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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

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House of Lords

Wednesday 18 October 2017

3 pm

Prayers—read by the Lord Bishop of Newcastle.

Oaths and Affirmations

3.05 pm

Lord Smith of Kelvin and Lord Williams of Oystermouth took the oath, and signed an undertaking to abide by the Code of Conduct.

Product Recall: Tumble Driers

Question

3.06 pm

Asked by ***Baroness Neville-Rolfe***

To ask Her Majesty's Government whether they intend to take any steps to improve the product recall system; and if so, whether they intend introduce a time limit for replacing tumble driers recalled due to safety concerns.

Viscount Younger of Leckie (Con): My Lords, product safety is a government priority. In July, the Government's working group on product recalls and safety published its report, making recommendations on how to improve recalls and reduce fires in white goods. The Government commissioned the British Standards Institution to develop a code of practice on corrective actions and recalls, which is currently out for public consultation. We have upgraded our recalls website to ensure consumers can access information on recalls.

Baroness Neville-Rolfe (Con): My Lords, I find that Answer a little disappointing. Whirlpool is a US company that is not taking its responsibility for safety seriously enough, leaving millions of dangerous machines in our British homes. Is the present recall system fit for purpose or do we need urgently to introduce and resource some central focus of responsibility when we have a massive recall, whether it is for tumble dryers or fridge freezers? Lives are at risk and I want to do more.

Viscount Younger of Leckie: My Lords, in such cases there is often a question of whether there is a need for recall or modification. The right approach has to be taken and that is a matter for trading standards. Peterborough city trading standards, which is responsible for the case of Whirlpool and Indesit tumble dryers, has been working closely and urgently with Whirlpool and has modified 1.7 million dryers. The resolution rate is over 40%—far higher than the average. On product safety, where there is a national concern, the Government are considering wider recommendations about an increased national capability: a central hub for technical and scientific resourcing for co-ordination of national recalls.

Baroness Crawley (Lab): My Lords, does the Minister agree that a register of injuries arising from unsafe products would be an essential intelligence resource, especially when so many products are delivered via the internet, directly to people's homes? What plans have the Government to create such a national injuries database?

Viscount Younger of Leckie: The noble Baroness makes a good point, and that indeed is part of our thinking and could be part of the national resourcing to increase the capability for improving consumer monitoring. We already have a GOV.UK website up and running. I do not believe that site is capable of allowing a database, but the noble Baroness makes a good point.

Lord Razzall (LD): My Lords, I share the disappointment of the noble Baroness, Lady Neville-Rolfe, in the Minister's Answer. I have no doubt he is aware that, during the coalition Government, Jo Swinson—then a Minister in his department—asked the consumer champion, Lynn Faulds Wood, to conduct an independent review on the enforcement of product recall regulations. Her review was published in February 2016 but the recommendations have not been implemented. Does the Minister not think it is time they were?

Viscount Younger of Leckie: The noble Lord is not quite correct because following that review, which was well received, a working group was set up and already some of the recommendations have been enacted: the tasking of the BSI has created a new code of practice; we are bringing manufacturers together to support a better sharing of data on faults; and we are applying behavioural insights to increase the impact and effectiveness of product safety messages.

Baroness Hayter of Kentish Town (Lab): My Lords, 70 deaths happen a year from electricity, but of course there are even more when there is a fire. We know that the Grenfell Tower fire was started by a Hotpoint fridge freezer. It is no good waiting for a website on which consumers have to go to find whether their machine is faulty. We have to have mandatory recall where there are dangerous, faulty goods. The noble Baroness, Lady Neville-Rolfe, was of course the Minister who put through the Bill, my amendment to which led to this inquiry, but nothing has happened. If we do not want another fire I suggest the Government make it mandatory.

Viscount Younger of Leckie: The noble Baroness will know that this is a matter primarily for trading standards. It is left to it to decide what sanctions and actions should be taken. In the case of the awful Grenfell Tower fire, much work continues to be done to ascertain exactly what happened. She is right that it was a Hotpoint fridge freezer. There is no evidence so far or grounds for concluding that there is a safety problem with this model, but investigations are continuing.

The Countess of Mar (CB): My Lords, will the Minister agree that the Food Standards Agency, together with the supermarkets, runs an excellent product recall system?

[The Countess of Mar]
Could not the noble Baroness, Lady Neville-Rolfe, and others learn from the Food Standards Agency?

Viscount Younger of Leckie: Absolutely. I am sure that will be taken into account in looking at the possibility of setting up this central hub. I thank the noble Countess for that point.

Lord Campbell-Savours (Lab): My Lords, did I hear the Minister refer to a 40% return for one manufacturer? Is it not the reality that the percentage of goods returned on recall is between only 10% and 20% nationally across the board, taking all these products, leaving potentially millions of white goods out there that could, in certain circumstances, be a fire risk? Also, is it not a question of what the manufacturers fit to their equipment? Why do white good manufacturers insist on using backs in plastic materials, knowing that they can be set on fire, when they could be substituted with a metal back?

Viscount Younger of Leckie: The noble Lord is correct on the figures. The average recall success is 10% to 20%. We believe that 40% is a great improvement on that, but of course there is more to be done. Whirlpool has taken its responsibilities very seriously. Letters, emails, texts and phone calls have been used to track down those who have bought its white goods. But, as I said earlier, there is more to be done. A central hub could be a way forward to help with the noble Lord's question.

Baroness Tonge (Non-Afl): My Lords, is the Minister aware that the charity Electrical Safety First—I must declare an interest as a patron—is running a campaign about the safety of all electrical appliances in the home? Will the Government please give as much support as they possibly can to its efforts?

Viscount Younger of Leckie: I take note of the noble Baroness's point. Britain's safety requirements are among the highest in the world. This is backed by the necessary legislation, but there is always more we can do.

Medical Examiners and Death Certification

Question

3.14 pm

Asked by ***Lord Low of Dalston***

To ask Her Majesty's Government when they expect to report the outcome of the consultation on the introduction of medical examiners and reforms to death certification launched in March 2016; and whether they still intend to introduce those reforms in 2018.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, since the election the Secretary of State for Health has reaffirmed his commitment to introduce medical examiners to provide a system of effective medical scrutiny applicable to all deaths that do not require a coroner's investigation. The Government's response to the consultation will be published shortly and the system will be introduced no later than April 2019. Pilot sites are already offering the bereaved an opportunity to raise concerns while improving patient safety through mortality data.

Lord Low of Dalston (CB): My Lords, I thank the Minister for that reply. While welcoming the Government's commitment to introduce the medical examiners scheme by April 2019, the president of the Royal College of Pathologists said in March that,

"it is vital to ensure that implementation is properly planned. There is still much work to be done in adapting the current system and recruiting and training medical examiners and officers".

Given all the delay to which the introduction of the scheme has been subject already, are the Government satisfied that it will be ready in time?

Lord O'Shaughnessy: The noble Lord is quite right to highlight this point. There have been calls for medical examiners since the Shipman inquiry; those were also endorsed following the inquiry into Mid-Staffordshire. Our intention is to ensure that, with planning time, the system can be introduced by April 2019, which is why the consultation and the regulations needed to underpin the planning for the system will be produced in short order.

Lord Hunt of Kings Heath (Lab): My Lords, I chaired a foundation trust where we trialled the medical examiner role. I commend to the House the value of having a senior consultant able to talk to relatives about concerns, drawing the attention of fellow clinicians to issues relating to practice but, above all, safeguarding the public against tragic and appalling actions such as those taken by Harold Shipman. Does the Minister expect every part of the NHS to be covered by medical examiners by April 2019, or is that the start of the rollout? I hope that it can be extended throughout the NHS by that date.

Lord O'Shaughnessy: The noble Lord is quite right to highlight the pilots; indeed, early adopters have followed in their wake and have provided a much better service. The intention from April 2019 is for the service to cover the entire country, but it is most likely to start in secondary care and then move out into primary and community care.

Baroness Jolly (LD): Changes to death certification are welcome and will impact on bereaved families. How were the general public involved in the consultation?

Lord O'Shaughnessy: I think I missed the critical word in the noble Baroness's question. Did she ask whether the public were involved?

Baroness Jolly: I asked how they were consulted.

Lord O'Shaughnessy: There was full consultation on the proposals. We have been considering that and will respond to it.

Lord West of Spithead (Lab): In 2009, a certain amount of work was done on how we would handle mass deaths should they occur because of some crisis or emergency. Does any of the current work affect that? Does that work still stand, so that we can handle such events properly?

Lord O'Shaughnessy: I think that the difference here is between handling mass deaths, which would obviously be an emergency situation—so we are talking about contingency and resilience planning—and looking at all deaths. About half a million people die each year. At the moment, only those who go through coroners receive that additional level of investigation, except in those pilot sites and early adopter areas that I mentioned. The new arrangements are about making sure that there is a system of verifying deaths from normal causes.

Baroness Hayman (CB): My Lords, when considering these issues will the Minister look at the proposal made by bereaved parents and raised by the chief coroner in his report in 2016 that there should be coroners' investigations of cases of stillbirth, so that the causes of stillbirths could be better understood and such tragedies could be averted in the future?

Lord O'Shaughnessy: The noble Baroness is quite right to highlight this point. Medical examiners are not involved in stillbirths, because the cause of death is before the point of birth. However, there is clearly a need for the involvement of coroners. I will look into the detail of that. I can tell the noble Baroness that the Government are taking the issue of stillbirths seriously. A new perinatal mortality review tool is looking at that and it is integrated into the learning from deaths scheme now going on in the NHS.

Lord Clark of Windermere (Lab): My Lords, this is a very welcome initiative, but in view of the incredible shortage of medical staff in the NHS, is the Minister confident that there are sufficient staff to cover it? Are the Government looking at other ways of making staff available—for example, people may be brought back from retirement—to handle it in the initial years?

Lord O'Shaughnessy: That is a very good question because we are talking about a greater workload. The pilots and the early adopters have demonstrated that it is possible to do this with existing staff loads. As it is rolled out across the country, there may be a need for additional staff. I reassure the noble Lord, and indeed others including bereaved families, that any staff who are used will be registered practitioners and would be regulated by the GMC.

Brexit: Creative Industries

Question

3.20 pm

Asked by ***Baroness Quin***

To ask Her Majesty's Government what discussions they have had with the creative industries regarding Brexit.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the creative industries are one of the UK's greatest success stories, contributing more than £87 billion to the economy and around £20 billion in exports. The Government have been working closely with the creative industries to understand the impacts and opportunities presented by our decision to leave the EU, as well as working with them on an early sector deal, as part of the industrial strategy, to secure the sector's continued prosperity and growth.

Baroness Quin (Lab): My Lords, I draw attention to my specific interest in the register, although my Question relates to the creative industries more generally, which, as the Minister has acknowledged, have been a very successful area of our economy. I believe they have been the economy's fastest-growing sector in recent years. Is the Minister aware of just how successful and influential the sector has been in formulating European policy, and how concerned it therefore is about a loss of influence in future, as well as some of the specific issues concerning market access, content and country origin, and of course funding? Will he assure us that these industries will be able to participate in those European policies and programmes that have been so successful in bringing jobs and opportunities to the United Kingdom?

Lord Ashton of Hyde: I absolutely agree with the noble Baroness that the creative industries have been not only European leaders but world leaders. As far as Europe is concerned, we absolutely want them to go on contributing in that way. That will be part of the negotiations. We want them to continue to be part of things such as the European creative fund. With regard to other EU funds, if various industries apply for grants the Chancellor has agreed to guarantee to continue paying those after we leave, until the project's expiration.

The Earl of Clancarty (CB): My Lords, for many working in the creative industries the most pressing concern is whether they will be able to travel to other countries in Europe at short notice to work. Some UK musicians travel within Europe more than 40 times a year. Surely in that and many other instances—the Minister will be aware that the advertising industry raised this concern yesterday—the implementation of visas will be unrealistic and detrimental to the sector.

Lord Ashton of Hyde: The noble Earl makes a good point and we are only too well aware of it. One of my department's roles is to make sure that the aspects raised by the creative industries are known throughout government, in particular to the Department for Exiting the EU and the Home Office. My department is working closely with the Home Office and the Migration Advisory Committee.

Lord Wigley (PC): My Lords, I declare an interest by way of my family involvement with the creative industries. May I pursue the thread of the previous question? The richness of the performing industries

[LORD WIGLEY]
comes from their diversity—one thinks particularly of music—and the wealth and range of talent that has been brought over to the countries of these islands from continental Europe. Is there not a danger that those who live in the other 27 member states will perceive that there is a barrier to coming here and stop coming, which would impoverish the cultural scene in these islands?

Lord Ashton of Hyde: If they perceive that, there is that danger, so we must work very hard to make sure that that perception does not exist.

Lord Cormack (Con): My Lords, while acknowledging and agreeing with everything that has been said and welcoming the tone of my noble friend's responses, will he also recognise the enormous importance of collaboration and co-operation between the great museums and galleries of Europe? That has been responsible, among other things, for bringing some of the finest exhibitions not only to London but throughout Europe. It would impoverish us all and the generations after if there was an impediment to that.

Lord Ashton of Hyde: I agree with my noble friend. Collaboration in the cultural scene applies not only to Europe but to other countries in the world. We want to make sure that that collaboration continues and is improved. I mentioned Creative Europe. It is important as a fund not only for the relatively small amount of money that we have received but because it is a totemic fund that encourages partnership and enables us to take a lead role in that.

Baroness Bonham-Carter of Yarnbury (LD): My Lords, I know that the Minister agrees that skills are key to the continued success of our creative industries, even more so now with the uncertainty of Brexit. Does he agree with the finding in Sir Peter Bazalgette's recent review of the creative industries that it is imperative that the Government commit to designing the education and skills framework to support the sector? Will the Government look again at the proposed reforms to the EBacc and introduce a creative subject?

Lord Ashton of Hyde: On the first part of the question, we welcome Sir Peter Bazalgette's report. The Creative Industries Council is looking at it and will take it into account when it produces its proposals for an early sector deal. Education is outside the remit of DCMS, but I am sure the noble Baroness's point will have been noted by that department.

Lord Cashman (Lab): My Lords, I refer noble Lords to my interests as set out in the register. May I point out the negative consequences of a reduction in freedom of movement for the pool of talent coming into and out of the United Kingdom, not least in the performing industries? Therefore, will the Minister make certain that the talent unions, such as the Writers' Guild of Great Britain, Equity and the Musicians' Union, producers and others are part of the consultation group that meets the Department for Digital, Culture, Media and Sport to iron out the problems that they foresee on the road to Brexit?

Lord Ashton of Hyde: We have had many conversations with subsectors in the creative industries, and we are certainly open to more. We know that access to talent and skills is a key concern for the creative industries. That is why we are working closely with the Home Office and the Migration Advisory Committee, through its consultation, to feed in the concerns and demands of the sector.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend accept what this Government and previous Governments have done to support creative industries through tax relief, from which Screen Yorkshire and the UK film industry have benefited? Will he use his good offices to ensure that these tax reliefs continue? I should declare my interest as I was a shadow Minister campaigning for these tax reliefs and subsequently benefited from them.

Lord Ashton of Hyde: I certainly accept the remarks of my noble friend. For example, since film tax relief was introduced in 2007, 2,070 films have been made accounting for £8.9 billion of UK expenditure. Only recently, we introduced tax relief for children's television programmes and theatre tax relief, and we hope to continue to do so.

Lord Stevenson of Balmacara (Lab): The Minister mentioned the Bazalgette report, commissioned by the former chairman of the Arts Council, which we welcome. It is a wide-ranging view of what needs to be done in the creative industries to make sure they are a success. As a former Treasury Minister, the Minister might be interested in two or three of the points which play to his strengths, I am sure. Will he advise us of where we are on the review looking at whether the current HMT definition of R&D tax credits captures legitimate R&D activity in the creative industries, which goes back to the film tax point that has just been made? Will he also explain why the creative industries fail to get virtually anything from Innovate UK funding? Currently only 2% goes to the creative industries.

Lord Ashton of Hyde: The Creative Industries Council is reviewing the suggestions in the Bazalgette review, which we commissioned. There are many of these, the most important being the proposal for creative clusters. The council expects to come back to the department with its proposals by the end of the year. I am not sure why Innovate UK supplies only 2%. Nevertheless, as the noble Baroness, Lady Quin, said, the creative industries have been a tremendous success story and are growing at one and half times the rate of the rest of the economy.

Disabled Children: Online and Verbal Abuse

Question

3.29 pm

Asked by ***Baroness Gale***

To ask Her Majesty's Government what assessment they have made of the rise in online and verbal abuse targeting families with disabled children.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, this Government abhor all form of hate crime, including disability hate crime, whether it takes place offline or online. That is why we take a cross-government approach to tackling the issue through the hate crime action plan.

Baroness Gale (Lab): I thank the Minister for her reply. I am sure she is aware that reports of hate crime against disabled children have risen by nearly 150% in two years. Amanda Batten of the Disabled Children's Partnership said this week:

> "Families often feel like they can't go into busy public spaces or post images onto social media for fear of being publicly shamed or having to be submitted to people telling them that their child must lack quality of life because of their disability".

Although the Home Office has said that there have been improvements in reporting techniques, the Government must now address the underlying reason for hate crime's existence, especially when it is aimed at children. What funding is available to support officers and the justice system in tackling these terrible and shocking abuses of disabled children?

Baroness Williams of Trafford: I thank the noble Baroness for her Question. She is absolutely right to raise it. To mete out hate crime against children must be among the worst types of hate crime of all, because they are defenceless. She will have noticed the Home Secretary's announcement last week that, having provided more than £450,000 to the Metropolitan Police towards the development of an online hate crime unit, we are now developing a national hate crime hub online. We are also working with industry to tackle hate crime. The police are well aware and working with the CPS on understanding why the number of referrals and prosecutions is perhaps not as high as we might have expected. The volume of reporting tells us that people are becoming less reticent to come forward to report what is frightening crime against their children.

Baroness Thomas of Winchester (LD): My Lords, disability is apparently not listed on Twitter as a specific category, unlike race or religion. Despite reassurances given to Trailblazers earlier this year, it is still not listed. Will the Minister take this up with Twitter as a matter of urgency, as some of the tweets one sees are quite shocking?

Baroness Williams of Trafford: I agree with the noble Baroness: not only are they quite shocking, some of them are pretty disgusting. I was unaware that disability was not listed on Twitter, although it certainly is a strand of hate crime. I can tell her that the Home Secretary has been in deep discussion with some of our CSPs, including Google, Twitter and Facebook, and I will certainly raise that back at the department, because I was unaware of it.

Baroness Farrington of Ribbleton (Lab): My Lords, does the Minister share my disgust that many police services are now categorising what they believe to be the most important crimes to pursue, and that among those being put lower down are hate crime investigations? It is no good having things on Twitter, Facebook and the Government's list if no action is taken because of this Government's shoddy reduction in police numbers, which is causing crimes that the public want investigated not to be investigated. Does she share my anger and concern?

Baroness Williams of Trafford: I do not agree with the noble Baroness in the sense that reporting has hugely increased. In fact, only this morning I was at the National Black Police Officers Association talking about the very subject of hate crime and getting diversity into the workforce. I disagree about police numbers because the police have the resources that they need to concentrate on the priorities they think are important, and they hold huge reserves.

Lord Touhig (Lab): My Lords, police data on disability hate crime does not discriminate between offences against people with learning difficulties and autism and all other disabilities, yet research shows that more than 70% of people with learning disabilities and autism experience hate crime. Does the Minister agree that we need to record these offences differently if we are to combat them effectively?

Baroness Williams of Trafford: I am aware that disability hate crime is not disaggregated in terms of autism and learning difficulties. Faith hate crime is disaggregated in certain police forces. I know that Greater Manchester Police disaggregates faith-related hate crime. I will take that back, but no matter that the police do not disaggregate it, we absolutely need to deal with it with full force because it is utterly unacceptable.

Lord Addington (LD): Does the Minister agree that the police will not be able to deal with these crimes, particularly in the case of hidden disabilities, unless they have some training in what these disabilities are and how they can be approached? A lack of knowledge will lead to a great lack of action.

Baroness Williams of Trafford: I do not disagree with the noble Lord. The police are well trained in a number of areas and I am sure disability is one of them. I will take that back and write to the noble Lord with details of what training is given to the police to deal with the more sensitive aspects of disability. I know certainly from working in the field of multiple sclerosis I often had reports of people with that condition being very upset because people in supermarkets thought they were drunk.

Sanctions and Anti-Money Laundering Bill [HL]

First Reading

3.37 pm

A Bill to make provision enabling sanctions to be imposed where appropriate for the purposes of compliance with United Nations obligations or other international obligations or for the purposes of furthering the prevention of

terrorism or for the purposes of national security or international peace and security or for the purposes of furthering foreign policy objectives; to make provision for the purposes of the detection, investigation and prevention of money laundering and terrorist financing and for the purposes of implementing Standards published by the Financial Action Task Force relating to combating threats to the integrity of the international financial system; and for connected purposes.

The Bill was introduced by Lord Ahmad of Wimbledon, read a first time and ordered to be printed.

Natural Environment and Rural Communities Act 2006 Committee

Membership Motion

3.37 pm

Moved by ***The Senior Deputy Speaker***

Natural Environment and Rural Communities Act 2006 Committee

That Viscount Chandos be appointed a member of the Select Committee in place of Lord Harrison, resigned.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, I beg to move the two Motions standing in my name on the Order Paper en bloc.

Lord Foulkes of Cumnock (Lab): I object.

The Senior Deputy Speaker: My Lords, I beg to move the first Motion standing in my name on the Order Paper.

Motion agreed.

Communications Committee

Membership Motion

3.38 pm

Moved by ***The Senior Deputy Speaker***

Communications Committee

That Lord Gordon of Strathblane be appointed a member of the Select Committee in place of Lord Hart of Chilton, deceased.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, I beg to move the second Motion standing in my name on the Order Paper.

Motion agreed.

Property Agents: Registration

Statement

3.39 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Northern Ireland Office (Lord Bourne of Aberystwyth) (Con): With the leave of the House, I shall now repeat a Statement made in another place by the Minister for Housing in the other place. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement on a call for evidence on protecting consumers in the letting and management agents market. When our Housing White Paper was published in February, we committed to taking action to help people already on the property ladder or living in rented accommodation. The Prime Minister has also announced billions of pounds of funding for new affordable homes, including homes for rent. We are also taking action to create a fairer property management system that works for everyone. We have already announced plans to regulate letting agents, including banning fees for tenants, and we have made it clear that we want to see an end to the unjustified use of leasehold in new-build houses.

The time has now come to address service charges. As the number of leasehold and private rented homes has grown, so the market for managing agents has boomed. According to one estimate, annual service charges alone now total as much as £3.5 billion. While these managers provide an important service, the system in which they work is simply not suited to the modern age. Tenants and leaseholders, even some freeholders on new-build estates, hand over their money and receive services in return, but they have little or no say over which agent provides them or at what cost. This matters because, while the majority of agents are honest professionals committed to delivering a high standard of service, a near-total lack of regulation has led to the growth of a market where, in places, standards and safety come second to the pursuit of profit. We have seen reports of broken windows being repaired with cardboard and sticky tape, and of damp and mould simply being painted over. One landlord was billed £500 by his agent for repairing a shower door, while a group of leaseholders were charged 10 times the market rate to have a new fire escape fitted, with the £30,000 contract for the work being handed to the property owner's brother.

You do not need any qualifications, training or experience to call yourself an agent. You do not need a criminal record check, and you do not even have to know what a managing agent does, so it is no surprise that some experts believe that such agents are overcharging by as much as £1.4 billion every year.

Today, we are setting out plans for fixing the problems in property management. We are publishing a call for evidence which outlines the challenges facing the sector, proposes some possible solutions, and asks for the views of the people who know the market best—people who work in it or who pay the service charges. As part of this new call for evidence, government is seeking views on three key elements: first, whether regulatory overhaul of the sector is needed; secondly, measures to protect consumers from unfair costs and overpriced

service charges; thirdly, ways to place more power in the hands of consumers by giving leaseholders more say over who their agent is.

The sector has done some good work to raise standards already, but there is more to do to professionalise the sector and root out poor practice. Through the call for evidence, we shall take views on whether we need an independent regulator to oversee property management. So today, the Government are asking everyone who pays service charges and everyone who receives them to share their views on what is wrong and how we can fix it. We want to give power back to consumers, give agents a clear and consistent framework to operate in, and give landlords, renters and leaseholders the confidence they need to know that agents are complying with the rules. As we build more homes, we need the right people to take care of them. That is why it is important that government acts to recognise what works in the sector and fix what does not.

Today's announcement is about delivering better value and services for tenants, leaseholders and hard-working people across the country. The call for evidence, which will be open for six weeks, is the first step in creating a property management system that works for everybody. I commend this Statement to the House".

My Lords, that concludes the Statement.

3.43 pm

Lord Kennedy of Southwark (Lab): So here is another announcement on housing from the Government, who are going to seek evidence on addressing unfair and unreasonable abuses in service charges affecting leaseholders and private rented sector tenants. What is frustrating is that in the Government's own Statement, they refer to the problems that we are all aware of and which need to be urgently addressed. After they collect their evidence, we need to see some real action from the Government.

The call for evidence lasts for six weeks, which gets us to the beginning of December, when the Government will want to reflect on the evidence received. Can the noble Lord tell the House when he expects concrete action that benefits leaseholders and tenants living in the private rented sector—the second biggest housing tenure—as a result of today's announcement? The Government have form here. On page 61, the housing White Paper, issued in February 2017, refers at paragraphs 4.31 and 4.32 to,

"A fairer deal for renters and leaseholders".

On page 62, under a section entitled, "Leaseholders", paragraphs 4.36, 4.37 and 4.38 refer to the issues, stating:

"We will … consult on a range of measures to tackle all unfair and unreasonable abuses of leasehold".

What have the Government been doing for the last eight months? They are just reannouncing what they announced in the White Paper.

I recall the debates on client money protection during the passage of the Housing and Planning Act. Following those debates, a working group was set up, co-chaired by my noble friend Lady Hayter of Kentish Town and the noble Lord, Lord Palmer of Childs Hill. Their consultation closed in October 2016 and their report was published on 27 March this year. The very next day, the noble Lord, Lord Bourne of Aberystwyth, announced at the Dispatch Box that the Government were going ahead with a mandatory scheme of client money protection—since then, absolutely nothing.

Then we have the ban on lettings agents' fees, such as inventory fees, tenancy review fees and agents' admin fees. The ban was announced by the Chancellor of the Exchequer in the Autumn Statement 2016. Then it appeared in the housing White Paper, published in February 2017, in paragraph 4.32 on page 61. Then it appeared as a pledge in the Conservative Party general election manifesto, and was again announced in the Queen's Speech on 19 June. But since then, absolutely nothing.

Then, we have mandatory electrical safety checks in the private rented sector, on which there were a series of debates during the passing of the Housing and Planning Act. A review took place, concluding in December 2016, and the report from the review group, which was sent to the Minister earlier this year, was crystal clear: it recommended five-yearly mandatory electrical safety checks in the private rented sector. The checks are again referred to in the housing White Paper, where, on page 62, paragraph 4.34, the Government state that they will set out their next steps shortly. That was eight months ago and since then, absolutely nothing.

Despite reviews, announcements, pledges and commitments, no meaningful progress has been made on any of these three measures. This Conservative Government could certainly not be accused of acting in haste when it comes to bringing in measures to provide private sector tenants with further protections from rogue letting agents, rogue landlords and rip-off fees, much-needed safety measures, and measures to protect leaseholders from unfair and unreasonable abuses. I am very disappointed with the Government's inaction and, although I like and respect the noble Lord very much, he is just reannouncing a previously announced pledge, when what is needed is action to deal with a range of serious problems in the private rented sector and leasehold sector, which has just stalled in the department.

As I said earlier, the Government have form here. When they are under pressure, they announce reviews and consultations, and kick matters into the long grass to avoid facing up to the issues that need to be addressed. The noble Lord and the Government are failing leaseholders and they are failing private sector tenants. Serious issues need to be addressed, and they have to do much better and sort them out.

Baroness Pinnock (LD): The noble Lord, Lord Kennedy, has accurately listed the failings of the Government in attempting to reform the housing sector, particularly for private sector tenants and leaseholders. It is very sad to see the Minister come here with good intentions which are then not carried out by the Government. As today's Statement demonstrates, there is a long-overdue need for serious protection for tenants. Indeed, some of the poorest families in this country rely on private sector rents for their homes. Those same people are being fleeced by others who have no regard for the welfare of their tenants. That, of course, is not representative of the entire market but there is a growing number of those sorts of landlords and management companies.

[Baroness Pinnock]

Having said that, I welcome the consultation, which has been a long time coming. I want to address two issues. First, the Statement refers to leaseholds. We all know that there has been a growing trend in property development for new builds to be sold as leasehold and for the buyer, for whatever reason—there has been quite a lot of publicity about this—to find out, often too late and to his or her considerable cost, that they have signed not a freehold purchase but a leasehold purchase. I urge the Government to move quickly to fulfil the commitment they have already made to prevent this unjustifiable burden falling on the house buyer.

The service charge is another element which affects private sector home buyers. In my area a new development has an open grass area that has not been reverted to the local authority to maintain but to a management company. The home owners in that development have had huge difficulties getting any maintenance of the shared open areas. I have first-hand knowledge of that, albeit in a small way. These people can fight their corner but, for many private sector tenants, service charges cause considerable anxiety. These people may often be on short-term tenancies and can find those tenancies ended without any redress if they raise questions about the service charges imposed on them.

I assume that the Minister will have read the consultation and therefore will be able to reassure the House that evidence will be sought on transparency over service charges and on accountability and redress, and that action will follow. If I was a private tenant, I would want to know that those three elements will be addressed. I would go further: there needs to be a right in law for a tenant to withdraw payment for a charge that is proven to be unacceptable or unjustifiable without the threat of eviction or the tenancy being brought to an end in any way. I have not read the consultation but perhaps the Minister will be able to help us on that.

Lastly, the rogue landlords register, which has been agreed, is secret and is held by councils. Councils know who these rogue landlords are. If we are truly protecting tenants, we ought to follow up on the pleas from this side of the House that that register be made open and transparent so that tenants can see before they sign an agreement whether or not their landlord is on that list. I look forward to reading the document and to the Minister's response.

Lord Bourne of Aberystwyth: My Lords, I will respond to the comments from the noble Lord, Lord Kennedy, and the noble Baroness, Lady Pinnock. First, I was somewhat disappointed in the noble Lord, who is not generally as unfair as he was today. In fact, there was not a single question in his opening statement. There were some points, which I will certainly respond to, but the accusation that we are not doing anything is, frankly, amazing and far from the truth. I will deal with some of the particulars.

First, on banning letting fees—which, it is quite true, the noble Baroness, Lady Grender, raised some time ago—very shortly we will come forward with the draft Bill to deal with this issue. On leasehold reform—long leases and ground rent charges—consultation ended only at the end of September, to be entirely fair. We are looking at that consultation and will come forward with a response shortly, and we certainly intend to act after that response. Again, there is no doubt about that. But we cannot be attacked for consultation. It seemed to me that in the noble Lord's statement there was a suggestion that we should not be consulting on these matters. It is important that we consult. As we have only just ended the consultation, it is somewhat unreasonable to expect a response in less than a month.

On protection of client money, the noble Lord referred, quite rightly, to the notable work of the noble Baroness, Lady Hayter, and the noble Lord, Lord Palmer of Childs Hill. We have accepted that and we are carrying it forward. It is important that we are doing that. We will consult with the sector, and I am happy to meet with the noble Baroness and others to discuss that. However, of course we are carrying that forward—we have given an undertaking on it.

I will deal with some of the other issues before I come to the Statement itself, which the noble Lord did not focus on. We are looking at a housing court and are taking that forward; the Ministry of Justice is considering that issue. We are looking at a landlord ombudsman to deal with unfair practices, and we are committed to that. Social tenants are of course already subject to the housing ombudsman, and redress is already provided for with regard to letting agents. As I say, we cannot be accused of not carrying things forward. I can understand noble Lords wanting to proceed at a greater pace than perhaps has been done but we have consulted fully and are taking these things forward.

On the part of the Statement which relates to service charges in the letting sector for both leasehold and tenanted arrangements, I thank the noble Baroness, Lady Pinnock, for her welcome of it. All the major parties here have been parts of government; if this has been so urgent for so long, one is entitled to ask why something was not done earlier. We are now carrying this forward and I hope that everybody will participate in this so that we can achieve something that is remarkable in being consensual and which takes us forward. There is much to be done, this is welcomed by all of the main letting association bodies, and, clearly, there is a need to act to provide the sort of principles that the noble Baroness was talking about with regard to transparency and redress. These are important and they will be provided for, and the questions are geared in that direction, as she will see. The consultation opens today and ends on 29 November, so it is open for six weeks, and I encourage anybody who is concerned in the sector to contribute to it. Another reason why it has taken some time to address the earlier consultations is that we had over 6,000 responses on leasehold reform and over 4,700 on letting agent fees. It is important that we go through all the points that were made to come up with a reasoned response.

3.58 pm

The Earl of Caithness (Con): My Lords, I declare my interest as a former surveyor, and I have let and managed property in a previous capacity.

The Statement refers to the letting and management agents market. Can my noble friend confirm that this will also include agricultural letting agents? That also

involves letting and managing property in which people live. Does my noble friend not agree that the nub of the problem, which is stated well in the Statement, is that agents do not require qualifications? Given the number of qualifications that financial agents and managers now need, it is quite wrong that any agent dealing with property is not subject to qualification requirements. Should not all agents be fully qualified, including those who buy and sell houses?

Lord Bourne of Aberystwyth: My Lords, I thank my noble friend for that contribution—and would indeed encourage the agricultural sector, as he indicated, to participate in relation to tenanted arrangements and managing agents in this consultation. He put his finger on the nub of the issue. Without wanting to prejudge the consultation, it is remarkable that no qualifications or training are required for this sector. These are the things, inter alia, that we are seeking evidence about and views on in this consultation.

Baroness Grender (LD): My Lords, I thank the Minister for the reassurance that letting agency fees will be banned—and soon. But I know that he will understand the frustration that Members of the House have that the consultation was announced a year ago and ended five months ago. For every day that we wait, there are tenants on very low incomes who are teetering on the brink of homelessness. As the consultation paper said at the time, one in seven has to pay more than £500 in fees—which is often a burden on those with the lowest incomes, because agents tend to charge them a higher level and they tend to move more often. Every day that there is a delay on this, people are literally teetering on the verge of—and some are shifting into—homelessness. So I urge that "soon" should be not just soon but tomorrow.

Lord Bourne of Aberystwyth: My Lords, it will be soon. I am not sure that it will be tomorrow but it will be soon. I thank the noble Baroness for her customary patience and I understand the frustration that she must feel. She will know that there have been events over the past five months that have conspired to contribute to the delay, but she can rest assured that we are determined to take this forward. I think that she will be reassured very shortly and I look forward to talking with her and progressing this through the House.

Lord Beecham (Lab): My Lords, the Statement refers to the "billions of pounds of funding for new affordable homes" that has recently been announced. I take it that that refers to the £2 billion and the 20,000 or so houses that will be built. Will the Minister indicate how that money will be allocated and where we can expect to see the new houses? Further, will he indicate whether the Government are looking at the escalating levels of ground rent that are contained in some of these long leaseholds, because recently the problem of ground rents going up very substantially over a period has been frequently raised? Finally, I refer him to a matter that has arisen in Newcastle. A charity that wanted to enfranchise a long lease was apparently unable to do so because it contravened some provisions of the Charities Act. I will send him a copy of counsel's opinion on the matter and invite him to look at it, because it seems to be anomalous. The charity in question would have been prepared to do it but apparently was not allowed to do so by law.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord for that. He rightly identified the £2 billion of additional money that was announced on 2 October for affordable housing. We will shortly issue details of how the money will be spent. On the ground rent issue, I mentioned in relation to leasehold reform that we will be responding to the consultation very shortly and looking at banning future long leaseholds with ground rents where they are inappropriate. I am very happy to look at the Jarndyce v Jarndyce situation he referred to in Newcastle—obviously I am not acquainted with it at the moment but I will have a look at the position and would be happy to meet him to discuss it if it would be helpful.

Baroness Gardner of Parkes (Con): My Lords, I declare my interest as set out in the register and will try to keep my remarks short. I think that the Minister is in need of looking at what we have thrown out that we should not have. The leasehold valuation tribunal was a way of dealing with things very simply: you could get somewhere with it. Instead, the Minister mentioned the courts. This is one of the problems. If everyone has to go through expensive court proceedings for even the most minor thing, it is very difficult.

I was not able to speak in the debate the other day and so could not draw it to the attention of the House, but the Minister does not appreciate the number of rogue and totally illegal landlords, in particular in London, which is the area I know. I have discovered that homeless people could probably get somewhere to live, but only if they are prepared to pay rent in a place where no one is meant to be subletting. Is it not time that the Minister liaised more with the local authorities and returned powers to them? That way, we would know what was happening in these properties. In extreme cases, local authorities can be told, but the homeless people I have seen have been put out because it came out that they were paying rent and the landlord was not declaring a penny of it to anyone.

I will not go on about Airbnb or holiday lets because I am always speaking about that and have a Question coming up on it. However, there needs to be consultation on many things and local authorities are the bodies authorised to do this. But when I asked in a Written Question what consultations the department had had with local authorities, the Answer that came back was none. I have tabled another Written Question to ask: why not? I could go on and on—there are so many aspects to this and I hope that the consultation period will allow us to look into these issues thoroughly.

Lord Bourne of Aberystwyth: My Lords, I thank my noble friend. I anticipate that she will respond to the consultation and I encourage her to do so. On the housing court, I think my noble friend is in danger of running ahead of herself. We have not published any proposals on this, as yet. We are discussing the right way forward with the Ministry of Justice. That is work in progress. On rogue landlords, this April we introduced civil penalties of up to—from memory—£30,000.

[Lord Bourne of Aberystwyth]

I did notice that my noble friend had put down a number of Questions on local authorities, and we will of course respond to those. At the moment, local authorities have considerable powers in relation to the sort of activity she is talking about. And I note with relief that she did not push the issue of Airbnb today.

Lord Palmer of Childs Hill (LD): My Lords, I draw the attention of the House to my entries in the register of interests. I was disappointed that, in the Minister's repeating of the Statement and his answers to the questions, no mention was made of the latest growth business. In large blocks of flats with lots of leaseholders, leases are being sold to other companies whose business it is, at the earliest opportunity, to raise the ground rent on those leases, as well as service charges and the like. This is an incredible growth business. People are buying up blocks of leases with the intention of making life more intolerable for the lessees of those apartments.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord for that contribution. As he rightly says, it is not the subject of the Statement we heard today, but I will look at that matter and respond to him. I will ensure that a copy of my response is placed in the Library and copied to all noble Lords who participated in this Statement.

Lord Campbell-Savours (Lab): My Lords, I am a little confused. The noble Lord referred to a paper on leaseholds. Surely any consultation on leasehold reform should be part of a wider package that includes the area we are dealing with today. That could then be incorporated in one piece of either draft or final legislation. Should not that be the intention? At the end of the day, these discussions all end in arguments about enfranchisement, as my noble friend suggested, and the purchase of freeholds.

That brings me to my final point. It is extremely difficult for residents' associations to gain access to the lists of leasehold owners in blocks of flats, in particular in London where a large proportion of our flats are owned by people overseas. When residents' associations seek to gain that information from management companies, they find that they are denied access to it. That often makes it impossible for them to move forward in the whole process of buying the freehold. Why is that not being considered as part of the legislation that the Government are proposing?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord for his contribution. On the general point about whether it is wiser to act on individual parts of the problem or wait and do the whole thing in a consolidated way in one go, I think he would probably find himself in disagreement with people who are keen to move things forward in some of the areas we have been talking about. I understand what he is saying but there is a discrete area that we have been looking at in relation to leasehold reform and houses that have been sold on very long leases with ground rents. There is a case for urgent action there before we tackle the broader issue of service charges that we are looking at here.

On the specific point that the noble Lord raises about residents' associations, that is encompassed within the consultation. I think that he will be pleased about that. There is a general catch-all anyway. If there is a particular question that is not asked which someone feels is appropriate, there is a catch-all which provides the opportunity to respond on that as well. However, we are looking forward to hearing from people on the particular issue that he raises.

Lord Elystan-Morgan (CB): My Lords, it is clear from what has already been said in this short debate that there is a crying need for the disciplines that have been adumbrated by the Minister in relation to property agents. However, that is only part of the problem. Over the past 100 years, starting with the Rent Acts immediately following the end of the First World War, various Governments have from time to time turned to the problem of housing and the relationship between landlord and tenant and come to the conclusion that it was less than equitable in the circumstances, mainly due to the law of supply and demand and social conditions at the time. We are in such a period now. There should be the widest possible review of the situation in order to bring about as much of an equitable balance between landlord and tenant as is humanly possible.

Lord Bourne of Aberystwyth: I thank the noble Lord for his customary perception on the importance of looking at this whole area. He is right to say that there are many facets to this—including the social rental issue, which we are looking at separately, and on which there will be a Green Paper. I accept that action in relation to the private rented sector has been done in a somewhat piecemeal way, but it is an important part of the debate. The point has been made, but it is worth restating, that the vast majority of agents and landlords are very good, just as there are very good tenants. To put it in perspective, we are dealing with a minority, but that does not mean that it is not important. I accept what the noble Lord says about the broader issues but, believe me, within the department many considerations are bubbling away. There is an active discussion about what we do next—and there is an awful lot to do—because there is the accumulated problem of a lack of housebuilding and, in all honesty, perhaps a lack of attention on some of the issues in the private and social rented sectors.

Baroness Hayter of Kentish Town (Lab): My Lords, I am pleased to see the noble Baroness, Lady Hanham, in her place. We welcome what the Government are doing now because at the time of the Enterprise and Regulatory Reform Bill an amendment of ours was passed in this House to provide that letting agents should be regulated and be members of a redress scheme. The noble Baroness persuaded Ministers in the other place to accept part of the amendment, the element that provided for a redress scheme. We therefore welcome, somewhat belatedly, that the Government have come to the second part, which is that letting agents should also be licensed in some way.

My questions concern something that we got slightly wrong with the redress scheme. We included managing agents, but we now discover that management companies

are not covered. It would be useful to know whether the new proposals now being discussed, which mention managing agents, will also cover property managing companies, particularly on long-lease properties. That is my specific question.

Perhaps I may repeat what I think was said at the end. I know that the Association of Residential Letting Agents and the Association of Residential Managing Agents, the voluntary professional associations, will welcome this move. It is something that they have long asked for, so they will be pleased that those who are not properly qualified and trained, and thus create a bad reputation for the sector, will now have to be included on any register.

Lord Bourne of Aberystwyth: I thank the noble Baroness, who I know understands the consumer sector and certainly knows this area well. I am grateful for her constructive contribution. I had not spotted that my noble friend Lady Hanham is in her place. It is a great pleasure to see her and I fully acknowledge the massive role that she has played in this matter.

On the point about management companies, the noble Baroness is right. I know something about company law and how companies are often used as a way of circumventing, sometimes intentionally and, in fairness, sometimes accidentally, obligations and occasionally rights that are bestowed. That should not be happening, so I am happy to undertake that we will look at how to ensure that it does not in this area. I also reiterate her point about the sector's welcome for this development—indeed, the welcome it has already had. I will be getting them on to the noble Lord, Lord Kennedy, to make sure that some of that enthusiasm rubs off. It is important that we move forward together in this area.

Lord Shipley (LD): My Lords, can the Minister clarify whether the scope of the Statement includes arm's-length management organisations, which manage local authority housing? I should remind the House that I am a vice-president of the Local Government Association. ALMOs provide services to those who have exercised the right to buy, particularly in blocks of flats. I think the Statement is about managing and letting agents, but it does state that it is also about protecting consumers. The Statement says that the Government are asking everyone who is paying service charges to comment, which implies that ALMOs are included. This is a very important issue, which would benefit from ministerial clarification as soon as possible.

Lord Bourne of Aberystwyth: My Lords, it is important to state, as I think I have, that this is very much rooted in the private rented sector, so it is on private sector rented management agents that we are expecting contributions. However, within that there is considerable scope for people to give us their views on all the issues relating to transparency, redress and so on. We look forward to a thoroughgoing review of the sector and to receiving a considerable response by the end of November so that we can respond in a timely way. Then, with the approval and support of the House, we will work together to move things forward.

Space Industry Bill [HL]

Committee (2nd Day)

4.18 pm

Relevant documents: 1st and 2nd Reports from the Delegated Powers Committee and 2nd Report from the Constitution Committee

Clause 33: Liability of operator for injury or damage etc

Amendment 34

Moved by ***Lord Tunnicliffe***

34: Clause 33, page 23, line 37, leave out subsection (1)

Lord Tunnicliffe (Lab): My Lords, Amendment 34 is about noise. Some 36 years ago I had a very pleasant life as a 747 co-pilot; it really was a splendid lifestyle. One would be given permission, on departure, to fly at 35,000 feet. You would think the difficult bit would be the take-off, but it is not particularly so. You point the plane down the runway, get to about 180 or 190 miles per hour, then pull the stick back and 320 tonnes of aircraft, including yourself and the captain, goes gracefully into the air. That is when the trouble starts, because you start to fly what is called a standard instrument departure, which often involves lots of twists and turns very early in the departure. The reason for that, not just in the UK but across the world, is to follow a minimum noise route. If you do not follow such a route, someone will ring up the airport, the airport will ring up your employer and your employer will have a free and frank discussion about your career. Noise has been at the top of the list of concerns about civil aviation since the jet age. Early jets were extremely noisy. I was privileged to fly the VC10, which has a noise footprint comparable to that of a satellite-inserting rocket; at least that is what my wife used to say.

In the Bill, I looked for provisions to protect people around spaceports from noise. From looking through the Bill—I am sure the Box will send a note if I am wrong—I am pretty sure that the word "noise" does not appear anywhere in it. I did not look for its near relative, the word "nuisance", which is what would be used in virtually any other environment. It is normally common-law rights—I am not a lawyer but I think they are called torts—to quiet enjoyment that allow one to use the courts to restrain the nuisance other parties bring to one. Looking for the word "nuisance" in the Bill—once again, I await correction—I believe it appears once, on page 23, in Clause 33(1), which states:

> "No liability arises in trespass or nuisance in respect of spaceflight activities carried out in compliance, or substantially in compliance, with the requirements and conditions imposed by or under this Act".

In other words, the only reference to "nuisance" is to deny citizens the rights to use the courts to protect themselves.

Nowhere in the paperwork can I find the Minister writing to me and saying it, but I think he has said informally that this is just like aviation law, which has

[LORD TUNNICLIFFE]

a similar clause that we will deal with in the same way. The folklore was that it was as simple as that, but I thought I would look it up. The most useful reference I found—I used Google; let us be realistic—was an online publication, politics.co.uk. I checked it out with our press department and I am sure it is a respectable organisation that does not produce fake news. The site had a section on aviation noise, which I will quote, simply because it is so much better worded than any speech I could create:

"The Air Navigation Act 1920"—

I knew it had gone back a long time—

"provided the basis of the UK's aviation noise regulation regime, by exempting aviation from nuisance sanctions, in order to stimulate the nascent industry. This principle was reaffirmed in the Civil Aviation Act 1982, which nonetheless set out a number of provisions for controlling noise at larger airports through a process of 'designation', which has only been applied to date to Heathrow, Gatwick and Stansted. By their Section 78 designation, the Transport Secretary is responsible for regulating take-off and landing noise at these airports".

So I sped to the Civil Aviation Act 1982 to see how it exempted aeroplanes from noise sanctions. Section 76 says:

"No action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of an aircraft over any property at a height above the ground which, having regard to wind, weather and all the circumstances of the case is reasonable, or the ordinary incidents of such flight, so long as the provisions of any Air Navigation Order and of any orders under section 62 above have been duly complied with".

Even that implies more control than the bland subsection in the Bill that I recommend be deleted. In fact, I hope the Minister will come back with a much better balanced subsection.

I then went on to read Section 78 of the Act, which is really quite powerful:

"The Secretary of State may by a notice published in the prescribed manner provide that it shall be the duty of the person who is the operator of an aircraft which is to take off or land at a designated aerodrome to secure that, after the aircraft takes off or, as the case may be, before it lands at the aerodrome, such requirements as are specified in the notice are complied with in relation to the aircraft, being requirements appearing to the Secretary of State to be appropriate for the purpose of limiting or of mitigating the effect of noise and vibration connected with the taking off or landing … at the aerodrome".

That section has enabled communities around those major airports to be protected over the years since 1982. I continue to quote from politics.co.uk, which says:

"In practice, noise restrictions at designated airports"—

Heathrow, Gatwick and Stansted—

"have been implemented through restrictions on departing aircraft noise, controls on night flying and (at Heathrow and Gatwick, under Section 79) housing noise insulation schemes … At other airports, the successive governments have continued to favour local resolution. Councils' main instrument in this regard is the Section 106 Obligation, a condition that can be placed on planning permission. These Obligations can limit movement numbers, operating hours and the types of permitted aircraft. Voluntary agreements can also be reached. London City Airport and Luton Airport, for example, have agreed maximum noise exposure contours, which must not be exceeded".

I put to the Minister that a combination of the fact there can be designation and the fact there is precedent for these local resolutions is why air operators agree these local agreements. There is a parallel in some of the banking regulations: because strong powers exist for government to implement appropriate protections, local agreements emerge. There is no strong power in this Bill to which communities can look. Therefore, I believe the Bill is insufficient to achieve the objective.

Compared with Clause 33, the whole of the aviation industry is, by statute and practice, better equipped to protect from noise those who live around airports. The Bill should be amended by the Government to have a more comprehensive regime to ensure that when this industry is as successful as so many people described on Monday, with massive numbers of movements, those living around the spaceports have adequate powers to protect themselves from noise nuisance. I beg to move.

4.30 pm

Lord Fox (LD): I must confess that in looking at the roster of the amendments, I tried to work out what the main thrust of the argument of the noble Lord, Lord Tunnicliffe, would be for deleting this provision. On hearing his detailed and comprehensive presentation, we find ourselves agreeing that there should be more powers to control noise than are currently available within the confines of the Bill. The noble Lord has identified that the provision may not be the optimal way to deliver that outcome. We would be interested to hear how the Minister might take this issue on board. The planning process should take it into consideration. The rejuvenated noble Lord, Lord Moynihan, will probably suggest that a launching facility that goes out over the sea may be one way of mitigating some aspects of the problems described. However, leaving that to one side, we believe that somewhere in the Bill firmer and more direct controls are needed within the armoury of Ministers.

Lord Moynihan (Con): I thank the noble Lord, Lord Tunnicliffe, for reminding us of the importance that Prestwick Airport has already attached to the noise question and agree with many of the points that he made. Nobody in this Chamber has as much experience or expertise as him when it comes to flying 747s—indeed, it will be principally 747s that are adapted for these purposes. Those airports from which such aircraft currently fly and land will already have taken into account the importance of the noise question. It is vital that the point raised by the noble Lord, Lord Tunnicliffe, be taken into account. There should be full consultation with local communities. This is a new technology for many of them and there will be considerable concern about the level of noise. That should be dealt with through the planning applications that will in many cases be necessary; it should also be done in any event by those seeking licences. They should communicate and engage with local communities and make sure that this point is high on the agenda. If that is what the noble Lord, Lord Tunnicliffe, is aiming for, I support him. I know that everybody associated with Prestwick Airport is already minded to focus on this important issue, although, as was rightly pointed out, we have the benefit of a runway which would be used to take off pretty much immediately over the sea.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Callanan) (Con): My Lords, I thank the noble Lord, Lord Tunnicliffe, for moving his

amendment—I shall say a few words about noise shortly. We have already had a helpful debate on Clause 33(5) and (6) and the power to cap an operator's liability, but Amendment 34 would remove subsection (1). Under the amendment, an operator could be susceptible to claims for trespass or nuisance even where they had carried out their spaceflight activities in compliance with all the requirements placed on them.

I appreciate the concerns that noble Lords have raised about this clause and the possibility of spaceflight activities having an adverse impact on people in the locality. The clause is designed to balance the right to quiet enjoyment of one's land against the right to carry out a commercial activity, and to ensure the minimal encroachment of rights where the operator is acting in accordance with the law. As the noble Lord acknowledged, it is replicated from Section 76(1) of the Civil Aviation Act 1982, which provides a similar protection for aircraft operators. We believe that this provision is necessary to prevent an operator who was acting lawfully from being sued by a third party who considers that his or her right to quiet enjoyment of land is being affected or interfered with.

I should highlight that given the nature of spaceflight activities, it is likely that spaceports will be set up in remote locations, very possibly in Scotland, where any noise or nuisance is likely to affect very few people. In comparison to aviation—where operators, I should remind the Committee, already have this protection—the number of spaceports and the frequency of spaceflight activities will be much fewer. The similar provision in the Civil Aviation Act protects aircraft against claims of trespass and nuisance. Therefore, where aircraft are used in spaceflight activities they already have protection against those claims, and for spaceports at aerodromes, the amendment would have little practical effect.

Our view is that subsection (1) is appropriate to enable spaceflight operators to carry out activities from the UK. It should also be stressed that such a protection does not apply if an operator does not comply substantially with all the requirements imposed upon them. This protection from claims of nuisance and trespass does not prevent anyone who has suffered injury or damage bringing a claim against an operator under the strict liability cause of action provided for in Clause 33(2) or under any other cause of action, such as negligence.

Let me give a little more detail on how frequently we envisage these operations being carried out and their noise impact. As the noble Lord, Lord Tunnicliffe, acknowledged, noise is undoubtedly a prime concern. My main ministerial responsibility is aviation, and I know all too well from my postbag of the difficulties caused to many communities where people live near or around airports. There will be a concern about launch operations; we need to acknowledge that spaceplanes and rockets create significant noise as they take off. Spaceplanes will also create significant noise as they pass overhead. Feedback from operators suggests that vertical launch operations could occur up to 12 times per year. These are indicative figures and would apply across the whole country. It is of course envisaged that in the early years of operations, launches will not even be as frequent as that.

It is difficult to provide an estimate of the launch frequency for suborbital spaceplane operations. Although precise noise levels have yet to be fully determined, initial indications based on published characteristics are that noise from spaceplanes should not create a more significant impact than noise from military fast jets. It is anticipated that in the immediate term, spaceports with horizontal launch operations will be able to comply with existing noise regulations, given that they will take place from a licensed aerodrome. Further analysis of the potential impact of noise will be carried out when a spaceport location is identified and the type of operations to be carried out from it decided. A spaceport operator would be expected to have planning permission for the use of the spaceport to carry out spaceflight activities, and the impact of noise will have been assessed as part of this planning permission.

Nevertheless, I accept the concerns about noise that have been raised by Members on both sides of the House. If your Lordships will allow me, I will therefore reflect further on the points made but in the light of those assurances, I ask the noble Lord to withdraw Amendment 34.

Lord Tunnicliffe: My Lords, I thank those who have spoken in this debate. I have mixed views about Prestwick: I have operated from it and done some training there. Sadly, I once burst two tyres there on a 747, so being there was not altogether an undiluted pleasure. It also has a runway that can be used in both directions but the other one points at Glasgow, roughly speaking.

I am very pleased that the Minister said he is going to reflect on this point. Of course, I entirely understand the importance of the clause and of protecting operators. We do not want to struggle with crafting an amendment that gives the Bill more teeth to help residents, but we might have to. It would be much better if the Government could put the issue of noise per se in the Bill, so that it has to be considered in the various processes. With that, I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Amendment 35 not moved.

Clause 33 agreed.

Clause 34 agreed.

Clause 35: Obligation to indemnify government etc against claims

Amendment 36 not moved.

Clause 35 agreed.

Clause 36: Regulator etc not liable in respect of spaceflight-related actions

Amendment 37

Moved by ***Lord McNally***

37: Clause 36, page 26, line 18, after "misconduct" insert "or gross negligence"

Lord McNally (LD): It is always a pleasure to follow the noble Lord, Lord Tunnicliffe. He is the reason why I do not have a fear of flying. When I am sitting at the back—and it is always at the back—of a 747, I always

[LORD MCNALLY]
assume that there is somebody up the front who knows a lot about getting it up and down and who has just the same reason for getting it up and down safely as I do. His interventions are important because there is a danger that we treat what we are talking about as just an extension of present civil aviation, and it is a step change, a quantum leap in what we are doing. In his first intervention, the noble Lord, Lord Tunnicliffe, pointed out that rockets are explosions, very possibly dangerous explosions at that.

This amendment strengths the test for the regulator to be liable in respect of spaceflight-related actions to include gross negligence as well as wilful misconduct. I am hoping it is just one of those things that got left out and that when the Minister sees the House of Commons Science and Technology Committee's recommendation that such wording should be in the Bill he will stand up and say that he will make sure that it is. Given the central role of the regulator in determining how large aspects of spaceflight should be conducted, it seems fair and logical that it should have its protection removed in case of gross negligence.

The noble Lord, Lord Tunnicliffe, spoke about legislation being drafted nearly 100 years ago to stimulate a nascent industry. We are trying to do that in the Bill, but in so doing we have to make sure that there are also checks and balances to ensure that in making this step change in travel, those responsible have checks and balances on their behaviour that contribute to safety. I beg to move.

Lord Callanan: My Lords, I thank the noble Lord, Lord McNally, for raising this important issue. This clause sets out that a regulator and persons listed in subsection (2) are not to be held liable for their actions or omissions in relation to spaceflight activities or associated activities.

The primary concern of the Bill is to secure safety. As regulators of spaceflight activities, we will take all steps possible to ensure that the risks to the public are as low as reasonably practicable and that all spaceflight activities are carried out as safely as possible. However, given the nature of the activities, the regulator cannot guarantee that all the risks can be eliminated. I highlight that without such a clause, a regulator may be reluctant to take any action in relation to spaceflight activities—for example, licensing that activity—because of concerns that they will be subject to claims, in negligence or breach of statutory duty, in the event of loss or damage arising from regulated spaceflight and associated activities. This would inevitably affect the growth of the sector.

4.45 pm

It should be stressed that the clause is not a free pass for a regulator and those listed in subsection (2). In cases of wilful misconduct, the protection afforded by this clause will not apply and the regulator and those listed people will be liable for their actions. This brings me to Amendment 37, which would include the words "or gross negligence" in subsection (3). That would limit the protection provided by the clause so that the regulator and others listed would be held liable in cases of both wilful misconduct and gross negligence.

As the noble Lord, Lord McNally, observed, this issue was also considered by the Science and Technology Committee in the other place. In its report, it recommended adding an exception for gross negligence. I take this opportunity to thank that committee for its invaluable work in scrutinising the draft Bill. However, public policy requires that public authorities, including regulatory authorities, act independently and without threat of litigation. I reiterate that shrinking this protection may mean that regulators will be reluctant to license space activities, which would undoubtedly affect the market.

The clause does not mean that no one is held accountable if things go wrong. Ultimately, spaceflight operators are responsible for the safety of their operation and activities and are therefore liable under the Bill for any injury or damage caused as a result. That is why the operator is held strictly liable; it means that a claimant who suffers injury or damage can bring a claim against the operator without having to prove fault. That is a key part of our policy—that the uninvolved general public have easy recourse to compensation.

We need to strike a balance here because this is a new activity for which safety cannot be guaranteed. Our view is that a gross negligence test would be inappropriate, and that the wilful misconduct test is more appropriate as it protects a regulator who is acting in good faith. Quite rightly, though, we are not proposing to protect a regulator that intentionally does something wrong. On those grounds, I commend the clause and ask the noble Lord to withdraw Amendment 37.

Lord McNally: My Lords, I notice a couple of noble and learned Lords in the Chamber today, and I would be interested to see how they wrestled with that reply. I will of course withdraw the amendment now but I would like to consider the issue further and perhaps bring it back on Report, because there is an issue here that we may want to explore further. I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Clause 36 agreed.

Clause 37 agreed.

Amendment 38

Moved by ***Lord Fox***

38: After Clause 37, insert the following new Clause—

"Consultation on the licensing and insurance of small satellites

(1) The Secretary of State must, within the period of one year beginning with the day on which this Act is passed, launch a consultation on the licensing and insurance of small satellites.

(2) The consultation under subsection (1) must explore the following areas—

(a) the suitability of a traffic light system whereby small satellites meeting certain launch, orbit and technical criteria can be fast-tracked to licensing;

(b) whether in-orbit operations insurance could be waived completely for any such fast-tracked small satellites; and

(c) how insurance requirements could be aggregated for constellations of satellites."

Lord Fox: My Lords, in moving Amendment 38, we seek to insert a new clause after Clause 37 which sets up a consultation on the licensing and insurance of small satellites, including what we call nano satellites, which I will speak to in a moment.

As was alluded to in our previous sitting, when my noble friend Lord McNally spoke about having the right level of liability and governance over these exercises, we seek to set up a process that recognises the varying risks according to the payload to be launched from these facilities. We want to reflect the relatively reduced risk posed by smaller micro-launchers and what are called nano-sat payloads, because both of these are growth industries which would be extremely valuable to the United Kingdom and could be a niche opportunity for such facilities, if they are to be successful. It is essential that the licensing, insurance and range-tracking costs are appropriate to the level of risk to payloads to allow the industry to succeed. We have already discussed how a burdensome regulatory requirement could negatively impact while, at the same time, in a series of amendments and new clauses, we have tried to maintain the right level of oversight.

In particular, a regulatory barrier exists around launch licensing for mega constellations. The current British law treats the nano satellite constellations no differently from large, $200 million satellites that go into geostationary orbit. Each satellite on a constellation is subject to the same licensing fee and must carry third-party insurance coverage of up to €60 million per satellite. Clearly, if there is an array of 750 satellites, it makes the whole affair expensive to insure, and it flies in the face of practice in other regimes, as I understand it.

The amendment would require the Government to consult on the desirability of changing how these small and nano satellites are insured and licensed, to ensure that it would be most beneficial to the industry while at the same time maintaining sufficient cover to be safe. I beg to move.

Lord Tunnicliffe: My Lords, this is an interesting point. I hope that the Minister will take it away and give it some consideration. I think we all agree that the whole issue of liability and insurance is important to get right so that the industry does not fail due to crippling cost.

Baroness Sugg (Con): My Lords, I thank my noble friend Lord Willetts, who is not in his place, for his comments in Monday's debate about the need for flexibility for licensing constellations and the benefits of small satellites. I hope also to address the concerns of the noble Lord, Lord McNally, from that debate about the length of the licensing process and the insurance cost for smaller satellites—and, indeed, nano satellites.

This amendment gives me the chance to explain the work that the UK Space Agency is already doing to improve the current licensing regime under the Outer Space Act. This work is of course relevant to the Bill as, when it comes into force, it will regulate the operation of a satellite in orbit that is carried out from the UK.

The amendment moved by the noble Lord, Lord Fox, would make it mandatory that, within 12 months of Royal Assent, the Secretary of State must issue a consultation. This consultation would explore a traffic light system to license the operation of small and nano satellites, with the potential to waive the in-orbit insurance requirement under certain circumstances for some small satellites fast-tracked under that system. Finally, it would also explore how insurance requirements could be aggregated for constellations of satellites.

The UK Space Agency already has this work in hand, and I shall take this opportunity to set out what it is doing in more detail—at some length, I fear. The agency conducted a review to evaluate how the UK's regulatory approach might be tailored for the in-orbit operation of small satellite systems. The outcome of the review was a series of recommendations, and comments on these recommendations were invited from industry.

Feedback was also sought at the regulatory advisory group, which is a meeting co-chaired by the UK Space Agency with industry, where the small satellite community is represented. This review allowed the agency to develop the traffic light system which is currently being trialled ahead of full implementation in the near future. This system gives potential applicants of standard, small satellite operations an idea of the likely outcome of their licence application in advance of lodging a full application. It is a fairly simple system. A green rating will be given where a mission is likely to get a licence; an amber rating signals that a mission is likely to get a licence with some modifications or clarifications; and a red rating means that the potential applicant is unlikely to receive a licence.

For recurrent applications for very similar missions by the same operator, the questions an applicant will be required to answer will be streamlined. Where an applicant is engaging in a repeat mission, some answers will be reused by UKSA in order to minimise the administrative overhead to operators. We expect this to speed up the licensing process for these types of missions.

At this point I shall say a few words about the way in which constellations are licensed. A constellation can be launched under a single launch licence if all the satellites can go on a single launch vehicle. However, the activity of operating a satellite also needs to be licensed as the operator needs to be licensed to carry out the in-orbit operation of each satellite. This is to ensure that the regulator has effective regulatory oversight of each satellite within the constellation. That allows the regulator to direct the operator to take action in relation to each satellite without affecting any of the other satellites under the control of that operator. For example, if 100 satellites are to be launched over four launches, an operator would need to submit only four applications and will result in a licence being issued for each of those 100 satellites.

In addition to the satellite system, the UK Space Agency is considering whether, for certain green-rated missions, the insurance requirement can be reduced or even removed. This assessment will be dependent on a number of risk factors, including the satellites' operating altitude and whether they are equipped with propulsion systems that allow them to avoid potential collisions with other space objects. Furthermore, the agency is already evaluating policy options to tailor insurance requirements for satellite fleets or constellations, which we

[BARONESS SUGG]
discussed in the debate on Clause 3. The feedback from industry is that obtaining a set level of insurance cover for every satellite in a large constellation is prohibitively expensive. Such a requirement could also quickly exceed the capacity of the space insurance market.

We understand that we need a solution that is available and affordable but still offers government and the taxpayer protection by providing sufficient funds in the event of a claim. UKSA is currently developing a policy model which is likely to require operators of multiple satellites to hold a given level of insurance coverage for the damage caused to third parties through collisions—in other words insurance per event rather than per satellite.

Key stakeholders will be invited to comment on the Government's proposed new policy model, which has been developed in response to the space sector's innovative approach towards new business models and the development of smaller and more capable satellites, including the nano satellite mentioned by the noble Lord. These matters will be discussed at a workshop on the traffic light system and the insurance requirements for small satellites, constellations and fleets, which is expected to take place by the end of this financial year.

As work on both the traffic light regime for small satellites and nano satellites and insurance requirements for constellations and fleets is already well in hand and likely to be finalised within 12 months of the Bill receiving Royal Assent, this amendment is not necessary. While we appreciate the content of the amendment, the agency is already engaging with the industry and a mandatory consultation in this area would be a duplication of work. I therefore ask the noble Lord to withdraw Amendment 38.

Lord Fox: I thank the noble Baroness for her comprehensive answer, and I will be studying it closely in *Hansard* as it is hard to take in on the fly. If she could write to me about the basic criteria used to flag green, red and amber, that would also be helpful, to give an idea of the parameters being used to make those judgments. On that basis, I beg leave to withdraw the amendment.

Amendment 38 withdrawn.

5 pm

Debate on whether Clause 38 should stand part of the Bill.

Lord Tunnicliffe: My Lords, I rise to speak to whether Clauses 38 and 40 should stand part of the Bill. The issue is about land, and Clause 38 deals with the powers to obtain rights over land. The noble Lord has written me a splendid letter—not that I am suggesting that any of his other letters were not splendid—in which, on page 4, he said:

"To enable the safe operation of spaceports, particularly during launch, the Bill makes provision to allow minimal rights over land. I strongly believe that these powers are proportionate and ensure that the rights of landowners are respected".

I have had a look at Clause 38, and it did not feel very minimal. I shall read the bits that I think are important. First, subsection (1) says:

"The Secretary of State may make an order under this section if satisfied that it is expedient to do so—

(a) to secure the safe and efficient use for the carrying out of spaceflight activities of any land which is vested in a qualifying person or which a qualifying person proposes to acquire,

(b) to secure the provision of any services required in relation to any such land, or

(c) to secure that spacecraft and carrier aircraft may be navigated safely".

Subsection (3) defines three qualifying persons, the third being the,

"holder of a spaceport licence".

Subsection (4) starts to set out what may be granted by such an order. Subsection (4)(b) refers to,

"rights to carry out and maintain works on any land",

and subsection (4)(c) to,

"rights to install and maintain structures and apparatus on, under or over any land".

Subsection (5) says:

"An order under this section may—

(a) include provision authorising persons to enter any land for the purpose of carrying out, maintaining, installing or removing any works, structures or apparatus".

Subsection (10) says:

"For the purposes of this section, a reference to carrying out works on land includes a reference to excavating the land or carrying out levelling operations on the land".

I am not a lawyer, but my recollection is that the concept of ownership is related to the concept of enjoyment. For ownership to be real, you must be able to enjoy what you own. To say, as the Minister does in his letter:

"I can assure you that the Bill does not give spaceport or range control operators powers to acquire land, or for the Secretary of State to do so on their behalf",

really is not honest. Well, I do not want to say that it is dishonest, but it is not truthful.

You do not enjoy a piece of land when someone can come in, carry out and maintain works, or install a 50-foot tower in your back garden. That is not enjoying the land. The Bill stresses that it can be on, under or over your piece of land. You have to allow the appropriate person to enter and to excavate, so you have a JCB in your back garden—you do not have enjoyment of your land. It is useless, hence the land would be valueless.

I hope the Minister will reconsider the wording of this clause. I know that I am going to be told that such an intrusion would never take place, but I should like the Bill to say that it will never happen by recognising that, if these powers are necessary, there must be an appropriate mechanism for a challenge. There is a mechanism, but we need a proper mechanism for a challenge—and, in that, there has to be a mechanism of redress. If these orders are issued, as far as I can see, my land becomes valueless and I am out of pocket. I am sure that that is not the Government's intention, and I hope that they will reconsider the clause.

The noble Lord talks about Clause 40 in his letter, saying that:

"The power in clause 40 restricts the use of land for safety reasons during times of launch and landing. This is essential for ensuring public safety and minimising risks associated with launch. The restrictions which can be enacted by Clause 40 are temporary and are only likely to last for a matter of hours. Therefore I do not believe this represents a significant infringement of land rights".

There is a problem with being told that these things are not going to happen very often. It seems to me that if they are not going to happen very often, they will not be very profitable. This assurance seems a bit like the Wright brothers, in December 1903, saying to the sheriff of Kitty Hawk, "This is not going to happen very often". The whole point of the Bill is so that it can happen often.

Clause 40 restricts the rights of citizens to the quiet enjoyment of land, and I do not think that we have the proper mechanisms to take account of those restrictions. Similar restrictions have built up over the years on things such as military ranges and so on—but they were built up for reasons of national security, often in tense and difficult times, and they were accepted by society. These ranges are for a civil purpose and I just do not think that the balance in Clause 40 is right. I hope that the noble Lord will give some thought to this and try to improve the rights of citizens in these circumstances.

Lord Deben (Con): My Lords, I feel strongly about these two clauses, because I recognise them. I have been a Minister for whom civil servants have produced such clauses. They always have an answer: you tell the House that it is not going to happen very often, it will never be used badly and nobody in their right mind could think that it would be any trouble. I have always resisted all those, I have to say. I am a Conservative and I believe in the rights of property. I do not believe that anybody should be taking those away. I am also a believer in the human rights legislation, and I do not like the way that the Conservative Party has made comments about it. It has a very clear defence of the rights of property and I am not prepared to go along with such words, if they mean what the noble Lord, Lord Tunnicliffe, and I think that they mean. Maybe neither of us is clever enough to understand the hidden protection within them.

There seems to be no protection whatever in Clause 38; the Secretary of State appears to be able to use it,

"if satisfied that it is expedient to do so".

Expedient is an extremely dangerous word. Expedient means anything that you want to do; that is why you want to do it—it is expedient. I have to say, I would not trust myself with expedience, leave alone trusting anybody else, and leave alone trusting this Secretary of State to be other than expedient. I do not get this clause, and I certainly do not get why it does not have the full panoply of proper means of protection of the people concerned.

I would like my noble friend to point to other areas where the same kinds of rights are given to the Secretary of State, where similar powers are given without any restriction, because I think that this is a very dangerous area. Nobody could be more enthusiastic about space than I—as long as nobody asks me to go in one of these things. It is a hugely important thing and I am entirely on the side of the Government in seeking to do what they want to do. It would be better if we did not have Brexit—then we would get more of it and a great deal more benefit from it, but that is true of almost everything. The fact of the matter still remains that, whatever happens, if we do or if we do not, this will affect people in this country and their rights to property. I do think that this clause, in its present form, should be presented by any Government, least of all by a Conservative Government who are supposed to believe in the rights of property.

I say very clearly to my noble friend that my problem with Clause 40 is that the only defence given for this provision is that it will not happen very often and will happen for short periods of time. Indeed, my noble friend said that it is okay because it will happen only for short periods of time. If that is the case, why does the Bill not say that? If it is going to be temporary, why does the Bill not say that? If that is not stated in the Bill, people will say, "The Bill does not say that it is temporary and therefore this time we are going to do it for three months", or say, "Three months is what we meant by temporary". I am afraid that is the other argument that civil servants try to use. I am trying to excuse my noble friend on the basis of the advice he has received rather than his determination. This measure seems to me contrary to the political position that he holds. After all, he would consider me rather a "pinko", so I say to him that—

Lord Callanan: Oh!

Lord Deben: I beg my noble friend's pardon. I hope that he is not laughing at that. First, the point I am trying to make is that if I think this measure is a serious incursion, he should doubly think that is the case.

Secondly, I want my noble friend to think again because there is no reason why we cannot include sensible protection in this power without in any way upsetting its balance. Thirdly, I do not think anybody who wants to start a space station would think that they had carte blanche in that regard so long as the Secretary of State thought that was expedient. Fourthly, if we turn this on its head, what happens if such a measure is necessary and the Secretary of State does not think that it is expedient? It seems to me that the Government have to be much more specific about what these provisions mean before this House should accept them. Lastly, this is a matter for this House, which is supposed to be very much the guardian of the constitution. Quite a lot of legislation will come in front of this House where, whatever our views are—we may be very much in favour of space, for example—we have to stand up for the rights of the citizenry. I think that we are going to talk about that a lot. Above all, we have to talk about the danger of handing to Ministers powers which are expedient and not considerably restricted to the purposes for which they are needed.

Baroness Randerson (LD): My Lords, I associate myself enthusiastically with the comments made by the noble Lords, Lord Deben and Lord Tunnicliffe. I touched on these issues when we discussed Amendment 13 on Monday. They relate clearly to the similar issues I raised in relation to Shell Island. It seems to me that line 42 and onwards on page 27 are especially important. The Explanatory Notes state that it is envisaged that these powers will be used only "as a last resort" when commercial options have been exhausted. That chimes very well with the noble Lord's comments. On Monday, I demonstrated in my comments on Shell Island how quickly you can exhaust commercial options.

[Baroness Randerson]

The Explanatory Notes also use the phrase,

"land in the vicinity of the spaceport site".

I have a detailed question for the Minister: what does the term,

"the vicinity of the spaceport site",

actually mean? Is there a legal definition of that, because we are talking about long-range travel and we could be referring to a very large area around the spaceport site that would in effect be intruded upon in terms of its rights and its use as a result of this wording.

Clause 40 contains the power to restrict the use of land to secure safety. This may include preventing people entering a given area of land for the duration of a launch window. The nearest simile I can think of is people who live near MoD ranges. People in those areas are well aware of the intrusion that that imposes on their lives. This is a very intrusive power and it could extend over a wide area, for the reasons I have already referred to.

5.15 pm

If the Bill does the job it is intended to do and the spaceports become successful and well used, I assume that this power could be imposed on a weekly, if not a daily, basis. The Minister himself referred to a possible monthly basis. The people who have lived around Heathrow for a long time refer to the fact that it was once a quiet little airport and no one envisaged its growth. We therefore need to plan for a future where this kind of thing is a daily occurrence, and the power we are looking at here could be a huge imposition on people in those areas.

I wonder how this interacts with the image of a new tourism industry and viewing platforms that the noble Lord, Lord Moynihan, mentioned in his speech on Monday. Will this fit with that concept of how space travel and the space industry will develop in the future? I think again of my happy campers on Shell Island. How will this impact on their summer holidays and on the business that is so well established there? I use that as a real-life example of the kind of impact this kind of activity could have. I entirely endorse the comments of both noble Lords; we need much more precision in these clauses.

Lord Fox: Briefly, there seems to be an internal inconsistency around the frequency and the success of these spaceports. Not only is it envisaged that they would launch commercial satellites but that they would launch recreational spaceflights—I believe that was set out at Second Reading. For that dream to be realised, it seems unrealistic that only 12 flights a year would be the norm. Once again, therefore, across the board, the idea that, "It won't happen very often, so it doesn't matter", is not a reasonable response.

Baroness Ford (CB): In the absence of the noble Lord, Lord Moynihan, I would hate the opportunity to go past without mentioning Prestwick and the spaceport again. I have a lot of sympathy with what the noble Baroness, Lady Randerson, says. Although the airport at Prestwick is already well established, with a clear area around it where the public do not come, that will not be true of everywhere. The lack of precision in these clauses, even for somewhere like Prestwick where it is clear where the field of operations will be, still does not do the job. The Government need to think again about being rather more precise in these clauses around what exactly they mean with regard to these restricted areas and what those restrictions will mean. I can see that in other places, where the airport is perhaps not as established or as big, there may be difficulties. I therefore have a lot of sympathy with the noble Baroness's argument.

Lord Callanan: My Lords, I thank your Lordships for this short but sharp debate, which was so excellently introduced, as always, by the noble Lord, Lord Tunnicliffe. I shall endeavour for my response to be as splendid as he intimates some of my letters to him are.

I also thank my noble friend Lord Deben for his contribution. I would never accuse him of being a "pinko"—despite the pocket handkerchief that he is wearing today. We of course have some fairly profound policy differences, but I hope that I will be able to answer his concerns on the matter of land provisions in the Bill.

A number of noble Lords expressed concerns about these provisions, but I reassure them that the Government are taking a responsible and balanced approach. Powers are restricted to what we believe is strictly necessary and proportionate for securing safe spaceflight operations. Clause 38 allows for the creation of orders granting rights over land. Such orders may be necessary to ensure that utilities and other supporting infrastructure can be installed and maintained—for example, for radar or surveillance.

Spaceflight from the UK will be conducted on a commercial basis, and as such we expect operators to negotiate access in the vast majority of cases. Such an order would be created only as a last resort where negotiation with the landowner has failed to produce a mutually agreeable outcome. Schedule 6 sets out further provisions for such circumstances, including how notice for such orders should be given and how proposed orders can be objected to. Spaceflight is a new opportunity for the UK, and as technologies develop we want to ensure that any equipment necessary for safe spaceflight activity can be installed, maintained and removed as necessary.

I will say a few words about Clause 40 and then come back to some of the points that were made. Clause 40 continues the approach that the Government have taken of ensuring that safety is at the heart of the Bill. The clause allows the Secretary of State to restrict or prohibit the use of land or water around the times of launch and landing to protect the public. Any order made under the clause would be temporary. It is not our intention to unnecessarily restrict the actions of people who use these areas of land or water.

This power would be used only as a last resort in circumstances where operators had been unable to negotiate restriction arrangements with local landowners or users of affected land or water. Contravention of any order under this clause would be an offence. The safety of the general public is critical and therefore it is vital that the Secretary of State has sufficient power to enforce this vital safety measure.

I will now say a few words about the points that were made and answer some of the questions. I believe that it was the noble Baroness, Lady Randerson, who asked about a definition of "vicinity" and about what size area would be affected. Launch from the anticipated vertical-launch spaceport sites of course will be towards the sea. We therefore expect that only small areas of land will be affected by these orders. The regulator can also use licence conditions to ensure that spaceflight activities do not have a disproportionate impact on populated areas. Schedule 1 lists indicative licence conditions. These include conditions relating to trajectories and mission profiles as well as conditions imposing restrictions on areas where, and times when, spaceflight activities can take place. The exact type of launch and mission—

Baroness Randerson: I wonder whether, in further detail, the Minister could write to me explaining exactly what a "small area" of land is. I assume we have examples from across the world of the kind of size of area that has to be set aside during operations such as this, and it would be very useful to have some idea of how large the affected area will be.

Lord Callanan: I will come on to explain that—but, of course, if the noble Baroness is not satisfied I will be very happy to write her another letter, splendid or otherwise.

Horizontal-launch sites will be aerodromes and therefore subject to provisions similar to those in the Civil Aviation Act 1982 that apply to aerodromes. We therefore expect that the main use of this power, if it is needed at all, will be for vertical-launch spaceports. On vertical launch we will continue to learn from countries that have extensive experience of launch. One such example is the United States, where the Federal Aviation Administration has implemented a launch-site boundary with a radius of 2.2 kilometres from the launch point for small vertical-launch vehicles that are likely to be similar to those that will be launched from the UK. This is an area to which access is restricted during a launch window. The proposed sites are much further away from local towns than the area that is likely to be restricted under a Clause 40 order.

I turn to some of the points made by my noble friend Lord Deben. Interestingly, the power is based on similar powers in the Civil Aviation Act 1982. I do not know whether my noble friend was a Minister in another place when this Act was passed or a Member of Parliament during the debates, but the powers do not go as far as those in the Civil Aviation Act.

My noble friend Lord Deben also asked why we are doing it, if there will not be many launches. We believe that these powers are necessary in case a licence holder cannot, despite their best efforts, secure a deal for access to land or restriction of the use of land during launch and landing. Invoking the Secretary of State's power would very much be a last resort.

Lord Deben: Let us say I own the land of which we talk and have had a negotiation with somebody who says, "I'll give you fourpence ha'penny", and I say, "But I need five pence". And I go on saying that and he goes on and on saying, "Four pence ha'penny". Finally, he says that he cannot come to an agreement. What right do I have to appeal against the Secretary of State stepping in and saying that, because a discussion has been had and an agreement not reached, it is expedient to do this? Where in the Bill is my appeal right against the Secretary of State's decision that it is expedient to overrule the fact that I, with all good intention, have not been able to get a deal? That is the bit that worries me. I am not worried about doing it; I am worried about the fact that I have no claim over the Secretary of State in these circumstances.

Lord Callanan: There is a right to object to any order made and we hope these matters could be the subject of negotiations. I hope my noble friend will accept that it is important that we do not allow a provision where a person perhaps not as reasonable as he might be in the circumstances could hold the whole operation to ransom. These things are always a matter of balance and there is a right to object to an order.

Lord Deben: I am sorry, and I will not interrupt again, but with respect, this is not a balance. This is a perfectly simple statement that the Secretary of State can make an order and no one has a claim against that. One can object to the order, but as far as I understand it, there is no proper judicial circumstance in which one can insist that it is not expedient because there has been a perfectly good negotiation and the other party will not go away. I do not want to hold this up but I want to protect the rights of the person who has negotiated perfectly reasonably but failed to come to a conclusion, and then the Secretary of State steps in for some greater good, and that person has no claim except to object to the order. As far as I can see, if someone objects to the order, it will be a case of "objection overruled because it is not expedient".

Lord Callanan: As I said, there is a provision for an interested party to object to the order if it has been proposed, and if the order has already been made then Schedule 7 provides for the quashing of the order. However, I take my noble friend's point. We believe that the power remains necessary because of the limited number of sites suitable for spaceflight operations in the UK and the need to ensure that operators are not held to ransom and the UK is able to benefit from this growing industry. When we come back to this matter in the next debate, I will address the operation of orders and how they may be challenged. I hope my noble friend will allow me to address this further during the debate on Clause 42.

The noble Lord, Lord Tunnicliffe, asked about the appropriate mechanism for challenge. Schedule 7 provides a process to apply for orders made under Clauses 38 and 40 to be quashed.

On the matter of compensation for people who lose out because of these powers, in Schedules 8 and 9 there are provisions for compensation in connection with the diminution of value of land interests, damage to land, interference with the use of land and general disputes.

The noble Baroness, Lady Randerson, asked how long these orders will last. We expect orders restricting the use of land or water to be in place for only a short

[LORD CALLANAN]
amount of time around the window of launch—typically a few hours—but the exact period will depend on the type of launch. I can give an assurance that they will be in place for the minimum necessary time to ensure the safety of the public. I hope I have addressed her comments about the size of the area affected. As I mentioned, "vicinity" is not defined in the Bill and if there were a dispute it would be given its ordinary English meaning by a court. The power may be exercised for only the limited purposes in the clauses.

I believe I have addressed the points. However, I take on board the strong feelings in the Committee on this issue. If noble Lords will allow me to go away and reflect further on the powers in this clause, I will come back to the subject. I ask the noble Lord, Lord Tunnicliffe, to withdraw his objection to the clause standing part of the Bill. With those assurances, I shall reflect on the issue and come back to it at a future time.

5.30 pm

Lord Tunnicliffe: My Lords, of course I will not press my objection to the clauses standing part because that was not the purpose of the exercise. The purpose of the exercise was to have this debate, which has revealed serious weaknesses in the Bill. The Minister's response has not been satisfactory and I hope he will further reflect on this issue. If he thinks that we have simply misunderstood the Bill—which is hardly difficult with this Bill—I hope he will set out the detail of how compensation, proper redress and judicial activity may come about under the various clauses. So far, despite careful study by me, my colleague and our researcher, we have not seen those processes there. I hope he will do that, reconsider and introduce new thinking and amendments to meet the concerns. When someone like the noble Lord, Lord Deben, and I agree, a Minister should be worried.

With that, I assure the House that I will not oppose these clauses standing part. However, we may come back to them on Report. I want to avoid doing that. Crafting an amendment to give effect to our concerns would be a difficult task but we may be forced to do it if the Minister is not able to give a more favourable response privately and to assure us that he will propose something on Report.

Clause 38 agreed.

Clauses 39 and 40 agreed.

Schedule 6 agreed.

Clause 41 agreed.

Clause 42: Operation of orders

Amendment 39

Moved by ***Baroness Randerson***

39: Clause 42, page 30, line 27, at end insert—

"( ) An order under section 38 or 40 cannot be made—

(a) in relation to a spaceport or prospective spaceport in Scotland, without the consent of the relevant Minister in the Scottish Government;

(b) in relation to a spaceport or prospective spaceport in Wales, without the consent of the relevant Minister in the Welsh Government; or

(c) in relation to a spaceport or prospective spaceport in Northern Ireland, without the consent of the relevant Minister in the Northern Ireland Executive."

Baroness Randerson: My Lords, Amendment 39 is on a similar theme. It relates to Clause 42 and the operation of orders in relation to the land to be used for a spaceport. A proposal to make an order, or an order itself, under Clauses 38 or 40 may not be challenged in any legal proceedings. Furthermore, such an order becomes operative within six weeks, which is a very short period of time.

On the face of it, these are sweeping powers for the Secretary of State to create rights over land and to restrict the use of land to secure safety. I find it quite difficult to square this clause with the comments of the Minister in relation to the previous debate, in which he assured the noble Lord, Lord Deben, of the legal right to challenge. That is because this clause states specifically that that cannot be done.

The powers referred to in the clause are essentially planning powers, which are normally devolved in Scotland, Wales and Northern Ireland, so this amendment is designed to probe how the powers in the Bill that are conferred on the Secretary of State will operate in tune with the powers of the devolved Administrations. We have heard on several occasions that the devolved Administrations are supportive of the spirit of this Bill, but I am surprised, given that it relates so strongly to devolved planning powers, that it makes no direct mention of the devolved Governments. Here I draw a parallel with the Bus Services Bill. That also dealt with devolved powers and referred to the rights of the devolved Administrations in that respect.

As well as planning issues, the Bill deals with the licensing process, which is to be managed at the UK Government level as a UK Government responsibility. I would suggest to noble Lords that there could well be friction between the two sets of powers and between the two levels of government; in fact, it is unlikely that there will not be friction at some point. It is also inevitable that security issues will have to be taken into account, and those powers lie at both the devolved and the UK levels. The point I want to make is that this is a complex picture, so the amendment seeks to formalise the relationship between the UK and devolved Governments and to ensure that they cannot be overlooked.

I have no doubt that those Governments are supportive of the Bill now, but they may not always be so in every case. Good law should seek to allow for every possibility. I beg to move.

Lord Tunnicliffe: My Lords, I shall speak to Amendment 39 and the Motion that Clause 42 should stand part. The points made by the noble Baroness, Lady Randerson, underline why we support devolution, so we would not want this Bill to reduce in any way the responsibilities of the devolved Governments—along with the devolved city state of Prestwick.

Our concern with Clause 42 as a whole is that we do not understand why orders made under what will be Sections 38 and 40 cannot be challenged, but it then refers to a schedule under which they can. We feel that the drafting could be much clearer so that it takes

account of the devolved Administrations and does not reflect an apparent conflict between the schedule and the clauses.

Lord Moynihan: My Lords, I agree with some of the comments that have been made about the importance of dialogue with the devolved Administrations. The success of a project of this kind depends heavily on a close working relationship with the devolved Assemblies and those responsible within them for supporting activities and investment in and around any proposed spaceport, as well as communicating with local authorities. I think it is inconceivable that the spaceport project should move forward without very close co-operation, for example with the Scottish Government; in fact, that should be at the heart and centre of the consultation and planning for development of potential spaceports in Scotland. On that point, I very much welcome that an amendment has been tabled to that effect, and I hope the Government will find some way of giving comfort to the Committee that this important issue, wherever it is in the United Kingdom, will be recognised and acted upon.

I am glad to report on the first point of the noble Baroness, Lady Randerson, who would expect me to reflect for just a moment on the importance of the land issue relevant to potential spaceports. For example, I am very glad to report to the Committee and place on the record that Prestwick Airport already owns sufficient land, so none of the ground requirements for spaceflight activities would require additional land. The restrictions will be merely in relation to the air volume zone. Depending on the strictness of regulations, the runway, as I have reported to the Committee, is a mere 13 metres short of 3 kilometres—so very long. There may be the need to carry out a consultation in order to process a planning application, but Prestwick Airport would not be impinging on anyone's land or assets. That should give great comfort to the department to recognise that an early recognition of first-mover status for Prestwick Airport in this context should be granted.

Lord Callanan: My Lords, before addressing the noble Baroness's amendment, if the Committee will allow me, I will go into a little more detail about the operation of orders that can be made under Clauses 38 and 40.

Clause 42 sets out that orders made under these clauses will become operative after six weeks, and how they may be challenged. It provides that the making of such orders may be challenged through applications to quash orders under Schedule 7. Persons who receive notice of a proposed order are also able to object to an order which has been proposed under the provision for objections set out in Schedule 6. The noble Lord, Lord Deben, is not in his place any more, but I point out that these order-making powers are equivalent to powers in the Civil Aviation Act 1982. A six-week time limit also applies to challenges to those.

Turning to Amendment 39, the noble Baroness, Lady Randerson, asked how such orders are made when they relate to land in Scotland, Wales or Northern Ireland. In this context, I feel a bit sorry for England, Wales and Northern Ireland, which do not seem to be receiving the same degree of attention as certain sites in Scotland, but I want to remain strictly neutral—my job is to try to get the Bill through, and I am sure there will be fair competition between the different sites regarding where spaceports should operate.

I want to assure the Committee that throughout the development of the Bill, we have consulted extensively with colleagues in the devolved Administrations. The Bill has the opportunity to benefit the whole of the UK. Scotland and Wales are actively supporting the development of spaceports in their regions, as we heard in the case of Scotland, while Northern Ireland is benefiting from direct industry investment in research and development. We have worked with them to ensure that they are content with all provisions in the Bill, and we have agreed an approach to land powers which our partners in the devolved Administrations are fully content with.

Schedule 6 requires that notice of a proposal to make an order under Clause 38 or Clause 40 must be published in local newspapers and also served on the local authority in question. This gives an opportunity for the devolved Administrations to raise any concerns about a specific order. After an order is made, notice must be published and served. Anyone aggrieved may then apply to quash the order, as set out in Schedule 7.

5.45 pm

I will directly address the issue of challenges, raised by the noble Baroness, Lady Randerson. Once the orders are made they can be legally challenged, but only as provided for by Schedule 7: in the first six weeks after the notice that they have been made has been published, and before they become operative. They cannot be challenged by judicial review. This is appropriate because there is a process for objections before an order is made, and once an order is made there is a further opportunity to quash the order.

The Secretary of State is also required to order a public local inquiry to give the person objecting the opportunity to be heard before proceeding to make the order. These order-making powers are equivalent to powers in the Civil Aviation Act, as I have said. A six-week time limit also applies to challenges to those. Horizontal spaceports could be developed at existing aerodromes and would therefore fall under the Civil Aviation Act 1982.

If the time limit for challenges to orders under the Bill differed from the one in the 1982 Act, there would be inconsistency between how orders related to horizontal spaceports and to vertical spaceports, and how they could be challenged. It is also in the interests of all parties to have legal certainty within a short time so that spaceflight activities may proceed without undue delay and so that affected persons may make any arrangements they need to, such as finding alternative land for an activity.

I think the noble Baroness, Lady Randerson, raised the question of whether legislative consent Motions will be necessary. Commercial spaceflight is a reserved matter for the UK Government. There are some provisions in the Bill that relate to devolved matters, such as land provisions. As I said, we have consulted the devolved Administrations throughout the development of this Bill. We believe that no legislative consent Motions are required.

[LORD CALLANAN]

With those assurances, I hope the noble Baroness is satisfied with my response and therefore feels able to withdraw Amendment 39.

Baroness Randerson: The Minister referred to the 1982 Act and similar powers there. I will of course go away and investigate that, but we cannot get by just by relying on the Sewel convention on something as big and significant as this. I am delighted to hear that the Government have consulted with the devolved Governments, but I still fail to understand why the Bill does not refer specifically to the powers of the devolved Governments in a similar way to the Bus Services Act. It might be a totally different set of powers, but the principle is exactly the same.

I would be very pleased if the Minister gave us more detail on how the Government have reached agreement with the devolved Governments on how powers are to be exercised. That might help provide a little clarity. This is a very complex, technical issue. I will read *Hansard* carefully and may come back to this general issue on Report if I need further clarity. I am happy to withdraw the amendment.

Amendment 39 withdrawn.

Clause 42 agreed.

Schedule 7 agreed.

Clause 43 agreed.

Schedule 8 agreed.

Clauses 44 and 45 agreed.

Schedule 9 agreed.

Clauses 46 to 49 agreed.

House resumed.

5.50 pm

Sitting suspended.

Hospitals: West London

Question for Short Debate

6 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government what are their plans for the future of hospitals in West London, particularly in relation to their proposals to sell off much of the site of the existing Charing Cross hospital.

Lord Dubs (Lab): My Lords, when the local London elections took place in 2014 everybody was surprised that Hammersmith and Fulham went to Labour—everyone except those of us who were knocking on doors like mad to try to win the council for Labour, which was of course the outcome. It was clear from knocking on those doors that the issue of Charing Cross Hospital was very much in people's minds. After Labour won the Conservatives, who lost, complained that the health service was not directly a local government issue, to which the answer was that the outgoing Conservative council campaigned to support the closure of Charing Cross Hospital so it was not surprising that it became an issue. The Minister shakes his head but they certainly did; I was there. I understand that the NHS is under serious financial pressure. If it were not, the argument about the future of Charing Cross Hospital and other hospitals in north and west London would not apply.

I want to make three arguments. First, it is wrong in principle to close and demolish Charing Cross Hospital; secondly, the method of doing so was less straightforward than it should have been; and thirdly, public opinion is very much on the side of keeping the hospital. Public opinion was ably led by Andy Slaughter, the local MP and Councillor Stephen Cowan, the leader of Hammersmith and Fulham Council.

In 2013, we had the "Shaping a Healthier Future" policy. The NHS agreed plans to close A&E departments and acute care beds in four hospitals in north-west London. These plans continue to be implemented. The Government's reconfiguration of those services is ironically entitled the "Shaping a Healthier Future" plan for north-west London. It was signed off by the Secretary of State, Jeremy Hunt. It showed that the plan was to demolish the current Charing Cross Hospital; sell off most of the Charing Cross Hospital site, leaving just 13%; replace the current hospital with a series of clinics on a site no more than 13% of the size of the current hospital; rebrand the clinics as a local hospital; replace the current A&E with an urgent care clinic; rebrand the urgent care clinic as a class 3 A&E; lose more than 300, possibly all, of the acute care beds; halt all complex and emergency surgery; and close the renowned stroke unit, which was possibly the best in London.

Since September 2014, the A&E departments at Hammersmith Hospital and Central Middlesex Hospital have been closed as part of the overall plan for the area. This had an immediate impact on waiting times at other A&E departments across north-west London. The figures are quite dramatic. Before September 2014 hospitals across north-west London were hitting their target of seeing 95% of patients within four hours. After the closures of the A&E departments at Hammersmith Hospital and Central Middlesex Hospital, the figure in December 2014 was 90% and by February 2017 it had reached 87%. As recently as September—last month—the combined figure for Charing Cross Hospital and St Mary's Hospital had fallen to 69.7%, suggesting that there was a great deal of pressure on A&E services which would only get worse if the plans for Charing Cross were proceeded with. I should add that, among other hospital closures, in July 2015 the maternity unit at Ealing Hospital was closed.

Five London boroughs—Brent, Ealing, Hammersmith and Fulham, Harrow and Hounslow—got together to set up an independent healthcare commission, commonly called the Mansfield commission. The commission

spent a year gathering evidence and published its findings and recommendations in December 2015. It said:

"There is still no completed, up to date business plan in place that sets out the case for delivering the Shaping a Healthier Future programme, demonstrating that the programme is affordable and deliverable … There was limited and inadequate public consultation on the original SaHF proposals and the proposals themselves did not provide an accurate view of the final costs and risks to the people affected … The escalating costs of the programme does not represent value for money",

and were a waste of precious public resources. It said that NHS facilities delivering important public healthcare services had been closed without adequate alternative provision having been put in place, and that,

"the original business case seriously underestimated the increases in population being experienced in West London",

and failed to address the increasing need for services. The main recommendation by the Mansfield commission was that the "Shaping a Healthier Future" programme itself should be halted.

The implications of the programme for protected groups were disturbing. The commission noted that the hospitals targeted for closure were those located in areas with high concentrations of deprived black and minority ethnic communities while the hospitals favoured for expansion were located in more affluent areas of north-west London. Significantly, the population of Hammersmith and Fulham is expected to increase by almost 12,000 between the 2011 and 2021 censuses. There is also a projected target of 22,000 new homes to be built in the borough by 2035.

We then had the Naylor review, which showed that, due to increasing demand on health services as a result of an ageing and expanding population, the Nuffield Trust estimates that an additional 22 hospitals of 800 beds will be needed over the next 10 years—not in London, but more widely. The review accepted that, even if new models of care are successful, this expansion and ageing of the population will require the same level of hospital capacity as at present. Most of the sustainability and transfer plan is pretty good; it is desirable to keep people out of hospital and to enable them to leave hospital when they are medically fit to leave so they do not block beds, and it is important that there are joined-up social care and health services.

I turn to urgent care centres. The UCC at St Mary's was rated inadequate by the CQC and placed into special measures. I understand that there is now a bid from the private sector to buy it. What assurances do we have, if the Charing Cross proposals were proceeded with, and I hope to heaven they are not, that its UCC would not be privatised if the main proposal went ahead? We do not want this just to be a back door for achieving more privatisation.

Both Hammersmith and Fulham and Ealing councils have refused to sign up to the proposal regarding Charing Cross and Ealing hospitals. The reason they did not sign up to the whole proposal is the threat to those two hospitals; otherwise they would have signed up. The councils have said that the sustainability and transfer plan has good elements in it, but they will not sign up to it simply because it endorses the plan to close those two hospitals.

There are key questions that need to be answered so that local residents know what is going on. What is the timetable for service closures at Charing Cross Hospital? I understand that the original plan has been dropped and it is now to be in at least 2021. The problem is that a long period of uncertainty over the future of the hospital is very demoralising; it affects staff and the ability of the hospital to get staff, and it is unhealthy for the local community. Of course, the important thing is that the closure should not go ahead at all but, if it does, there should at least be a sensible timetable.

When will part two of the "Shaping a Healthier Future" strategic outline case be published? We need to know that to see what will happen. We need an assurance that those part 2 plans will be subject to widespread consultation.

Finally, and very importantly, I have mentioned the likely population figures. My question is: what population projections and modelling data are being used to estimate future patient demand for acute hospital services across north-west London generally, and in Hammersmith and Fulham specifically? We need answers to those questions.

I appreciate that this is a very party-political issue, but it is party political because local people want the hospital to remain. They do not want it to close. Many of us have used the services of the hospital and we do not want it to go. If it does, there will be no local hospital. There will be a clinic and one or two minor services, with most of the beds going, and all the good features of Charing Cross Hospital will simply disappear. I hope that will not happen.

6.10 pm

Lord Suri (Con): I start by thanking my noble friend Lord Dubs, who has spoken on this topic. I have learned a great deal sitting here. I have some thoughts that I would like to share with you.

From the off, let me put on record that I have always supported cross-party collaboration on the future of the NHS. I honestly do not believe that any mainstream party seeks to undermine the future of our health service, and I have argued that it is overpoliticised and underanalysed, especially by leading spokespeople. I have supported increasing technocracy in NHS management for some time. Such enormous organisations require experts in the technicalities, not transient Governments or Ministers, whose jobs and term of office change regularly.

That is not to disparage any current or former Ministers, of course, but it must be a basic principle across government that day-to-day control of huge public services should be done by the most qualified. Oversight, yes, but not overcomplication. I note that the current principal Opposition spokesman on health has backed sustainability and transformation plans in the past, and that the Labour manifesto contained a commitment to decisions on NHS care being made locally. So did the Conservative one. In that cross-party spirit, then, let us proceed.

I am well familiar with the standards and provision of care across the north-west London region. It is not out of selfishness that I support the proposed changes to Charing Cross, but out of necessity. Increased care

[LORD SURI]
and support for the frailty service is of paramount importance in an ageing area of London. The cuts to the size of the hospital and provision of services are indeed wide-ranging, but they are necessary. The future of healthcare provision is in dedicated clusters. These serve best to concentrate talent and spur innovation.

In London alone, I encourage noble Lords to visit the splendid Royal National Orthopaedic Hospital or the National Hospital for Neurology and Neurosurgery. These dedicated units provide a higher standard of care, are less bureaucratic due to their specialised care, and bring down the differences between regions by aggregating treatment. Moving Charing Cross's wide-ranging functions to those units will result in better outcomes, which I think all of us here want.

I have not said anything on funding. If additional funds are required due to the move, or to rehire or relocate professionals, I have no quibble. It is an investment and, I think, a sound one.

On another point, I feel it is necessary to widen the argument on the sale of these sites. The Government own a great deal of land in places with an intense housing shortage. I would want to consider whether the sale of more sites, especially in London, could help to alleviate the housing crisis.

Often I drive past Wormwood Scrubs. That area of land is very much prime, and a similar facility could be built closer to the edges of London. The MoD has been a trailblazer in this regard, and I think that this is one of the easier tools in the policy kit to hand if this Government really are serious about tackling the housing crisis and increasing their own funds to reinvest in core services.

6.15 pm

Lord Warner (CB): My Lords, it is good that the noble Lord, Lord Dubs, has given us a chance to traverse the well-trodden paths of the future of north-west London's hospitals. I want to put his concerns into a wider context. First, let me declare my interest as an elderly resident of Barnes with a personal interest in these hospitals. But I have also dabbled in the issues of London's hospitals both as a Health Minister and subsequently as the chair of a provider agency established by the former strategic health authority for London which attempted to reshape some of the provider services in London.

Let me start with that latter experience. Reforming London's health services is rather like battling through the Somme mud. Occasionally after a well-thought-out battle plan you make an advance. This happened with the reform of London's stroke services where the number of stroke centres was cut from 32 to eight which saved lives and money, and produced better recovery outcomes for patients. This change, however, was a whole-London system change driven by the London SHA which was rather cavalierly abolished by the Secretary of State in the coalition Government. More often, the forces of local public and professional conservatism have thwarted change, as has consistently happened with the various attempts of the noble Lord, Lord Darzi, since 2007 to reshape London's health services to meet today's needs rather than those of the 1960s.

All the worthwhile attempts to reform the effectiveness of London's acute hospital services have required a level and consistency of capital investment which has usually not been forthcoming from any Government. That looks to be the case for the proposals put forward in the five London STP plans. They call for a capital investment plan of about £6 billion over four years. This is probably an underestimate, but in any case, is highly unlikely to be forthcoming, unless the Minister has a surprise up his sleeve. Moreover, it is difficult to see whether these five separate STP plans are consistent with the overall needs of London, especially in relation to the consolidation of specialist services. This is where the loss of the London SHA is very telling. Will the Minister enlighten us on who will knit the five STP plans together in the best interests of Londoners?

Let me now turn to the issue of revenue budgets. According to the STPs themselves, the aggregate London "do nothing" revenue funding gap will be £4.1 billion by the end of 2021. This is without any allowance for any likely, and I have to say sizeable, shortfall in adult social care funding. If London was fairly treated on the basis of its weighted capitation population in 2021, this gap would shrink by about a third. So, can the Minister explain why London is being treated so unfairly in its NHS allocations, given the character and nature of its population? All this assumes that the whole NHS estimated deficit in 2021 will be as low as the NHS has calculated on present assumptions, which is a mere £17 billion.

I say all this because, despite the well-intentioned work that has gone into the STPs, those for London may have no more relevance than the latest Harry Potter story. The truth is that there is no credible funded plan for reshaping London's health services as a whole. The STPs seem likely to suffer the fate of the noble Lord, Lord Darzi. Instead, what we will actually experience is more likely to be a series of actions aimed at trying to balance the books and patching up the services as best they can. That kind of patch-up approach seems to me—let me assure the noble Lord, Lord Dubs—a much more likely outcome for Charing Cross Hospital which, in any case, under the STP plans, is not due to change before 2021. I would be a bit more relaxed about the NHS's capacity to reshape Charing Cross Hospital that much before the middle of the next decade.

However, it is crucial that as the London STPs evolve—and they will evolve; they are not going to be set in stone as they stand—they need much greater clarity about the future location of specialist services, not just A&E departments. They should also develop a much better definition of the services to be provided in what is starting to be called a "local hospital"—a term almost designed to raise local anxieties, unless you explain much more clearly than has been done what it means.

The NHS in London also needs to explain better than it has so far why it may well need to reduce its secondary care footprint by selling higher value land and buildings to fund the new community facilities that London so badly needs—and, as the noble Lord, Lord Suri, said, to help to contribute to providing land for affordable housing. So we should not get too excited about demolishing some hospital buildings in

London to provide alternative facilities for the NHS and other social goods such as affordable housing, where land is very scarce.

I have to say, in conclusion, that the STPs have made a valiant attempt at coming up with a plan, but that plan lacks coherence across the scale of the whole of London and they do not seem to have done that good a job of taking the public with them.

6.22 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to my noble friend for bringing to the House's attention the concerns of residents about the future of Charing Cross Hospital. Although my noble friend has focused on issues in west London, the kind of debate that we are having is reflected up and down the country, as each area develops its sustainability and transformation programmes. My noble friend Lord Warner has outlined some of the issues with STPs. I particularly share his view about the loss of a London-wide SHA in terms of trying to lead change in the metropolis.

If the Minister thinks that STPs are going to get this Government out of trouble on the NHS, he should think again. Essentially, the wording may be different but, actually, when you look at them, they are previous plans dusted down and regurgitated in new language. At heart they are based on the belief that think tanks have had for 30 years that, if you invest in prevention, community and primary care, demand for hospital care will reduce. The evidence for that is very thin indeed. The fact is that there have been any number of attempts to implement those kinds of programmes, but of course the investment has never been of the order required out of the hospital setting, because the programmes almost invariably rely on acute bed closures to fund future investment. That is particularly difficult in current circumstances. Clearly, that is the case in west London.

The STP document really goes back to the 2012 consultation. My noble friend described that; the proposal was to reduce the number of major hospitals in north-west London from nine to five in a programme called "Shaping a Healthier Future". That was subject to a searching independent review chaired by Michael Mansfield QC. My noble friend explained to the House some of the conclusions of Mr Mansfield's review.

Despite that, the STP has decided to plough on with the proposals before us tonight. It is clear, reading between the lines, that the STP's overriding motive is financial. It says that a clinically and financially sustainable system cannot be delivered in west London without reconfiguring acute services. Although it says—and the noble Lord, Lord Warner, is right—that no planned changes are to be made to Charing Cross's A&E services before 2021, the fact is, because of the decision over the land closure on the Charing Cross site, there is a risk that, once the public and staff become uncertain about the future of the hospital, people will leave, retention and recruitment will become more difficult, patient confidence will be lessened, and the hospital will become blighted. This is the real risk for Charing Cross.

What is happening in west London cannot be divorced from general concerns about capacity in the NHS. We have debated twice in the last week the King's Fund report, which identified that we have fewer acute beds in this country than any advanced healthcare system. We could of course use them better—we know that we could improve the way that discharge procedures work—but the fact is that it would be very risky indeed to go ahead with further reductions in acute capacity when the number of patients, particularly frail, older people who need the kind of care that hospitals provide, is going to grow. The King's Fund therefore concluded that further significant reductions in bed numbers are unrealistic, which ties in with the Naylor review that I think my noble friend referred to.

We have not had much opportunity to debate STPs, but I point the Minister to the recent IPPR report, which found a deficiency of leadership within STPs and that funding was the overwhelming pressure on them, to the expense of any other action that they take and, of course, that there are no statutory powers with which to deliver the reform agenda as a result of the fragmentation created by the 2012 Act. The King's Fund analysis of STPs in February 2017 concluded that, despite all the warm words about new models of care, they are driven by financial imperatives. I remind the Minister that a survey of 172 NHS trust chairs and chief executives, carried out last autumn, found that achieving financial balance was seen as the most important issue in STP land.

It is clear that the north-west London STP is financially driven. The noble Lord, Lord Warner, referred to the London STPs as a whole and the "do nothing" deficit of over £4 billion by 2021. The figure in the north-west London STP puts its funding gap at £1.113 billion. The STP then goes on to make the highly questionable claim that, through a combination of normal savings delivery and the benefits to be realised through the STP proposals, this huge deficit can be turned into a £15 million surplus. I hope that Ministers realise that this is a fantasy. It is a requirement, because the system bullies STPs if they do not come up with financial balance. But I do not know anybody who thinks that this STP could deliver anything like a £15 million surplus by 2021—it is a complete and utter fantasy.

The STP goes on to talk about the need to transform general practice and for,

"a substantial upscaling of the intermediate care services … offering integrated health and social care teams outside of an acute hospital setting".

Well, every STP says that. The question I put to the Minister is: how on earth is this going to happen? Clearly, it expects general practice to take on greater responsibilities, yet only a few days ago the Secretary of State acknowledged the overload on GPs. Many practices are now closing their lists to new patients, many GPs are choosing to go part-time and others are retiring. I wonder how on earth this STP envisages that by 2021 the GPs in west London will miraculously suddenly develop a new drive and energy to provide the kind of additional services that are required.

What about intermediate or step-down care? Unbelievably, we hear that while these STPs talk about the importance of intermediate or step-down care, they have proposals to close community hospitals. Again, I ask the Minister: where on earth is the confidence that the STP will deliver what it says to bring down the

[LORD HUNT OF KINGS HEATH]
deficit, reduce acute capacity—clearly, that is what it will do—and provide the kind of enhanced service that it talks about?

Ministers tend to hear what they want to hear, as we all do. However, the word on the street, when one talks to any senior person locally who is not in the earshot of one or other of the regulators, is that STPs are a mere flight of fantasy designed to get Ministers off the back of the NHS and give it a little more time until somebody comes up with something new that Ministers will latch on to as the next solution for the NHS. STPs will not work. We all know they are not going to work.

The risk is that Charing Cross Hospital becomes absolutely blighted. I agree with my noble friend Lord Warner, who says that in the light of previous experience, whatever the STP says about Charing Cross, if anyone thinks that all this is going to be done by 2021, they need to think again. The risk is that poor old Charing Cross will be stuck in this awful blighted position, good people will leave and it will become increasingly difficult to manage this hospital. That is why residents are right to be concerned and why we look to the Minister for reassurance tonight.

6.32 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, I congratulate the noble Lord, Lord Dubs, on securing this debate and thank him and all noble Lords for their contributions. As ever, I will try to address as many of the points made this evening as possible.

In responding to this debate as a Minister in the Department of Health, I should declare an interest as a resident of west London for the past 11 years. I have counted up the number of hospitals in the STP area that my family have used—often too often. That figure incorporates pretty much all of them one way or another for various services. Therefore, I know from personal experience as a resident, patient, husband and father what we are talking about, and the very strong emotions that can be evoked by the discussions we are having about the future of Charing Cross and other hospitals. I also confirm to the noble Lord, Lord Dubs, that this has been an issue on the doorstep during local and national elections. However, some of the accusations I have heard about what will happen have been wrong, very misguided and, frankly, scaremongering. I see posters up all the time, as I am sure does the noble Lord, saying that hospitals are going to close. Indeed, he talked about hospital closures when, as he well knows if he has looked at the plans, we are not talking about closing hospitals and the sustainability and transformation plans are not talking about closing hospitals.

Noble Lords will know that west London—I think pretty much everyone who has spoken is a resident of west London—is a large area with many clinical commissioning groups, local authorities and providers split across two transformation plans in north-west London and south-west London. The north-west London plan covers about 2 million people. As that is the one that the noble Lord and other noble Lords have highlighted, that is where I shall focus my attention. The area covers a broad range of population and some of the country's leading hospitals, including world-famous trusts such as Imperial, the Royal Brompton and the Royal Marsden, and cherished district general hospitals such as Ealing and Charing Cross. I note that this year the funding for the *North West London Sustainability and Transformation Plan* area is £3.7 billion, and that between 2015-16 and 2020-21, funding is expected to rise on current plans by £602.5 million—a cash increase of 17%. I think that answers the question asked by the noble Lord, Lord Warner, about funding. We also know that it is an area with a growing population with changing needs, driven by a relatively high turnover of people, with large-scale, inward migration from the UK and other countries. The changing needs of this population must of course shape the local NHS's plans for the future.

Many times in this House we have discussed how the healthcare needs of patients in our country are changing. On average, we are becoming older and frailer, but also more mobile and more networked together by technology. Added to this, the science and practice of health is changing. We understand that some services are better centralised into highly specialised facilities—the noble Lord, Lord Warner, talked about stroke care and my noble friend Lord Suri talked about neurology, which are two good examples—while other treatment, such as rehabilitation, is better delivered in the community.

Therefore, because of demographic and professional developments, service change is inevitable. But it is of course always an issue that raises concerns, so it is vital that any proposed changes are looked at with great care. The noble Lord, Lord Warner, talked about it as being like the Somme mud; in slightly more uplifting terms, my noble friend Lord Lawson once said that the NHS is the closest the English get to a religion—and I think hospitals are our churches. That describes how people feel about them. It is therefore incredibly important that I stress that any potential service changes affecting west London hospitals must be driven by local health organisations and, while I am sure local people will follow this debate with interest, the opportunity to shape their future health services is driven by engaging with their own clinical commissioning groups and the STP.

The Government are clear that any health service changes proposed are subject to an agreed set of procedures. Proposed changes stand and fall on their ability to show clear evidence that they will deliver better outcomes for patients, and they must meet the four tests for service change. First, they should have support from GP commissioners; secondly, they should be based on clinical evidence; thirdly, they should demonstrate public and patient engagement; and fourthly, they should consider patient choice.

In addition, in April this year NHS England introduced a new test on the future use of beds, which requires commissioners to assure NHS England that any proposed reduction is sustainable over the longer term and that key risks, such as staff levels, have been addressed. This is precisely the point that the noble Lord, Lord Hunt, made about preserving beds, and he will also know that the number of acute beds has been falling

over many years under many different Governments. Indeed, the number has stabilised in the last couple of years, which speaks to the point he raised from the King's Fund research.

Where local discussions fail to provide resolution, proposed changes may be challenged on a number of grounds—for example, if there has not been proper local consultation or where the local oversight and scrutiny committee concludes that the changes are not in the best interests of the health service. The Independent Reconfiguration Panel exists to arbitrate and provide independent and authoritative advice to the Secretary of State in such instances. That is therefore the policy background against which any plan must be judged.

The *North West London Sustainability and Transformation Plan* was published in November 2016, and a core component is a programme called Shaping a Healthier Future, plans of which were first published in 2012. The public consultation in 2012 set out plans for a more integrated approach to care, whereby specialist services would be consolidated on fewer sites to improve quality and efficiency, and routine and chronic care would be expanded to improve access, particularly in the community. It was proposed that the Charing Cross Hospital would become a growing hub for integrated care within this network of services.

Following feedback from the public consultation, the proposals were refined to retain the integrated care approach and, in addition, for the Charing Cross site to house a wider range of services than initially proposed. Following examinations by both the IRP and the Secretary of State, the plans changed further. Since then, as noble Lords may be aware, NHS England invested a further £8 million in the Charing Cross Hospital site last year. This funding enabled refurbishment of urgent and emergency care wards, theatres, outpatient clinics and lifts, as well as the creation of a patient service centre and the main new facility for North West London Pathology.

There is widespread recognition that in north-west London and other areas of the country we need to ensure there are strong primary and community services to keep people well, effective urgent care services to deal with more intensive need, and world-class services to treat the most severe and urgent emergencies. That is why I welcome the sustainability and transformation plan commitment that there will be no reduction in A&E or acute capacity at Charing Cross Hospital unless and until a reduction in acute demand can be achieved—and, as the noble Lords, Lord Warner and Lord Hunt, pointed out, it cannot happen before 2021. Furthermore, despite the accusations of local campaigners, there are no plans to close Charing Cross Hospital, and none of the land on the hospital site has been designated as surplus land for redevelopment.

I turn to some of the points raised in the debate. There is of course with any difficult decision such as this the question of whether there is support from the clinical community. Members of the clinical community were clear from the beginning in 2013 that they,

"remain absolutely confident that delivering the Shaping a Healthier Future recommendations in full will save many lives each year and significantly improve patients' care and experience of the NHS".

The noble Lord, Lord Dubs, pointed out that two councils had not signed up to any plan that involved a hospital being closed. I will say two things in response. First, there is no suggestion that any hospital will be closed. Secondly, I suggest that one reason those councils are not engaging is that they won elections on the basis of suggesting that hospitals would be closed and it is not in their political interest to endorse a plan which makes clear that that is not going to happen.

My noble friend Lord Suri was absolutely right about the need for a bipartisan approach and to avoid mud-slinging at local political level. He made a particular suggestion about the potential use of Wormwood Scrubs. It is not one that I personally endorse, but the point is that any suggestion for reconfiguration must emanate from local health organisations and then go through the service-change tests that I outlined.

The noble Lord, Lord Warner, made a very valid point about co-ordination across London. This is something that we are looking at in particular at the moment. I hope that we will be able to say more about it in due course. Clearly, the interaction between services across the five STP areas is incredibly important; people are clearly moving across boundaries for the healthcare that they need and it is important that there is a degree of local co-ordination.

Of course, there is always with our health service a need for more funding. I know that many noble Lords feel that the Government are not giving the funding they should. With the STPs, I have to disagree; the Budget provided £325 million as a first capital instalment towards transformation and we are absolutely supporting the process—which of course was begun and is being led by NHS England—to transform our health service into an integrated process. One way in which that can be delivered, as my right honourable friend the Secretary of State set out in a speech to the Royal College of General Practitioners, is to have more GPs in training so that there can be more community-based care.

The noble Lord, Lord Hunt, called the STPs a "fantasy". I know that his right honourable friend the shadow Secretary of State for Health said in his party conference speech that he did not support the STPs but did want integrated care. That is a very easy thing to say, but the challenge is how it will be delivered if STPs are not going to get the backing of the Opposition.

In conclusion, I hope that I have been able to reassure noble Lords and local residents on two fronts. First, there are strict rules that govern the reorganisation of NHS services and that put patient outcomes first. Secondly, Charing Cross hospital has a critical role to play in the sustainability and transformation plan for north-west London and will continue to operate A&E and acute services while the demand for them exists.

The Government remain committed to supporting the local NHS to make complex and sometimes challenging decisions about the future configuration of the services on which we all depend. As those discussions take place locally, it is incumbent on all of us to deal with the facts about what is and is not in prospect, and to avoid playing political games with people's healthcare.

[Lord O'Shaughnessy]

I will close by congratulating all noble Lords on their incisive and, as ever, forthright contributions to the debate, informed by their role both as legislators and local residents—and once again thank the noble Lord, Lord Dubs, for securing it.

House adjourned at 6.44 pm.