event. That is unethical and should be illegal, and I welcome the Government's action on that. We need to make sure that we have good secondary legislation, and we look forward to it coming before the House.

On Amendment 33ZLZC, I will simply say that the reason I tabled this amendment is that it is important to respond to what the Minister said about the lack of enforcement. One way of dealing with the lack of enforcement in this area is to give event organisers the right to enforce the Act through civil action in the courts. This has the benefit of reducing the resources call on the police and/or trading standards, and it should be welcomed. It has certainly been called for by governing bodies of sport and promoters so that they can take action—because it is not in their interest, either, for people to be turned away because they have bought through the secondary market tickets that are counterfeit or illegal. I am unlikely to press that amendment to a vote, but I will be interested to see what the Minister says in response, because it seems to be a helpful suggestion by the governing bodies of sport to respond to this heinous issue.

The most important amendment that I am speaking to is Amendment 33ZLZA, which is fairly straightforward and common sense. Ed Sheeran's manager appeared before the DCMS Select Committee last week, in the absence of one of the four major secondary market platforms, viagogo, which just did not show. He made the clear and important point that neither Ed Sheeran nor any of the top artists, nor any of the major sports events, all of which are heavily in demand, want to see their tickets counterfeited and people turned away at the door.

We did work on the Consumer Rights Bill to make sure that you got a ticket number, a row number, and a seat number, and to make sure that there were clear terms of reference on the face of the ticket. That should have been achieved and should be deliverable. We fought for but failed to get the ticket number—at the time we got the seat number, the row number and the block. The tickets for Ed Sheeran at the front do not have a block, a seat number or a row, because they are for the standing areas at the front of the concert. But if you have come down a long way and have brought your family down for this one event, you may be turned away at the door because you have no way of checking as a consumer that a ticket is valid.

The only way you can do it is to make sure that there is a unique reference number, which was originally printed on the ticket but has to be on the secondary market platform. It is not an unreasonable request—it does not say that the Horsham Dramatic Society has to put a unique reference number on the ticket. It simply says that where there originally was one, and where Ed Sheeran's management team wanted one to protect loyal fans of Ed Sheeran who turn up, they should have the ability either to go online or to phone up and say, "Does this reference number accurately relate to a proper ticket and not a counterfeit ticket?".

A number of these mass, modern-day touts sweep the market and say, as they do online for Ed Sheeran, "Your seat number is between 1 and 20", and therefore they think that they have answered the question about the seat number. But the one thing they do not want is the honest supporter of a sporting event or a music fan having the ability to check whether their ticket is valid. This is the one amendment that would achieve that—and there would be no cost or difficulty. As far as the promoter of a sporting or music event is concerned, they are putting the seat number, the row number, the date and the event on the ticket. If there is an original, unique reference number, why not put that on as well to allow the true fan to check that it is not a counterfeit ticket before he spends a lot of money travelling to London with his family, for the sake of argument, to go to the O2?

The Minister said that he was concerned about this on three very simple grounds—but I think that there are answers to all three points. First, we obviously welcome the Waterson report, but Waterson stated, as did my noble friend, that he does not support any further significant changes to legislation at this time. However, by his own definition, these amendments are not significant. They do not ban or impose controls on the price; they merely tidy up gaps in the Consumer Rights Act regime, which Waterson endorses. So I believe it would be reasonable to suggest that the Government do, too, with their proposals for greater enforcement.

Secondly, the CMA review is under way but it is not about what might happen in this House tonight or in another place next week. The review and its inquiries are about the enforcement of existing legislation; they are not about possible changes in the future. If there were problems in the future, no doubt the CMA would consider having a further review. It is interesting that it would, by implication, support the measure this evening because it states:

> "We also think that it is essential that those consumers who buy tickets from the secondary market are made aware if there is a risk that they will be turned away at the door".

So, by implication, the CMA is in any event supportive of this proposal. However, that is not the point; the point is that, under statute and under its terms of reference, it is looking at existing legislation and not at new legislation.

Thirdly, when we debated this issue before, the European Union directive was much quoted as a reason for not being able to move forward—because we would be outside the scope of the European Union directive on consumer rights. I wrote to Brussels—not a usual habit of mine—in the following terms:

> "Whether it would be in accordance with the EU Consumer Rights Directive for both primary and secondary market ticket sellers to have to provide a unique reference number on the tickets so that event organisers could track sales of tickets".

The response was:

> "Providing a unique reference number on the tickets is not regulated under the Consumer Rights Directive; therefore the Directive does not prevent this practice. National legislation could be relevant to this regard".

Therefore, on all three grounds, I believe that common sense should prevail. We should look after the interests of the many people who are being ripped off by modern-day ticket touts and enable those individuals to have the right to enjoy a concert because they love either the music they want to listen to or the sporting event that they want to go to.

Lord Clement-Jones: My Lords, as the noble Lord, Lord Moynihan, has spoken extremely eloquently in support of his amendments, I wish to add very little to what he had to say.

On these Benches we strongly welcome government Amendment 33ZL banning the bulk purchase of tickets, but we believe that it will not solve the problems entirely by itself. There are certain questions about enforcement, which the noble Lord, Lord Moynihan, raised. The Minister used the expression "partnership with law enforcement agencies". Perhaps when he responds, he could say in a little more detail how that will work. As the Computer Misuse Act has not been effectively enforced by the police to date, the question is: who will enforce it and what budget will they have to enforce it with?

We strongly support Amendment 33ZLZA, proposed by the noble Lord, Lord Moynihan. We believe it is very important to include the booking reference where one exists. It is important as many tickets do not have a seat or row number because they are standing tickets or for unreserved seating. Some venues have 100% standing or unreserved places, while others sometimes have a significant number of standing areas. Other events, such as major golf, horseracing and motor sports

[Lord Clement-Jones]
events, as well as festivals, may also have unseated areas, and that has consequences. If there is no seat number, that enables secondary ticket websites to declare, "The full seat information is not available" or is "not applicable", so sellers may be able to avoid identification and undermine the existing provisions, which were pretty hard fought for under Section 90 of the Consumer Rights Act 2015.

The second part of the amendment is also very important. It requires the ticketing website to provide information if there is a resale restriction. This is key information for a potential buyer so that they do not purchase a ticket which is in fact invalid. That was noted by the Competition and Markets Authority when it launched its investigation last December into breaches of consumer law. Even at this late stage, I very much hope that the Minister will accept that amendment.

7.15 pm

Lord Pendry (Lab): My Lords, many of us have been around this block many times before, and here we are again discussing the negative impact that secondary ticketing has on the sport and entertainment sectors. I therefore willingly support the amendments standing in the name of the noble Lord, Lord Moynihan, who, as we have all heard, has so ably spelled out his reasons for tabling them.

It is a particular pleasure for me that these amendments carry his name because many years ago we were old sparring partners in the days when he was Minister for Sport and—if noble Lords can believe it—I was his shadow. I could not keep up with all the Ministers for Sport whom I shadowed but certain names spring to mind: Atkins, Tracey, Key, Sproat and Spring. I wrestled with them all but, a priori, the best by far was Colin Moynihan MP, who now carries a different hat in tabling this amendment. However, because his tenure in office was a short one before he moved onwards and upwards to become a Minister in the Department of Energy, I did not receive his wise words on the vexed question of ticket touting at that time. I did, however, receive volumes of advice from other Ministers, telling me that it was not the time to enact legislation to curb the touters. Even as early as 28 September 1992, the then Prime Minister, John Major, wrote to me:

"Although committed to give effect to the recommendations of Lord Justice Taylor … because of the lack of parliamentary time",

it was not the time to proceed with legislation on ticketing.

So progress has been slow. With the exception of legislation on football, not much has been achieved in the field of eliminating ticket touting. However, progress now seems to be at hand, thanks to the noble Lord and his colleagues, who I am sure will be the first to recognise the work of the late and lamented Lady Heyhoe Flint, who worked alongside them and did so much to give us the opportunity to debate the issue this evening. They are giving the Government the opportunity to embrace the need to protect consumers' rights and to call for a thorough study into secondary ticketing. These are important measures.

I am sure that, by now, noble Lords will have recognised why I am adamant that these amendments should be passed. As shadow Minister for Sport from 1992 to 1997, I worked on a blueprint for sport for the Labour Party which was brought together for the 1997 general election. That manifesto, *Labour's Sporting Nation,* was endorsed by the then Prime Minister-elect, Tony Blair. Of course it was an important time for me personally, as the one who wrote that document, as I believed that we were in sight of ensuring a breakthrough in this ticket touting problem. In particular, the passage on touting concluded with these words:

"A New Labour Government will make touting at all major sporting events illegal and therefore eliminate it".

I do not want noble Lords to bring out their handkerchiefs and tissues in sympathy for me at this moment but, as the House knows, as the author of that dictum I was not given the opportunity to bring that commitment into legislative form. But seriously, the then intention was to introduce explicit legislation that directly dealt with the problem of ticket touting. But the world has moved on, as we all recognise, and we are in a different age. One has to recognise that the world of 1997 is not the world of 2017. A lot has happened since, which has been acknowledged by the noble Lord, Lord Moynihan, and his colleagues who submitted these amendments. We must also acknowledge the way that they have gone about that in the months preceding this debate.

By supporting these measures we will be giving further power to protecting consumers and ensuring that effective enforcement takes place. This will give greater choice and information to sports fans and help in the fight against those who commit fraud and seek to exploit the pockets of hard-working families. Like others, I have received correspondence from a number of bodies which usually support what we are doing this evening. The UK stages some of the world's greatest sporting events. If we want them to flourish and for the country to continue to be open for business, we must protect those events from the profiteering of those committing fraud.

Organisations involved in rugby—both rugby league and rugby union—tennis, and cricket in England and Wales already do good work. We need to empower them to do more. The amendments before us give us that opportunity. They would give them the right to take civil action in a court if they so wished. The Minister will no doubt tell us when he replies about the importance of enforcement. I would like him, ideally, to accept the amendment before us. By accepting that progress has been slow, we have arrived at an important time when this House can endorse the amendment before us and people such as Lord Justice Taylor, Professor Waterson and those who have done so much in the past will, I am sure, benefit from what we do today.

Lord Stevenson of Balmacara: My Lords, I have been following the progress of this arrangement between all sides because the noble Lord, Lord Moynihan, and Lady Heyhoe Flint—who is terribly missed—the noble Lord, Lord Clement-Jones, and I have been doing this for about four years now. We are reaching the next stage. I do not think we are at the end of the track

yet—there are still things that we would like to do—but we have reached an important stage and I should like to support what we are doing.

The issue is all about the rights of the promoters to organise the events that they want to and have control of them, and the rights of consumers who sign up to see these events to do so with the security and certainty that they will be able to see what they have paid for at reasonable prices. The Minister has said that what he has done with the bots amendment is to try to modernise the modern-day ticket touts. I absolutely agree with that. That is why I have signed up to his amendment. There were real difficulties getting this through, which I know because I have talked with the Bill team and the Minister about this. It is really good to see the amendment here today. We will support it and wish it well on its way.

However, the other amendments in this group, which we also support, should not be lost sight of and I hope very much that we will get some movement today. They stem from recommendations 4 and 5 of the Waterson review. They are in keeping with those and try to establish further what the Minister articulated when he introduced the original amendment: as well as having a good partnership with primary ticket sellers and the secondary market, it is really important that the law has a good relationship with consumers and event promoters. Only by providing additional transparency, which was requested in Amendment 33ZLZA—and possibly in the good suggestion that governing bodies get more power in Amendment 33ZLZC—will we begin to take the steps that will clean up this act.

We know from the police reports, from those who are active in this area and from talking to promoters that there is huge criminality and money laundering. There are issues that we really have to investigate. But at the heart of it stand consumers who cannot rely on the market providing them with the right choice and a fair one. This must stop. If the noble Lord wishes to take his amendment to a vote we will support him in the Lobby.

Lord Ashton of Hyde: My Lords, I am grateful to all noble Lords and I will try to be quick because I want to move on to the dinner break business. I pay tribute to my noble friend Lord Moynihan for his persistent campaigning on the subject. His work has influenced today's government amendment, as has the work of other parliamentarians and particularly Nigel Adams MP and Sharon Hodgson MP.

Amendment 33ZLZA would amend the Consumer Rights Act 2015, by inserting a duty to provide the ticket reference or booking number when reselling tickets. This was specifically considered by Professor Waterson in his report. So I start by reminding noble Lords of the reasons that Professor Waterson gave for rejecting the same proposal that we now have before us in Amendment 33ZLZA. I refer to page 170 of his 226-page report. The first was cost. The amendment would require a system for the potential buyer to check a reference number, and in a manner that could be done quickly enough to facilitate internet sales. That requires infrastructure changes in both the primary and secondary market. The primary market would be asked to pay for changes to allow customers to authenticate tickets on the secondary market, for which they receive no additional income. Ultimately, the cost will be added to ticket prices.

Secondly, there is practicality. The secondary ticketing industry would need to establish a standard interface to enable cross-checking. There is strong competition between the platforms and no appropriate industry body to help bring such a system about. In such circumstances, it may be easier and possibly more productive for the secondary platforms simply to chase more exclusive authorised resale deals. Further, there is little evidence of there being the trust between the primary and secondary markets necessary to enable such verification.

Thirdly, my noble friend has mentioned the legal reasons. The EU consumer rights directive, which is the basis of the secondary ticketing information requirements in the Consumer Rights Act, prohibits member states going further in national law than the directive requires. My noble friend mentioned his telephone conversation with the European Commission. There are differences of opinion on the legal interpretation and clearly, at the very least, there may be litigation ahead if we go down this road.

The Government agree with Professor Waterson. We cannot see how Amendment 33ZLZA would actually benefit anyone. Even if those problems were overcome and the primary sellers would offer a consumer confirmation that a reference number was real, how do we know that the real ticket is available for sale? Might it have already been resold? Consumers who buy tickets online, only to be disappointed, will be even angrier having gone to the effort to "verify" yet still being left in the lurch.

Professor Waterson preaches caution in further legislating with good reason. Amendment 33ZLZA is untested and offers false hope. While ticket reference numbers do not offer a solution, we agree with the proposal to require consumers to be informed of the terms of resale. Indeed, we have already legislated to do just that in Section 90(3)(b) of the Consumer Rights Act. Rather than amending the Consumer Rights Act, we believe that the existing law should be tested.

The need for better enforcement was also the overwhelming view of those who gave evidence to the Culture, Media and Sport Select Committee last week, and the Competition and Markets Authority's enforcement investigation is ongoing. In addition, National Trading Standards and Trading Standards Scotland have been tasked with investigating potential enforcement cases against sellers on secondary ticketing websites that do not comply with the legislation.

I turn to Amendment 33ZLZC. While injunctions are already possible, the amendment would introduce a new element into consumer law by seeking to shift the responsibility for enforcement to the primary ticket seller. This could risk putting an undue onus on event organisers regardless of their capacity to act because public enforcement bodies could use it as grounds to prioritise other areas for enforcement action. The amendment also requires us to trust primary sellers to self-regulate and self-enforce, yet to date the sector has often been too unwilling or unable to take action. There have been notable exceptions, but the strides

[Lord Ashton of Hyde]
that we are making as I set out at the start of the debate have been achieved by bringing together the parties, including law enforcement agencies, and we need to build on that.

Although Amendment 33ZLZB is similar to the one the Government have tabled on the use of bots, it goes further by attempting to ban the resale of tickets purchased by bots. I acknowledge my noble friend's kind remarks along with those of the noble Lord, Lord Stevenson, so to save time I will not comment in detail as I understand that my noble friend is content with the government amendment.

In conclusion, the Government recognise that it is hugely frustrating for fans who miss out on tickets sold on the primary market only to see them appear on the secondary ticketing market at increased prices. The Government are acting—working with industry and law enforcement agencies. We need to let these developments grow and allow time to harvest the results of the legislation that we agreed in this House only two years ago. I would respectfully ask my noble friend to withdraw his amendments and noble Lords to support government Amendment 33ZL in their place.

Amendment 33ZL agreed.

Amendment 33ZLZA

Moved by ***Lord Moynihan***

33ZLZA: After Clause 91, insert the following new Clause—

"Duty to provide information about tickets

In section 90 of the Consumer Rights Act 2015 (duty to provide information about tickets), after subsection (4)(d) insert—

"(e) the ticket reference or booking number;

(f) any specific condition attached to the resale of the ticket.""

Lord Moynihan: My Lords, I am grateful to the Minister and all noble Lords who have participated in this debate. I should say to my noble friend that I did not telephone Brussels, which has put it in black and white that the directive does not prevent this practice, so they would be suing themselves, which would be fairly unwise.

I should also mention to the Minister that, in his report, Professor Waterson does not support further significant changes to the legislation, but makes it clear on page 22 that he is talking about a ban on the secondary ticketing market, which we are not in favour of. We do not want to ban the market, although noble Lords did so for the Olympic Games in London 2012. Similarly, this is not about a cap on resale prices. It is perfectly within the conclusions, and the Government's response to the Waterson report, to move ahead with this simple but effective remedy. It is not costly; it is about the cost of a phone call to the RFU to say, "Your original ticket had a unique reference number on it. I want to check that the one I have bought from StubHub or one of the other secondary sites is for real. Can you tell me whether that same number, which does not exist on there—or they have put another number on it—is for real before I incur a lot of costs?". It is a simple additional consumer protection measure which does not cost anything. It would look after consumers—in this context, particularly fans of sport and fans of music—which is what we should be all about. I beg to move the amendment and I should like to test the will of the House on it.

7.33 pm

Division on Amendment 33ZLZA

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Amendment 33ZLZA agreed.

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Ramsay of Cartvale, B.
Randerson, B.
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Thornton, B.
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Thurso, V.
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Tyler, L.
Tyler of Enfield, B.
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Walmsley, B.
Warwick of Undercliffe, B.
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Young of Old Scone, B.

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Arran, E.
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Astor of Hever, L.
Baker of Dorking, L.
Bates, L.
Berridge, B.
Blencathra, L.
Borwick, L.
Bourne of Aberystwyth, L.
Brabazon of Tara, L.
Brady, B.
Bridges of Headley, L.
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Browning, B.
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Caine, L.
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7.44 pm

Amendments 33ZLZB and 33ZLZC not moved.

Consideration on Report adjourned until not before 8.45 pm.

Horserace Betting Levy Regulations 2017

Motion to Approve

7.45 pm

Moved by ***Lord Ashton of Hyde***

That the draft Regulations laid before the House on 7 March be approved.

Relevant documents: 29th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the Government are proposing to extend the horserace betting levy to betting operators based offshore. Currently, betting operators in Britain are required to pay the levy, whereas those based offshore but otherwise in identical circumstances are not. This is manifestly unfair. Alongside this we are setting the rate of the levy, providing long-term certainty for betting and racing industries.

[Lord Ashton of Hyde]

Horseracing is an extremely popular sport, being the second best-attended sport in Britain last year. Some 6 million people enjoyed a day at the races in 2016 and it is an important contributor to the economy. The symbiotic relationship between betting and racing is well established. The principle of transferring funding to racing from the proceeds of betting under statutory arrangements dates back to 1928 and the levy itself has been in place since the early 1960s.

The levy generally works well, providing distinct funding for specific purposes. Areas of expenditure include prize money, veterinary research and education, and upholding integrity. These areas are also crucial from a betting perspective. For example, a healthy prize supports large and competitive field sizes, ensuring that racing remains attractive as a betting product. However, wider changes have meant that the levy is no longer fair to either betting or racing. Given the introduction and subsequent rapid growth in remote—primarily online—gambling in recent years, this has created a system which puts British-based operators at a competitive disadvantage. It has contributed to a significant decline in levy receipts.

While I applaud and pay tribute to those betting operators that have chosen to make voluntary contributions to the sport, efforts at securing a long-term arrangement have failed to materialise. The Government have been left with little choice but to take action to ensure fair competition among betting operators. The UK is by no means unique in this regard. France, Ireland, Germany and others all have similar statutory arrangements in place.

The Government's proposed changes to the levy have two principal objectives. They will create a level playing field between all betting operators and provide a fair return to the racing industry, helping to sustain and develop the sport. The levy is a pre-existing state aid, as it was in place prior to the United Kingdom's accession to the European Economic Community, as it then was. As we are making material changes to the levy, we now require state aid approval from the European Commission. The Government are seeking state aid clearance and these regulations will come into force only once this approval is granted. We have today been informed by the European Commission that state aid approval will not be received before 1 April. Therefore, the reformed levy will not be in place on this date. However, we are confident that clearance will be received shortly. The statutory instrument provides for the reforms to come into force once state aid clearance has been received. Until that time, the 56th levy scheme, as determined by the Secretary of State, will take effect from 1 April, ensuring a continued flow of funding to the racing industry.

I turn now to the levy itself. The levy will be payable on bets on British racing made by customers located in Britain. The location of the operator will be irrelevant. The levy will apply equally to all: bookmakers, including pool-betting and spread-betting operators, and betting exchange providers. The levy rate will be set at 10% of a betting operator's gross profits on such activity and it will apply whether the bet is placed at a course, a high-street bookmaker, or online.

The Government considered a range of evidence in arriving at a fair levy rate. This included responses to three previous consultations on the levy and extensive engagement with representatives from the betting and racing industries. We have also considered the recent history of the levy, the overall landscape of the betting market and the findings of an independent report on the funding of racing.

Alongside the headline rate, we are proposing a threshold amount. As a result, no operators will pay levy on their first slice of gross profits derived from taking bets on British horseracing. This exempt amount will be set at £500,000 and will mean that the majority of small and medium-sized operators will not be required to pay the levy. The Government are of the view that a rate of 10%, with a £500,000 de minimis threshold, is a fair and proportionate contribution from betting to the mutual interest it has in a good-quality racing industry.

A fixed rate provides a foundation for betting and racing to make longer-term investments with confidence. However, the market can change, so it is important that the levy can respond. Therefore, the regulations require the Secretary of State to review the rate of the levy within seven years.

The changes I have outlined will make necessary alterations to the levy scheme itself. In addition, the Government have previously announced that we intend to make changes to the administration of the levy to reduce administration costs and remove government from day-to-day involvement relating to levy expenditure. We will consult on this second phase of levy reform in due course and the issue will return to this House then. That is a matter for another day.

These reforms will ensure a level playing field for competition for all betting operators, and will give racing a fair return from those who make significant profits from the British racing product. The levy will support funding for a range of areas, including prize money, integrity, veterinary science, and equine welfare.

As we approach the final furlong towards these much-needed reforms, the Government believe that resolving the unfairness in the current system will enable betting and racing to move forward and to work together to grow both industries in the mutual benefit of a sustainable and vibrant racing product. I beg to move.

Amendment to the Motion

Moved by ***Lord Lipsey***

At end insert "but this House regrets that Her Majesty's Government have taken insufficient account of authoritative legal opinion that the draft Regulations are ultra vires."

Lord Lipsey (Lab): My Lords, I beg to move the amendment in my name. I declare a remote interest as a member of the Starting Price Regulatory Commission, chaired by the noble Lord, Lord Donoughue, and as a recipient of occasional hospitality from bookmakers, as stated in the register.

The Minister said that this is approaching the final furlong: I think this is the first of three gigantic Becher's Brooks, at which this legislation will fail, and I shall explain why.

I make no secret of the fact that I am against the levy—I am against statutory support for a particular industry. I believe that racing should stand on its own feet through a proper market-oriented system of money from bookmaking. Of course, that is what has been happening, because media rights have now far dwarfed any yield from the levy—they are three times as much as the levy, which was fading away. I oppose the levy because it is a state-mandated picking of the pockets of poor punters to fill the boots of rich owners such as me. But I do accept that, if you are going to have a levy, it is right that everybody should pay it and that offshore operators should not escape it. So to that extent, I sympathise with the Minister, and if that was the objective, the Government could have proceeded in a perfectly straightforward way and introduced primary legislation, which would be subject to full parliamentary scrutiny, to reconstruct the levy.

Indeed, it was the clear advice of the parliamentary authorities that that is what the Government should have done. Mr Colin Lee, Clerk of Bills in the Commons, said in a note to Philip Davies MP:

"I can say with reasonable confidence that changes to the levy itself and its scope would need primary legislation".

However, we do not have primary legislation before us tonight. The truth that Mr Lee was speaking unto power has had no effect, and DCMS, no doubt under pressure from some of its Ministers, has cobbled together a two-phase process to reconstruct the levy: the order before us now, and another in the autumn to abolish the levy board and hand over collection to the Gambling Commission.

This House is rightly sensitive about secondary legislation, the use and abuse of Henry VIII powers, ministerial attempts to minimise parliamentary scrutiny and so on. However, in this case there is a further problem. According to legal experts who have examined the order, it is not only the wrong way of doing things, it is actually ultra vires. I will cite the opinion of two such authorities: Olswang, the leading firm of gambling lawyers; and Tim Ward QC, in counsel's opinion prepared for the Remote Gambling Association. The Library has copies of their documents if anyone wants to read up on this in more detail. I shall paraphrase their arguments.

In the latest note from Olswang, Mr Dan Tench does not dispute that an order to impose levy on foreign betting operators who do not at present pay it is in order; the 2014 Act provides for that. However, Mr Tench says that this order goes "well beyond" that. It mandates a fixed levy of 10% for all bookmakers, in place of the present process of annual levy fixed by the Levy Board. It mandates the extension of the levy to the Tote's on-course operation. Incidentally, it was rather telling that the DCMS told a delegation only a week or two ago that the Tote already pays levy on its on-course business. It does not. I was a director of the Tote, so I am something of an authority on it. The DCMS just got that wrong, as it has got this order wrong. There is a £500,000 per annum exemption limit for on-course bookmakers, but it is an extension.

To summarise Mr Ward's opinion, in paragraph 4 he says:

"DCMS has failed to establish a robust legal basis for the measures in these Draft Regulations. The explanations now given by DCMS raise serious concerns in circumstances where DCMS is seeking to enact under delegated legislative power a wide-ranging reform of the statutory Levy regime in the absence of any express statutory power to do so … On DCMS view, the Henry VIII clauses can be used to effect a wide-ranging restructuring of the Levy, even though on its face it affords only a power to 'secure' the levy is extended to offshore bookmakers. Such a broad reading of the clause is in stark contrast to the restrictive approach approved by the Supreme Court".

I should say that this evidence was not available to the Joint Committee on Statutory Instruments when it considered the order.

I know why the DCMS has made these extra changes: it thinks they will help to get state approval. However, it may be significant that Ministers have been disappointed in their hope that they would have that state approval by tonight. The thing is, Commission approval is not enough. As we have seen before in the horseracing field, the Commission can be taken to the European court, and I can say with total confidence that this order will be challenged in the European court. I am not a legal expert and I cannot judge the chances of success of that challenge. However, the lawyers I have spoken to think that the Government's retort that this is rather similar to the French parafiscal case, where something slightly similar was approved, will crumble on examination, the French system being so different from ours. We have a competitive market, they did not.

More broadly, what are the prospects of this balsa boat surviving the rough seas into which it is being launched? Not strong, I think. Any interested party can challenge the order, and in the opinion of those I have cited, they would have a good chance of success. Next, the Government have to launch their second order, a legislative reform order, in the autumn. I will have a chance to make my views on that known—or rather, the views of the lawyers I have consulted—but again, there is a strong legal view that this is outside the scope of the legislative reform order they are seeking. Then, there is the possibility, which I have mentioned, of a state-aid challenge to the European court. I do not think Brexit will come along fast enough to affect that and if it does, there are likely to be other restrictions on state aid and whatever arrangements follow.

I make one closing point. Ministers, in proceeding with what I fear they must know is a dodgy order, are making a political calculation. They thought, wrongly, that the new levy was uncontroversial in both Houses of Parliament. They think that they have the bookmakers by the short and curlies so long as the triennial review is impending, with the threat of slashing FOBT stakes deterring them from making legal challenges.

They might be right, but let us suppose that they are wrong. Let us suppose that a challenge arises, if not from the big bookmakers then from some other betting firms, and the Government lose. For racing—and there are many present in this House tonight because they are supporters of racing, as I am—that could be a catastrophe. In all likelihood, they would end up not

[Lord Lipsey]
even with the existing levy but having to pay back the money that had been collected under the terms of this order; that is, roughly £50 million a year.

For Ministers, too, I have to say to the noble Lord that it would be a catastrophe. They were warned by the lawyers, by me tonight and by others that if they went ahead, they would be behaving illegally; they went ahead anyway; and they have been caught. I can see the short-term advantages to Ministers of going ahead with this scheme. The Queen will no doubt warmly thank the Prime Minister at her weekly audience because her horses will cost her less. Mr Hancock, the Minister of State for Culture in another place, will no doubt feel confident that his Newmarket constituents will be minded to add still more to his 13,000 majority. But those thanks will turn to ashes. Far from providing certainty to racing, the order promises prolonged uncertainty. Long term, there is every chance that this half-baked legislative scheme will collapse at the hands of the courts. The Queen, Mr Hancock's constituents and indeed the racing public will ask: "Why did you plough ahead? You had been warned". I beg to move.

8 pm

Baroness McIntosh of Pickering (Con): My Lords, I declare my interest in that I took the Bill through in place of Matt Hancock when he started his ministerial career. I also did a six-month stage, or apprenticeship, in DG IV of the European Commission, now known as the Directorate-General for Competition. Like the noble Lord, Lord Lipsey, I have enjoyed hospitality through membership of the all-party horseracing group.

I do not share the noble Lord's pessimistic approach and entirely endorse my noble friend the Minister's recommendation that we support the statutory instrument before us. That the Government have set the threshold at a rate that will exclude the majority of small and medium-sized businesses is to be welcomed.

Perhaps I may say why there is such a need for the regulations and for the levy to be applied in this way. The regulations answer a basic question: why should bookmakers who are based offshore and who take bets on British horseracing not pay the levy on bets placed in this country, albeit remotely, and therefore put money back into horseracing? Self-evidently in my view, they should pay.

I had the opportunity to look at the briefing and saw that receipts from the statutory levy fell from £115 million in 2007-08 to £54.5 million in 2015-16. The action that the Government propose to take is much needed. Having practised for a short period in Brussels as a European lawyer, I dispute the legal advice that the noble Lord, Lord Lipsey, has put before the House. Although the levy proposed is a form of state aid, it shares many of the characteristics of the French parafiscal levy. I can therefore see no reason for the European Commission to do other than rule in favour of what the Government propose nor for it to be challenged in the European Court.

I had the privilege to represent for 13 years the Vale of York and then for five years Thirsk and Malton, which were home to some of the most successful trainers, jockeys and stable lads and lasses in the country. The benefits of what is proposed to the rural economy of North Yorkshire and to Britain's racing grass roots, and to the wider horse sector, deserve our support. I urge the House to support the regulations.

Lord Addington (LD): My Lords, I support the Government's measures and think the noble Lord, Lord Lipsey, is wrong. That is primarily because I live in the village of Lambourne. Lambourne might claim to be one of the beating hearts of the racing scene, but I will not contest with the noble Baroness who has the biggest claim to that status. I live in a community dominated by racing and by people who work and live in it. These people are not fat-cat owners; they are people who get up, usually when it is still dark, to go and deal with the horses. They risk life and limb in dealing with a half-tonne of animal which has a mind of its own and muscle, which moves up and down. People are hurt regularly, and then there is the task of supporting the horses themselves. The rest of the horse community benefits from that, because when you get one type of horse, you get others going down there and congregating around them in hubs. The levy supports them, but receipts from it have halved. We need something down there. Those communities and people benefit from that money being spent.

Anti-corruption and anti-doping, which racing has taken a real lead on and which the rest of the sporting sector can learn from, has been tackled well in this industry. It is money well spent as a whole and I recommend that we proceed with these regulations. Those people's livelihoods depend on this money or at least on being able to live with a degree of certainty and support. If we have to take a little bit more off a person who is sitting or standing fatly back and watching as opposed to taking part, I have no objection to that. Those who work in racing should receive that support, thus I hope that the Government will stand firm.

Lord Donoughue (Lab): My Lords, I should declare my interests as in the register, particularly as secretary of the racing and blood stock all-party group and of the Betting and Gaming All-Party Group. I am also chairman of the Starting Price Regulatory Commission. In 2005, I chaired on behalf of the racing industry the independent review of the future funding of racing, with particular reference to the levy and the commercial alternatives to it. That was against a background of the chairman of the then British Horseracing Board having recently called for the abolition of the levy from his racing base. Our three-stage review—I shall not delay your Lordships on it, but they will see the relevance—concluded that we should replace the levy. It had been introduced 40 years earlier to compensate racing for the assumed, although unproven, damage to its revenues caused by the introduction of off-course bookmakers. We identified commercial alternative revenues to racing, with race courses selling race data and television pictures to bookies, but because of then doubts regarding the legal security of such revenues, we reluctantly decided not to recommend abolishing the levy until alternative commercial revenues were legally secure. That is the background I come from. The then Minister accepted our report and the levy was resumed for three years.

However, I think I can say that we assumed that the levy would go; its original purpose was achieved. I note that the Government have helpfully and cleverly defined a new justification, which is well drafted. Since then, the levy debate has rumbled on, as we have seen, through different Governments. It has wobbled between replacing and reforming the levy. Sometimes we have seen different proposals from the Treasury and from DCMS, the department sponsoring it. A year ago, the then Chancellor announced dramatically a new racing right. Now that has quietly disappeared. The levy is restored at 10% for seven years. As I mentioned, a new justification has been produced, replacing the earlier outworn one. Presumably, that was drafted to meet Brussels' requirements in not discriminating, reconciling racing and betting interests, and with a fixed rate. Elsewhere, the offshore avoidance loopholes have rightly been closed. I am sure all noble Lords support that and will thank the Government for doing it.

Meanwhile, media revenues to racing have continued to rise as our 2005 review predicted, more than doubling since then to around—I read—some £120 million, and double the current levy. Personally, I am always instinctively pleased to see racing receive revenue from any source. I love racing. I can also see the political attractions to the Minister of getting this annual irritation of the levy settlement off his desk for seven years. However, a number of issues clearly remain, including those my noble friend Lord Lipsey so strongly set out. I trust the Minister will address them adequately in his response. I am not sure that it can be a case of just one person trained in law claiming they know a bit more about the law than, for instance, Olswang—a major City firm.

I will summarise my concerns, some of which of course share ground with my noble friend. I see that the new measure may—I hope will—avoid a Brussels challenge over European state aid, thought it clearly seems to be state aid. I assume and hope that Brussels assisted drafting to ensure its safe passage over that hurdle. I accept that French support, wishing to protect French racing, should help there. We will see but my noble friend raised serious doubts. We also have the question of the domestic legal challenge from our bookmakers' body which may trip it up, as happened—as some of us remember painfully—with William Hill in the past. Again, we will see.

The use of the regulatory order to transfer the levy collection to the Gambling Commission seems unusual. I trust the Minister will be convincing in explaining that. I hope that the Gambling Commission, for which I have great respect, is fully resourced for its new and unexpected task. I note that as recently as 16 March last year, when DCMS published its plans to replace the levy, it specifically stated that the existing Levy Board would collect the funds. Why was that changed? I assume that the Gambling Act 2005, which many of us were deeply and painfully involved in, properly authorises the commission to do this job. Incidentally, at this point we should pay tribute to the fine work done by the Levy Board in its past very tricky job.

However, the biggest remaining problem is the familiar financial one: securing adequate future funding for racing. My view remains, as earlier, that that financial path must be basically a commercial one. This new levy may help in a small way for a while but we should be aware—this is my key point—that it also makes it more difficult for bookmakers to assist racing. This renewed levy impost plus the growing charges for pictures, over which there are current disputes, inevitably make horseracing an expensive betting product. Bookmakers, already under great commercial pressure, will increasingly, inevitably, focus on cheaper betting products such as football in its various betting forms.

8.15 pm

If the FOBT machines are soon hit—as they should be, in my view, and recent bookmaking managements have been guilty of gross complacency in approaching or ignoring this social problem—then these commercial pressures will increase. Hence, as that happens, the recent decline in the importance of race betting revenues to bookmakers may, ironically, be accelerated by these proposals. That will not help racing in the long run.

For the future, racing and betting must always where possible seek to work together and not be, as too often it seems, in adversarial opposition. As industries, they are joined at the hip. In the long term, each prospers best if the other prospers. They would be prudent to plan that future as being not always with a state levy. This seven-year break should not be wasted. With DCMS, betting and racing should spend some of that time preparing a secure commercial future for racing, which is what all sides want. Finally, and above all, I hope the Minister has indeed taken good legal advice or the department and racing may be in a little trouble.

Viscount Astor (Con): My Lords, briefly, I welcome this order and congratulate the Government on it. I claim some very small credit for it because the noble Lord, Lord Collins, and I, in a cross-party movement, managed to persuade the Government to accept an amendment to the earlier Bill, one that had been rejected in the Commons, which allowed these regulations to be brought forward.

I note that when the regulations went through another place they were endorsed and supported by the Opposition. They were even supported by the SNP, although I am not sure your Lordships would necessarily regard that as a terribly good endorsement of any prospect. However, it gives certainty to racing and to the bookmakers. They know that we will avoid the annual or tri-annual reviews that have beset racing and various Secretaries of State. I am sure my noble friend Lord Howard will refer to that.

I always noted that the noble Lord, Lord Lipsey, never liked the levy. Of course, we know his interest in greyhound racing, which has never benefited from the levy. However, I saw that the Minister in another place said that the noble Lord has volunteered to chair an active mediation. Although there are no plans to introduce a statutory levy for greyhound racing, we will try to encourage more money into the sector. I hope that gives him some assurance that greyhound racing will be supported.

Lord Lipsey: I thank the noble Viscount for drawing attention to that. Of course, the reason I took this job on is precisely in order that a statutory levy is not

[Lord Lipsey]
necessary for greyhound racing and that sensible parties working in a market environment sort it out between themselves, perhaps with a little help from me.

Viscount Astor: I am sure that the noble Lord's involvement will be very helpful to greyhound racing. I was recently at the new greyhound track in Towcester for a very successful event.

I will not say anything about the legal things as my noble friend Lord Howard will mention them. I just note that, should there be any involvement of and appeal to Brussels, after what happened today one would have thought that by the time the appeal got resolved other events might have made the whole thing unnecessary.

Viscount Falkland (CB): My Lords, the last time many of us who are in the Chamber tonight spoke was in 2014, during the licensing and advertising Bill. Many of the topics that we are touching on today we discussed then. But as the song goes, times are a-changing. The great change, of course, took place in 1963 when the levy was born and betting shops arrived on the scene. At that time, which I remember well, when I used to gamble quite a lot—I do not now—racing and greyhound racing were the two methods by which people who liked to have a gamble could do so.

In his concise introduction, the Minister mentioned the sport of racing as having high attendance and popularity among the public. That may well be so but that is against a very sharp decline in betting on horses, which is one of the reasons why bookmakers have been extremely worried and extremely tight in responding to the levy demands. The reasons for that are quite obvious. One is the different ways in which you can bet, many of which I would recommend. If some young man came to me and asked, "What is the best and most amusing way to have a bet", I would say, "If you had come to me 30 or 40 years ago, I would have said: go racing, take a limited amount of money and enjoy it. But I would not say that today because there are far better ways of making money out of gambling". I would suggest snooker or tennis—all these things people gamble on nowadays. Racing is a very difficult business in which to win. I ought to know; I suffered for many years.

In fact, I had a friend at school who I used to go racing with. I used to stay with his family in the holidays. They were great racing people. Unfortunately, he became a compulsive gambler, so much so that he found himself in court for fraud, trying to make up his gambling losses. The judge said, "This is a sad day for me to have to impose a custodial sentence on someone who comes from such a good family background and has had so many advantages and a good education. It is a sad duty for me and I expect my dismay will be shared by many in court. Perhaps I could ask the accused if he would like to say anything to the court to explain how he finds himself in this position". My friend's answer was simple. It got a great round of laughter but it was serious. He said, "Bad information, my lord". The thing about betting on racing is that it is entirely on information. You need good information and the only good information you can get in racing is from either the trainer or the lad—male or female—who looks after the horse. They are well protected these days, I am glad to say, by the security people who work for the horseracing association.

Nowadays we are in a different world and I am worried about the seven-year period before we have a review. I probably will not be here. Some other Members of this House may not be here in seven years. It seems an enormously long time to wait to see whether there are any satisfactory results. But you will get satisfactory results only if people go back to racing and start betting. I am afraid that I have come to the conclusion that they will not do that. The betting pound, if you like, is limited and people will choose the way in which they want to spend their betting pound. They will move to cricket. Cricket is very popular. In fact, it is the area globally in which there is the most crime—not in this country but in other countries in the Indian subcontinent and elsewhere. Most other sports here on which people gamble are generally well controlled. People bet on every kind of thing and bookmakers will give them the odds.

One thing that puzzles me, which has not come up in the debate so far, is: what about the betting exchanges? Another important change in this country was the arrival of betting exchanges, where not only could you back a horse to win but you could back it to lose, which caused a great deal of concern among people in racing because it increased the chance of skulduggery and getting the information that I referred to.

I listened very carefully to the noble Lord, Lord Lipsey, as I always do. I remember his definition, which I will not repeat in the House, of the drawbacks of FOBTs, which stands for—I hate acronyms—fixed-odds betting terminals. What on earth does that mean? It means nothing at all. What in fact it refers to are casino games in betting shops, which the Labour Party decided was a good thing to do when it was in power. Each betting shop has four of these things and that is why they are still open. People are not backing horses. What the people who can least afford it are doing with the little money left in their pockets is putting it in casino machines in betting shops. There is a lot of denial about this.

I declare my position as a deputy chairman of the Racing and Bloodstock APPG, and I also belong to the Betting and Gaming APPG, but I fear that the betting and gaming group does not agree with my views on the social damage from these machines. This is a complicated area. I do not criticise the Government for bringing this in. The great thing it does—temporarily, anyway—is to bring in a flat rate of 10% with a discount for more than £500,000, if I can put it that way. It will be administered by the levy board. The endless unseemly wrangles between bookmakers and the levy board will cease. That is a good thing, and I hope it will go on for longer than I suspect it will.

I do not think that in seven years' time the betting scene will be the same as it is now. Horseracing will continue. British horseracing has a world reputation, and the people who work in racing—in the stables and in the breeding—have a reputation which they cherish. They will find a way of surviving. They do not need an enormous amount of money, as long as there are

owners, and there are people who love owning well-bred horses. You do not need a racecourse and all the money you have to pump into it. You really only need a bit of land with suitable turf on which horses can compete. We may go backwards towards the 18th century when rich people had matches with one horse against another.

I am pessimistic. I do not think I am as pessimistic as the noble Lord, Lord Lipsey, but we have to pay attention to him because state aid is a complicated business. When the Minister sums up, will he explain to the House, because I do not understand it, the effect of this French parafiscal decision? I have consulted my friend on the Labour Benches, the noble Lord, Lord Donoughue, about this. He lives in France, so he should know, and I know the French pretty well. They have found a way of getting round European law. If they have done that, they will not be too busy making life difficult for us.

What the noble Lord, Lord Lipsey, described contains a lot of sense. I am not going to bet on a fight between the noble Baroness, Lady McIntosh, and the noble Lord, Lord Lipsey, although I know which one I would back in the long run. I hope they will not come to blows on this, but my opinion edges towards the noble Lord, Lord Lipsey. We have to be very aware of the dangers of state aid.

8.30 pm

Baroness Mallalieu (Lab): I appreciate that time is very short, so I shall be very short. I strongly support these regulations, and I pay tribute to the Minister in the other place, Miss Tracey Crouch, who has made enormous efforts to try to bring both sides together and produce a workable set of regulations. As my noble friend Lord Donoghue said, the betting and racing industries are pretty well joined at the hip, but they are also a minefield of conflicting interests. How to craft a fair and mutually acceptable system for funding a £3.5 billion industry has been the subject of a number of earlier failed—or, at best, imperfect—attempts. Indeed, the turf is scattered like confetti with, to use my noble friend Lord Lipsey's phrase, "authoritative legal opinions", usually conflicting, on how it should be done. I well remember one of them. Some years ago, when I was an independent member of the British Horseracing Board, we relied on such an opinion and fell foul of it later when challenged in the European court.

Every effort has been made by the Government to produce an agreement on which both sides can meet. That has proved difficult, if not impossible. We cannot leave things as they are. The levy is dwindling. The levy makes essential investments not solely in rich owners but in the sort of people who work in racing who were spoken about by the noble Lord, Lord Addington: 6,500 of them. I know them, and I declare my interest as a trustee of Racing Welfare, the charity that looks after them, and their union, the National Association of Stable Staff. There is also the money that goes straight to research which benefits not just the racing industry but the whole of the equine population. We cannot afford to see that continue to dwindle, and with it the small grants that go to keep the gene pool of our native species. That all comes from racing. Without the changes that are being proposed today, the levy is going to shrink. The needs are the same or greater, and we cannot meet them. As a lawyer, I know that there is no such thing as legal certainty—but there are times when, as in racing, you must simply do your best and go for the gap. I think this is one of them.

Lord Howard of Lympne (Con): My Lords, it is a pleasure to follow the noble Baroness, and I agree with everything she said. I declare my interest as a member of three horseracing syndicates and as a former chairman of a racecourse group. The issues before your Lordships this evening have bedevilled racing for decades. They were a matter of great contention when, more than 20 years ago, as Home Secretary I had responsibility for the racing industry and betting. Like the noble Baroness, I congratulate Tracey Crouch, the Sports Minister, on having had the courage to grapple with this issue, which has eluded the attention of Ministers for far too long.

I, too, listened attentively to the noble Lord, Lord Lipsey. As far as I could make out, apart from his principled opposition to the levy as a whole, his main objection to these regulations related to the possibility that they might fall foul of the courts, either in this country or in Europe. It grieves me to say that, given the growing assertiveness of the courts, that could be said of very many measures of legislation, both primary and secondary, which come before your Lordships' House. If that were a sensible and satisfactory basis for opposing legislation, the legislative burden on your Lordships' time would very light—much lighter than it is today. As the noble Baroness rightly said, we have to do the right thing—and if in due course the courts take a different view, I fear that that is something we all have to live with in these days of growing judicial intervention. I strongly support these regulations.

Lord Mancroft (Con): My Lords, I will speak just for two minutes, and start by declaring my interest, first as the chairman of one of the three regulatory bodies of point-to-point racing, which is the smallest area of racing. I should also say that I too have received entertainment from bookmakers from time to time, although by the time I have finished this evening I probably shall not receive any more.

I listened very carefully to the noble Lord, Lord Lipsey. The noble Viscount, Lord Falkland, said he did too, as it was important to do so, because the noble Lord knows what he is talking about in these matters and deserves our careful attention. I have some sympathy with the comments that he made and understand the whole principle that he is opposed to. The idea that the Government should impose a levy to support one particular industry and not another is a ridiculous one, in theory. But the reality is, as my noble friend the Minister said in starting and as I think other noble Lords have said, that the relationship between racing and betting is symbiotic. They are, as the noble Lord, Lord Donoughue, said, joined at the hip, and we should not do anything to break that join if either is to continue successfully. One comes to the conclusion that this is indeed a bit of a fudge, but the relationship between racing, government and betting has been a bit of a fudge since long before my noble friend Lord Howard

[LORD MANCROFT]
was Home Secretary—indeed since the 1960s—and it has been a fudge that has sort of worked. Occasionally, it has to be given a bit of a nudge to continue the relationship and make it go further. It is unsatisfactory that, every year over the last few years, the Secretary of State has had to reset a levy because the two industries have not been able to find a way forward.

What we have before us today is a fudge but, as several noble Lords have said, the Minister in another place, Tracey Crouch, has worked very hard to come up with a very nice a sweet piece of fudge, which certainly the racing side of the industry approves of, although I suspect that some of the bookmaking side of the equation will not be quite so happy. But it is reasonable that the online betting operators should contribute as they have not before, and I conclude that this is a fudge worth going for. As my noble friend Lord Howard said, if we rejected every single statutory instrument that we thought might end up in the courts, we would have nothing to do in dinner hour after dinner hour from now on—that may be a very splendid idea, but the reality is that we must not be put off with that. Yes, this is not without problems going forward, and it may not work for ever, but on balance I think we should support the Government and let this statutory instrument go forward.

Lord Trees (CB): My Lords, I will try to be very brief as I am very aware of the time, but want to support these regulations, which simply extend the reach of the levy to include offshore betting and which, in my opinion, quite simply right a wrong. One of the major benefits of the levy in the past has been, as I hope it will be in the future, the support it gives to equine veterinary science, research and education. Here I declare an interest as a former head of a veterinary school. Over the past 15 years, something like £32 million has been contributed by the levy to research and education. It has led to real improvements in the health and safety of horses, to a reduction in injuries, and to the prevention of infectious disease and many other facets of ill health. It has also contributed to the education of equine specialists, ensuring that here in the UK we are a global leader in equine healthcare.

I emphasise that that support is important because there are very few other sources of support for funding equine research. The research councils generally do not do it. In summary, this legislation corrects an unfair anomaly and makes eminent sense. By restoring and maintaining the support for equine veterinary research, education and disease surveillance, it will contribute widely to equine health and welfare in general. In particular, it will help ensure the health of the racehorses on which both the racing industry and, ergo, the racing betting industry depend.

Lord Clement-Jones (LD): My Lords, I am conscious of the time, and we must allow the Minister time to respond. I simply indicate the support of these Benches for the proposals. We have had many knowledgeable contributions from around the House, most of which I support. We do not support the noble Lord, Lord Lipsey, in his amendment to the Motion, but I thank him for the courtesy of providing a copy of the legal advice. I was very interested to hear what the noble Baroness, Lady McIntosh, and the noble Lord, Lord Howard, had to say on that score. It seems to me to be pretty thin, but there is always an arguable case, as the noble Baroness, Lady Mallalieu, said. That does not seem to me to be a barrier to the adoption of this excellent scheme.

As the noble Lord, Lord Donoughue, outlined, it has been quite a saga. It is now since 2005 that the very existence of the levy has been up for grabs, so to speak. Then we had the discussion about racing rights, and so on. I think we have come to the right place. I entirely agree with the noble Lord, Lord Howard, that Tracey Crouch has grasped the nettle in the right way. The Secondary Legislation Scrutiny Committee had no great things to say about the scheme. We very much welcome the £500,000 threshold. Some questions have been raised about why it is the Gambling Commission and why seven years, but I am sure that the Minister will answer them.

Lord Collins of Highbury (Lab): My Lords, I shall try to be brief, but the Minister and I will not have any sort of dinner break if we are to go straight to the next group of amendments to the Bill.

I welcome the Government's initiative in bringing this forward. It reflects the amendments that the noble Viscount, Lord Astor, and I submitted three years ago. Last April, we had a lengthy debate initiated by the noble Viscount about this precise issue. So it is not that Parliament has not had sufficient opportunity to scrutinise the principle. Unlike my noble friend, I support the principle. I know what the levy can do for rural industry. I know that it is not simply about rewarding rich horse trainers or owners: it is also about providing a system of support for education and training; ensuring that the industry is in a strong, healthy position; and, as noble Lords have pointed out, ensuring that it is a clean industry in which people can have faith when gambling.

That is the point I want to come to. I firmly believe that the people who profit from gambling should pay. Of course, it is not the punter who profits, it is always the bookmaker. I am not pro gambling, but I do not think that you can ever stop people gambling. I think we should create a situation in which people can have faith and confidence in what they are gambling on, and this is one way of doing it.

State intervention and state gambling provides the biggest support in this country to sport through the National Lottery, something that I firmly believe in and support. Since 2005, we have had debate after debate about the alternatives. The alternatives to the levy were proposed because of the changes to the way in which people gambled and how they could support the industries which they were gambling on. I see today's statutory instrument as a natural progression of the debate. I would have liked to have seen alternatives to the levy; I would have liked to have seen that sporting right. The noble Viscount, Lord Astor, knows that when we talked about offshore during the passage of the Gambling Act, we were faced with the Treasury saying, "We want to bring offshore gambling onshore". It was nothing to do with the levy. The Government did not want the levy—it was to do with the Treasury

wanting to capture that income. It was the pressure in this Chamber that forced the Government to consider the continuation of the levy. I hope that in the next seven years we will see that matter progress.

From these Benches, I would like to see the betting right cover more sports so that, when people gamble on football, grass-roots football benefits and when they are gambling on other sports, grass-roots sports benefit. That is not what tonight is about—and I welcome the debate initiated by my noble friend. I welcome the fact that he has tried to avoid having a wide debate about the principle. He has raised important issues about legality, and I am sure that the Minister will respond to those points but, as a point of principle, this side strongly welcomes the continuation of the levy.

8.45 pm

Lord Ashton of Hyde: My Lords, I thank all noble Lords who have made interesting contributions to this debate, and a number of very important points. The levy has been around for many decades and needed fixing. It is clear that the existing system is unfair and that the fudge, as my noble friend Lord Mancroft called it, creates more money for horseracing in general and is fairer. It includes things like veterinary research, which the noble Lord, Lord Trees, talked about. Since 2000, £32 million has been raised form the levy. This will raise more money and some of it can go to things such as veterinary research.

The noble Lord, Lord Lipsey, raised a number of points. His opposition to the levy is something of a well-trodden path, and he was honest enough to say that some of the technical reasons he was putting forward were really based on the fact that he does not approve of the levy. Before I go on, I should acknowledge that he has been completely open, and we have had useful meetings. We absolutely listen to his views and respect his knowledge but, ultimately, we have agreed to disagree.

Betting and racing have a well-established, intertwined relationship, and the Government are clear that the levy continues to be necessary to aid horseracing and the equine sector, reflecting that mutual interest. But it must be right that all operators who derive significant benefit from British racing should contribute.

On the legal basis mentioned by the noble Lord, Lord Lipsey, the levy is a state aid. Section 2 of the Gambling (Licensing and Advertising) Act 2014 allows the Government to extend the levy in a state-aid compatible way, using secondary legislation. At the time, my noble friend Lord Gardiner, who I am glad to see is in his place, was explicit that the power had to be broad enough to enable the Secretary of State to make changes to ensure state aid approval. That was Parliament's clear intention when enacting the power in 2014. So there is no need for primary legislation. The point of securing the power in 2014 was to allow us the flexibility to use secondary legislation, and that power is broad enough to address all the issues to secure state aid approval.

We have thought through very carefully the right way to apply the state aid requirements to the British context. We consider that our proposals, taken together, represent the right approach for Britain. The exempt amount means that we can protect smaller operators, and the diversity of the betting market at racecourses in particular. There is no justifiable reason for differential treatment between different types of betting operators going forward.

There was talk about the challenge to state aid approval in the European court. The noble Lord, Lord Lipsey, questioned whether racing would have to repay funds in the event of a successful challenge, but that will depend on the reasons why the European court sets aside the Commission's decision. Racing would not be liable to repay historic funds. We are confident that the European court will uphold the decision of the Commission to approve the levy as compatible state aid, as it did in the French case, so we do not expect that to happen. The noble Viscount, Lord Falkland, was worried about the seven-year period being a long time, but I can confirm that the Secretary of State has to review the levy within seven years—if need be, it can be sooner than that. Looking ahead, in terms of the transfer of functions to the Gambling Commission and racing authority respectively, we will consult on this in due course. This will provide an opportunity for all interested stakeholders, including the noble Lord, Lord Lipsey, to inform our consideration of this issue.

The noble Lord, Lord Donoghue, talked about media rights and he is right that they have increased in recent years. For example, they were £90 million in 2012 and increased to £128 million in 2014. But media rights are a distinct commercial product and are voluntarily entered into. Many online operators do not purchase media payments, so relying on media payments alone would not secure a contribution from many online betting companies to racing. Racing has told us that the current price for media payments has reached a peak. Since January 2017, some high street betting shops—Ladbrokes, Coral and Betfred—have not been showing pictures from Arena Racing Company racecourses due to a media rights dispute. This demonstrates the uncertainty attached to this form of income. The noble Lord also asked whether we had changed our mind on the Levy Board collection since March 2016. For the time being, collection remains with the Levy Board and we will be consulting on the transfer of the collection function to the Gambling Commission in due course.

The noble Lord, Lord Lipsey, said that we were wrong about the Tote paying the levy; the Tote on course is liable to pay the levy but amounts paid are negotiated with the Levy Board. These regulations abolish that differential treatment and apply the levy equally to all operators.

We think that these reforms will make a profound difference to the British racing industry and will help the sport to grow as an attractive betting product. I hope that my explanation will have satisfied the noble Lord, Lord Lipsey, sufficiently and will allow him to withdraw his amendment.

Lord Lipsey: My Lords, this has been a really excellent debate and the arguments on all sides have been well expressed. I just say that the Government, by laying these regulations, have disposed but—at the

[LORD LIPSEY]
end of the day, and whether the noble Lord, Lord Howard, likes it or not—the Commission, our courts and the European court will decide. I do not wish to put this to a vote tonight. We will see in the light of history who turns out to have been right. I beg leave to withdraw my amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Digital Economy Bill

Report (3rd Day) (Continued)

8.52 pm

Amendment 33ZLA

Moved by ***Baroness Howe of Idlicote***

33ZLA: After Clause 91, insert the following new Clause—

"Duty on Ofcom to report on filtering by internet access providers

(1) Ofcom must prepare a report for the Secretary of State, every two years from the date on which this Act is passed—

(a) on the number of providers of an internet access service who are preventing or restricting access on the service to information, content, applications or services, for child protection purposes;

(b) on the number of providers of an internet access service who are not preventing or restricting access on the service to information, content, applications or services, for child protection services; and

(c) describing the actions that are being taken by providers of an internet access service to—

(i) prevent or restrict access on the service to information, content, applications or services, for child protection purposes;

(ii) provide and improve child protection via other means other than those listed in sub-paragraph (i); and

(iii) provide relevant information to parents.

(2) The report produced under subsection (1) must be laid before each House of Parliament.

(3) In this section "internet access service" has the same meaning as in section 91."

Baroness Howe of Idlicote (CB): My Lords, I rise to speak to my Amendment 33ZLA on adult content filters. After all the lengthy discussions about age verification, some might be tempted to think that filters have been overtaken and eclipsed by age verification checks. However, that is not the case. The age verification checks in Part 3 relate narrowly to pornography and not to other non-pornographic adult content. This leaves out any protections in Part 3 on violence, self-harm, gambling, and so on. In another place there was a debate about extending age verification checks to other forms of adult content and this is something that I think is worthy of further consideration, perhaps in the forthcoming Green Paper on internet safety.

In the short term, however, it seems to me that we should make better use of adult content filters. The Government have asked Ofcom to produce a series of reports on the filtering provisions and practices of the four largest ISPs. These reports have helpfully provided objective analysis of the way each of the four ISPs have approached adult content filters, the standards to which they have subscribed and the extent to which customers have used them. This information has been very useful for policymakers and parents. If we concede that it is important to understand what ISPs are doing in relation to adult content filters, however, it simply makes no sense to look only at the conduct of some ISPs. Indeed, if Ofcom was only going to look at the conduct of some ISPs, it would make more sense for it to shine the spotlight on the conduct of the smaller ISPs as they are not party to the family-friendly filtering agreement between the big four ISPs.

There is no public clarity about the conduct of smaller ISPs in terms of whether or not they provide adult content filtering options, how they provide these options or what filtering standards they apply. Far from making for transparency, this generates confusion for both parents and policymakers. My amendment would end this very unsatisfactory state of affairs and require Ofcom to assess the conduct of all ISPs in relation to adult content filters.

In making this argument, I am mindful that some have suggested that the smaller ISPs primarily service businesses rather than homes, which might cause them to conclude that it is not relevant to assess their conduct in relation to adult content filters. In the first instance, even if it were true that the smaller ISPs primarily service businesses, to the degree that they would not do this exclusively and would also service homes, there would be a clear need to assess their conduct in relation to adult content filters. After all, every child matters.

Secondly, and more importantly, while I certainly acknowledge that some small ISPs such as Claranet, for example, focus only on business customers, that is not the case for others such as KCOM, the Post Office and Plusnet. There is a sense in which the different assessment as to whether the smaller ISPs service businesses or homes highlights all too well the lack of clarity about the smaller ISPs, demonstrating the need to ask Ofcom to review their conduct in relation to adult content filters, as well as that of TalkTalk, Sky, Virgin and BT. I believe in transparency, and that we particularly need greater transparency in relation to the conduct of the smaller ISPs. This will serve two important ends. In the first instance, it will help service a clearer public policy debate about child safety online and on the role of filters, which I believe would greatly assist the Green Paper process. In the second instance, the data gathered could be made available to help parents wanting to have a good objective understanding from an official source of the kind of filtering options that an ISP provides, and of the filtering standards to which it subscribes. This would help empower parents as they seek to rise to the challenge of helping to keep their children safer in a digital age.

In closing, I thank the Minister for meeting me to discuss the conduct of the smaller ISPs and for the conversations that he had subsequently about the approach of smaller ISPs with the Internet Service Providers' Association. I very much welcome the fact that ISPA has now agreed to introduce a new step in its members

sign-up process, which requires members to consider whether online safety tools are suitable for their customers. This provision, together with my amendment, would certainly help to move things forward. I beg to move.

9 pm

Lord McColl of Dulwich (Con): My Lords, I am very pleased to have been able to put my name to this amendment, which is also in the names of the noble Baroness, Lady Howe, and the noble Lord, Lord Collins. I commend the noble Baroness, Lady Howe, for all the work she has done in this important area and for her persistence in ensuring that we have the best internet filtering options available.

The noble Baroness's amendment comes only a week after the House of Lords Communications Select Committee published its report, *Growing up with the Internet*. Most of us will need to read it carefully, as it has some important things to say about internet filtering which I hope the Government will consider as they put together their promised Green Paper on internet safety. I am concerned that the committee's report says on page 3 that,

"self-regulation by industry is failing".

Indeed, it makes me wonder whether we will need to revisit Clause 91 at some point so that it goes further in mandating all internet service providers to provide filtering.

For the time being, I am glad that the Government have taken measures to ensure that family-friendly filtering can continue to operate under the EU rules on net neutrality for both internet service providers and mobile phone operators. I am also glad that they will be hosting conversations which will be influenced by the noble Lords' report on what is needed to ensure the best interests of children.

The internet, mobile phones and young people go together. If they did not, we would not have needed the age verification plans that the Government have introduced under Part 3. Last year, Ofcom's annual report on children's media use showed that, for the first time, children's internet use overtook their use of TV. Some 79% of 12 to 15 year-olds own a smartphone. This is technology in our teens' pockets with no 9 pm watershed. While there is an automatic adult bar in place on smartphones, 46% of parents of 12 to 15 year-olds do not know whether it is in place or not.

Internet network filtering is another option for parents as they raise digital natives. While Part 3 seeks to tackle children's access to pornography, filters on both mobile phones and home broadband can target other adult content, including violence and drugs. The ISPs offer customised filtering and different variations of the filtering options. When the big four ISPs agreed to provide family-friendly filtering, the Government asked Ofcom to produce a series of reports on how their commitment was progressing. Amendment 33ZLA is an extension of that requirement, which would apply to all ISPs for the first time—big and small—and to mobile phone operators.

My noble friend Lady Shields described internet filters as,

"a vital tool for parents".—[*Official Report*, 5/11/15; col. 1799.]

I agree, but I am concerned about the transparency of options for parents, especially in relation to the smaller ISPs. A mystery shopper exercise revealed that, when asked on the phone about filtering provision, some smaller ISPs were able to say whether filtering was offered, but seven were unable to confirm either way.

In this context it seems to me that, having conceded that Ofcom should report on some of the filtering policies of some ISPs, it makes no sense not to cover the smaller providers. Indeed, it is in respect of them that the need for a review is greatest—although the review of the four larger providers is vital and must continue. The findings of the last report were very useful.

These options need to be clearly set out to parents, and I support the requirement in Amendment 33ZLA that Ofcom should produce a report every two years setting out what all the mobile phone operators and ISPs are doing—or not doing—on internet filtering. This state-of-the-nation filtering report would serve two key purposes. First, it would help to bring greater clarity and transparency, which would be invaluable for policymakers, especially in the context of the Green Paper and beyond. Secondly, the data could also help inform parents of their options for filtering, so that they would not have to go to multiple websites, with differing levels of transparency, and try to work out the differing options.

I hope that, if this information is more accessible to parents, it will empower them to make the right ISP choice for their family and will increase their take-up of filters. The use of home network filters has been increasing over the last few years but they are still used by only about a third of parents. There are 7.96 million families with dependent children in the UK, and 99% of these households have fixed broadband. By my calculations, that means that 5.25 million households do not use internet filtering. Some parents have deliberately chosen not to use filtering, but 42% of parents of 12 to 15 year-olds do not know about internet filters. I hope that our Amendment 33ZLA will help provide the support and information they need.

This proposal is quite modest and fully in line with the intentions of the Government's Green Paper on internet safety, which has as an objective,

"helping parents face up to the dangers and discuss them with children".

Indeed, it is difficult for the Government to argue against this, given that they have established the relevant precedent by helpfully asking Ofcom to review some of the ISPs' filtering practices. I hope that the House will support Amendment 33ZLA to ensure that Ofcom reports on all ISPs, big and small.

Baroness Benjamin (LD): My Lords, I support Amendment 33ZLA, which would require Ofcom to report on internet filtering. I, too, thank the noble Baroness, Lady Howe, for persistently raising this issue in the House, and I welcomed the Government's proposal at Second Reading to bring forward an amendment on filtering.

As we have already heard, last week the Communications Select Committee, on which I sit, published its report, *Growing up with the Internet*, which covered the important subject of internet filters.

[Baroness Benjamin]

We should not be lulled into complacency by Part 3 of the Bill. Although it is very welcome, it deals only with children's access to pornography and not to any of the other subjects covered by internet filtering. The Select Committee heard of a,

"worrying rise in unhappy and anxious children emerging alongside the upward trend of childhood internet use".

This is a sobering reminder that there are many challenges ahead of us.

I hope that the Government will read our report carefully as they prepare their Green Paper on internet safety. In doing so, I particularly hope that they will review the committee's two recommendations on internet filters. On page 60, the report recommends that,

"all ISPs and mobile network operators should be required not only to offer child-friendly content control filters, but also for those filters to be 'on' by default for all customers. Adult customers should be able to switch off such filters".

We also recommend:

"Filter systems should be designed to an agreed minimum standard".

In this context, while the Government's Committee stage amendment, which basically says to ISPs, "You may provide filtering if you want to, but, equally, you don't have to if you don't want to", is clearly problematic. As we move towards the Green Paper we must look to require all ISPs that service homes among their customer base to provide unavoidable choice—or, better still, default-on adult-content filtering options.

I know that the Minister gave us assurances that the Internet Service Providers' Association was going to encourage its members to consider what was appropriate for their customer base. But, given the strong messages in our report for child-centred design, I am not convinced that that is enough—unless an ISP is solely for businesses.

I hope that the Government will review their position on internet filtering in the light of our report and that, in the meantime, they will support this modest but important amendment. It will give policymakers a clear picture of the landscape of what is and is not being provided by ISPs. Having conceded that it is appropriate to ask Ofcom to review the approach of some ISPs to adult-content filters, logically they should be looking at the conduct of all ISPs that service homes. This is especially important in relation to smaller ISPs whose practices and standards are often less accessible. This will really help the preparation for the Green Paper.

The information should also be provided to consumers on the Ofcom website on the web page Advice for Consumers. We need to put as many tools as we can in the hands of parents to help them navigate the complexities of filters. Of course, if the Government adopt the committee's recommendation that there should be minimum standards for filtering, we would make parents' lives much easier. I look forward to discussing this further with the Minister in one of his round tables on the Green Paper and I very much hope that noble Lords will support Amendment 33ZLA. It is a vital step towards greater industry transparency with respect to child protection online.

Lord Collins of Highbury (Lab): My Lords, I too thank the noble Baroness, Lady Howe, for this amendment. I added my name to it and support very much the principles contained in it. As she said in her introduction, this is not simply about pornography or about age verification, where we have addressed those issues. It is about giving parents the tools for the job so that they can be sure that their children are accessing the internet in a responsible way. That is a key issue because we have just had an hour-long debate on gambling; we know that access to gambling is on the internet nowadays. We have controls in casinos and age limits in betting shops, but we also know that someone can bet huge amounts on mobile phones using the internet. We need to give parents those tools. That is what the House of Lords Communications Committee resolved. The report is excellent and I welcome noble Lords' references to it.

The Minister will no doubt reassure the House about what we are doing with the major ISPs and how Ofcom will be reviewing that, but if, as the noble Baroness said, 10% or potentially even 15% of the market is not covered by that review, we are not addressing the full picture. What we need to aim for in this highly competitive market is an industry standard so that consumers understand that wherever they go to get the best price for access to the internet, the whole industry will be applying the same standards in terms of the ability of parents to ensure that their children are accessing the internet in a responsible way.

Reference has been made in this discussion to the review being conducted by Ofcom. Will the Minister consider whether that review could be extended to all ISPs? He has the authority and he does not need this amendment to be approved, but he could reassure us that we will not simply rely on the letter from the industry saying that we will approach the other ISPs and seek their co-operation. He can ask Ofcom to do this and I urge him to give noble Lords that reassurance.

9.15 pm

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I thank all noble Lords who have contributed to the debate. I will start by saying that the noble Baroness, Lady Howe, has been a consistently strong voice in this House in favour of protecting children online and we pay tribute to that. As noble Lords know, we introduced Clause 91 in Committee on the provision of family-friendly filters, clarifying that internet service providers may restrict access to information, content, applications or services where that is in accordance with the terms of service agreed by the end user. That clause gives a reassurance to providers that such filters are compliant with EU net neutrality regulations, so the debate on that has been had in this Bill.

The noble Lord, Lord Collins, my noble friend Lord McColl and the noble Baroness, Lady Benjamin, referred to the report of the House of Lords Communications Committee, *Growing Up with the Internet*, which was published on 21 March. The noble Baroness, Lady Benjamin, hopes that we will take careful note of it. She knows that we listen to her—she had an amendment accepted. Among the many

recommendations in the report, there is a call for a mandatory default on filters set to a minimum standard to be a requirement made of all ISPs and mobile network operators. Of course I can confirm that we will consider the recommendations in the report carefully as part of our developing work on the new internet safety strategy, and we will respond to it formally in due course.

However, we believe that the current voluntary approach on filters works well and that a mandatory approach would run the risk of replacing the current user-friendly parental control tools with a more inflexible top-down system. As has been noted by several noble Lords, the Internet Service Providers' Association, the trade body for the industry, is taking further action to encourage smaller ISPs to consider online safety issues and parental control filters for their customers where appropriate. But having said that, I can make the commitment that we will listen to what the committee has said on this subject and, as I say, we will respond in due course. This amendment would require Ofcom to report to the Secretary of State every two years on the number of internet access providers which do or do not offer filters and to describe the actions being undertaken by them in relation to child protection.

As noble Lords will know, in 2013 the previous Prime Minister announced our agreement with the big four ISPs—Sky, Virgin Media, BT and TalkTalk—that they would offer network-level family filters to all customers by the end of December 2014. Ofcom was asked to produce reports on this rollout and did so in four reports issued between January 2014 and December 2015 covering the detail on the provision of filters and child protection measures by the big four ISPs, covering 88% of the fixed broadband market. The vast majority of consumer-focused broadband is therefore a matter of public record. The Ofcom reports also cover data on take-up and usage by parents of these filters. The data are now updated annually in Ofcom's *Children and Parents: Media Use and Attitudes* reports, which provide statistics on parental usage and awareness of filters and experience of online safety. In respect of ISPs other than the big four, which run into hundreds, the vast majority of these are SMEs and micro-businesses, as noble Lords may be aware, offering niche, specialist and business-to-business services to small subscriber bases.

With that in mind, it is not clear from the amendment how Ofcom would gather the information it would need to prepare the statutory reports. It is likely that Ofcom would need to identify and ask providers for this information. This would be a very big task for Ofcom as ISPs enter and leave the market constantly and there is no requirement for them to register with Ofcom. It would also be disproportionate for the majority of ISPs, most of which are not focused on the mainstream consumer market, to be asked to provide this information.

The information covered by the existing Ofcom reporting ensures that the most relevant data are sourced on the actual usage of filters by parents, without disproportionate costs or impact on SMEs and micro-businesses. A statutory approach could also unnecessarily limit the scope and focus of reporting moving forward, as technology and the market changes.

On that basis, we consider it more appropriate for Ofcom's reporting to be on a non-statutory basis to allow greater flexibility. Therefore, I hope that in light of that the noble Baroness will withdraw her amendment.

Baroness Howe of Idlicote: My Lords, I am most grateful to all noble Lords who have taken part in this debate and raised all these extremely important issues, and to the Minister for setting out his views on what has been achieved and some of what he considers the danger of asking Ofcom to do rather more than at present, therefore perhaps limiting some of the other work. I would certainly like to see rather more progress being achieved, but on the other hand I understand the extent to which steps have been taken. In the circumstances I will not press the amendment further, but I hope that the Minister will keep the whole issue under review and let us know as and when he becomes even more satisfied with what has been achieved, remembering that at the back of all this it is the small users, such as the parents and children, who we are really concerned about protecting. Having said that, I will withdraw my amendment.

Amendment 33ZLA withdrawn.

Amendment 33ZM

Moved by ***Lord Ashton of Hyde***

33ZM: After Clause 92, insert the following new Clause—

"Regulations about charges payable to the Information Commissioner

(1) The Secretary of State may by regulations require data controllers to pay charges of an amount specified in the regulations to the Information Commissioner.

(2) Regulations under subsection (1) may require a data controller to pay a charge regardless of whether the Information Commissioner has provided, or proposes to provide, a service to the data controller.

(3) Regulations under subsection (1) may make provision about the time or times at which, or period or periods within which, a charge must be paid.

(4) Regulations under subsection (1) may make provision—

(a) for different charges to be payable in different cases;

(b) for cases in which a discounted charge is payable;

(c) for cases in which no charge is payable;

(d) for cases in which a charge which has been paid is to be refunded.

(5) The Secretary of State may by regulations make provision—

(a) requiring a data controller to provide information to the Information Commissioner, or

(b) enabling the Commissioner to require a data controller to provide information to the Commissioner,

for either or both of the purposes mentioned in subsection (6).

(6) Those purposes are—

(a) determining whether a charge is payable by the data controller under regulations under subsection (1);

(b) determining the amount of a charge payable by the data controller.

(7) The provision that may be made under subsection (5)(a) includes, in particular, provision requiring a data controller to notify the Information Commissioner of a change in the data controller's circumstances of a kind specified in the regulations.

(8) In this section "data controller" means a person who, alone or jointly with others, determines the purposes and means of the processing of personal data.

(9) In subsection (8) "personal data" means any information relating to an identified or identifiable individual.

(10) For this purpose an individual is "identifiable" if the individual can be identified, directly or indirectly, in particular by reference to—

(a) an identifier such as a name, an identification number, location data or an online identifier, or

(b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

(11) Where the purposes and means of the processing of personal data are determined by or on behalf of the House of Commons or House of Lords, other than where they are determined by or on behalf of the Intelligence and Security Committee of Parliament, the data controller in respect of those data for the purposes of this section is the Corporate Officer of that House."

Lord Ashton of Hyde: My Lords, the government amendments in this group seek to give the Secretary of State the power to make regulations introducing new charges to fund the regulatory functions of the Information Commissioner for data protection. The charges will replace the existing notification fees set out in regulations made under Sections 18 and 26 of the Data Protection Act 1998.

The amendments will also repeal Part 3 of the Data Protection Act, which imposes an obligation on data controllers to notify the Information Commissioner of certain types of data processing. The commissioner maintains a register of all data controllers. The General Data Protection Regulation removes the obligation on data controllers to notify the Commissioner, so it is necessary to repeal Part 3. The GDPR will become part of UK law on 25 May 2018.

The amendments seek to replicate the substance of the fee-raising powers in the Data Protection Act 1998. I can confirm that charges will continue to be based on the principle of full cost recovery and, in line with the current model, fee levels will be determined on size and turnover of organisation, but will also take account of the volume of personal data being processed by organisations to recognise the additional risk of a breach occurring when an organisation processes large volumes of sensitive personal data.

Although organisations will no longer be required to notify the Information Commissioner that they are processing personal data, they will continue to receive a range of services from the Information Commissioner's Office in return for the charge. This includes good practice guidance on organisations' obligations under the data protection framework and how to comply; online training videos; free voluntary audits of organisations' data protection practices to support improved compliance; and advisory visits.

The Government have considered the DPRRC's recommendations on these clauses and have responded. We agree with the committee that regulations made under the new charging powers should be subject to appropriate external consultation and parliamentary oversight. We will therefore bring forward an amendment at Third Reading to require the Secretary of State to consult,

"such representatives of persons likely to be affected by the regulations as the Secretary of State thinks appropriate and such other persons as the Secretary of State thinks appropriate",

in addition to the Information Commissioner. We will also bring forward an amendment to require the Secretary of State to use the affirmative procedure when making regulations under the new power, except in the case of purely inflationary increases, where the negative procedure will apply.

We have considered carefully the committee's recommendation to require the Secretary of State to ensure that the income from the charges does not exceed the reasonably anticipated costs of discharging the specified functions of the Information Commissioner and Secretary of State related to data protection. It is the Government's view that the limited flexibility given in the government amendments is necessary, given rapid developments in the digital economy and to manage the inevitable period of transition as the ICO takes on additional responsibilities under the forthcoming general data protection regulation. The language used in the Government's amendment mirrors that in the existing Data Protection Act. Parliament has not expressed any concerns about how the existing powers have been exercised and we believe that by subjecting each exercise of the power to the affirmative procedure, we are putting in place sufficient parliamentary safeguards to ensure the powers will be exercised in a rational and responsible way in the future. We therefore do not intend to table an amendment to address this recommendation. I beg to move.

Amendment 33ZN (to Amendment 33ZM)

Moved by ***Lord Clement-Jones***

33ZN: After Clause 92, in subsection (2), leave out from "charge" to end and insert "for a service provided to the data controller by the Information Commissioner."

Lord Clement-Jones (LD): My Lords, I thank the Minister for that introduction but I must confess to being somewhat baffled by it. I am very happy that he has taken on board some of the Delegated Powers and Regulatory Reform Committee's recommendations. However, he read out word for word from his letter to us of 22 March why he is not agreeing to table an amendment similar to Amendment 33ZP, which is in my name and that of my noble friend Lady Hamwee, yet in his introduction, he assured us that the actual charges would be no more than full cost recovery. I therefore do not really understand what his objection is to enshrining that in primary legislation. I certainly do not understand the paragraph that begins:

"It is the Government's view that the limited flexibility given in the Government's amendments is necessary given rapid developments in the digital economy and to manage the inevitable period of transition".

Full cost recovery is full cost recovery—I cannot see any ambiguity or any need to be particularly flexible going forward. Just because the language used in the Government's amendment mirrors the existing Data Protection Act does not mean that we cannot improve on it.

This is a bit of a curate's egg. Although I am of course pleased that the Minister is responding to two-thirds of the committee's report, the really important

bit—making sure that the ICO does not overcharge—is not catered for. A bit more explanation from the Minister is needed as to why he cannot simply enshrine that in a third amendment at Third Reading.

9.30 pm

Lord Collins of Highbury: I have tabled Amendment 33ZPA, which deals explicitly with the Delegated Powers Committee's recommendation. As the Minister will know, immediately on seeing the government amendments I approached him and wanted a discussion, because I was anxious that items were suddenly being put in the Bill of which no mention had been made before. We had had amendments relating to the Government's willingness to implement the GDPR and they were reluctant to address that issue in the Bill, but suddenly the GDPR was to come into force on 18 May and we needed time to ensure that charges could be properly accommodated. I was concerned that suddenly all this was happening. The Minister wrote to me after our meeting and I was happy to learn that the Delegated Powers Committee had come up with the same concerns as me.

I want to be clear that my amendment specifically picks up the words of the committee. This is not simply about covering costs—I am sure that the Minister will reassure us about that; it is also about creep. It is about whether the Government will ask the ICO to undertake other things for which charges will suddenly become applicable, as was referenced in the report. It cited,

"broadly similar legislation enabling the Government to prescribe enhanced court fees, which they are relying on to introduce large increases in probate fees".

We know that the ICO wants to extend its powers—quite rightly in some respects—but it should not do so without proper parliamentary scrutiny. I want the Minister to give me a clear assurance that the specific example given by the committee will not be applicable in relation to these charges. The "limited flexibility" of which he spoke gives the Government much wider powers. Why do they need limited flexibility when they are introducing a charging regime to meet the requirements of the GDPR and the specified responsibilities of the ICO? If they are to go beyond that and say that they need wriggle room in the form of what are described as limited powers, Parliament deserves the opportunity properly to scrutinise such changes. I reserve the option of tabling amendments at Third Reading that bring forward the recommendations of the Delegated Powers Committee. I hope that the Minister can reassure me about the limited power or wriggle room that he says the Government need. I want to know why they need it.

Lord Ashton of Hyde: My Lords, I listened with interest and a certain amount of apprehension to this debate and the contributions made by noble Lords. As I said in my opening remarks, the Government intend to bring forward at Third Reading amendments to address the intentions of Amendments 33ZR, 33ZS, 33ZT and 33ZV tabled by the noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Hamwee.

I listened to the arguments in support of Amendments 33ZN, 33ZP and 33ZPA. However, we need the existing flexibility in the government amendments because there is rapid development in the digital economy. That means that the role of the data protection regulator is continually evolving. We want to allow flexibility to manage the period of transition as the ICO takes on additional responsibilities under the forthcoming GDPR. For example, in our amendment we specifically refer to discounts to certain organisations.

I understand why noble Lords are worried about giving additional powers to the ICO. The noble Lord, Lord Collins, talked about "creep" on this. I reassure noble Lords that this will be on a full cost recovery basis and it is in line with the current charging regime, so the fees will be determined by the size and turnover of the organisation, as I said at the beginning. We will consult data controllers on the shape of the new regime before laying regulations to introduce new charges. I repeat that the new model will continue to be based on the full cost recovery principle. On parliamentary scrutiny, the affirmative procedure will allow that scrutiny in Parliament.

The other reason for this is that the ICO fees regime needs to be in place by 1 April, ahead of the GDPR. In advance of this, it will be necessary to consult organisations on the proposed fees levels and lay the fees regulations in sufficient time for the start of the 2018-19 financial year. We would not be able to do that in the third Session.

To answer the noble Lord, Lord Clement-Jones, on the language in the proposed new section, the nature of the ICO role is changing with the changes in electronic communications—for example, in the regulation on cookies. We need some flexibility without the restrictive language of the noble Lord's amendment.

I hope noble Lords will agree that subjecting regulations made under these powers to consultation and the affirmative procedure offers the necessary safeguards to ensure the powers are used proportionately. I therefore respectfully ask that the noble Lord withdraws the amendment.

Lord Collins of Highbury: Bearing in mind the comments I made, would the Minister take the opportunity to meet me and other interested Peers before Third Reading so that we can be clear and reassured that those points are covered by the government amendments?

Lord Ashton of Hyde: It is always a pleasure to meet the noble Lord and I give that undertaking.

Lord Clement-Jones: My Lords, I thank the Minister for that undertaking, which would be extremely helpful and sensible in the circumstances. We will have rather a limited amount of business at Third Reading, no doubt in prime time. We might well want to take this issue forward if we have not had satisfactory discussions in the meantime. No doubt, that can take place early next week if Third Reading takes place on Wednesday.

Lord Ashton of Hyde: I am very happy to meet. Obviously, I make no commitments as to what will emerge from that meeting.

Lord Clement-Jones: My Lords, I would not expect the Minister to make commitments at this stage, just to listen to the arguments that we have already made

[Lord Clement-Jones]
and will no doubt make again in the meeting. I am very grateful to the Minister. We have Third Reading where we can—

Lord Stevenson of Balmacara (Lab): I am abusing the system. I apologise for interrupting. I am grateful to the noble Lord for giving way. My question is directed at the Minister through the noble Lord, to maintain some semblance of protocol. I think the question my noble friend was trying to ask was, given that the Minister has committed to bringing back an amendment which covers much of the ground that has been discussed today, because there are issues he wishes to solidify, the assumption is that the points that have been raised may be raised again at Third Reading. He is not asking him to concede any additional work. I make it absolutely clear, because of the need for the clerks to be sure about this, that there will be a discussion at Third Reading on the substantive points that have been made so far.

Lord Ashton of Hyde: What the noble Lord, Lord Collins, asked me to do was to meet to discuss these issues before Third Reading. I agreed to meet him and the noble Lord, Lord Clement-Jones, if he wants to do that. I said that we were going to bring forward two amendments and we will continue to do that. I think it is the other one, where we have agreed not to do that, that he wants to talk about, but I am happy to talk about all of them. We will bring forward the two amendments at Third Reading. Obviously, I can make no commitment about any extra amendments but I am happy to talk about it.

Lord Clement-Jones: I completely understand that but, as the Minister is fully aware, because it is Third Reading, our ability to discuss is limited by the rules. But we could do it by way of an amendment to the Minister's amendment. That is our assumption, I think, in the circumstances. On that basis, I am happy to withdraw Amendment 33ZN.

Amendment 33ZN (to Amendment 33ZM) withdrawn.

Amendment 33ZP and 33ZPA (to Amendment 33ZM) not moved.

Amendment 33ZM agreed.

Amendment 33ZQ

Moved by ***Lord Ashton of Hyde***

33ZQ: After Clause 92, insert the following new Clause—

"Functions relating to regulations under section (Regulations about charges payable to the Information Commissioner)

(1) Before making regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5) the Secretary of State must consult the Information Commissioner.

(2) In making regulations under section (Regulations about charges payable to the Information Commissioner)(1), the Secretary of State must have regard to the desirability of securing that the charges payable to the Information Commissioner under such regulations are sufficient to offset—

(a) expenses incurred by the Commissioner in discharging the Commissioner's functions—

(i) under the Data Protection Act 1998,

(ii) under or by virtue of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426),

(iii) under the General Data Protection Regulation,

(iv) under regulations which implement the General Data Protection Regulation or the Criminal Data Directive,

(v) by virtue of section (Regulations about charges payable to the Information Commissioner), and

(vi) under this section,

(b) any expenses of the Secretary of State in respect of the Commissioner so far as attributable to those functions,

(c) to the extent that the Secretary of State considers appropriate, any deficit previously incurred (whether before or after the passing of this Act) in respect of the expenses mentioned in paragraph (a), and

(d) to the extent that the Secretary of State considers appropriate, expenses incurred by the Secretary of State in respect of the inclusion of any officers or staff of the Commissioner in any scheme under section 1 of the Superannuation Act 1972.

(3) In subsection (2)—

"the Criminal Data Directive" means Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;

"the General Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

(4) The Secretary of State may from time to time require the Information Commissioner to provide information about the expenses referred to in subsection (2)(a).

(5) The Information Commissioner must keep under review the working of regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5) and may from time to time submit proposals to the Secretary of State for amendments to be made to the regulations.

(6) The Secretary of State must review the working of regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5)—

(a) at the end of the period of five years beginning with the making of the first set of regulations under that section, and

(b) at the end of each subsequent five year period."

Amendments 33ZR to 33ZT (to Amendment 33ZQ) not moved.

Amendment 33ZQ agreed.

Amendment 33ZU

Moved by ***Lord Ashton of Hyde***

33ZU: After Clause 92, insert the following new Clause—

"Supplementary provision relating to section (Regulations about charges payable to the Information Commissioner)

(1) Regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5) are to be made by statutory instrument.

(2) A statutory instrument containing regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5) is to be laid before Parliament after being made.

(3) Regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5)—

(a) may make different provision for different purposes;

(b) may make transitional, transitory or saving provision;

(c) may make incidental, supplemental or consequential provision.

(4) Regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5) may bind the Crown.

(5) But regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5) may not apply to—

(a) Her Majesty in Her private capacity,

(b) Her Majesty in right of the Duchy of Lancaster, or

(c) the Duke of Cornwall.

(6) For the purposes of section (Regulations about charges payable to the Information Commissioner) each government department is to be treated as a person separate from any other government department.

(7) In subsection (6)"government department" includes—

(a) any part of the Scottish Administration;

(b) a Northern Ireland department;

(c) the Welsh Government;

(d) any body or authority exercising statutory functions on behalf of the Crown."

Amendment 33ZV (to Amendment 33ZU) not moved.

Amendment 33ZU agreed.

Amendment 33ZW

Moved by ***Lord Ashton of Hyde***

33ZW: After Clause 92, insert the following new Clause—

"Amendments relating to section (Regulations about charges payable to the Information Commissioner)

(1) The Data Protection Act 1998 is amended in accordance with subsections (2) to (7).

(2) Omit Part 3 (notification by data controllers).

(3) In section 33A(1)(manual data held by public authorities) omit paragraph (e)(but not the "and" following that paragraph).

(4) In section 71 (index of defined expressions) omit the entries relating to "address", "fees regulations", "notification requirements", "prescribed" and "registrable particulars".

(5) In Part 2 of Schedule 1 (interpretation of the data protection principles) in paragraph 5 omit paragraph (b) and the "or" preceding that paragraph.

(6) In Part 1 of Schedule 5 (the Information Commissioner) in paragraph 9(1)(destination of fees etc) after "the Freedom of Information Act 2000" insert "and all charges received by the Commissioner under regulations under section (Regulations about charges payable to the Information Commissioner) (1) of the Digital Economy Act 2017".

(7) In Schedule 14 (transitional provisions and savings) omit paragraph 2 (registration under Part 2 of the Data Protection Act 1984).

(8) In regulation 5(3)(b) of the High Court Enforcement Officers Regulations 2004 (SI 2004/400)(application procedure) omit paragraph (iii).

(9) In consequence of the repeal in subsection (2) the following are repealed or revoked—

(a) section 71 of the Freedom of Information Act 2000;

(b) in paragraph 6 of Schedule 2 to the Transfer of Functions (Miscellaneous) Order 2001 (SI 2001/3500)—

(i) in sub-paragraph (1), paragraphs (h) to (m), and

(ii) sub-paragraph (2);

(c) in paragraph 9(1)(a) of Schedule 2 to the Secretary of State for Constitutional Affairs Order 2003 (SI 2003/1887), the words "16, 17, 22, 23, 25, 26,";

(d) Part 1 of Schedule 20 to the Coroners and Justice Act 2009;

(e) paragraph 26 of Schedule 2 to the Transfer of Tribunal Functions Order 2010 (SI 2010/22)."

Amendment 33ZW agreed.

Amendments 33ZX to 33ZYB

Moved by ***Lord Ashton of Hyde***

33ZX: Before Schedule 4, insert the following new Schedule—

"PUBLIC SERVICE DELIVERY: SPECIFIED PERSONS FOR THE PURPOSES OF SECTION 31

1_ The Secretary of State for the Home Department.

2_ The Secretary of State for Defence.

3_ The Lord Chancellor.

4_ The Secretary of State for Justice.

5_ The Secretary of State for Education.

6_ The Secretary of State for Business, Energy and Industrial Strategy.

7_ The Secretary of State for Work and Pensions.

8_ The Secretary of State for Communities and Local Government.

9_ The Secretary of State for Culture, Media and Sport.

10_ Her Majesty's Revenue and Customs.

11_ A county council in England.

12_ A district council in England.

13_ A London borough council.

14_ A combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009.

15_ The Common Council of the City of London in its capacity as a local authority.

16_ The Council of the Isles of Scilly.

17_ The Greater London Authority.

18_ A metropolitan county fire and rescue authority.

19_ The London Fire Commissioner.

20_ A fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.

21_ A fire and rescue authority created by a scheme under section 4A of the Fire and Rescue Services Act 2004.

22_ A chief officer of police for a police area in England and Wales.

23_ The proprietor of a school within the meaning of the Education Act 1996.

24_ The proprietor of an Academy within the meaning of that Act.

25_ The responsible person in relation to an educational institution as defined by section 72(5) of the Education and Skills Act 2008 (other than a person within paragraph 23 or 24).

26_ The Gas and Electricity Markets Authority.

27_ The Chief Land Registrar.

28_ A person providing services in connection with a specified objective (within the meaning of section 31) to a specified person who is a public authority."

33ZY: Before Schedule 4, insert the following new Schedule—

"PUBLIC SERVICE DELIVERY: SPECIFIED PERSONS FOR THE PURPOSES OF SECTIONS 32 AND 33

1_ The Secretary of State for Business, Energy and Industrial Strategy.

2_ The Secretary of State for Work and Pensions.

3_ The Secretary of State for Communities and Local Government.

4_ Her Majesty's Revenue and Customs.

5_ A county council in England.

6_ A district council in England.

7_ A London borough council.

8_ A combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009.

9_ The Common Council of the City of London in its capacity as a local authority.

10_ The Council of the Isles of Scilly.

11_ The Greater London Authority.

12_ A metropolitan county fire and rescue authority.

13_ The London Fire Commissioner.

14_ A fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.

15_ A fire and rescue authority created by a scheme under section 4A of the Fire and Rescue Services Act 2004.

16_ The Gas and Electricity Markets Authority.

17_ The Chief Land Registrar.

18_ A person providing services in connection with a fuel poverty measure (within the meaning of section 32) to a specified person who is a public authority."

33ZYA: Before Schedule 4, insert the following new Schedule—

"PUBLIC SERVICE DELIVERY: SPECIFIED PERSONS FOR THE PURPOSES OF SECTIONS 34 AND 35

1_ The Secretary of State for Work and Pensions.

2_ The Secretary of State for Communities and Local Government.

3_ Her Majesty's Revenue and Customs.

4_ A county council in England.

5_ A district council in England.

6_ A London borough council.

7_ A combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009.

8_ The Common Council of the City of London in its capacity as a local authority.

9_ The Council of the Isles of Scilly.

10_ The Greater London Authority.

11_ The Chief Land Registrar.

12_ A person providing services in connection with a water poverty measure (within the meaning of section 34) to a specified person who is a public authority."

33ZYB: Before Schedule 4, insert the following new Schedule—

"SPECIFIED PERSONS FOR THE PURPOSES OF THE DEBT PROVISIONS

1_ The Secretary of State for the Home Department.

2_ The Lord Chancellor.

3_ The Secretary of State for Justice.

4_ The Secretary of State for Education.

5_ The Secretary of State for Business, Energy and Industrial Strategy.

6_ The Secretary of State for Work and Pensions.

7_ The Secretary of State for Transport.

8_ Her Majesty's Revenue and Customs.

9_ The Minister for the Cabinet Office.

10_ A county council in England.

11_ A district council in England.

12_ A London borough council.

13_ The Common Council of the City of London in its capacity as a local authority.

14_ The Council of the Isles of Scilly.

15_ The Greater London Authority.

16_ The Student Loans Company.

17_ A person providing services to a specified person who is a public authority in respect of the taking of action in connection with debt owed to a public authority or to the Crown."

Amendments 33ZX to 33ZYB agreed.

Amendment 33ZYC

Moved by ***Lord Ashton of Hyde***

33ZYC: Before Schedule 4, insert the following new Schedule—

"SPECIFIED PERSONS FOR THE PURPOSES OF THE FRAUD PROVISIONS

1_ The Secretary of State for the Home Department.

2_ The Secretary of State for Defence.

3_ The Lord Chancellor.

4_ The Secretary of State for Justice.

5_ The Secretary of State for Education.

6_ The Secretary of State for Business, Energy and Industrial Strategy.

7_ The Secretary of State for Work and Pensions.

8_ The Secretary of State for Transport.

9_ The Secretary of State for Communities and Local Government.

10_ The Secretary of State for the Environment, Food and Rural Affairs.

11_ The Secretary of State for International Development.

12_ The Secretary of State for Culture, Media and Sport.

13_ The Minister for the Cabinet Office.

14_ Her Majesty's Revenue and Customs.

15_ The Export Credits Guarantee Department.

16_ A county council in England.

17_ A district council in England.

18_ A London borough council.

19_ The Common Council of the City of London in its capacity as a local authority.

20_ The Council of the Isles of Scilly.

21_ The Greater London Authority.

22_ The Chief Land Registrar.

23_ The Big Lottery Fund.

24_ The Nuclear Decommissioning Authority.

25_ The Environment Agency.

26_ The Homes and Communities Agency.

27_ The Higher Education Funding Council for England.

28_ The Historic Buildings and Monuments Commission for England.

29_ The Student Loans Company.

30_ The British Council.

31_ The Arts Council of England.

32_ The English Sports Council.

33_ The Technology Strategy Board.

34_ The Arts and Humanities Research Council.

35_ The Medical Research Council.

36_ The Natural Environment Research Council.

37_ The Biotechnology and Biological Sciences Research Council.

38_ The Economic and Social Research Council.

39_ The Engineering and Physical Sciences Research Council.

40_ The Science and Technology Facilities Council.

41_ A person providing services to a specified person who is a public authority in respect of the taking of action in connection with fraud against a public authority."

Amendment 33ZYD (to Amendment 33ZYC) not moved.

Amendment 33ZYC agreed.

9.45 pm

Amendment 33ZYE

Moved by ***Lord Ashton of Hyde***

33ZYE: After Clause 95, insert the following new Clause—

"Guarantee of pension liabilities under Telecommunications Act 1984

Guarantee of pension liabilities under Telecommunications Act 1984

(1) The Secretary of State may make regulations modifying or supplementing section 68 of the Telecommunications Act 1984 (liability of Secretary of State in respect of British Telecommunications public limited company's liabilities as successor for payment of pensions) in accordance with subsection (4).

(2) Subsection (4) applies in relation to relevant employees of British Telecommunications public limited company ("BTplc") becoming employees of another company (a "transferee") in connection with any part of the undertaking of BTplc being transferred or outsourced (whether or not to the transferee).

(3) Employees are relevant if the liability of BTplc for the payment of pensions which vested in it by virtue of section 60 of the Telecommunications Act 1984 included, immediately before the employees ceased to be employees of BTplc, liability for the payment of pensions to or in respect of those employees.

(4) The regulations may provide for the Secretary of State (in addition to any liability apart from the regulations) to become liable—

(a) on the winding up of BTplc, to discharge any outstanding liability of BTplc for the payment of pensions to or in respect of relevant employees of the transferee or a successor;

(b) on the winding up of the transferee or a successor, to discharge any outstanding liability of the transferee or successor for the payment of pensions to or in respect of relevant employees.

(5) The regulations may provide for any liability that the Secretary of State is liable to discharge under the regulations not to include liability arising by virtue of a person's employment on or after a specified date, or by virtue of anything else occurring on or after a specified date.

(6) The specified date must be not earlier than the date on which the regulations come into force.

(7) The power to make regulations under this section is exercisable so as to—

(a) make provision in relation to all cases or circumstances to which the power extends or in relation to specified cases or circumstances;

(b) in particular, make provision in relation to all employees to whom the power extends or in relation to employees of a specified description;

(c) make different provision for different purposes.

(8) The regulations may—

(a) amend section 68 of the Telecommunications Act 1984;

(b) re-enact any provision of that section with or without modifications.

(9) In this section references to the winding up of a company are references to—

(a) the passing of a resolution, in accordance with the Insolvency Act 1986, for the voluntary winding up of the company, or

(b) the making of an order for the winding up of the company by the court under that Act.

(10) In this section—

"specified" means specified in regulations under this section;

"successor" means—

(a) where relevant employees of a transferee become employees of another person, that person, and

(b) where relevant employees of a successor within paragraph (a) or this paragraph become employees of another person, that person."

Lord Ashton of Hyde: My Lords, Amendments 33ZYE and 33ZYF confer a power on the Secretary of State to modify Section 68 of the Telecommunications Act 1984, which put in place a Crown guarantee covering the BT pension scheme when BT was privatised. This is essential so that the Government can continue to guarantee the BT pension scheme liabilities relating to employees transferred to a separate Openreach.

This amendment is necessary following the announcement on 10 March of a voluntary deal between BT and Ofcom legally to separate BT and Openreach, making Openreach a wholly-owned subsidiary of BT. Ofcom has identified an issue concerning the Crown guarantee as a barrier to the implementation of that deal. This amendment removes that barrier.

When BT was privatised in 1984, the Government legislated that BT plc's pension liabilities were subject to a Crown guarantee. This meant that government would stand behind the BT pension scheme if BT entered insolvent winding-up. However, if that legislation were to remain unamended, the protection of the Crown guarantee would be removed from BT pension scheme members who transferred to a separate Openreach.

The welfare of BT pension scheme members is a critical consideration for the separation deal. That is why this amendment will enable the Secretary of State to ensure that the Crown guarantee can continue to apply to the pensions of all the staff who benefited from it before separation. The Government are clear that maintaining existing pension protections for BT and Openreach employees is vital. We intend to use the power to do that. Dialogue and consultation with

[Lord Ashton of Hyde]
the trustee on the exact exercise of this power will therefore be crucial, and we will engage with it before and during the creation of the implementing regulations.

This power also ensures that the Government can respond to a range of potential outcomes. It would not be right to amend the Telecommunications Act 1984 directly at this stage, when many technical details of the transfer of employment to Openreach and the management of the BT pension scheme after separation are unknown or unclear. That is why we need to take a power so that we can get the detailed secondary legislation on the Crown guarantee right.

The power taken under this amendment has a comprehensive set of safeguards on its use, including a duty to consult appropriate stakeholders: the trustee of the BT pension scheme, the Pensions Regulator and the companies involved. The power may be exercised only with the consent of the Treasury, and a draft of the instrument must be laid before, and approved by resolutions in, both Houses of Parliament.

The separation of BT and Openreach lays the ground for a more competitive broadband market that will improve the speed and reliability of our nation's broadband services to the benefit of businesses and consumers. Ofcom has also stated that separation will promote investment in next-generation full-fibre infrastructure, and I hope that noble Lords will join me in calling on BT to make that a reality and deliver the connectivity that our nation needs. Further, I hope noble Lords will support this necessary amendment so that Ofcom can implement a more separate Openreach without delay, and so that the welfare of all BT pension scheme members may be safeguarded. I beg to move.

Amendment 33ZYEA (to Amendment 33ZYE)

Moved by ***Baroness Drake***

33ZYEA: After Clause 95, in subsection (2), after "undertaking" insert "or activities"

Baroness Drake (Lab): My Lords, Amendments 33ZYEA and 33ZYEB, which are in my name and that of my noble friend Lord Mendelsohn, amend the Government's Amendment 33ZYE on the Crown guarantee for pensions liabilities in BT plc. I am not a member of the BT pension scheme, but for some years as a trade union official I represented the majority of BT employees, including on pension matters. In March this year, BT and Ofcom announced agreement on a regulatory settlement that would see Openreach become a distinct, legally separate company within the BT group. Once the agreement is implemented, around 32,000 employees will transfer to the new Openreach Ltd, following TUPE consultation and once pension arrangements are in place. This transfer is expected to be the largest TUPE transfer in UK corporate history and is an important pillar of the agreement between BT and Ofcom.

My amendments seek to address causes of concern for employees who will be transferred and to seek assurances that they and the BT pension scheme trustees need. As the noble Lord mentioned, the BT pension scheme currently has a Crown guarantee of BT's obligations to the liabilities of the scheme provided for in the Telecommunications Act 1984. The implementation of the agreement between BT and Ofcom is subject to the satisfaction of certain conditions, which include new legislation providing for Openreach pension liabilities to be covered by the maintenance or equivalence of the current BT plc Crown guarantee, so ensuring that employees who are BT pension scheme members will not lose that protection on transfer to Openreach—in effect, ensuring maintenance of the existing Crown guarantee for both BT plc and the new Openreach Ltd pension liabilities.

I believe government Amendment 33ZYE does not make explicit provision for Openreach pension liabilities to be covered by the maintenance or equivalence of the current Crown guarantee for two reasons. The purpose of my two amendments is to address each of those two reasons. Amendment 33ZYEB addresses the first reason, which goes to the future scope and operation of the Crown guarantee covering Openreach pension liabilities, which I believe is of material concern to the scheme members and the trustee.

New subsection (5) proposed in the Government's amendment—which my amendment would delete—sets out that any regulations made under the proposed new clause may provide for the Secretary of State's liabilities to be limited so that the Crown guarantee does not cover pension liabilities arising in Openreach Ltd after a future date, whether such liabilities arise because of a person's continuing employment or indeed from anything else occurring. The Crown guarantee covering Openreach Ltd would be more restricted than the current Crown guarantee covering BT plc—they would not be equivalent.

The trustee's engagement in the Ofcom review was on the understood basis that affected employees of BT plc who transfer to Openreach will continue to benefit from the same Crown guarantee protections as they would have done with BT plc—that the guarantee in respect of Openreach pension liabilities would be,

"equivalent in operation and scope",

to the current Crown guarantee. The DCMS press release of 15 March states that the Government's intention in bringing forward this amendment is to,

"maintain pension protections for BT Pension Scheme members … and provide peace of mind to affected workers".

The power to restrict the guarantee to exclude Openreach pension liabilities arising after a future date is problematic for several reasons. First, it does not maintain equivalent Crown guarantee protection, as there is no provision in legislation for the current Crown guarantee to be so curtailed. Secondly, restricting the Crown guarantee will cause significant concern to the trustees and employees affected. It would not maintain existing pension protections and is outside the understood implementation of Openreach Ltd.

If Ofcom has reserved revisiting full separation of Openreach from BT if it considers functional separation not to be working appropriately, the implications of full separation would need to be addressed at that time. BT workers who are members of the BT pension scheme have the security of a Crown guarantee to all their service. These rights were confirmed by the Court

of Appeal. To remove them is wrong and in no way required by this regulatory settlement between Ofcom and BT plc.

For the Government to give themselves, through proposed new subsection (5) in their amendment, a power now to limit the Crown guarantee adds to the trustees' uncertainty, fails to reassure employees and provides an unhelpful backdrop to the scheme's 2017 triennial valuation. Proposed new subsection (5) seems to allow regulations that enable the Secretary of State to turn off the tap of the Crown guarantee to Openreach from a future date. That would not be maintenance of the Crown guarantee or provide peace of mind to affected workers—the Government's promised intention. Proposed new subsection (5) could also inhibit employees moving freely between employment with BT and with Openreach, because the security of their pensions could be prejudiced and Openreach denied access to skilled people in BT plc.

My amendment deletes proposed new subsection (5) in the government amendment, which is not required to implement the Ofcom-BT agreement on Openreach. Proposed new subsection (5) has also caused lingering anxiety about the Crown guarantee for BT plc pension liabilities. The Government have said that they intend to maintain the Crown guarantee for BT pension scheme members who transfer from BT plc to the new Openreach company and those whose employment may move in future between the two companies, but their amendment does not expressly commit them to maintain the current Crown guarantee to cover Openreach pension liabilities.

Will the Minister give a categorical assurance that relevant employees can move over to Openreach knowing that the pension liabilities, including those arising from future service of Openreach—a legal entity created as a result of the new regulatory settlement between BT plc and Ofcom—will continue to be covered by the current Crown guarantee, maintained for all members of the BT plc pension scheme?

The Minister will be aware of the extensive litigation on the interpretation of the Crown guarantee and will understand that members of the BT pension scheme will be anxious to ensure that no changes could be made to the Crown guarantee which, whether deliberately or inadvertently, might reduce or alter its scope or coverage in so far as it relates to the pension liabilities of BT plc. My understanding is that the amendment is not intended to have that effect. There are circa 330,000 members of the BT pension scheme. Many are pensioners. Will the Minister confirm that my understanding is correct and that it is not possible for any regulations made under the powers arising from the government amendment to disturb or reduce the scope for effect of the Crown guarantee as it applies to the pension liabilities of BT plc in any way?

My Amendment 33ZEA addresses my second reason for concern. Proposed new subsection (2) in the Government's amendment sets out the circumstances in which regulations may extend the coverage of the Crown guarantee. It states that the relevant circumstance is one where relevant BT plc employees become employees of another company,

"in connection with any part of the undertaking of BTplc being transferred or outsourced".

Proposed new subsection (2) is important because how existing BT plc employees switch to become employees of the new Openreach Ltd needs to fall within the circumstances set out in that subsection.

10 pm

Under TUPE, there are two ways in which employees can transfer—first, where an undertaking is transferred and, secondly, where activities cease to be carried out by one entity and are instead carried out by a different entity, such as outsourcings. The implementation of the Openreach agreement intends to use the second service provision change limb of TUPE to effect the change of employment. My concern is that, while proposed new subsection (2) refers to outsourcing, it provides that "part of the undertaking" must be outsourced to engage the regulation-making power which allows for the Crown guarantee. In the instance of the Openreach agreement, it is harder to see that any undertaking is outsourced but rather that "activities" are outsourced. If that is the case, the employees transferred to Openreach might not come within the scope of proposed new subsection (2).

The purpose of my Amendment 33ZYEB is simply to insert the word "activities" and to remove any ambiguity. Could the Minister take time to seriously reflect on this amendment before Third Reading, because ambiguity is not at all desirable on a matter of this moment and people are genuinely concerned?

Lord Clement-Jones: The noble Baroness, Lady Drake, has asked a number of very pertinent questions, but I have one question—probably because I am a bear of small brain in these circumstances. Would the new section apply on full structural separation of Openreach from BT, if that were to arise in future?

Lord Mendelsohn (Lab): My Lords, this group of amendments addresses two crucial issues—first, the Crown guarantee on BT pensions and, secondly, the relationship between Openreach and BT. In relation to the Crown guarantee, I have added my name to Amendments 33ZYEA and 33ZYEB in the name of my noble friend Lady Drake. These Benches support her arguments completely, and I hope that the clear, comprehensive and compelling case that she made will receive a good reception across the whole House. I thank her for her excellent and assiduous work on this matter.

It is clear that these government amendments do not yet have the robustness that assures this House, and I think that my noble friend's unequalled expertise has come up with an impressive formulation. I look forward to hearing the Minister respond to these issues and would wish to hear some specific reassurances, if he is not minded to accept her amendments. It is important that nothing weakens the covenant on pensions; it is extremely important that the Crown guarantee is carried across and that nothing undermines the responsibilities of the trustees in exercising their duties properly. It is a colossal task. BT has the second-worst-funded pension scheme in the world, according to the MSCI survey of 5,000 company pensions, second only to Du Pont, which is the subject of a merger which will make it better funded, so BT will become the worst-funded pension scheme in the world. In addition to uncertainties

[LORD MENDELSOHN]
about the Crown guarantee, that will put trustees in an impossible position, if these amendments are not addressed as my noble friend suggested. The Government and all those concerned in this discussion should be in a position to confirm—as indeed Matthew Hancock, the Minister responsible, did in a meeting with Members of this House—that the proposed arrangements for the pension scheme should ensure long-term assurance to pension holders whether Openreach is legally or structurally separated.

This brings us to Amendment 33M in my name and that of my noble friend Lord Stevenson of Balmacara, which proposes the structural separation of Openreach. I will make a few very brief points to support this view. This is not a negative statement about BT, which is an excellent British company and one that we hope will continue to grow and thrive. There are many keen to criticise BT's behaviour in relation to the supply of broadband but this must be properly balanced by the realities of the regulatory framework and policy context in which it was given to operate and which has incentivised and guided its approach. It is slightly unfair to create such arrangements and then criticise someone for following them, and many of the criticisms of BT have been unfair and misdirected.

The differences between the benefits of legal and structural separation are important to note. Legal separation, which has been proposed by Ofcom, is where the upstream business is established as a separate legal entity within the wider group but remains under BT's complete ownership. It includes functional separation with independent governance. There is a clear benefit to a regulator that would lend itself to suggesting this approach. It certainly makes the regulatory task of overseeing this arrangement much more economic. But having one place to look at is a benefit only for the regulator. The alternative is structural separation, where the vertically integrated operation is split with no significant common ownership and "line of business" restrictions to prevent them re-entering each other's markets. There are some issues that people think are reasons to achieve separation, such as improvements to service levels, broadband speeds and end-customer services, but these are not dependent on separation.

BT has contributed massively to getting us to where we are now, where we have—in relative terms to international peers—availability of superfast average speeds and lowish prices. But the challenge is the future, and this is where investment needs to be higher. Crucially the UK is lagging in fibre to the premises; the majority of the network is either fibre to the cabinet or cable. The future will require us to commit to FTTP. Other solutions such as G.fast will not keep us as a leading nation. Structural separation is the only mechanism that can sufficiently address the investment issues, and this was the matter that Ofcom did not adequately address in its proposal. The legal separation does not address the problem that strategic decisions on investment will still be dependent on BT, even though I hope that it takes note of the Minister's exhortation for it to do better.

Ofcom's statement of reasons for its approach says that this will provide improved investment outcomes from new models of investment such as co-investment and risk sharing. But BT has never lacked access to capital, which is why even Ofcom acknowledges that this model will be reviewed in order to ensure that the new structure achieves its objectives. This is not an equivocal "may" or "could", but an emphatic "must" and "should" be reviewed. I hope that the Minister can confirm that this will be done and a broad timetable for it.

Our concern is that policy is drifting and opportunities to ensure that we maintain a leading position in the new communications technologies are being weighed down by compromise, confusion and a terrible lack of clarity. It is surely better to provide leadership and certainty by choosing the only arrangement that will ensure the necessary level of investment to make our broadband fit for the future.

Lord Ashton of Hyde: My Lords, I thank the noble Baroness, Lady Drake, for the time and effort that she has put into examining this matter and meeting with me and my officials to explore the details. The noble Baroness is an expert in pension matters and we have all benefited from her advice, and I am very grateful. Government Amendment 33ZYE is explicitly designed to ensure the continuation of the Crown guarantee for those transferees from BT plc to a future Openreach or other successor company. Amendment 33ZYEA is a technical point and concerns the adequacy of the word "undertakings". I believe that our existing wording on undertakings is sufficient and would cover any transfer of staff, including one that was consequential on the application of the TUPE regulations about the movement of activities from one company to another. The "activities", suggested by the noble Baroness, if moved to another company, are part of the undertaking of BT.

We agree with the noble Baroness on the policy intent. We intend to cover all ways by which BT staff might be transferred to the new Openreach company, but technical detail is important here, and I will table a technical clarification for Third Reading.

Amendment 33ZYEB seeks to delete a subsection of the Government's amendment that provides a power to vary the Crown guarantee. I understand the reasoning behind this amendment but want to remind noble Lords that the Government have been clear that we are providing a power to ensure that, following Openreach's separation, the extent of protection afforded by the Crown guarantee is no less and no more than at present. I reassure noble Lords that nothing in the Bill or in the delegated powers it gives to the Secretary of State will change or alter the Crown guarantee to BT plc pension liabilities.

We have seen the documents published by BT and Ofcom that outline plans for a legally separate Openreach Ltd. On the basis of those, the Government fully intend to ensure that the Crown guarantee protection continues to be maintained for all current members of the BT pension scheme, including those who will become part of the wholly owned subsidiary Openreach Ltd. So, our clear intention is that the protection of the guarantee provided to BT pension scheme members should be maintained. That is why the power includes an ability to define that protection in secondary legislation so that it may be neither wider nor narrower than

existing protections. However, until we see the detail of the agreement on Openreach separation, and how the liability for payments to the BT pension scheme will be divided between BT plc and the new Openreach, we cannot say that the power defined in new subsection (5) will not be required. In applying the Crown guarantee to the pension liabilities of the new company, we are creating new risks. There is the potential for unintended consequences, which concerns us particularly. This power helps guard against them, while enabling the Government to maintain Crown guarantee protections for pension scheme members in line with our clearly stated intention to do so.

New subsection (5) gives the power for the Secretary of State to consider whether to maintain the Crown guarantee for any staff who then move on to spin-off companies: for example, if part or all of Openreach were sold. I believe that the need for this power is clear. I reiterate that it is the Government's intention to ensure that current members of the scheme who transfer to Openreach are certain that their pension rights will continue to be safeguarded by a Crown guarantee.

I turn now to Amendment 33M, which seeks to place obligations on the Secretary of State to direct Ofcom to begin the process of "legal and functional separation" of Openreach from BT plc. Functional separation of Openreach and BT has been in place since 2006 by means of undertakings that BT gave to Ofcom pursuant to the Enterprise Act 2002. On 10 March 2017, Ofcom and BT announced that they had agreed on a legal separation. By the end of this year "legal and functional separation", as required by the noble Lord's amendment, should have been achieved, according to Ofcom. On that basis, if the timetable set out in Amendment 33M were to be followed, separation would take much longer. Ofcom is currently consulting on the details of the transition to a legally separate Openreach. This consultation closes on 14 April and the timetable for completion Enterprise Act 2002Moreover, if Ofcom had to impose its decision on BT rather than having a voluntary agreement as now, the decision would have to be referred to the European Commission under the electronic communications framework directive. The remedy of separation has never been used before, so the timetable for a response from the Commission is unknown. It could be nine months or more. It is also possible that BT would appeal against forced separation, further delaying the process. A long delay would be likely to inhibit investment in the sector at a time when we all want to see great strides being made in the UK's broadband coverage and quality.

The purpose of having our independent communications regulator, Ofcom, is to make exactly these assessments. It is Ofcom's duty and role to take decisions and regulatory interventions on the strength of its expert analysis of competition in the market. As such, it is our view that it would not be appropriate for the Government to legislate in this way in view of the independence of Ofcom from government. It is therefore not necessary or right for government to legislate on this matter both because Ofcom can take such decisions and because it has already done so, specifically in respect of the separation of Openreach. With that explanation, I hope that the noble Baroness will withdraw the amendment.

10.15 pm

Baroness Drake: My Lords, amendments on the matter of Openreach and the Crown guarantee were not tabled until Report—which is understandable, given the timing of the discussions with Ofcom. I was therefore unable to have the benefit of being able to probe in Committee, so I ask noble Lords to forgive me for taking some time now. I also thank the Minister for his courtesy in meeting me and for his consideration of my concerns, and I thank the civil servants in the DCMS, who were so patient in dealing with my questions and queries.

I welcome the Minister's statement that there will be a technical amendment at Third Reading to remove any ambiguity about what is covered under any transfer of undertaking under proposed new subsection (2). I also welcome the unequivocal assurance that the powers arising from the amendments to the Bill will not disturb the existing Crown guarantee relating to BT plc pension liabilities.

On the issue of the protection of the pension liabilities on behalf of those members transferred into Openreach —the Openreach created as a result of the regulatory settlement—obviously I will read the detail in *Hansard*, because I was trying to take all the words in. That provides quite a lot of assurance to the members and the trustees, but I would like to read it and, if I may, reserve any concern I may have in that reading. However on first hearing it seems to confirm that the Government's intention is that the existing Crown guarantee will be applied in all respects to those people transferred to Openreach under the regulatory settlement agreed with Ofcom. On that basis, I beg leave to withdraw the amendment.

Amendment 33ZYEA withdrawn.

Amendment 33ZYEB not moved.

Amendment 33ZYE agreed.

Amendment 33ZYF

Moved by ***Lord Ashton of Hyde***

33ZYF: After Clause 95, insert the following new Clause—

"Regulations under section (Guarantee of pension liabilities under Telecommunications Act 1984)

(1) The power to make regulations under section (Guarantee of pension liabilities under Telecommunications Act 1984) is exercisable by statutory instrument.

(2) That power is exercisable by the Secretary of State only with the consent of the Treasury.

(3) A statutory instrument containing regulations under that section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(4) Before making regulations under that section the Secretary of State must consult—

(a) the Pensions Regulator;

(b) BT plc;

(c) the trustees of the BT Pensions Scheme;

(d) any transferee or successor to which the regulations apply;

(e) any other persons the Secretary of State considers it appropriate to consult."

Amendment 33ZYF agreed.

Amendment 33A

Moved by ***Baroness Janke***

33A: After Clause 95, insert the following new Clause—

"Duties on providers of social media services

After section 131 of the Communications Act 2003 (statement of policy on persistent misuse) insert—

"131A Duties on providers of social media services

(1) In this section "social media service" means a website or application that enables users to create and share content, to communicate publicly and privately with other users, and to participate in social networking.

(2) Social media services have a general duty to respond to reports of material shared or communicated via their website or application ("the content") that passes the "criminal test" set out in subsection (3).

(3) The criminal test is whether the content would, if published by other means, or communicated in person, cause a criminal offence to be committed.

(4) Social media services have a duty to provide a means for users to report content which, in the view of the user, meets the criminal test.

(5) Social media services have a duty to remove content which demonstrably meets the criminal test within the prescribed period, and to inform the police.

(6) The prescribed period must be set out in regulations made by the Secretary of State within 120 days of the commencement of this section.

(7) Regulations under subsection (6) may prescribe different periods for different categories of social media services, to be determined by the number of users that service has at the time a report is made under the provisions of subsection (4).

(8) Regulations made under this section must be made by statutory instrument, and may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Baroness Janke: My Lords, this amendment has already been debated. Although the assurances the Minister gave in the previous debate were very interesting and will bring forward some new issues and some reassurances, this is a very urgent matter and I would like to hear what he has to say. I therefore beg to move.

Lord Ashton of Hyde: My Lords, as the noble Baroness said, this has been debated. However, I will respond briefly. First, on 27 February the Government announced work on an internet safety strategy which aims to make the UK the safest place in the world for children and young people to go online. With the help of experts, social media companies, tech firms, charities and young people, we aim to publish a Green Paper in June. We need the time to do this.

Secondly, on 20 March this House agreed the amendment in the name of the noble Baroness, Lady Jones, on a code of practice for social media. The House has already debated this issue. To accept Amendment 33A would create overlap and duplication between the two amendments. It simply does not make sense to have agreement to both amendments.

Thirdly, defining "social media service" is difficult, but I regret that the noble Baroness's definition is very wide, and therefore unworkable and disproportionate.

Finally, and perhaps most importantly, it should not be left to social media companies or their users to judge whether or not content is criminal.

However, we know that there is more to do and I give a firm commitment to the House that we will consider all available options through our internet safety strategy, which will be published in June, and that we will implement its proposals as quickly as possible.

Baroness Janke: I thank the Minister for his comments. The difference between this amendment and the one that he mentioned is that the previous amendment referred to children, whereas this amendment covers a much wider range of adults, particularly vulnerable adults and adults who are subject to bullying, criticism and unfair treatment on the internet.

Having heard what the Minister said, I look forward to the Green Paper and to participating in discussions on it. I hope that the Government see this as a very serious issue and that they are committed to doing something about it. Having said that, I beg leave to withdraw the amendment.

Amendment 33A withdrawn.

Amendments 33B to 33D had been retabled as Amendments 33LZA to 33LZC.

Amendment 33E not moved.

Amendment 33F

Moved by ***Lord Lansley***

33F: After Clause 95, insert the following new Clause—

"Definition of media enterprise

(1) The Enterprise Act 2002 is amended as follows.

(2) In section 58A(1) (construction of consideration specified in section 58(2C)) for "broadcasting" substitute "the provision of television, radio and other services through which audio-visual content is made generally available to the public, whether by subscription, for payment or otherwise"."

Lord Lansley (Con): My Lords, as we turn the final bend, I hope that this group of amendments will be worthy of your Lordships' patience. This group of five amendments in my name and those of my noble friends Lord Puttnam and Lord McNally all concern aspects of the public interest test on media mergers.

My co-signatories to these amendments and I worked together during the passage of the Communications Act 2003, when your Lordships successfully put the public interest test for media mergers into statute. That has proved a necessary and valuable intervention. Fourteen years on, the media landscape has greatly changed and with it, in our view, has come the need to review, strengthen and future-proof this important legislative measure. I am very grateful to my noble friend Lord Puttnam, who initiated this debate in Committee. Your Lordships who were present will recall that debate, which has permitted us to refine the amendments for Report and, indeed, has led to a positive and constructive engagement with the Secretary

of State, the Minister and officials. I am very grateful, as I know my colleagues are, for all that engagement and discussion.

I should emphasise that the amendments are not occasioned by, nor intended directly to affect, the current intervention notice and review by Ofcom, which is expected to be considered under existing legislation. Our concern is to strengthen and future-proof the legislation.

So what is the purpose and effect of the amendments? Amendment 33F would widen the definition of "media enterprises", to which the public interest test refers. Currently the definition is that,

"an enterprise is a media enterprise if it consists in or involves broadcasting".

Broadcasting, as one will see under the Broadcasting Act, means television and radio services, and therefore does not include enterprises such as Google, including YouTube, Facebook, Twitter, Snap and many others, which are, as Martin Sorrell said the weekend before last, not technology enterprises but media enterprises.

Many people take more of their audio-visual content off YouTube than off conventional broadcast channels, or they seek their news through Twitter or take their news from apps on smartphones, not necessarily through broadcast platforms or channels. If a public interest can be engaged by the dominance or inappropriate control of a broadcast channel, why not therefore of a platform or channel through which social media is offered, delivering large-scale news-related and other material to the whole population? Therefore, this amendment widens the definition of a media enterprise to include those which involve the control of audio-visual content made generally available to the public.

Amendment 33G would give Ofcom the same powers—that is, powers when carrying out an Enterprise Act competition function—as would be available to the Competition and Markets Authority, and most specifically the power to require the attendance of witnesses and the production of documents as specified under Section 109 of the Enterprise Act 2002.

Amendment 33H relates to one of the existing grounds for a public interest intervention notice—namely that of the,

"commitment to the attainment in relation to broadcasting of the standards objectives".

The standards referred to are broadcasting-related standards: they relate to television and radio services. The amendment therefore enables further standards to be prescribed that may relate to media extending beyond television and radio. The amendment therefore also refers to the commitment to the attainment of standards as evidenced through the control of media enterprises, linking back to Amendment 33F. Media enterprises in that context would be more widely construed. This test therefore, suitably widened in scope, would give a clearer basis for examining the behaviour of a person and their commitment to standards across media more generally. It would eliminate the risk that behaviour outside the scope of television and radio and beyond the specifics of the broadcasting standards code would not be able to be drawn in aid in determining whether the grounds for an intervention are met.

Amendment 33J adds to the reasons why a public interest intervention notice on a media merger may be issued by reference to three additional grounds. The first is that the control of a media enterprise which includes a Broadcasting Act licence should be exercised by someone who is a fit and proper person to hold such a licence. In the current media merger referral, Ofcom has chosen to conduct a fit and proper person test under the Broadcasting Act alongside the review of the Enterprise Act and including therefore the actions in corporate governance. It was not required to do so and it is possible that control of a media enterprise may therefore be disassociated from the fit and proper person test relating to the holding of a Broadcasting Act licence. The amendment is designed to align the public interest test under the Enterprise Act with the Broadcasting Act test at the point at which control may be acquired over a regulated broadcaster. To that extent, it is intended to be necessarily proactive in relation to the control of enterprises and not necessarily reactive.

Amendment 33L in the name of the noble Lord, Lord Stevenson of Balmacara, introduces a further limb to the question of what "fit and proper" means in this context. In our amendment, we propose to specify to some extent what it means beyond the tests already included in the media merger public interest test. What the noble Lord says in his amendment is reminiscent of what the Financial Conduct Authority says in relation to its fit and proper person test. He may not have intended it to be, but it is very similar. Indeed, other economic regulators, when they apply a fit and proper person test, have in a number of instances been more specific than Ofcom has about what it means by a fit and proper person. The time may well have come—it is implied by our amendment and that of the noble Lord, Lord Stevenson of Balmacara—when we need to be more specific about what "fit and proper person" means in relation to the control of media enterprises. This is a helpful way of stimulating that debate and potentially, if not putting it in statute, clearly putting it in guidance from Ofcom.

The second limb of Amendment 33J is to protect the editorial freedom of the news services of media enterprises and see that safeguards are in place. In a nutshell, media plurality—the plurality of ownership—does not necessarily mean that in relation to that ownership editorial freedom is protected and safeguarded. That is what the amendment is directed to achieve.

The third limb would extend that plurality test beyond television and radio and therefore beyond the platforms, channels and the plurality of news, which the test is currently focused on, to the plurality of control of rights, talent and cultural assets. On the principle that content is king, this would give the power to intervene where an unwarranted and undesirable dominance would otherwise be created in relation to any significant category of cultural assets.

We had a useful and full debate in Committee. I hope that we have made explicit in these amendments the kind of questions that changes to the legislation now need to answer. First, how do we protect the public interest in media plurality rather than just news plurality, given the emergence of new dominant social media platforms and channels? Secondly, how do we

[LORD LANSLEY]
ensure that those with control of the media, especially news media, are committed to high standards across all media and in their wider business dealings? Thirdly, how do we ensure that plurality is maintained in the control not only of news content, but of significant content of a cultural nature relating to both rights and assets? Lastly, how can we ensure not only the plurality of news but the editorial freedom applying to news?

We have greatly appreciated the engagement of Ministers and officials and I look forward to a positive response. I hope that we may be able to see a positive answer to these questions incorporated into legislation very soon. I beg to move.

10.30 pm

Lord McNally (LD): My Lords, earlier today we had a Question on divorce. Sir James Munby, the president of the Family Division, was quoted as saying that the law that he had to administer and make judgments on showed hypocrisy and a lack of intellectual honesty. That is a good example of what happens when, as in this case, a 44 year-old law does not reflect the society and the social mores that now exist. In a way, what we are doing here is similar. In 2003 we tried to persuade the then Government—with partial success—to give Ofcom some teeth in terms of the fit and proper person test. Our allies included the Minister herself: she was in that fray, as were the noble Lords, Lord Crickhowell, Lord Lansley and Lord Puttnam. I think that we can be proud of our work at that time.

Earlier today the noble Viscount, Lord Colville, referred to Ofcom as a world-class media regulator, and I think that that is true. The debates at the time reflected a degree of uncertainty about whether Ofcom would prove to be up to the job. Would it not be swamped by the massed ranks of corporate lawyers from the big media companies? In fact, at the time we did not want to give the BBC to Ofcom because we thought, again, that that would be too big a burden for it. Now there is general agreement that it is a very satisfactory place to put the BBC in terms of regulation —so it has done a good job.

What these amendments are about, as the noble Lord, Lord Lansley, explained so ably, is trying to make our current laws ready to give Ofcom powers that are clear, robust and wide-ranging. In terms of what we gave Ofcom in 2003, one former CEO of Ofcom was quoted as saying that somebody would have to commit a murder before he would fail the fit and proper person test. That is the problem. The Secretary of State very correctly clings to her quasi-judicial responsibilities. She does not want to be seen to be making political judgments, but we cannot escape entirely from doing that in carrying out our responsibilities. I think it was the noble Lord, Lord Saatchi, who said that media companies are not like tins of beans. That reminds us that they are an integral part of the social, political and cultural life of our country. Government has a duty to protect the ecology of our media to ensure that diversity of service and plurality of ownership are encouraged and sustained.

We enjoy many benefits from our sharing of the English language with the United States, but it also makes us particularly vulnerable to predatory activity by companies whose ethos and cultural values are embedded in the United States. This is particularly so when there is no reciprocity in terms of a two-way street in media ownership.

When I questioned the noble and learned Lord, Lord Keen, on these matters a week or so ago, I cited the support of those great standbys of our law—the man and woman on the Clapham omnibus. They will make short shrift of politicians hiding behind quasi-judicial status, pleading that rules and regulations are so tightly drawn that they are impotent and then allowing organisations or individuals into our media who threaten the ecology, diversity and quality. Nye Bevan's great advice, "Why look into the crystal ball when you can read the book?", is apposite here. We see constant attempts to intimidate the BBC. Although this does not affect the present problem, the Murdochs are an ever-incoming tide—as the noble Lord, Lord Lansley, referred to it. As he also said, there are possibly even bigger fish in the pool now.

So there is a need to pass the Clapham omnibus test and to strengthen and future-proof the legislation. The intention is to protect the integrity of our media ecology, but we must give the regulator the power and teeth to be able to do that.

Lord Puttnam (Lab): My Lords, I am very happy to add my name to the amendments set out so ably by the noble Lord, Lord Lansley. I will build on what has been said by the noble Lord, Lord McNally. Today of all days it cannot be an overstatement to claim that these amendments go somewhat to the heart of a fundamental question: what kind of society do we wish to become, or, more importantly, what kind of society do we wish to leave to our children and our grandchildren? Is it one that is well informed, thoughtful and compassionate? Or, as an alternative, is it one that is easily manipulated, fearful and grasping at simple answers to ever more complex questions?

In answering that, I will quote at some length from a speech by the noble Lord, Lord Crickhowell, who I am delighted to see in his place this evening. He made it in this House on 2 July 2003 and it can be found in *Hansard*. He was speaking to an amendment on so-called foreign ownership, which he had co-signed with the now Lord Speaker, the noble Lord, Lord Fowler. The purpose of their amendment was to place a pause on the possibility of UK broadcasting assets being bought by foreign media owners, at least until a proper assessment of the impact of such ownership changes could be investigated and reported on by the then newly created regulator, Ofcom.

In this speech I believe that he nailed the issue that has bedevilled the creation of good legislation on this. Towards the end of his speech the noble Lord said:

> "Public service broadcasting is now comprehensively defined … in legislative language. We are talking about creativity, diversity and standards … When my noble friend the Chief Whip circulates a note saying that we are being watched closely—minute by minute and in detail—by the media and that the most careful consideration has been given to the issues by senior colleagues in both Houses, I know that those who tell me that heavy pressure has been applied by media moguls are right. My reaction is not to climb down in the face of such pressure but to feel even more strongly that the Bill needs strengthening, not weakening".

He concluded by saying:

"I hope that there will be many in all parts of the House, and a substantial number in my party, who will feel as I do and will insist on retaining effective … standards that are immensely valuable and need our protection".—[*Official Report*, 2/7/03; cols. 928-29.]

Fourteen years later, that is essentially the purpose of these amendments: to strengthen and, as noble Lords have heard, future-proof the legislation, along with the definitions that drive it, in such a way as to enhance the clarity and conviction with which Ofcom can make its judgments. This in turn should have the effect of helping depoliticise the position of this or any other Secretary of State in making a final quasi-judicial decision on mergers and takeovers.

The word "sovereignty" has rippled around this Chamber more in the past few weeks than at possibly any time in living memory. One of the underpinnings of sovereignty is the integrity of our media, through which we see a daily reflection of ourselves at our best—and sometimes, I am afraid, at our very worst. We are at present a nation at odds with one another, to a greater degree than I can ever remember. As the Prime Minister stressed in her Statement to the House today, the need to focus on the things that bind us, the values we share and a belief in a future that is better and fairer than the past has surely never been more important.

Without confidence in an honest and truthful media, how can we ever develop sufficient trust in each other to help steer society towards a sustainable, let alone successful, post-Brexit future? Only Parliament, through its statutory regulatory bodies, can insist on a commitment to the standards that the noble Lord, Lord Crickhowell, referred to 14 years ago: those of truthfulness, justice, compassion and tolerance—values which I suspect all believe to be an essential aspect of a truly civilised society. The very idea of licensing any broadcast media organisation that does not demonstrably embrace and adhere to those values would in my judgment be an act of wilful national self-harm. These amendments, set out in the names of the noble Lords, Lord Lansley and Lord McNally, and myself, are intended to make any such act of self-harm that much more unlikely.

Lord Crickhowell (Con): My Lords, I have not taken any part in the debates on this Bill, but in view of the fact that a speech I delivered 14 years ago and which I had entirely forgotten has been quoted at some length today, I hope I may be allowed to say that, on having reread it, I am rather proud of it and stand by every single word I said on that occasion. For that reason, I wholly support the general principles being advanced by my noble friend Lord Lansley and others who support the amendment. If it cannot be accepted tonight, I hope the Minister will at least indicate that the Government will follow this up with some very serious consideration indeed of the principles being advanced.

Viscount Colville of Culross (CB): I too rise to support these very well-crafted amendments, particularly Amendments 33J and 33L, which are crucial in ensuring that Ofcom's "fit and proper" test is extended to not just existing licence holders but prospective ones.

The amendments come as the proposed 21st Century Fox merger with BSkyB goes for the Ofcom "fit and proper" review. At the moment, I fear that the regulator can look only at the present situation, with Fox holding a 39% stake in BSkyB. Surely, that test should concentrate on what would happen if the merger went ahead and Fox took 100% control of BSkyB. Such a test would look at the assessment of James Murdoch. I refer your Lordships to the 2012 Ofcom report on "fit and proper assessment of Sky". It said:

"In our view, James Murdoch's conduct in relation to events at NGN repeatedly fell short of the exercise of responsibility to be expected of him as CEO and chairman".

At the time, Murdoch was not chairman of BSkyB, merely a non-executive director, and therefore junior enough for Ofcom to conclude that the finding did not affect BSkyB as a fit and proper licence holder. But last year, he was appointed chairman of BSkyB. The prospective merger with 21st Century Fox would give him massively increased power, with the full backing of a 21st Century Fox-appointed board. Ofcom surely should have the power to investigate what would happen in mergers such as these.

I am also concerned by developments with the federal grand jury sitting in Manhattan which is investigating the business practices of Fox News and claims by the Attorney's Office that Fox News violated securities laws by not reporting to the Securities and Exchange Commission a series of massive settlements to employees. If Fox News is found guilty, there will be an American investigation into whether it is fit to hold a broadcasting licence. I ask the Minister, would it not be strange if the UK Government went ahead and granted 21st Century Fox a merger with BSkyB in this country, at a time when the sword of Damocles hangs over Fox News in America?

I look forward to the Minister reassuring me on these matters.

10.45 pm

Lord Stevenson of Balmacara: My Lords, it is clear that we have saved the best till last. It has been a terrific debate. The hour is late and I shall not delay the House too long, but it is worth reflecting that a 14 year-old speech can be brought out, dusted down, given the once-over and realised to be fit for purpose and continue to have relevance today.

I support the amendments tabled by the noble Lords, Lord Lansley, Lord Puttnam and Lord McNally. They are absolutely right; they are on the mark. They are matters that need to be addressed now but also for the long term. The Government need to take them away and come back with some proposals as soon as possible.

The noble Lord, Lord Lansley, was right that the existing legislation, stemming from a variety of sources but crystallising around the Enterprise Act 2002, is strong, but it needs to be looked at in light of technological change, of developments and of the new way in which the world receives its information. Many things have not changed. We want to be sure that by moving around some of the architecture, we do not lose something, but it is clear that we need to widen the definition of a media enterprise—as the noble Lord said, broadcasting

[Lord Stevenson of Balmacara]
is far too narrow a definition for the way in which we consume and rebroadcast our information today. Ofcom needs powers equal to those of the CMA, in terms of getting papers and material in front of it so that it can have exactly the same authority in its work. It is not clear that it has those at the moment.

We need to think about the term "broadcasting standards" and make sure that it is fit for purpose in respect of the various companies now operating, which are definitely media companies and not technology companies, as many would argue. Certainly, all those involved in the current merger arrangements need to be considered closely in terms of the impact both of individuals and of the corporate structures which they employ.

The questions raised in our amendments to Amendment 33J, as was picked up by the noble Lord, Lord Lansley, are based closely on the model offered by the FCA in its fit and proper person test. If the noble Lord detected a similarity, it is because 90% of the words are the same—and well spotted. However, it shows that there is a commonality of approach which would repay some discussion and debate. Everyone will say that it is different in financial regulation, but some of the words copied out in Amendment 33L, for instance, which are taken straight from the FCA with only a couple of points lost, are appropriate. There are other examples and I commend them to the Minister when she comes to consider this matter, perhaps away from this sitting.

A point well made by the noble Lord, Lord Lansley, was that the work done in 2010 and 2011 is worth revisiting in some detail. In particular, a section on page 15 of the *Report on Public Interest Test* produced by Ofcom and published in 2011—to no significant media comment at that time because, by that stage, the Milly Dowler case had broken and the merger then in proposal had gone, so the public's attention moved away—deals with:

"Concerns about wider market developments and sufficient plurality".

It is incredibly relevant for today—I shall not read it all; I want to touch on just a few things. The point is made that,

"the current statutory framework may no longer be equipped to achieve Parliament's policy objective of ensuring sufficient plurality of media ownership".

The market developments have changed so much and some consideration of that broader issue must be given. The report identifies the problem that, at present, the regulations require that,

"a public interest consideration can only be triggered by a specific corporate transaction",

such as merger proposals, but that can be done by organic growth and change. It is important that we have something in the regulations which allows Ofcom to use judgment over whether it is time to intervene, particularly on the fit and proper person test.

The report expresses concern about the differential arrangements for remedying competition concerns. Such concerns are not carried forward into considerations about whether transactions are operating in the public interest depending on plurality. In other words, the narrow competition concerns largely operated through the CMA are on one side of the calculation, but those that deal with media mergers are not given the same weight. Therefore, there is a discrepancy of approach.

Finally, the point is made that,

"a more fundamental review and possible reform of the current … framework",

is probably necessary. This was said in 2010 and published in 2011. I do not think much work has been done on this since then. It is overdue time for us to look at it.

Specifically on Amendment 33L and the questions it raises, it is important that we think harder about what this phrase, a "fit and proper person", should aim for. As I said, the wording of Amendment 33L is not necessarily perfect but it points us further down this track. I have heard it said that the problem with the fit and proper person test and the work operated under Ofcom is that precedents in relation to media come from earlier times under earlier regimes, such as the old ITC regime, which must be nearly 30 years old. Since it is not used very often, there are only occasional examples of it. We have a problem in ensuring there is a join-up between the considerations that should be brought into play today and what happened in the past. It was said—perhaps slightly light-heartedly but it makes the point—that it would be difficult in today's world if one were using the tests provided by the ITC in the early 1980s and 1990s, as you would be able to prove that someone was not a fit and proper person to hold a broadcasting licence only if they had been not only charged with a crime of murder but also put away for it. That is probably too high a standard. Generally, most people would accept that. If it is true, there is a bigger question here.

It may be that the territory is such that we must be a bit more concerned about fit and proper persons in a more generic sense. In a time of fake news and with what is happening across America, we have difficulties enough coming our way. We also read in today's papers that Andy Coulson, no less, is about to be hired as the PR consultant for a well-known daily newspaper on the very far right of the political spectrum. If it is right that his brief is to make people believe that the paper is authoritative and truthful, we have problems.

Baroness Buscombe: My Lords, I agree that the best is left until last. I start by thanking my noble friend, Lord Lansley, and the noble Lords, Lord Puttnam and Lord McNally, for the constructive way they engaged in discussions with the Secretary of State and me, and with the department's officials, on seeking a common understanding on the very important issues raised in this debate.

As noble Lords said, in particular the noble Viscount, Lord Colville, the Secretary of State issued a European intervention notice in relation to the Fox/Sky merger on 16 March. She did so on two grounds: media plurality and commitment to broadcasting standards. Ofcom also announced on 16 March that it will conduct its fit and proper assessment at the same time as it will consider the public interest considerations raised in the intervention notice.

It is now time to leave the independent regulators, Ofcom and the Competition and Markets Authority, to carry out their reviews as set out in legislation. Under the terms of the intervention notice, both will

report back to the Secretary of State within 40 working days—by 16 May. For the avoidance of doubt, the Secretary of State's quasi-judicial role in respect of that merger continues and it would therefore be inappropriate for me to comment on the merits of that case. I am able to address the important issues raised by these amendments on future mergers.

As my noble friend Lord Lansley made clear, the purpose of these amendments is to future-proof the issue when it comes to media mergers. I listened carefully to the noble Lord, Lord McNally, talk about the changes over the past 14 years in terms of social mores and societal changes. The noble Lord, Lord Puttnam, referenced the need to talk about trust in each other, truthfulness, justice, compassion and tolerance. Of course, there was the reference to my noble friend Lord Crickhowell, whom I well remember speaking in those debates on foreign ownership. They were controversial at the time. There were some real difficulties in accepting what my noble friend sought to achieve but times have changed. We have moved on and learned a lot, and we have built a great deal of trust in the ability of Ofcom to do its work and do it well.

The first point I want to deal with is the amendment on Ofcom's powers. In a phase 1 assessment of any media merger, Ofcom's role is not to conclusively decide whether concerns about the merger have been established but rather to advise on whether or not they warrant a more thorough, phase 2 review. In our view, the timing and nature of Ofcom's phase 1 review simply do not necessitate the powers that Amendment 33G is proposing. Phase 2, if this is needed, is a more in-depth review that the CMA carries out over a longer period, of 24 weeks. At this stage in the process, the CMA does need more extensive powers and this is already provided for under the Enterprise Act 2002. It is at the end of this review that a decision is made by the relevant Secretary of State on whether the merger operates against the public interest and whether it should be able to proceed.

If a party to a merger does not co-operate with Ofcom in its phase 1 review, Ofcom can, and indeed should, draw out that point—and the behaviour of the parties—in its report and conclusions, which will be published. The provision of false or misleading information by anyone to Ofcom or the CMA is a criminal offence under Section 117 of the Enterprise Act. Our conclusion, therefore, is that extending the powers to Ofcom in phase 1, as Amendment 33G seeks to do, is not necessary and indeed changes the nature of what is a first-phase review to decide whether a fuller, much more thorough investigation is warranted.

As noble Lords have said, the media landscape is changing at a faster and faster rate and the tests set down in 2003 may no longer fully cover all the public interest considerations needed in media mergers. We have heard arguments throughout the passage of the Bill that the fit and proper assessment needs to be baked into the media public interest test. As the Secretary of State made clear in her Statement of 16 March, Parliament has given Ofcom a duty to assess on an ongoing basis the question of fit and proper for all organisations applying for broadcast licences. For corporate bodies, Ofcom's assessment will cover controlling directors and shareholders.

Both the Secretary of State and Ofcom have said that while many of the same issues will be relevant to both the assessment of the commitment to broadcasting standards' public interest ground and to an assessment of the fitness and propriety of licence holders, it is right that the latter—the fit and proper test—sits with an independent regulator. The current grounds for intervention in media mergers are all linked to the important public interest consideration of media plurality: plurality of ownership, plurality of content, and a commitment to standards that support plurality of views and content.

Although I acknowledge that, in a quasi-judicial role, political considerations do not come into play, adding fit and proper as a ground of intervention goes beyond the plurality test into questions of character and fitness, and puts the ultimate decision on those questions in the hands of a politician. Notwithstanding what the noble Lord, Lord McNally, said about the Government having a duty to protect the ecology of our media, this is a different position. We are very clear that the decision on fit and proper should be made by an independent authority; that is, Ofcom. This cuts entirely across what is generally the role of an independent regulator and, in my view, takes the grounds of intervention a step too far.

On the general premise that the media merger public interest consideration may not fully capture future shifts, we agree that it is time to consider this. Amendment 33F seeks to broaden the definition of media enterprise to take account of new forms of delivery and distribution. Amendment 33J, although introducing a media public interest test around fit and proper in proposed new subsection (2CC), adds a new media public interest test to cover access to cultural and performing rights, talent and other expression available to UK audiences in terms of media plurality.

11 pm

As my noble friend Lord Lansley explained, this would help to clarify that the tests cover plurality concerns about control of content. In our view, the changing nature of media markets and the increased importance of control of content may well need to be covered by the media public interest considerations. However, in our view such changes would require further thought and consideration, as well as proper consultation, to ensure that a revised test captured fully the various types of scenarios that might arise in future.

Existing powers under the Enterprise Act 2002 allow the Secretary of State to amend or update the public interest criteria and amend the definition of media enterprises without primary legislation. That is in Sections 58(3) and 58A(9). Having considered the views of noble Lords, the Secretary of State has agreed to a limited review of the public interest intervention regime for media mergers to ensure that it continues to work in the light of today's media landscape and the changing nature of media consumption.

To be clear, this will not cover any changes that relate to the import of the fit and proper test. Instead, the review will look at measures to future-proof the media public interest tests. The Secretary of State is also keen to work with all noble Lords who have

[Baroness Buscombe]
worked on this and to consult on the changes. Of course, as the noble Lord, Lord Stevenson, said, this will include the work done back in 2010 and the need to reconsider competition issues. Her aim would be to ensure that legislative changes needed as a result of this review were brought forward by the end of the next Session—that is, by May 2018. The Secretary of State is also willing to look at whether there needs to be a formal trigger for Ofcom's consideration of fit and proper in media merger cases. She is prepared to amend legislation if such a change is necessary and if this can be done without impacting on Ofcom's operational independence. As this would need primary legislation, she cannot give a definite timetable but, as noble Lords are aware, the Government announced in September 2016 that they were reviewing the wider public interest regime in relation to foreign takeovers.

In the light of the Secretary of State's clear commitment, now on the record, to meet noble Lords' views on the need to future-proof the media public interest tests, I very much hope that the noble Lord will withdraw the amendment.

Lord Lansley: My Lords, I am very grateful to all noble Lords who have participated in this debate. Every contributor added something of significant value to the debate as a whole. It is a very good debate with which to conclude—practically conclude—our proceedings. I am sure noble Lords will forgive me if I say a special thank you to my noble friend Lord Crickhowell for coming and reiterating his remarks of 14 years ago. I, too, remember them very well, even if I was in another place at the time.

I am very grateful for the engagement of the Secretary of State, the Minister and officials and for the Minister's response tonight. On Report, one is often pressing very hard because the window of opportunity is about to slam shut. As the Minister quite rightly said, in relation to some of the very important issues that we are putting forward relating to the definition of media enterprises and the nature of the grounds on which a public interest test can be triggered under the specified considerations in the Enterprise Act 2002, there is a power in Sections 58(3) and 58A(9) for those specified considerations to be amended by order.

The debate that has been given life during the passage of the Bill does not stop with the passage of the Bill, and I am therefore very grateful for the way in which the Minister has said that she and her Secretary of State and colleagues are going to take these issues forward and look at how they may be given life beyond here, in orders or in future primary legislation. The point about competition is important.

I neglected to refer to Amendment 33K, which was tabled by the noble Lord, Lord Stevenson of Balmacara. He illustrated very well what he was about. I am sure he will accept that inserting "any other reason" into merger control would be a jarring legislative intervention into a merger regime, but the point he makes is a very good one. When one is looking at the abuse of a dominant position under competition legislation, the nature of the abuse is not necessarily simply that there is consumer detriment. There may be wider detriments to the public interest which are not necessarily reflected in the nature of that abuse of the dominant position, so it is a very proper issue to be further considered.

Given what my noble friend the Minister said, and the ability to engage with her and the Government in looking at this in the months rather than years ahead, I hope that colleagues will accept that I should at this stage beg leave to withdraw the amendment.

Amendment 33F withdrawn.

Amendments 33G to 33M not moved.

Clause 97: Commencement

Amendment 34 not moved.

Amendment 34A
Moved by ***Lord Ashton of Hyde***

34A: Clause 97, page 100, line 26, at end insert—

"( ) sections (Guarantee of pension liabilities under Telecommunications Act 1984) and (Regulations under section (Guarantee of pension liabilities under Telecommunications Act 1984));"

Amendment 34A agreed.

Amendments 34B to 35 not moved.

Amendments 35A to 38
Moved by ***Lord Ashton of Hyde***

35A: Clause 97, page 100, line 36, at end insert—

"( ) section (Provision of children's programmes);"

36: Clause 97, page 100, line 37, at end insert—

"( ) section (Televising events of national interest: power to amend qualifying conditions);"

37: Clause 97, page 101, line 5, leave out "Chapter 5, so far as that Chapter relates" and insert "Chapters 5 and 6, so far as those Chapters relate"

38: Clause 97, page 101, line 9, leave out subsections (5) and (6) and insert—

"( ) The provisions mentioned in subsection (4)(a) and (c) come into force on whatever day the Welsh Ministers appoint by regulations made by statutory instrument."

Amendments 35A to 38 agreed.

Amendment 39 not moved.

Amendments 40 and 41
Moved by ***Lord Ashton of Hyde***

40: Clause 97, page 101, line 18, at end insert "or different areas"

41: Clause 97, page 101, line 18, at end insert—

"(9) The appropriate authority may by regulations made by statutory instrument make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.

(10) Subsection (9) does not apply to section 4 or Schedule 1 (for which see section 5).

(11) The appropriate authority, subject to subsection (12), is the Secretary of State.

(12) The appropriate authority in relation to Part 5 is—

(a) the Secretary of State, in relation to Chapter 2;

(b) the Welsh Ministers, in relation to—

(i) Chapter 1 so far as relating to the disclosure of information to or by a water or sewerage undertaker for an area which is wholly or mainly in Wales, and

(ii) Chapters 5 and 6 so far as relating to the disclosure of information by the Welsh Revenue Authority;

(c) otherwise, the Secretary of State or the Minister for the Cabinet Office."

Amendments 40 and 41 agreed.

In the Title

Amendments 42 to 44

Moved by ***Lord Ashton of Hyde***

42: In the Title, line 4, after "data-sharing;" insert "to make provision in connection with section 68 of the Telecommunications Act 1984;"

43: In the Title, line 10, after "offences;" insert "to confer power to create an offence of breaching limits on ticket sales;"

44: In the Title, line 10, after "offences;" insert "to make provision about the payment of charges to the Information Commissioner;"

Amendments 42 to 44 agreed.

Neighbourhood Planning Bill [HL]

Returned from the Commons

The Bill was returned from the Commons with a reason and amendments. The Commons reason and amendments were ordered to be printed.

House adjourned at 11.07 pm.