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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

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§ Members of the Government listed under more than one department

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THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE FIRST SESSION OF THE FIFTY-SEVENTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE THIRTEENTH DAY OF JUNE IN THE
SIXTY-SIXTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCLXXXVII**

FIFTH VOLUME OF SESSION 2017-19

House of Lords

Monday 20 November 2017

2.30 pm

Prayers—read by the Lord Bishop of Coventry.

Introduction: Lord Burnett of Maldon

2.37 pm

The right honourable Sir Ian Duncan Burnett, Knight, having been created Baron Burnett of Maldon, of Maldon in the County of Essex, was introduced and made the solemn affirmation, supported by Lord Judge and Lord Thomas of Cwmgiedd, and signed an undertaking to abide by the Code of Conduct.

Personal Statement
Announcement

2.42 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, with the leave of the House, I would like to make a short personal statement. Last Monday I repeated a Statement to the House to provide an update on negotiations between the UK and the European Union in November. Following that Statement, I responded to a question from my noble friend Lord Ridley regarding the Supreme Court's view on the revocability of Article 50. My response to my noble friend was incorrect, as a result of a misunderstanding of the question on my part. I am grateful to the noble Baroness, Lady Hayter, who highlighted my mistake. I undertook to check the record, which I subsequently did, and then wrote to the noble Baroness the following day to clarify my remarks and make it clear that the Supreme Court did not opine on the revocability of Article 50 during the case. A copy of this correspondence was placed in the Library of the House last Tuesday afternoon.

I would like to take this opportunity to clarify the Government's understanding of the Supreme Court case. To reiterate, for the avoidance of any doubt, the Supreme Court proceeded in the Miller case on the basis that Article 50 would not be revoked but did not rule on the legal position regarding its revocability. It was, and remains, the Government's policy that our notification of Article 50 will not be withdrawn. This House has a huge amount to contribute to debates about our exit from the European Union, and my door remains open to anyone who wishes to discuss this with me.

Once again, I am grateful to the House for this opportunity to make a statement. I recognise that my comments have caused confusion, and I apologise for that.

Brexit: Tourism
Question

2.44 pm

Asked by ***Baroness Doocey***

To ask Her Majesty's Government what assessment they have made of the impact that the United Kingdom's exit from the European Union Open Skies Agreement would have on the United Kingdom's tourism industry.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, the Government are considering carefully all the potential implications arising from the UK's exit from the EU. We are aiming to negotiate the best possible relationship between the UK and the EU in the field of aviation and matters impacting on tourism. The importance of air services to the UK tourist economy is recognised across government, and we will continue to work closely with the aviation and tourism industries to ensure their continued success.

Baroness Doocey (LD): My Lords, the airport operators' association, ABTA, and all the major United States airlines have said it is essential to have new deals in place by spring of next year. Given the speed of the Brexit negotiations, that is perhaps a bit optimistic, so what are the Government doing to mitigate the devastating impact that any disruption or interruption to flights is likely to have on tourism, which contributes £127 billion to the UK economy and provides employment for 3 million people?

Baroness Sugg: My Lords, the UK already has 111 bilateral agreements on air services with other countries, and they of course will continue after we leave the EU. However, we understand the need for early reassurance on flights to the EU, and that will be a consideration when we negotiate our future relationship. Airline representatives made it clear last month to the Transport Select Committee that they would continue to sell tickets, and that they share our confidence that we will get a good agreement in place after Brexit. We meet regularly with the airlines at both official and ministerial level to discuss the options for the future aviation relationship.

Lord Trefgarne (Con): My Lords, what will happen to the operational regulation of civil aviation at Brexit? Will that revert to the Civil Aviation Authority?

Baroness Sugg: The CAA already operates the vast majority of EU regulations in the UK and will continue to do so after exit.

Lord Adonis (Lab): My Lords, will the Minister guarantee to the House that there will be no disruption in air traffic as a result of Brexit in March 2019?

Baroness Sugg: My Lords, the Government recognise the need for UK air traffic management arrangements to remain interoperable with the rest of Europe. Safe and efficient air traffic management is a priority for us. We are considering all the potential implications for the UK and working with NATS to ensure that there is no disruption.

Lord Hannay of Chiswick (CB): My Lords, will the Minister confirm that flights across the Atlantic are in fact covered by an agreement between the European Union and the United States? What contacts have the British Government had with the United States Government about the situation if there were not an agreement with the EU?

Baroness Sugg: I can confirm that flights between the US and the EU are currently covered under an EU/US air transport arrangement. This is of course a really important market for us, with over 90 million passengers between the UK and the US in 2016. I confirm that my officials are having informal discussions with the US on air services, and we have made positive progress. Our aim is to maintain the liberal market access arrangements available under the current agreement.

Lord Robathan (Con): My Lords, my noble friend is of course much younger than not only me but most Members of the House. Could she tell the House whether it was possible before 1972 to fly across the Channel? I seem to remember doing so. It was rather easier than it is now.

Baroness Sugg: I can confirm that yes, it was indeed possible to fly across the Channel, and we look forward to continuing to do so.

Lord Rosser (Lab): No guarantees were given to my noble friend Lord Adonis in response to his question, and I am sure that note has been taken of that fact. In the light of the Answer to the noble Baroness, Lady Doocey, and of the potential adverse impact on tourism, will the Government at least do what the aviation industry wants and give a commitment now to deal with aviation separately and in advance of the main negotiations with the EU on Brexit since there is no automatic WTO fallback for the governance of international aviation rights if we do not reach agreement on new air service agreements following our withdrawal from the EU? Will the Minister, having failed to give the guarantees sought by my noble friend Lord Adonis, at least give a commitment on behalf of the Government to deal with aviation separately and in advance of the main negotiations?

Baroness Sugg: I am afraid I am not able to give that commitment to the noble Lord today. How sectors are discussed will of course be a matter for the negotiations, but of course we recognise that traditionally aviation agreements have been negotiated separately. For our part, we are ready to move on with the negotiations.

The Lord Bishop of Leeds: My Lords, if it is not possible to give that commitment now, is it possible to give an idea of a timeline as to when that commitment can be made, when the aim might become a reality?

Baroness Sugg: As I said previously, we are ready to move on with these negotiations and hope to do so shortly.

Lord Lee of Trafford (LD): My Lords, longer queues at airports are likely to be yet another exciting bonus of Brexit. What plans do the Government have to deal with the likely increase in queueing at the airports?

Baroness Sugg: My Lords, we are of course mindful of this possibility and are planning for the border to maintain security and flow at all ports of entry and exit. The Department for Transport is working closely with the Home Office to minimise delays after exit.

Lord Spicer (Con): My Lords, is it not possible that under Brexit, Britain will retain its open skies policy and the EU will fall back into its protectionist mode, a situation which existed when I was Minister for Aviation—to the great benefit, as it happened, of the British aviation industry?

Baroness Sugg: My Lords, it is of course in the common interests of the UK and the EU that we maintain access to the open, liberal arrangement for aviation that we currently have, and we are confident that we will achieve a mutually beneficial agreement.

Lord Harris of Haringey (Lab): My Lords, the noble Baroness has not given the guarantee that my noble friend Lord Adonis asked for. Can she tell us what proportion of flights in or out of the United Kingdom are to Europe—or, in the light of her answer to the noble Lord, Lord Hannay, what proportion are to or from the United States, and therefore how many are at risk because the Government cannot give that guarantee?

Baroness Sugg: I have already given the figure of 90 million passengers between the UK and the US, and of course we have our 111 bilateral arrangements, which I have spoken about before. On the 17 countries with which we currently have a relationship through being part of the European Union, we are already having discussions with them to agree a future bilateral arrangement. On the percentage of flights between the EU and the UK, I will have to get back to the noble Lord in writing.

Housing: Offsite Manufactured Housing

Question

2.52 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what assessment they have made of the contribution that offsite manufactured housing can make to their proposals for fixing our "broken housing market".

Lord Kennedy of Southwark (Lab Co-op): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as a councillor of the London Borough of Lewisham and a vice-president of the Local Government Association.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, building more homes needs a modern homebuilding industry. New technology has improved productivity, quality and choice in a range of sectors, but housing has yet to catch up. That is why the housing White Paper talked about specific measures to stimulate the growth of modern methods of construction, including offsite. For instance, on top of providing financial support to builders, we are creating a pipeline of opportunities in the sector and setting up a specific working group on modern methods of construction.

Lord Kennedy of Southwark: My Lords, offsite manufactured housing could play a bigger role in helping to solve the housing crisis in the UK, as it has done elsewhere. I refer the Minister to the Building Societies Association report *Laying the Foundations for Modern Methods of Construction*. What are the Government prepared to do to further deal with the problem that supply is low because lenders cannot or will not routinely lend on such properties because they do not fully understand the risks, and builders will not build more of this type of housing because mortgage lending is in limited supply, as is home insurance? This type of building has the potential to help to solve the crisis, but more support is needed to help the sector.

Lord Bourne of Aberystwyth: My Lords, I agree with the noble Lord's analysis that there is scope here, but already 15% of new housing—a statistic that surprised me—is produced by modern methods of construction, which is a considerable amount. As I said, we are setting up a modern methods of construction working group, which will have its first meeting in the first half of December. The noble Lord referred to difficulties with mortgages. Already, through the Buildoffsite Property Assurance Scheme, mortgage lending is being taken more account of and freed up. In the meantime, the pipeline of opportunities, to which I referred, is creating UK jobs on modular production.

Baroness Gardner of Parkes (Con): My Lords, I declare an interest in that I was on the GLC and responsible for a lot of housing at that time. Is the Minister aware that, even at that stage, prefabs, as they were then called, were used in part and in whole? In areas such as Dagenham, everyone was able to have a new kitchen and bathroom added on to their house, because it was pre-constructed and could just be put in there. Is not it also important to upgrade existing buildings? That means that, instead of people needing to move on, they could have a home that allowed for an expanding family—or else a new place or prefab. It could certainly reduce production time very much, although it would need to be tested thoroughly.

Lord Bourne of Aberystwyth: My Lords, at the risk of appearing ungallant, I think that the type of prefab now has changed massively. Modern methods of construction have opened up that area considerably. But I take my noble friend's point about looking at the existing housing stock and seeing whether we can add to that and improve it as well. That is something that I shall take back.

The Earl of Listowel (CB): I welcome the Government's White Paper on housing, with its increasing attention to our need to supply housing to families in this country. Would the Minister expect much of this provision, or a proportion of it, to be directed at families on low incomes who rent property? Furthermore, is it correct to say that 120,000 children in this country live in temporary accommodation, in hotels or bed and breakfasts, with a risk to disruption to their education as a consequence?

Lord Bourne of Aberystwyth: My Lords, I know that the noble Earl is very expert in this area, so I am sure that that statistic is correct. He is absolutely right that we need to ensure that a good proportion of the property coming on line is for the families that he spoke about—I am sure that that will be the case—and across a range of tenures.

Lord Stunell (LD): My Lords, the Government's ambitious target of 300,000 new homes a year will require a doubling of the current production. Does the Minister agree that the huge additional public spending that that will need gives the Government a very powerful hand in driving the long-term investment

[Lord Stunell]
needed to deliver modern methods of construction, which will improve productivity, allow the industry to flourish and make at least some contribution to replacing the many EU workers being driven out by careless talk of a hard Tory Brexit?

Lord Bourne of Aberystwyth: First, the noble Lord is absolutely right about the need for people from overseas to help with the construction side; that is a point identified by the Government which is being taken up and acted on. In relation to investment opportunities, as I have mentioned already, there is considerable growth in the economy in this area. We have Laing O'Rourke, L&G and Swan producing modular housing in the country at the moment, in Worksop, Leeds and Basildon respectively. In Chatham, we have homes already being built with that type of investment, and over seven sites in London are taking this up. It is right to say there is great potential here, and we intend to ensure that it is used.

Lord Forsyth of Drumlean (Con): My Lords, might not the Government tackle the oligopoly that exists among the big housebuilders, which results in land for which there is planning permission not being built on? Also, might we expect the Government to respond to the recommendation from the Economic Affairs Committee that we end the absurdity whereby local authorities can borrow to build swimming pools but not council houses?

Lord Bourne of Aberystwyth: My Lords, my noble friend is absolutely correct about the issue of land banking, although he did not call it that; it is certainly something identified in the White Paper. Borrowing is there already. I do not want to pre-empt the Budget, as I do not know what will be in it myself, but obviously it is an issue that will be looked at by the Government.

Lord Watts (Lab): My Lords, what are the Government going to do about the shortage of pensioner properties? With the demographic changes taking place, surely there is a need to boost that sector?

Lord Bourne of Aberystwyth: My Lords, the noble Lord is absolutely right. He will be aware that this was the first Government ever to identify that issue, in the Neighbourhood Planning Act 2017. We have ensured that the needs of senior citizens are identified in legislation for the first time, so planning authorities have to act on that.

Baroness Jones of Moulsecoomb (GP): Could the Government look into the possibility of using offsite manufactured housing for places that at the moment are unsuitable for traditional housebuilding—for example, on brownfield sites? Some of the 1945 prefabs are still in good use, and looking good as well.

Lord Bourne of Aberystwyth: On the last point, the noble Baroness is absolutely right. On the earlier point, I shall take it away since it is a specific one. I shall write to her and ensure that a copy is placed in the Library.

VAT: Evasion

Question

2.59 pm

Asked by ***Lord Lucas***

To ask Her Majesty's Government what progress Her Majesty's Revenue and Customs have made in closing down VAT evasion by overseas sellers trading in the United Kingdom through online marketplaces; and what remains to be done.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Government recognise that this issue has a significant impact in preventing a level playing field for legitimate UK businesses. That is why the Government took decisive action at Budget 2016 to tackle VAT non-compliance by overseas traders who sell goods to UK customers via online marketplaces.

Lord Lucas (Con): My Lords, that is a very welcome reply—albeit that it has been a very long time coming. For several years now, the Inland Revenue has known that it is losing £1.5 billion in VAT, and that we are losing £6 billion a year in economic activity, but has done nothing, so I am delighted to hear that things are changing. Will my noble friend please make sure that the Chancellor emphasises to HMRC that fairness is important, and that having teams of heavies go round to UK taxpayers and then do nothing about enormous abuse by Amazon and its serfs really gets people's goats, does not make people love the taxation system and does not make them like the Government, either?

Lord Bates: First, I pay tribute to my noble friend for being a consistent campaigner on this issue, which has brought about significant change. We introduced the change where there is joint and several liability. The problem here is that non-EU importers are bringing in goods to the UK at wholesale prices, storing them here, selling them on at retail prices and not paying the VAT, thereby undercutting small businesses. We responded to that by introducing joint and several liability for online providers. That has meant that the number of non-EU traders registered in the UK has gone up from 700 to 17,500 just over the past two years—so we believe that we are making progress, but there is a lot more to do and we have further ideas in that area.

Lord Anderson of Swansea (Lab): My Lords, before the revelations of the Paradise papers, was Her Majesty's Revenue and Customs aware of the device involving the Isle of Man used by a famous racing driver? If so, why was nothing done about it? If HMRC was not aware of it, will it now close that loophole?

Lord Bates: VAT is a matter for the Isle of Man to deal with, but we have said that we are aware that there is a potentially significant problem here. Her Majesty's Treasury has been approached by the Isle of Man Government and asked to provide technical advice on how to assess and close that loophole. We hope that will be a way of moving forward to ensure that everybody pays the taxes that are due.

Lord Palmer of Childs Hill (LD): My Lords, I thank the Minister for pointing out what is in the new Finance Act—namely, the aim to catch non-EU businesses selling goods in the UK and avoiding VAT. However, the application of the scheme is set to widen post Tory Brexit as the EU/non-EU distinction will no longer apply. What additional resources will be allocated to this issue, given that at the same time resources will be needed to implement Making Tax Digital in April 2019, and the new customs declaration service?

Lord Bates: The noble Lord is absolutely right to say that there is a big change from traditional sorts of trading to online trading. It is therefore essential that HMRC tracks that in moving towards making tax digital. That is what we are trying to do. We are also saying that fulfilment houses, which are a device used to store goods for onward selling in the UK, will need to register from April next year. Perhaps most relevant to the point that he raises, we are also looking at the idea of having split taxation so that, rather than going through the declaration element, the minute that a transaction is triggered online, the tax immediately goes to the Exchequer. That seems a more sensible way forward. We consulted on that and will come forward with our proposals on it very shortly.

Lord Davies of Oldham (Lab): My Lords, as the noble Lord, Lord Lucas, has clearly exposed, the Government have been somewhat tardy in dealing with this issue—as they have been on so many issues which involve the multinationals. Will the Minister recognise that legislative time is no excuse as the Government introduce a Finance Bill every year in which they could, and should, address these significant issues? Does he appreciate that the Government ought to have a comprehensive plan to restore transparency to our tax system—which is what a future Labour Government will deliver?

Lord Bates: Before we wait for the future one, we might reflect on what the last one did or did not do in this area. The truth is that these are fast-moving instruments; people are arbitraging the system and looking at how to exploit advantages from a trading point of view. HMRC has been vigilant and has come forward with ideas—and when it does, we implement them. That is why we put them forward in the Finance Bill and are bringing forward the measures we are talking about. That is also why the 75 measures on tax evasion and avoidance that we have introduced since 2010 have raised £160 billion for public services.

Lord Watts (Lab): My Lords, can the Minister explain why the BBC seems to know more about tax evasion than the Treasury? What is the Treasury doing?

Lord Bates: I think that the particular case the noble Lord refers to is about how some employees of the BBC are remunerated using taxation. There is a standard briefing in my pack here, which says that I cannot refer to specific individuals and their taxation status. However, suffice it to say that, thanks to the BBC, we are all now aware of them—including HMRC.

Lord Christopher (Lab): My Lords, I declare some of my past life, which is in the register and which should be taken note of. There is no prospect whatever of the Inland Revenue getting on top of the range of activities which you now require without more staff—not just in numbers but in quality, experience and knowledge, and a capacity for doing forensic work. Will the Government undertake a review of what is required?

Lord Bates: Since 2010—this is absolutely right—the Government have invested £1.8 billion in trying to tackle avoidance. However, it is clear that, as well as looking at the headcount issue, we should also look at the additional revenues that are generated. In that regard, HMRC has a very positive story to tell. However, we need to be smarter and use more technology to ensure that all people who have a liability to pay UK tax, in whatever form, do so.

Businesses: Start-ups

Question

3.07 pm

Asked by ***Viscount Ridley***

To ask Her Majesty's Government what conclusions they draw from calculations by the Centre for Entrepreneurs that 660,000 start-up companies were founded in 2016.

Viscount Ridley (Con): I beg leave to ask the Question standing in my name on the Order Paper, and in doing so I declare my interests as listed in the register.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the Government are working hard to ensure that the United Kingdom is the best place in the world to start and grow a business. While there is no single source of data on the start-ups, the Government agree that the numbers engaged in enterprise is at a historic high, which shows that entrepreneurship is thriving in the United Kingdom.

Viscount Ridley: I thank my noble friend for that reply. Is he aware that there was a record number of start-ups in 2015 and 2016 and that, according to the Centre for Entrepreneurs, there is likely to be another record in 2017; that we are third in the world for start-ups, second only to Silicon Valley as a centre for the tech industry; and that we have three times as many unicorns—that is, $1 billion start-ups in tech—as Germany? However, while this entrepreneurial revolution is a welcome result of government policy since 2010, does my noble friend agree that what is needed now are policies to help small acorns grow into big oak trees without selling out too early? In that respect, will he perhaps look at Rishi Sunak MP's proposal for a retail bond market for SMEs?

Lord Henley: I am grateful to my noble friend for quoting all the figures that I would have wanted to put before the House, and I thoroughly endorse his doing so. I am also grateful to him for bringing the attention of the House to Rishi Sunak's report, *A New Era for Retail Bonds*, which I am aware of. He would not expect me to comment on it in detail at this stage, but it is certainly interesting and the Government will certainly want to have a look at it.

Lord Campbell-Savours (Lab): My Lords, is not reference to 660,000 start-up companies and this entrepreneurial revolution peddling a myth when a large chunk of that number is made up of personal service companies, the objective of which is to save tax and save on national insurance contributions? Why peddle these myths?

Lord Henley: The noble Lord is overcynical. It is quite obvious from all the figures we have, whether we take them from Companies House or wherever, that a large number of new companies are coming into existence. My noble friend quoted the other figures, which show just how well they are doing, and how well compared to other countries throughout Europe. The noble Lord should welcome that and be grateful that entrepreneurship flourishes in this country because the Government create the right environment for it.

Baroness Lane-Fox of Soho (CB): My Lords, publicly available data shows that 93% of funding goes to male-led start-up businesses and that one in 10 people making decisions in financial institutions is a woman. Do the Government track this data, and what are they planning to do about it when so many people are being left out of the entrepreneurial revolution?

Lord Henley: My Lords, I was not aware of those figures but if the noble Baroness is correct, they obviously give us some concern. It is not for the Government to create new businesses—as I said earlier, it is for the Government to create the right environment in which businesses can start up. However, if 93% of them seem to be male led, we should look at that to see what is happening and whether, in creating the right environment, there is anything that the Government can do to make sure that women feel they have an opportunity to create their own businesses.

Baroness Burt of Solihull (LD): I endorse the comments of the noble Lord, Lord Campbell-Savours. Many of these start-ups represent self-employed people using contractor payroll and virtual office solutions. The FSB says that small business confidence has plummeted since the Brexit vote, with rising inflation and a weakening domestic economy. Therefore, if the Government want to help businesses, large and small, will they provide some certainty on where Britain is headed—remaining in the single market or going over a hard Brexit cliff?

Lord Henley: Again—dare I say it?—I think that the noble Baroness is being overcynical. All the figures, from wherever they are taken, show the same trend—that business start-ups are at an historic high. Perhaps not all of those businesses will go on to flourish, but the trend is in the right direction and I think that the noble Baroness ought to welcome that.

Lord Flight (Con): My Lords, do the Government accept the enormous help provided to entrepreneurship by the Government's EIS scheme, which I think has raised some £16 billion of risk capital? It is the envy of Europe. I declare my interest as chairman of the Enterprise Investment Scheme Association.

Lord Henley: I welcome what my noble friend has to say and I hope that noble Lords on the other side of the House take note of it.

Lord Mendelsohn (Lab): My Lords, as welcome as the rise in numbers is, is it not the case that under close examination the data shows some very worrying trends? Professor Mark Hart of the Enterprise Research Centre, one of Britain's leading academics on this matter, points out:

"Too many of these businesses do not create jobs or do anything for UK productivity",

and that our entrenched problem is,

"turning start-ups into high growth companies".

Can the Minister confirm what proportion or number of start-ups in these figures was for structuring purposes—holding companies, special purpose vehicles, personal service companies and partnerships—and can he set out the Government's plans to reverse the decline in the three-year company survival rate, the falling number of high-growth companies and the proportion of start-ups that scale?

Lord Henley: The noble Lord asked quite a number of questions and I will restrict my answers to two. He is right to express concern about productivity. This is something that we will want to address, and I hope that he will be ready for the Statement on the industrial strategy that I hope will come out later this month. He also expressed concern about companies progressing from small to medium and medium to large. That is why we made an announcement in last year's Autumn Statement about patient capital and why we announced a review into it. We are waiting to respond to that in due course.

The Earl of Erroll (CB): Given the last question, will the Minister look at a lighter touch, particularly in employment law? A lot of this is very onerous for small businesses and, if certain things happen, they can easily get bankrupted. Small businesses need a lot more flexibility in the laws as they apply to them. Until you employ a lot of people, you cannot handle some of the provisions around employment law, and I think that the Government should look at that closely.

Lord Henley: The noble Earl is right to express concerns about the regulation that faces business, particularly small businesses. We obviously want to reduce the regulatory burdens on businesses wherever possible and wherever it is right to do so, and we will certainly continue the work that we have done in this field.

Data Protection Bill [HL]

Committee (5th Day)

3.15 pm

Relevant documents: 6th Report from the Delegated Powers Committee, 6th Report from the Constitution Committee

Amendment 153

Moved by ***Lord Paddick***

153: After Clause 114, insert the following new Clause—

"Function of the Commissioner to maintain a register of data controllers

(1) The Commissioner must maintain a register of all data controllers.

(2) Subject to subsection (3), personal data must not be processed unless an entry in respect of the data controller is included in the register maintained by the Commissioner under subsection (1).

(3) Subsections (1) and (2) do not apply in relation to any processing whose sole purpose is the maintenance of a public register."

Lord Paddick (LD): My Lords, I will speak to Amendment 153 in my name and that of my noble friend Lord Clement-Jones. Section 17(1) of the Data Protection Act 1998 states that personal data must not be processed unless an entry in respect of the data controller is included in the register maintained by the Information Commissioner. Effectively, processing personal data without registering and without paying a fee is, at the moment, a strict liability criminal offence. This ensures that all data controllers are aware of their most basic obligations and that a central register of who is processing personal data is maintained. It also provides a simple means of collecting notification fee income.

We have been made acutely aware during the debates on the passage of the Bill of the increased responsibilities that will be placed on the Information Commissioner and the need for her to have additional resources. This is one way of ensuring that she has those resources, provided she is able to keep the fees raised and does not have to hand over large amounts of those fees to the Treasury.

This is an important protection for data subjects, and the Government have asserted that they are strengthening the law to protect data subjects. If the requirement to register is removed, as will happen without this amendment, this will weaken those protections. In addition to protections provided by registration and the increased awareness of the other requirements around data protection as a result of registering, it allows for the Proceeds of Crime Act to be used to confiscate money generated by the unlawful processing of personal data by those who are not registered. This would be lost if this amendment is not adopted.

The amendment seeks to maintain the current position by requiring the Information Commissioner to register all data controllers. However, unlike the current requirement for more detailed information, the amendment requires that the data controller provides only the minimum of information—such as his name and address; if he has nominated a representative for the purposes of the Act, their name and address; and the principal activity or activities undertaken by the data controller.

The Minister may wish to pray in aid article 57(3) of the GDPR, which states:

"The performance of the tasks of each supervisory authority shall be free of charge for the data subject and, where applicable, for the data protection officer".

We argue that this is a notification fee, not a task performed by the Information Commissioner, and a fee that would be levied on the data controller and not the data protection officer. I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, I shall speak to Amendment 153ZA in my name and that of my noble friend Lord Kennedy of Southwark. I support the amendment tabled by the noble Lords, Lord Clement-Jones and Lord Paddick, which is important. We look forward to hearing what the Minister says in response.

Our amendment is in two halves. The first probes the question of what happens in cases where the data controller relies on derogations or limitations provided for under the GDPR that have been brought, directly or indirectly, into UK law through the existence of the GDPR after 25 May 2018 or through secondary legislation, whichever is appropriate. It asks whether there is a need for a bit more guidance on the commissioner's duties, in that she may wish to look at the proportionality of such reliance by the data controller—in other words, whether it is appropriate relative to the overall aims and objectives placed on the data by the data controller—and whether it is appropriate under the GDPR or its subsequent limitation or derogation. It also asks whether adequate systems are in place to make sure the rights of data subjects are safeguarded. This may seem to be gold-plating, but it is important to understand better how the mechanics of this works in practice. These are very important issues.

The second part returns to an issue we touched on earlier in Committee, but about which there is still concern. We have again had representations on this issue. The amendment is framed as a probing amendment, but it comes back to familiar territory: what will happen in later stages of the life of the Bill as we leave the EU and are required to make sure our own legislative arrangements are in place? At present, the GDPR has an extraterritorial application so that even when companies are not established in the EU they are bound by the GDPR where they offer goods or services to EU citizens or monitor their behaviour. As well as requiring that lawful processing of data is not excessive, data controllers are required to keep data secure.

So far, so good. The important point is that under the GDPR at present—there is no derogation on this—it is necessary for such companies to make sure they have what is called a representative in the EU. This would be a physical office or body, staffed so that where EU citizens wish to take up issues that affect them, such as whether the data is being properly controlled or whether it has been processed legally, contact can be made directly. But under the Bill as I understand it, and I would be grateful if the Minister could confirm what exactly the situation is, after the applied GDPR comes in the requirement for a company to make sure it has a representative in the UK—in the GDPR, it is for a company to have a representative in the EU—will be dropped. If that is right, even if the operating company is well-respected for its data protection laws or is in good standing as far as the EU is concerned, any individual based in the UK would obviously have much more difficulty if there is no representative, such as in a situation with different foreign laws, where an

[Lord Stevenson of Balmacara]
individual would probably rely on an intermediary who may not see non-nationals as a sufficiently high priority. If things do not work out, the individual may have to have recourse to law in a foreign court. This will make it very difficult to enforce new rights.

Is it right that the Government will not require foreign companies operating in the UK after Brexit to have a representative? If it is, how will they get round these problems? I look forward to hearing what the Minister says on these points.

Baroness O'Neill of Bengarve (CB): My Lords, I have a question about proposed new subsection (2) in Amendment 153, which says that,

"personal data must not be processed unless an entry in respect of the data controller is included in the register".

That goes a certain distance, but since enormous amounts of personal data in the public domain are not in the control of any data controller, it is perhaps ambiguous as drafted. Surely it should read, "Personal data must not be processed by a data controller unless an entry in respect of the data controller is included in the register". If that is the intention, the proposed new clause should say that. If it is not, we should recognise that controlling data controllers does not achieve the privacy protections we seek.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): Could I ask the noble Baroness to repeat which provision she is referring to?

Baroness O'Neill of Bengarve: Subsection (2) of Amendment 153:

"Subject to subsection (3), personal data must not be processed unless an entry in respect of the data controller is included in the register maintained by the Commissioner".

That would be an adequate formulation if all the personal data being processed was within the control of some data controller. Since much of it is not, the drafting does not quite meet the purpose.

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lords for introducing these amendments. Perhaps I may begin by referring to Amendment 153. The requirement set out in the Data Protection Act 1998 for the Information Commissioner to maintain a register of data controllers, and for those controllers to register with the commissioner, was introduced to support the proper implementation of data protection law in the UK and to facilitate the commissioner's enforcement activity. At the time when it was introduced, it was a feasible and effective measure. However, in the intervening 20 years, the use of data in our society has changed beyond all recognition. In today's digital age, in which an ever-increasing amount of data is being processed, there has been a correspondingly vast increase in the number of data controllers and the data processing activities they undertake. There are now more than 400,000 data controllers registered with the Information Commissioner, a number which is growing rapidly. The ever-increasing amount and variety of data processing means that it is increasingly difficult and time consuming for her to maintain an accurate central register giving details on the wide range of processing activities they undertake.

The Government believe that the maintenance of such an ever-growing register of the kind required by the 1998 Act would not be a proportionate use of the Information Commissioner's resources. Rather, as I am sure noble Lords will agree, the commissioner's efforts are best focused on addressing breaches of individuals' personal data, seeking redress for the distress this causes and preventing the recurrence of such breaches. The GDPR does not require that a register similar to that created by the 1998 Act be maintained, but that does not mean there is a corresponding absence of transparency. Under articles 13 and 14 of the GDPR and Clauses 42 and 91 of the Bill, controllers must provide data subjects with a wide range of information about their processing activities or proposed processing activities at the point at which they obtain their data.

Nor will there be absence of oversight by the commissioner. Indeed, data controllers will be required to keep records of their processing activities and make those records available to the Information Commissioner on request. In the event of non-compliance with such a request, the commissioner can pursue enforcement action. The only material change from the 1998 Act is that the Information Commissioner will no longer have the burden of maintaining a detailed central register that includes controllers' processing activities.

I turn now to Amendment 153ZA which would give the Information Commissioner two new duties. The Government believe that both are unnecessary. The first new duty, to verify the proportionality of a controller's reliance on a derogation and ensure that the controller has adequate systems in place to safeguard the rights of data subjects, is unnecessary because proportionality and adequate safeguards are core concepts of both the GDPR and the Bill. For example, processing is permissible only under a condition listed in Schedule 1 if it is necessary for a reason of substantial public interest. Any provision to require the commissioner to enforce the law is at best otiose and at worst risks skewing the commissioner's incentives to undertake enforcement action. Of course, if the noble Lord feels that the Bill would benefit from additional safeguards or proportionality requirements, I would be happy to consider them.

The second new duty, to consult on how to support claims taken by UK residents against a data controller based in another territory who has breached their data protection rights, is in our view also unnecessary. As made clear in her international strategy, which was published in June, the Information Commissioner is very aware of the need for international co-operation on data protection issues, including enforcement. For example, she is an active member of the Article 29 Working Party and the Global Privacy Enforcement Network, and her office provides the secretariat for the Common Thread Network, which brings together Commonwealth countries' supervisory authorities. Only last month, her office led an international sweep of major consumer websites, in which 23 other data protection regulators from around the world participated. Clause 118 of the Bill and article 50 of the GDPR require her to continue that important work, including through engaging relevant stakeholders in discussion and activities for the purpose of furthering international

enforcement. Against this background, the Government do not feel that additional prescriptive requirements would add value.

3.30 pm

The noble Lord talked about co-operation with EU member states after the UK has left the EU. As he noted, the Information Commissioner works closely with other EU regulators and is well regarded among her EU and international counterparts. But of course, the detail, such as representatives, on how the UK and EU systems interact post exit is a matter for negotiations, and the Government are keen for this co-operation to continue and do not see any reason why it should not. We believe that regulatory co-operation between the UK and the EU on a range of issues, including data protection, will be essential, not least because the GDPR will continue to apply to UK businesses, offering goods and services to individuals in the EEA. We want to build a new, deep and special partnership with the EU; that relationship could enable an ongoing role for the Information Commissioner in EU regulatory forums, preserving the existing valuable regulatory co-operation and building a productive partnership to tackle future challenges.

While we are on the subject of the Information Commissioner's role, I want to comment on a matter that the House authorities have raised with the Bill team. There are some concerns about the potential role of the commissioner in relation to proceedings in Parliament. For example, it may arguably be a breach of the GDPR for a corporate officer of the House to continue to process inaccurate personal data contained in privileged material, such as an Early Day Motion containing names of individuals, which in theory could be enforceable by action taken by the Information Commissioner. Let me put on record that there is no intention that the Information Commissioner be involved in the proceedings of Parliament. Article 6 of the GDPR sets out the function of the commissioner and we have included in the Bill provision to supplement that where we can. While the commissioner must be independent, she also reports to, and respects, Parliament and will not interfere with proceedings or undermine parliamentary privilege.

I hope that provides some reassurance to the House authorities. I also hope that, in the light of my response to the proposed amendments, noble Lords feel able not to press them today. Before I finish, I should mention the intervention of the noble Baroness, Lady O'Neill. I asked her for the paragraph she mentioned; I looked at it, but I am afraid I was not quick enough to catch up with her. If I may, I will read her comments in *Hansard* and reply by letter.

Lord Stevenson of Balmacara: My Lords, I want to come back to an issue relating to the situation post Brexit: companies operating in the UK, for which a representative will not be required. I listened to the Minister very carefully and I understand what he is saying, but I take it that, post Brexit, he is basically relying on the force of the Information Commissioner's personality and her ability to maintain her current relationships and build on them. As such, when taking issues abroad, individuals in the UK will not have any statutory provision, as they currently do, but will have to rely on the informal mechanisms the Minister mentioned and their own resources. He has failed to answer the question whether that is a good situation to be in as we progress through the Bill, but I will read what he said more carefully and come back to him later.

Lord Paddick: My Lords, I thank the noble Baroness, Lady O'Neill of Bengarve, for her contribution—we will look at that should we bring back the amendment on Report. I also thank the noble Lord, Lord Stevenson of Balmacara, for his support for the amendment.

The Minister said that provision in the 1998 Act requiring all data controllers to be registered was an important part of data protection, yet his argument for not continuing with that seemed to be that it would be difficult to maintain a register with the numbers now involved. Either the register is an important contribution to data protection or it is not. In any event, we should bear in mind that a charge could be levied. The Minister suggested that a register would not be a proportionate use of the Information Commissioner's resources, but those resources could significantly increase. If the existing law were enforced, it is estimated that an additional £1 billion in income would be possible.

On a detailed central register, I said when introducing the amendment that the detail suggested would be far less than is currently the case. However, we will reflect on what the Minister said. For the moment, I beg leave to withdraw the amendment.

Amendment 153 withdrawn.

Amendment 153ZA not moved.

Schedule 13: Other general functions of the Commissioner

Amendment 153A not moved.

Schedule 13 agreed.

Clauses 115 and 116 agreed.

Schedule 14 agreed.

Clause 117: Inspection of personal data in accordance with international obligations

Amendment 153B

Moved by ***Lord Stevenson of Balmacara***

153B: Clause 117, page 63, line 35, leave out subsection (5)

Lord Stevenson of Balmacara: My Lords, the amendment is in my name and that of my noble friend Lord Kennedy. Clause 117 allows the commissioner to inspect personal data held on any automated or structured system where the inspection is necessary,

"to discharge an international obligation of the United Kingdom".

Before exercising the power, the commissioner under subsection (4) must by written notice inform a controller of her intention. However, this does not apply if the case is "urgent". Since in every other aspect of the Bill phrases such as "urgent" are usually defined, uniquely in this case it is not, so the amendment is merely to allow the Minister to read into record those cases that he might consider to be urgent. I beg to move.

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lord. I am just looking through my notes to find the bit that states what determines whether a case is urgent—but, before that, I thought he might like to hear the other things that I have to say.

In addition to the essential role of enforcing data protection law in the UK, the Information Commissioner has a role to play where personal data is processed in accordance with international obligations. We are aware of three cases where the commissioner's oversight is currently required: the Schengen Information System, the Europol Information System and the Customs Information System. The conventions that establish these systems require the supervisory authority to have free access to national sections.

Clause 117 provides that the commissioner may inspect personal data to fulfil an international obligation, as long as the commissioner notifies the controller and any processor in any case where there is sufficient time to do so. The clause is very similar to Section 54A of the 1998 Act, with one slight change: namely, we have made a general power, which the noble Lord will be pleased to see in the Bill. This is intended simply to eliminate the need to legislate for every system the UK joins or leaves, thereby future-proofing the legislation. The amendment would remove the commissioner's ability to make such an inspection without prior written notice in cases that the commissioner considers urgent. We certainly expect that the commissioner will not normally need to do that and that it will be the exception rather than the rule. The amendment would therefore be a retrograde step since it changes the position that currently pertains in the 1998 Act.

As to what is and is not urgent—I hasten to add that this has never actually been applied by the Information Commissioner—it is for the Information Commissioner to determine. That is consistent with the existing position, as I mentioned, and it remains appropriate, so that each case can be assessed on its own merits. Of course, if the decision of the Information Commissioner were unreasonable, it would be amenable to judicial review. As I said, there is only one example that we know of when the Information Commissioner has needed to make use of the section at all, which was a routine audit that was not deemed urgent. A hypothetical example might be if the commissioner needed to urgently inspect a system if the need arose in the context of a request for extradition. I hope that the noble Lord is satisfied with my explanation and will feel able to withdraw his amendment.

Lord Stevenson of Balmacara: I thank the Minister; he adequately covered the points and I am happy to withdraw the amendment.

Amendment 153B withdrawn.

Clauses 117 and 118 agreed.

Clause 119: Data-sharing code

Amendment 153C

Moved by ***Lord Stevenson of Balmacara***

153C: Clause 119, page 65, line 2, at end insert "subject to the process under section 121"

Lord Stevenson of Balmacara: My Lords, the amendments in this small group are probing in nature. Amendment 153C is in my name and that of my noble friend Lord Kennedy. Clause 119 places an obligation on the commissioner to publish and keep under review a data-sharing code of practice that would contain guidance on data sharing and good practice, as the name suggests. This is good, we talked about it in some detail in earlier sittings of the Committee and we have no problems with it. It continues a practice that we are well aware of and there are no particular issues arising from it, provided that it continues to be comprehensive and to provide the sort of advice that data controllers and data subjects will need as we go forward.

Amendment 153D raises the question of whether a 40-day approval process for codes should apply, in order to make it clear that codes under Clauses 119 and 120 are subject to parliamentary scrutiny and that the 40-day approval period would fit in with the procedures of Parliament. As I said, this is a probing amendment and I would be grateful to have the comments of the Minister in due course.

Amendment 154A concerns the statement that the commissioner will review and revise the codes regularly, or keep each code under review. There is no specification of the timescale or the frequency of that. I suspect that the answer will be that it will be as seen fit by the Information Commissioner—but if the Minister can shed some light on this, it would be helpful.

Finally, Amendment 154B draws attention to Clause 119(2), which says, at the top of page 65:

"Where a code under this section is in force, the Commissioner may prepare amendments of the code or a replacement code".

We have already touched on this, and the procedure is not explained. I would like to confirm that, since this matter may be of interest to Parliament, it will be by the affirmative procedure. I look forward to hearing a response and I beg to move.

3.45 pm

Baroness Chisholm of Owlpen (Con): My Lords, as my noble friend and I have mentioned previously, one of the Government's primary concerns is to ensure that organisations of all sizes are supported in the transition to the new regime. To that end, the Bill maintains the requirement in the Data Protection Act 1998 for the Information Commissioner to publish codes of practice on data sharing and direct marketing.

When these codes are first published, they will rightly be subject to parliamentary scrutiny, although of course "first published" is slightly misleading as almost identical codes have been, or will have been, published under the 1998 Act before the Bill reaches Royal Assent. Either way, Amendments 153C and 153D seek to ensure that any future amendments to the data-sharing code of practice or the direct marketing code of practice are also subject to parliamentary scrutiny. I understand and appreciate the sentiment behind the amendments. I am happy to reassure the noble Lord that under Clause 121(8) it is already the case that amendments to the code are subject to parliamentary scrutiny.

Amendment 154A would require the commissioner to review the codes of practice at least once every three years. However, I point out to the noble Lord that the Bill already requires the commissioner to keep the codes of practice under review while they are in force and the Government do not consider that specifying a three-year timeframe between reviews would add any benefit. Indeed, it might create the misleading impression that the code should be reviewed only once every three years, when in fact it is a continuous process.

Finally, I turn to Amendment 154B. The Bill makes provision for the Information Commissioner to publish additional codes of practice beyond the two codes on data sharing and direct marketing. The noble Lord's amendment would require any such additional codes to be subject to the affirmative resolution procedure. When preparing such codes, the commissioner must first consult trade associations, data subjects and other stakeholders the commissioner deems appropriate. The Government's view is that, given the requirement for advance consultation with interested parties, and the fact that any regulations would simply place the commissioner under a duty to issue a code of practice providing practical guidance on the processing of specified classes of personal data of action, the negative resolution procedure remains appropriate.

To sum up, first, the purpose of the two codes of practice is to provide practical guidance to data controllers on the proper application of the data protection legislation; as such, they do not alter the law. Secondly, the procedure used to approve codes and amendments to codes is the same as found in Sections 52A and 52AA of the current Data Protection Act, the latter of which was inserted only earlier this year by the Digital Economy Act. That also means that the Delegated Powers and Regulatory Reform Committee of your Lordships' House has considered this matter twice in the past year, and we are not aware that it had any concerns. I hope that has reassured the noble Lord and he feels able to withdraw his amendment.

Lord Stevenson of Balmacara: My Lords, I am grateful to the Minister for her comments. She always sounds so reassuring, it is very hard to be critical. She did a rather better job of summarising what my amendments are about than I did—and I say that without any rancour or any concern. I am very grateful to her on all these counts. I beg leave to withdraw the amendment.

Amendment 153C withdrawn.

Clause 119 agreed.

Clause 120: Direct marketing code

Amendment 153D not moved.

Clause 120 agreed.

Amendment 154 not moved.

Clause 121 agreed.

Clause 122: Publication and review of data-sharing and direct marketing codes

Amendment 154A not moved.

Clause 122 agreed.

Clause 123 agreed.

Clause 124: Other codes of practice

Amendment 154B not moved.

Clause 124 agreed.

Amendments 155 to 157 not moved.

Amendment 157A

Moved by ***Lord Stevenson of Balmacara***

157A: After Clause 124, insert the following new Clause—

"Personal data ethics code of practice

(1) Within six months of the passing of this Act, the Commissioner must prepare an ethics code of practice for data controllers.

(2) The code must include a duty of care from the data controller and the processor to the data subject.

(3) The code must provide best practice for data controllers and processors on measures which, in relation to the processing of personal data—

(a) reduce vulnerabilities and inequalities;

(b) protect human rights;

(c) increase the security of personal data;

(d) ensure that the access, use and sharing of personal data is transparent, and the purposes of personal data processing are communicated clearly and accessibly to data subjects.

(4) The code must consider—

(a) how to support data processing which has clear benefits for users and members of the public;

(b) the effectiveness of measures to seek the consent of users to the collection and use of their personal data;

(c) the risks and limitations of new technologies, ensuring that there is sufficient human oversight.

(5) The code must also provide guidance on—

(a) default privacy settings;

(b) data minimisation standards;

(c) presentation and language of terms and conditions;

(d) transparency of paid for activity, such as product placement and marketing;

(e) sharing and resale of data;

(f) veracity and accuracy of information;

(g) strategies used to encourage extended user engagement;

(h) user reporting and resolution processes and systems;

(i) responses to unintended consequences of technological advances in the processing of personal data; and

(j) any other aspect of design that the Commissioner considers relevant.

(6) Where a data controller or processor does not follow the code under this section, the data controller or processor is subject to a fine to be determined by the Commissioner.

(7) Before preparing the code of practice and prior to every revision, the Commissioner must consult the Secretary of State and relevant stakeholders.

(8) The Secretary of State must bring the code of practice into force by regulations made by statutory instrument.

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

Lord Stevenson of Balmacara: My Lords, with so many codes of practice flying around it would not be hard to lose one in the crowd, but this one stands out. With this amendment, we are suggesting to the Government that there is a need at the top of the pyramid for a code of practice which looks at the whole question of data ethics and morality. We discussed this topic in earlier sittings of the Committee and I think we were of one mind that there was a gap in the overall architecture of the organisations supporting data processing, which concerned us, in the sense that there was a need for an expert body.

The body could be some sort of combination along the lines of the HFEA or the Committee on Climate Change. It would have a duty to look at the moral and ethical issues affecting data collection and use, and be able to do some blue-sky thinking and to provide a supervisory approach to the way in which thinking on these matters would have to go. We are all aware, as has been mentioned many times, that this is a fast-moving technology in an area full of change where people feel a bit concerned about where their data is and how it is being looked at. They are worried that they do not have sufficient control or understanding of the processes involved.

The amendment suggests to the Government a data ethics code of practice which I hope they will look at with some care. It would begin to provide a hand of support to individuals who are concerned about their data and how it has been processed. Under this code of practice the commissioner could set out the moral and ethical issues, rather than the practical day-to-day stuff. It would focus on duties of care and need to provide examples of where best practice can be found. It would increase the security of personal data and ensure that the access to its use and sharing were transparent, and that the purposes of data processing were communicated to data subjects.

Some codes of this type already exist. I think that the Royal Statistical Society has been behind a number of codes on the use of our overall statistics, such as that operated within the OSS. Having read that code, I was struck by how apposite it was to some of the issues faced in the data-processing community. Some of the wording of this amendment comes from that, while other wording comes from think tanks and others who are working in this field. It will also come as no surprise to the Committee that some of the detail in the code's latter subsections about privacy settings, minimisation standards and the language of terms and conditions also featured in the proposed code recommended to the Committee by the noble Baroness, Lady Kidron, in relation to children's use of the internet and how their data is treated. The amendment meets other interests and examples of activity. It seems to fulfil a need, which is becoming more pressing every day, and is ambitious in its attempt to try to make sure that whatever regulatory and statutory provisions are in place, there will also be a wider dimension employed, which I think we will increasingly be part of.

I do not expect the Government to accept the amendment tout court, because it needs a lot more work. I fully accept that the drafting is a bit rough at the edges, despite the fact that we spent a lot of time in the Public Bill Office trying to get it right. I have already explained that I am not very good at synthesising in the way that the Bill team obviously is. I have no doubt that when he responds the Minister will be able to encapsulate in a few choice words what I have been struggling to say over the past three or four sentences—he nods, so it is clearly going to hit me again. I hope that he will take away from this short debate that this is an issue that will not go away. It is an issue that we need to address, and it may be that the new body, which was, I think, generally accepted by the Committee as something that we should move to in short order, might take on this as its first task. I beg to move.

Lord Clement-Jones (LD): My Lords, the noble Lord, Lord Stevenson, is too modest about his drafting—I think that this is one of the most important amendments to the Bill that we have seen to date. I am just sorry that we were not quick enough off the mark to put our name to it. I do not know which hand the noble Lord, Lord Stevenson, is using—there seem to be a certain number of hands involved in this—but anybody who has read Jonathan Taplin's *Move Fast and Break Things*, as I did over the weekend, would be utterly convinced of the need for a code of ethics in these circumstances. The increasing use of data in artificial intelligence and algorithms means that we need to be absolutely clear about the ethics involved in that application. The noble Lord, Lord Stevenson, mentioned a number of codes that he has based this amendment on, but what I like about it is that it does not predicate any particular code at this stage. It just talks about the desirable architecture of the code. That makes it a very robust amendment.

Like the noble Lord, I have looked at various other codes of ethics. For instance, the IEEE has rather a good code of ethics. This is all of a piece with the stewardship council, the data ethics body that we debated in the previous day in Committee. As the Royal Society said, the two go together. A code of ethics goes together with a stewardship council, data ethics committee or whatever one calls it. You cannot have one without the other. Going forward, whether or not we agree today on this amendment, it is very clear that we need to keep coming back to this issue because this is the future. We have to get it right, and we cannot prejudice the future by not having the right ethical framework.

Lord Puttnam (Lab): My Lords, I support this amendment and identify myself totally with the remarks of the noble Lord, Lord Clement-Jones. I am trying to be practical, and I am possibly even pushing at an open door here. I have a facsimile of the 1931 Highway Code. The introduction by the then Minister says:

"By Section 45 of the Road Traffic Act, 1930, the Minister of Transport is directed to prepare a code of directions for the guidance of road users … During the passage of the Act through Parliament, the opinion was expressed almost universally … that much more could be done to ensure safety by the instruction and education of all road users as to their duties and obligations to one another and to the community as a whole".

Those last few words are very important. This must be, in a sense, a citizens' charter for users—a constantly updated notion—of the digital environment to be sure of their rights and of their rights of appeal against misuse. This is exactly where the Government have a duty of care to protect people from things they do not know about as we move into a very difficult, almost unknown digital environment. That was the thinking behind the 1931 Highway Code, and we could do a lot worse than do something similar. That is probably enough for now, but I will undoubtedly return to this on Report.

Baroness O'Neill of Bengarve: My Lords, I support the spirit of this amendment. I think it is the right thing and that we ultimately might aspire to a code. In the meantime, I suspect that there is a lot of work to be done because the field is changing extremely fast. The stewardship body which the noble Lord referred to, a deliberative body, may be the right prelude to identifying the shape that a code should now take, so perhaps this has to be taken in a number of steps and not in one bound.

Baroness Hamwee (LD): My Lords, I too support the amendment. Picking up this last point, I am looking to see whether the draft clause contains provisions for keeping the code under review. A citizens' charter is a very good way of describing the objective of such a code. I speak as a citizen who has very frequently, I am sure, given uninformed consent to the use of my data, and the whole issue of informed consent would be at the centre of such a code.

4 pm

Lord Ashton of Hyde: My Lords, I am very grateful to the noble Lord, Lord Stevenson, for tabling this amendment, which allows us to return to our discussions on data ethics, which were unfortunately curtailed on the last occasion. The noble Lord invited me to give him a few choice words to summarise his amendments. I can think of a few choice words for some of his other amendments, but today I agree with a lot of the sentiment behind this one. It is useful to discuss this very important issue, and I am sure we will return to it. The noble Lord, Lord Puttnam, brought the 1931 Highway Code into the discussion, which was apposite, as I think the present Highway Code is about to have a rewrite due to autonomous vehicles—it is absolutely right, as he mentioned, that these codes have to be future-proofed. If there is one thing we are certain of, it is that these issues are changing almost by the day and the week.

The noble Lord, Lord Stevenson, has rightly highlighted a number of times during our consideration of the Bill that the key issue is the need for trust between individuals and data controllers. If there is no trust in what is set up under the Bill, then there will not be any buy-in from the general public. The noble Lord is absolutely right on that. That is why the Government are committed to setting up an expert advisory body on data ethics. The noble Lord mentioned the HFEA and the Committee on Climate Change, which are interesting prior examples that we are considering. I mentioned during our last discussion that the Secretary of State was personally leading on this important matter. He is committed to ensuring that just such a body is set up, and in a timely manner.

However, although I agree with and share the intentions that the noble Lord has expressed through this amendment, which other noble Lords have agreed with, I cannot agree with the mechanism through which he has chosen to express them. When we previously debated this topic, I was clear that we needed to draw the line between the function of an advisory ethics body and the Information Commissioner. The proposed ethics code in this amendment is again straddling this boundary.

Our new data protection law as found in this Bill and the GDPR will already require data controllers to do many of the things found in this amendment. Securing personal data, transparency of processing, clear consent, and lawful sharing and use are all matters set out in the new law. The commissioner will produce guidance, for that is already one of her statutory functions and, where the law is broken, the commissioner will be well equipped with enforcement powers. The law will be clear in this area, so all this amendment will do is add a layer of complexity.

The Information Commissioner's remit is to provide expert advice on applying data protection law. She is not a moral philosopher. It is not her role to consider whether data processing is addressing inequalities in society or whether there are public benefits in data processing. Her role is to help us comply with the law to regulate its operation, which involves fairly handling complaints from data subjects about the processing of their personal data by controllers and processors, and to penalise those found to be in breach. The amendment that the noble Lord has tabled would extend the commissioner's remit far beyond what is required of her as a UK supervisory authority for data protection and, given the breadth of the code set out in his amendment, would essentially require the commissioner to become a regulator on a much more significant scale than at present.

This amendment would stretch the commissioner's resources and divert from her core functions. We need to examine the ethics of how data is used, not just personal data. However, the priority for the commissioner is helping us to implement the new law to ensure that the UK has in place the comprehensive data protection regime that we need and to help to prepare the UK for our exit from the EU. These are massive tasks and we must not distract the commissioner from them.

There is of course a future role for the commissioner to work in partnership with the new expert group on ethics that we are creating. We will explore that further once we set out our plans shortly. It is also worth noting that the Bill is equipped to future-proof the commissioner to take on this role: under Clause 124, the Secretary of State may by regulation require the commissioner to produce appropriate codes of practice. While the amendment has an arbitrary shopping list, much of which the commissioner is tasked with already, the Bill allows for a targeted code to be developed as and when the need arises.

[Lord Ashton of Hyde]

The Government recognise the need for further credible and expert advice on the broader issues of the ethical use of data. As I mentioned last week, it is important that the new advisory body has a clearly defined role focused on the ethics of data use and gaps in the regulatory landscape. The body will as a matter of necessity have strong relationships with the Information Commissioner and other bodies that have a role in this space. For the moment, with that in mind, I would be grateful if the noble Lord withdrew his amendment. As I say, we absolutely understand the reasons behind it and we have taken on board the views of all noble Lords in this debate.

Lord Clement-Jones: My Lords, do the Minister or the Government yet have a clear idea of whether the power in the Bill to draw up a code will be invoked, or whether there will be some other mechanism?

Lord Ashton of Hyde: At the moment, I do not think there is any anticipation for using that power in the near future, but it is there if necessary in the light of the broader discussions on data ethics.

Lord Clement-Jones: So the Minister believes it is going to be the specially set-up data ethics body, not the powers under the Bill, that would actually do that?

Lord Ashton of Hyde: I do not want to be prescriptive on this because the data ethics body has not been set up. We know where we think it is going, but it is still to be announced and the Secretary of State is working on this. The legal powers are in the Bill, and the data ethics body is more likely to be an advisory body.

Lord Stevenson of Balmacara: I thank all noble Lords who have contributed to this debate. It has been a short but high-quality one that has done a lot to tease out some of the issues behind the amendment. I am grateful to the noble Lord, Lord Clement-Jones, for his kind words about what I was saying, but also for reminding me that there were other groups working on this. I absolutely agree that the IEEE is one of the best examples of thinking on this; it may come from a strange source, in the sense that it is a professional body involved more with the electronic side of things, but the wording of the report that I saw was very good and bore very firmly on the issues in this amendment.

So where are we? We seem to be sure that a body will be set up that will be at least advisory in terms of the issues that we are talking about, although I think the Minister was leaving us with the impression that the connection would be made outside the Bill, not within it. That is possibly a bit of a mistake; I think a case is now developing, along the lines set out by my noble friend Lord Puttnam, that we need to see both sides of this in the Bill. We do not need to see the firm regulatory action, the need to comply with the law and the penalties that can be applied by the regulator, the Information Commissioner, but we need to see a context in order to build trust and allow people to understand better what the future growth, change and trends in this area will be, because they are concerned about them. I do not think you can do that if these bodies are completely separate. I suspect we need to be surer about how the connections are to be made, and we will gain if there is in fact a proper connection between the two.

If the Information Commissioner is not to be a moral philosopher—who needs moral philosophers when there are so many around?—she will certainly need to have good advice, which can come only from expertise gathered around the issues that we have been talking about. That is not the same as making sure that she is robust about people applying the law; the difference there is the reason why we want to do that.

The other half of this equation is that it may well be fine for an advisory body to opine about where the moral climate is going and where ethics might take you in practice, but if the companies concerned are not practising what they are hearing, we will be no further forward. Surely a code will have to be devised, whether now or later, to make sure that the lessons learned, the information gathered and the blue sky thinking that is around actually bite on those who are affecting our individuals—whether they be young, vulnerable or adult—and that they are fully compliant with all the aspects of what they have signed up to. We will need to come back to this but, in the meantime, I beg leave to withdraw the amendment.

Amendment 157A withdrawn.

Clauses 125 and 126 agreed.

Clause 127: Confidentiality of information

Amendment 158

Moved by ***Baroness Chisholm of Owlpen***

158: Clause 127, page 68, line 31, leave out "It is an offence for"

Baroness Chisholm of Owlpen: My Lords, I shall speak briefly about the Government's motives in tabling this group of amendments. There are 27 amendments in the group, but fear not: I shall avoid the temptation to talk through them all, instead focusing on only a few which may be of interest. Also, noble Lords received letters from my noble friend on 20 October and 14 November addressing the issues in the amendments.

I start with Amendments 163, 164 and 168. Clause 139 provides a criminal offence of failure to comply with an information notice. This is a hangover from the 1998 Act but, on reflection, the Government consider that it is no longer required, as the Information Commissioner will now have access to a much broader range of administrative penalties. Removing the criminal offence would also align the maximum penalty with that for failure to comply with an enforcement notice, ensuring that the commissioner is not disincentivised from serving an enforcement notice if she considers that that is the most appropriate course of action.

Amendments 165, 166 and 167 amend Schedule 16. Where the commissioner intends to give an administrative penalty, she must give a notice of intent, to which the data controller may make representations. The commissioner has six months from the point at which the notice of intent is given to issue a penalty notice. In some complex cases, the data controller may need

more than six months to make their initial representations, or there may be a continuing technical dialogue between the parties. These amendments allow—but, importantly, do not compel—the commissioner and the controller to mutually agree to extend the six-month deadline to allow the process to reach its natural conclusion.

Finally among the many amendments in this group, Amendment 188A provides a list of consequential amendments. I mention it here for two reasons. First, as noble Lords will have noticed, it is a long list: references to the Data Protection Act appear in more than 50 other pieces of primary legislation. Secondly—this is a response to a point made by the noble Lord, Lord McNally, on a previous day in Committee—it is testament to the importance that the Government attach to having a regime that is fully operational in time for 25 May 2018. Such a tight turnaround means that there is no time to take through secondary legislation after Royal Assent, which is the Government's usual approach to consequential amendments. Instead, we must put everything that we need for 25 May in the Bill. Amendment 188A is another step towards that goal.

On that note, my Lords, I beg to move.

4.15 pm

Lord Griffiths of Burry Port (Lab): My Lords, it is an extraordinary list of amendments that address things in great detail; they are all about tidying up and working things out as we go along. Since that is what we try to do as often as we can, it is nice to see the effort that has been made and hours that have been spent. Much of it is logical and needs no further discussion, but we have in respect of amendments in the range of Amendment 171, and so on, a bit of a worry about the notion that personal data is processed for special purposes—journalism, academic, artistic or literary purposes—and that there are exemptions in place so that the commissioner must first determine whether processing is for a special purpose before taking further enforcement action.

We have always understood that the provisions at this point are only asking in this Bill to replicate the conditions obtaining in such cases in the 1998 legislation. This particular detail makes it seem as if that might not be the case, because we have submissions from various people in the media to suggest that, while they understand the regulations, to step in before the material is put together to make this determination feels a bit threatening. Can the Minister guarantee that the provisions in this Bill are identical with those in the 1998 Act?

There is not an adequate mention, again, according to people in the field, of the relation of photography and photojournalism to written journalism. Could that be thought about, too? If everything is the same, we have no further questions but, if not, could the Minister tell us exactly what the differences are and whether she can write to us so that we may know what they are?

Baroness Chisholm of Owlpen: As the noble Lord said, this particular group of amendments is where personal data is processed for special purposes for journalism, academic, artistic or literary purposes. There are certain exemptions in place, so the commissioner must first determine whether processing is for special purposes before taking further enforcement action. A special purposes determination can be appealed to a court, not a tribunal; these amendments correct the Bill as only a court, not tribunals, are relevant. They also make technical corrections to ensure compatibility with Scots law. The definition of special purposes proceedings is also widened slightly so that special purposes can be asserted in a wider range of situations.

I think that I have inspiration coming from my right hand side. The noble Lord mentioned photojournalism, which is included in the data—I think that that is what he meant.

Lord Griffiths of Burry Port: I sympathise with the Minister, who sought inspiration from behind, because it is what I do all the time. Those who have expressed anxiety to us are worried that pressure will be put on them as programme makers and investigative journalists prior to publication and issuing their material in edited form, whereas currently they are subject to the regulation once that material has been put together. That is the area where anxieties have been expressed, and we need some reassurance on that point.

Baroness Chisholm of Owlpen: The best thing that I can do is to have a look and get back to the noble Lord on those points, if that is okay.

Amendment 158 agreed.

Amendments 159 to 161

Moved by ***Baroness Chisholm of Owlpen***

159: Clause 127, page 68, line 32, leave out "knowingly or recklessly to" and insert "must not"

160: Clause 127, page 68, line 37, leave out "living"

161: Clause 127, page 69, line 17, at end insert—

"( ) It is an offence for a person knowingly or recklessly to disclose information in contravention of subsection (1)."

Amendments 159 to 161 agreed.

Clause 127, as amended, agreed.

Clause 128: Guidance about privileged communications

Amendment 161A

Moved by ***Baroness Hamwee***

161A: Clause 128, page 69, line 23, after "communications" insert "and confidential legal materials"

Baroness Hamwee: My Lords, I speak also to the other amendments in this group. All these amendments are suggested by the Bar Council and stand in my name and those of the noble Lord, Lord Arbuthnot of Edrom, and the noble Baroness, Lady Neville-Rolfe. All concern legal professional privilege, a subject which the Committee and the House have frequently debated. I know I do not need to stress its importance or remind noble Lords—but obviously, I am just about to—that the confidentiality and privilege are those of the client, not the lawyer.

[Baroness Hamwee]

The Bar Council comments that the powers of the commissioner to have access to the information and systems of data controllers should be limited where the data controller is a legal professional or anyone subject to the requirements of client confidentiality and legal professional privilege. It reminded us that there are exceptions in the 1998 Act which deal with this. Legal professional privilege cannot be waived by the lawyer but is subject to contractual or other legal restrictions. In the clauses in question, legal professional privilege seems to be overridden in circumstances where the commissioner considers that she needs to look at the data to perform her functions. Clause 128(1) refers to use or disclosure,

"only so far as necessary for carrying out those functions"—

that is, the commissioner's functions. I suggest that this is inappropriate given the provisions elsewhere in the Bill which we now seek to amend.

Amendments 161A, 161B, 161C and 161D deal with confidential legal materials which it is proposed should be inserted and covered. These are defined in the last of these four amendments as "materials brought into being", as distinct from documents which are communicated between an adviser and a client, and thus would be wider, and include materials brought into being,

"for the purpose of establishing, exercising or defending legal rights",

which is wider than the Bill provides.

The Bill does not contain directions as to the purpose of the guidance on protection of privileged material. Amendment 161C would give a direction to the commissioner as to the purpose. Amendments 162A, 162B, 163ZA and 163ZB would again extend the protection. Clauses 138 and 141 are limited to documents that relate to data protection legislation. These amendments would widen the protection to all documents protected by legal professional privilege.

Clause 138(5) does not cover the right of self-incrimination of other persons, such as the client of a legal representative or a family member of a client, who would not be entitled to rely on privilege. Amendment 162C would widen the class of persons to others. Since the client may well be seeking advice or representation in relation to a matter which might incriminate him, the Bar Council asks us to point out that this is particularly important.

Amendment 163B reflects provisions in Clause 138, on information notices, and in Clause 141, on assessment notices, and extends the restrictions to enforcement notices. The clauses I have mentioned provide that a person is not required to give the commissioner privileged material—I beg your Lordships' pardon; a bracket has been opened and I am seeking where it closes—in response to such a notice. As I say, this would extend that restriction to enforcement notices.

Finally, on Amendment 164B, professionals may be restricted in providing information to the commissioner in respect of their processing, because of privilege or an obligation of confidentiality, compliance with the Bar code of conduct, or rules or orders of the court. The Bar Council wishes the Committee to be aware that a barrister,

"may wish to disclose information in mitigation or explanation for a breach of the GDPR provisions, but be unable to do so because disclosure would place",

counsel,

"in breach of professional conduct rules or other confidentiality obligations, or in breach of data protection obligations because it is not possible to obtain consent for",

the processing.

Compliance with the profession's rules might have the result of exposing a barrister to a higher penalty to be imposed by the commissioner as a result of that inability, which does not seem fair. The amendment would provide that circumstances of this kind may be taken into account by the commissioner when assessing the penalty by adding a paragraph to the mitigating circumstances in the list. As the Bar Council points out, none of these points would prevent the commissioner effectively carrying out her duties. Even if she were,

"prevented from seeing privileged and confidential material, this … would be a justified and necessary consequence of … proper weight being given to the citizen's fundamental right to consult a lawyer and to maintain the confidentiality".

However, if unamended, there could be a conflict between the legal regulators and the commissioner. I beg to move.

Lord Arbuthnot of Edrom (Con): My Lords, I am grateful to the noble Baroness, Lady Hamwee, and to the Bar Council for the help it has given us on these amendments. I declare an interest—at least, I suppose I do—in that my wife is a judge and I used to practice as a Chancery barrister long ago.

It is an essential part of our legal system that people should have access to the justice system without communications between the client and the lawyer being disclosed—or, at any rate, that those disclosures should have only the rarest occurrence, such as, for example, if a communication is to be used to facilitate a crime. In those circumstances alone can legal professional privilege be waived. I suggest that the Bill should recognise the value of legal professional privilege but that it does not put that recognition into full effect. I hope that our amendments would achieve that.

4.30 pm

Lord Ashton of Hyde: My Lords, I am grateful to the noble Baroness, Lady Hamwee, for tabling these amendments. I know that the Bar Council has raised similar concerns with officials in my department and I am keen that that dialogue continue.

Before I address the amendments, I would like to say something about the overarching principles in relation to the interaction between data protection and legal professional privilege.

The right of a person to seek confidential advice from a legal adviser is indeed, as my noble friend Lord Arbuthnot said, a fundamental right of any person in the UK and a crucial part of our legal system. The Government in no way dispute that, and I reassure noble Lords that this Bill does not erode the principle of legal professional privilege.

It is true that the Data Protection Act 1998 allows the Information Commissioner to use her powers to investigate alleged data breaches by law firms, and

sometimes the information she requests in order to carry out a thorough investigation may contain information which is subject to legal professional privilege. The commissioner recognises the sensitivity of material protected by legal professional privilege and has established processes in place for protecting it. Any material identified by the data controller as privileged is isolated if seized during a search and it is then sent directly to independent counsel for review. Counsel then provides an opinion on whether privilege applies. If counsel decides that the data is not privileged, the data controller can still dispute the Information Commissioner's right to access that material and has the right to appeal to a tribunal, which will carry out a full merits review.

The Government are seeking only to replicate, as far as possible, in the current Bill the existing provisions relating to legal professional privilege in the 1998 Act. It is, for example, vital that the Information Commissioner retains the power to investigate law firms. They, like other data controllers, can make mistakes. If personal data is lost, stolen or disclosed unlawfully, that can have serious consequences for data subjects. It is right that the Information Commissioner retains the ability to investigate potential breaches by lawyers. They are not above the law.

As a final point of principle before we examine the amendments in detail, it is also worth highlighting that Clause 128 introduces a new requirement for the Information Commissioner to publish guidance on how legally privileged material obtained in the course of her investigations will be safeguarded. There was no similar requirement in the 1998 Act, so in that respect the current Bill actively strengthens protections for legal professional privilege. This has been included because historically the commissioner has found that a minority of those in the legal profession refuse to allow her access to personal data on the basis that it is privileged. The profession has not always understood that it must disclose the data and that the commissioner then has processes and procedures to protect that data. This guidance will make it clearer to the legal profession that robust safeguards are in place.

I turn to the amendments in this group. As I have said, Clause 128 provides that the Information Commissioner must publish guidance on the safeguards in relation to legally privileged communications. Amendments 161A and 161B would amend subsection (1) to clarify that any guidance published by the commissioner should cover the handling of any "confidential legal materials" as well as any communications between legal adviser and client. Amendment 161D would then introduce a wide definition of "confidential legal materials". This, in our view, is unnecessary. I have no doubt that the Information Commissioner will interpret this to include draft communications.

Bills have grown in length over the years and, if we were to cover off permutations and combinations of processing and preparatory work such as this in every clause, we would be debating this Bill until next summer. We would also, through overdefinition, create more worrying loopholes.

Amendment 161C would make further provision about the purposes of the guidance published by the Information Commissioner. It has been suggested that the aim of the guidance should be to make it clear that nobody can access legally privileged material without the consent of the client who provided the material in the expectation that it would be treated in confidence. As I have already said, it is vital that the Information Commissioner retains the ability to investigate, and this amendment would call that into question because an investigation could not happen if the client withheld consent. I hope that the reassurances I have already given about the lengths to which the Information Commissioner will go to keep any confidential information safe are sufficient on that point. We are clear that the commissioner must have the right to investigate.

I said I would return to the issue of the Information Commissioner's enforcement powers and the interaction with legal professional privilege. When there is a suspected breach of the data protection legislation, the commissioner has a number of tools available to aid her investigation. The commissioner can use information notices and assessment notices to request information or access filing systems, use enforcement notices to order a data controller to stop processing certain data or to correct bad practices, and issue monetary penalty notices to impose fines for breaches of the data protection legislation. However, we understand from the commissioner that the powers to issue assessment notices and information notices are rarely used because controllers tend to co-operate with her request. There are, however, a number of restrictions on the use of these enforcement powers where they relate to legally privileged information. In relation to information notices these are set out in Clause 138, and in relation to assessment notices they are set out in Clause 141. The restrictions ensure that a person is not required to provide legally privileged information. The concept of legal privilege is therefore preserved, although it may be waived by the controller or processor.

Amendments 162A, 162B, 162C, 163ZA and 163ZB intend to broaden the restrictions in Clauses 138 and 141 regarding information and assessment notices so that they apply explicitly to all legally privileged communications, not just those which concern proceedings under data protection legislation. The Government carefully considered whether these restrictions should apply to a wider range of legally privileged material when we developed the Bill. The current practice is for the ICO to appoint independent counsel to assess all potentially legally privileged material, which is not therefore passed on to the ICO if found to be privileged.

Amendment 163B seeks to apply the same restrictions that apply to assessment and information notices to enforcement notices. While we understand that this amendment derives from a concern that there may be a gap in the enforcement notice provisions, as there is currently no reference in those provisions to protecting legal professional privilege I can reassure noble Lords that such provision is unnecessary because, unlike information and assessment notices, enforcement notices cannot be used to require a person to provide the commissioner with information, only to require the controller to correct bad practice.

Finally, I turn to Amendment 164B, which aims to add to the list of matters in Clause 148 that the Information Commissioner must consider when deciding whether to give a data controller a penalty notice and

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determining the amount of the penalty. If a legal adviser failed to comply with an information or assessment notice because the information concerned was legally privileged, it would require the Information Commissioner to take this into account as a mitigating factor when deciding whether to issue a penalty notice and setting the level of financial penalty. Clause 126 specifically provides that the duty of confidence should not preclude a legal adviser from sharing legally privileged material with the Information Commissioner. As I have previously explained, there are strict procedures in place to protect privileged material.

We have given all these amendments careful consideration, but I hope that I have convinced the Committee that the Bill already strikes the correct balance between the right to legal professional privilege and the rights and freedoms of data subjects. With that, I hope that the noble Baroness feels able to withdraw her amendment.

Baroness Hamwee: My Lords, indeed I will. The Minister mentioned continuation of dialogue. That, of course, is the right way to address these things, but I believe the Bar Council seeks to do what he says the Bill does: replicate the current arrangements.

If it is not necessary to provide specifically for confidential material, I suspect those who drafted these amendments may want to look again at the definition of "privileged communications" to see whether it is adequate. I do not believe they would have gone down this route had they been content with it.

On the amendments that would extend protections to all legally privileged material, not just data protection items—Amendment 162A and so on refer to any material—I am not clear why there is a problem with the extension under a regime such as the one the Minister described. That would catch material and deal with it in the same way as any other. I do not know whether there is a practical problem here.

On Amendment 164B the Minister directed us to Clause 126. Again, I am not sure whether he is suggesting there might be a practical problem. It seems an important amendment, not something that should be dealt with by reading between the lines of an earlier clause. However, I will leave it to those who are much more expert than I am to consider the Minister's careful response, for which I thank him. I beg leave to withdraw the amendment.

Amendment 161A withdrawn.

Amendments 161B to 161D not moved.

Clause 128 agreed.

Clause 129: Fees for services

Amendment 161E

Moved by ***Lord Stevenson of Balmacara***

161E: Clause 129, page 70, line 14, at end insert—

"( ) Within the period of three months, beginning with the day on which this Act is passed, the Commissioner must specify in guidance the amounts that constitute a reasonable fee in relation to subsection (1)."

Lord Stevenson of Balmacara: My Lords, although the amendment's wording is narrow, it is very much a probing amendment. I hope we will be able to range a bit further on the funding and the structure of the Information Commissioner's Office, which depends on its ability to raise funding to survive. I will make various points on that.

In some senses the Information Commissioner's Office is a rather strange regulator, in terms not of its functions, but of the way it has survived a number of possibilities for change and development that have been applied to other sectors of British industry, particularly those relating in some senses to data processing. If noble Lords compare Oftel, the IBM, to some extent the BBC and what has now emerged as Ofcom, they will see a change from the original structure of regulators, which were very largely bodies set up to make sure the previously public sector nature of an activity that had been privatised was done in a way that did not exclude the public interest. These regulators were largely economic in origin and have only gradually added social regulation to their parts.

In a sense the ICO's journey is different. First, the way these other regulators have moved has not been followed, so the change from a one-off individual dealing with economic and a limited amount of social regulation to being partnerships or boards with a range of individuals appointed to take over various functions—Ofcom is perhaps the easiest example to use—has not been followed. We still have a single regulator which is independent and reports to Parliament, and I understand the structure to be that of a corporation sole, which is an issue that we might want to reflect on.

4.45 pm

In saying this, I make no criticism of the ICO and its work. Indeed, we are seeing a golden age of activity with the present Information Commissioner. A wide range of documents is being produced, the response from industry is constantly good and it believes that she and her team are doing a great job. There is a sense that the office has been able to move forward in this complicated area in an efficient way.

However, there is a worry. We need to be sure in agreeing the Bill that the regulator the Bill creates and continues will be capable of doing the job not just in terms of structure but also of funding. Our amendment looks at one issue of the funding, but there are wider issues as well. Clause 132(4) shows that the commissioner is expected to recover and recoup her costs under four separate pieces of legislation and, as I understand the wording, it is to be done on a cost recovery basis. One needs to consider the common usage of other regulators that I have been talking about, whereby those affected by the regulation put up the funding for it. The ICO has moved from having a small amount of public funding with a great deal of grant-in-aid to one that is now largely cost recovery with the costs largely resting with the industry, but on a very restricted basis. Until recently we found that massive internet companies and government departments were paying £500 each towards the costs of the ICO. The current consultation would suggest that the biggest companies will have to dig deep into their pockets and raise that £500 to nearly £1,000. That does not compare well with the

size of these mega-corporations whose turnovers are often larger than the GDPs of many small countries. It certainly does not give me confidence that we have a financial basis on which the work of the ICO will prosper. When the Minister comes to respond, will he give us some information on whether he thinks that the structure now in place is the right one and whether it is likely to be efficient and effective in the long run?

The second point that goes with this, although it is slightly different and not raised specifically by the amendment—again, I would be interested in the Government's response either now or later—is how the Information Commissioner's Office will be able to attract staff to its operations if those staff are treated, as I understand it, as effectively a non-department public body in terms of the salary scales available. Other regulators, of which Ofcom is a good example, are funded by the industry which they work to. They are thus able to set fees at levels which mean that their staff are not constantly being poached, but we find that the ICO is regularly losing members of staff to competitors because they are well trained, efficient and effective and, of course, underpaid. They can be attracted away by additional funding. It would be wrong for the Government to set up a structure in which they are willing the ends of policy but not providing the means to operate it. I look forward to the Minister's response and I beg to move.

Lord Ashton of Hyde: My Lords, I thank the noble Lord for introducing his amendments, which touch on the fees that the Information Commissioner will be able to charge under the new regime. Noble Lords will recall that we discussed similar issues during the passage earlier this year of what became the Digital Economy Act. Perhaps I may start with some of the general points made by the noble Lord and then go on to address his specific amendments. I agree absolutely that this is a bigger issue than just the amendments; it is the question of how the Information Commissioner, to whom we have given these very important duties, will be able to sustain an effective service. I can assure the noble Lord that we are aware of and understand the specific problem he outlined about staff. In fact, I was present at a meeting three or four weeks ago at which we discussed that exact subject. Part of the issue to deal with that will, I hope, be addressed in the near future, in ways that I cannot talk about tonight.

On the noble Lord's general question as to whether it is an adequate system, we believe that the suggested system is flexible enough to deal with the requirements of the Information Commissioner. We realise that increased burdens will be placed on her; at the moment, I believe that her office has not raised its fees for 18 years. Of course, the number of data controllers has risen, so the rate applies to a greater number of people. We will lay some statutory instruments that will deal with the fees for the Information Commissioner in the near future, so I am sure that we will come back to that.

On the specific amendments the noble Lord has tabled, Clause 129 permits the Information Commissioner to charge a "reasonable fee" when providing services to data controllers and other persons who are not data subjects or data protection officers. This is intended to cover, for example, the cost to the commissioner of providing bespoke training for a data controller. Amendment 161E would place a requirement on the commissioner to publish guidance on what constitutes a "reasonable fee" within three months of Royal Assent. We agree that data controllers and others should know what charges they should expect to pay before they incur them. However, the Government's view is that this is already provided for through Clause 131, which requires that the commissioner produce and publish guidance about any fees that she proposes to charge for services under Clause 129. As there is already a requirement for the commissioner to publish guidance in advance of setting any fees, the Government do not consider a particular deadline necessary.

Amendment 161F would remove Clause 132(2) completely. I am concerned that the amendment would create ambiguity in an area where clarity is desirable. Clause 132 makes provision for a general charging regime in the absence of a compulsory notification regime like that provided in the 1998 Act. Clause 132(2) clarifies that the regime could require a data controller to pay a charge regardless of whether the Information Commissioner had provided, or would provide, a "service" to that controller. This maintains the approach that is currently in force under the 1998 Act—namely, that most data controllers are required to pay a fee to the commissioner whether or not a service is provided to them—and is intended to meet the costs of regulatory oversight.

The consultation on the new charging regime recently closed and the Government intend, as I said, to bring forward regulations setting out the proposed fees under the new regime early in the new year. No final decision has yet been taken in relation to those fees, but, as I committed to during the passage of what became the Digital Economy Act, charges will continue to be based on the principle of full cost recovery and, in line with the current model, fee levels will be determined by the size and turnover of an organisation but will also take account of the volume of personal data being processed by the organisation. That partly addresses the point made by the noble Lord.

Amendment 161G addresses a concern raised by the Delegated Powers and Regulatory Reform Committee that the fees regime established by Clause 132 should not raise excess funds beyond what is required to cover the costs of running the Information Commissioner's Office. I must confess to a sense of déjà vu; we debated a very similar amendment in the Digital Economy Act. The Government are considering their response to the committee's report, but they remain concerned that there should be sufficient flexibility within the new fees regime to cover the additional functions that the commissioner will be taking on under the new regime and any other changes that may be dictated by operational experience, once the new regime has bedded in. Indeed, if anything, the merit of having some limited flexibility in this regard is even clearer now than it was in March when we debated the Digital Economy Act.

I confirm once again that charges will be on the basis of full cost recovery. We take on board the point made by the noble Lord, Lord Stevenson, that the

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commissioner must be able to make sufficient charges to undertake and fulfil the requirements that we are asking of her.

Finally, on Amendment 161H, I can reassure the noble Lord that the Information Commissioner already prepares an annual financial statement, in accordance with paragraph 11 of Schedule 12 to the Bill, which is laid before Parliament. In addition, there may be occasions where the Secretary of State needs up-to-date information on the commissioner's expenses mid-year—in order, for example, to set a fees regime that neither under-recovers nor over-recovers those costs. That is why Clause 132(5) is constructed as it is.

I hope that I have addressed the noble Lord's concerns both in general and in particular and that he will feel able not to press his amendments.

Lord Paddick: My Lords, I do not know whether I am getting confused here. The Minister referred to Clause 132(2), about the power for the Information Commissioner to require data controllers to pay a charge regardless of whether the commissioner has provided, or proposes to provide, a service to the controller. How can that be done if there is to be no requirement for data controllers to register with her?

Lord Ashton of Hyde: There is a duty for data controllers to pay a charge to the Information Commissioner in the same way as there is a duty today for data controllers to register with the Information Commissioner. The duty applies in both circumstances. In some cases, some data controllers do not register with the Information Commissioner—they are wrong not to do so, but they do not. In the same way, it is possible that some data controllers may not pay the charge that they should. In both cases, in today's regime and that proposed, there is a duty on data controllers to perform the correct function that they are meant to perform. Controllers do not all register with the Information Commissioner today, although they should, and may not pay their charges. Under the new regime, they should, and an enforcement penalty is able to be levied if they do not.

Lord Stevenson of Balmacara: I am grateful to the Minister for his full response to the group of amendments. I shall look at it carefully in *Hansard* before we come back on it. Concerns were expressed in other Committee sittings about the burden placed on charities and SMEs, many of which will find the costs they are now required to pay an additional burden—we have seen some figures suggesting that there will be quite a big drag on some smaller companies. The consultation should at least have identified that concern and the Government will be aware of it. If the three-tier system is to be capable of looking at volumes—the implication of what the Minister said is that big international companies will pay more because the volume of the data they process is much greater—there will be equity in that. We will look at how that progresses, but we seem to be on the right lines.

By and large, the thrust of what I was trying to say is that there needs to be a modern response to this system in terms of what is available out there in the marketplace. If a company is paying Ofcom for the regulatory function it provides, it should not be that different if it is also paying the Information Commissioner for what services it provides, because they are two sides of the same coin. On the DPRRC amendment, I note what the noble Lord said and look forward to his further discussion with the Committee on that point. On the broader question about the ICO, there were two points that were not responded to, but perhaps we can look at that again offline.

The great advantage of the new type of regulator exemplified by Ofcom—there are many more examples—is that it is trusted, not just by government but also by industry, to set its own fees and charges in a businesslike way. Indeed, we get responses all the time about how well Ofcom does in satisfying what is required. Of course, if there is a problem about fees—and the Minister said he is on to it—one solution is to ensure that the ICO has that freedom to set the fees and charges appropriate for the work that needs to be done. I think she is probably in a better place to do that than anyone else.

5 pm

As an example, because I do not think we can read too much into individual letters, Ofcom currently has 795 staff on core business and its core costs are just over £116 million, whereas the ICO has 434 staff and costs of £23 million. We are talking about quite a big gap in terms of what can be done. Of course money does not mean everything, but I think there is a difference in scale which we may need to come back to. In the meantime, I beg leave to withdraw the amendment.

Amendment 161E withdrawn.

Clause 129 agreed.

Clauses 130 and 131 agreed.

Clause 132: Charges payable to the Commissioner by controllers

Amendments 161F to 161H not moved.

Clause 132 agreed.

Clause 133: Regulations under section 132: supplementary

Amendment 162

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

162: Clause 133, page 72, line 33, leave out from beginning to "regulations" in line 34

Amendment 162 agreed.

Clause 133, as amended, agreed.

Clauses 134 to 137 agreed.

Clause 138: Information notices: restrictions

Amendments 162A to 162C not moved.

Clause 138 agreed.

Clause 139: Failure to comply with an information notice

Amendment 163

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

163: Clause 139, page 76, line 2, leave out subsections (1) and (2)

Amendment 163 agreed.

Clause 139, as amended, agreed.

Clause 140 agreed.

Clause 141: Assessment notices: restrictions

Amendments 163ZA and 163ZB not moved.

Clause 141 agreed.

Clause 142: Enforcement notices

Amendment 163ZC

Moved by ***Lord Kennedy of Southwark***

163ZC: Clause 142, page 79, line 2, at end insert—

"( ) Within three months of this Act coming into force, the Commissioner must specify in guidance what constitutes "other failures" under subsection (8)."

Lord Kennedy of Southwark: My Lords, the amendments in this group, in my name and that of my noble friend Lord Stevenson of Balmacara, take up a number of issues raised by the Delegated Powers and Regulatory Reform Committee in its report on the Data Protection Act. Our Amendment 163ZC adds a requirement on the commissioner to specify in guidance what constitutes "other failures" under subsection (8). Amendment 164C adds a requirement on the commissioner to specify, within three months of the Act coming into force, what constitutes "other failures". I think it is important that we are clear, at least in guidance, what these "other failures" are.

Amendment 168A concerns the regulations for non-compliance with the charges regulations, deleting all the subsections and inserting new ones. The new subsections make provision for proper consultation with the commissioner and other persons that the Secretary of State considers appropriate, and state that any regulations made must be subject to the affirmative resolution procedure. The amendment sets a maximum penalty and the amount of penalty for different types of failure.

Amendment 168B seeks to replace "produce and publish" with "prepare", which we think is better in this context. Amendment 168C seeks to put in the Bill a procedure that was recommended in the report of the Delegated Powers and Regulatory Reform Committee, which suggested that the guidance should be subject to some form of parliamentary scrutiny. Amendment 168D seeks to set out how the guidance can be amended or altered with the new procedures outlined in Amendment 168C.

The final four amendments in the group—Amendments 182D to 182G—take up the issue of the power in the Bill to make Henry VIII changes to reflect changes to the data protection convention. We are seeking to delete "or appropriate" from Clause 170(1) to make it only,

"as the Secretary of State considers necessary".

We think that presently the subsection is worded too broadly. We also seek to delete "includes" and insert "is limited to" in respect of the powers. Then we make it clear that the power is in respect only of Part 4. Finally, as highlighted by the committee, we time-limit the period for changes to three years. I beg to move.

Baroness Chisholm of Owlpen: My Lords, the amendments tabled by the noble Lords, Lord Stevenson and Lord Kennedy, reflect the recommendations made by the Delegated Powers and Regulatory Reform Committee in its report on the Bill. As noble Lords will be aware, the Government hold the committee in high regard and, as always, we are grateful for its consideration of the delegated powers in the Bill. As set out in our previous discussions on delegated powers, the Government are considering the committee's recommendations with a view to bringing forward amendments on Report. For that reason, I will keep my remarks brief but noble Lords should be reassured that I have listened to and will reflect on our discussions today.

As noble Lords know only too well, delegated powers are inserted into legislation to allow a degree of adaptability in law. As we have touched on in our earlier discussions of delegated powers, and as I am sure noble Lords will agree, no other sector or industry is evolving as quickly as the digital and data economy. The pace at which new forms of data processing are being developed, and the sophistication and complexity with which new data systems are being designed, will render any current governance obsolete in a very short time. It is for this reason that we consider it necessary to be able to adapt and update the Information Commissioner's enforcement powers.

However, the Government recognise the need to provide certainty through clauses on the statute book. I therefore thank the noble Lord for his suggestions in Amendments 163ZC and 164C for how regulation-making powers relating to the commissioner's enforcement and penalty notices in Clauses 142 and 148 could be more appropriately defined; this is certainly something that I will reflect upon. In Amendments 168A to 168D, I recognise other recommendations of the DPRRC relating to the Information Commissioner's guidance and penalties.

As I have already set out, it is important that the Information Commissioner's powers are subject to a degree of flexibility. She must be able not only to identify new areas of concern but to tackle them with proportionate but effective enforcement measures. In an ideal world, we would have a crystal ball that could tell us all but the reality is that we do not. We do not have one now and the Information Commissioner will not have one three months after Royal Assent. We must preserve the ability of the regulatory toolkit to constantly adapt to changing circumstances and keep data subjects' rights protected.

I note the proposals in Amendments 182D to 182G, which would limit the scope of the regulation-making

[Baroness Chisholm of Owlpen]
power in Clause 170. Clause 170 is intended to allow the Government to update the Bill to reflect amendments to convention 108.

As with previous amendments based on the Delegated Powers and Regulatory Reform Committee's report, it is important that we consider these amendments alongside the broader recommendations given by that committee. The Government are keen to give proper consideration to these recommendations and, although this is ongoing, I am confident that we will have concluded our position on these amendments before we come to the next stage of the Bill. I am grateful for the informative discussion we have had today, which forms the final part of our reflection upon the committee's report. I hope that the noble Lord will feel able to withdraw his amendment and I look forward to returning to these issues on Report.

Lord Kennedy of Southwark: My Lords, the Delegated Powers and Regulatory Reform Committee is one which the Opposition hold in high regard, as the Government do. It does an important job for the Government by going through legislation and looking at whether the powers the Government seek to take are applied appropriately. I thank the noble Baroness, Lady Chisholm, for that very much and I am pleased that she confirmed that the Government were looking at the matters in the report carefully. When they come back on Report, I hope that they will address the issues I have raised and others in that report. On that basis, I am happy at this stage to withdraw my amendment.

Amendment 163ZC withdrawn.

Clause 142 agreed.

House resumed.

5.11 pm

Sitting suspended.

Yemen: Humanitarian and Political Situation

Statement

5.30 pm

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, with the leave of the House, I shall now repeat a Statement delivered in another place by my right honourable friend Alistair Burt, the Minister for the Middle East and North Africa. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement to the House on the humanitarian and political situation in Yemen and the implications of the conflict for regional security.

Her Majesty's Government remain deeply concerned by the humanitarian situation in Yemen and the impact recent restrictions are having on what was already the worst humanitarian crisis in the world and largest ever cholera outbreak. We recognise the risk of a severe deterioration of the humanitarian situation if restrictions are not quickly removed, and call on all parties to ensure immediate access for commercial and humanitarian supplies through all Yemen's land, air and sea ports.

But we should be clear about the reality of the conflict in Yemen. The Saudi-led coalition launched a military intervention after a rebel insurgency took the capital by force and overthrew the legitimate Government of Yemen as recognised by the UN Security Council. Ungoverned spaces in Yemen are being used by non-state actors and terrorist groups to launch attacks against regional countries, international shipping lanes and the Yemeni people. As my right honourable friend the Foreign Secretary has made clear, we strongly condemn the attempted missile attack against Riyadh on 4 November. This attack, which has been claimed by the Houthis, deliberately targeted a civilian area and was intercepted over an international airport.

The United Kingdom remains committed to supporting Saudi Arabia to address its legitimate security needs. We are therefore deeply concerned by reports that Iran has provided the Houthis with ballistic missiles. This is contrary to the arms embargo established by UN Security Council Resolution 2216 and serves to threaten regional security and prolong the conflict.

I understand that a UN team is currently visiting Riyadh to investigate these reports. It is essential that the UN conducts a thorough investigation. The UK stands ready to share its expertise to support this process, but we recognise that those who suffer most from this conflict are the people of Yemen. We understand why the Saudi-led coalition felt obliged temporarily to close Yemen's ports and airports in order to strengthen enforcement of the UN-mandated arms embargo. It is critical that international efforts to disrupt illicit weapons flows are strengthened.

At the same time, it is vital that commercial and humanitarian supplies of food, fuel and medicine are able to reach vulnerable Yemeni people, particularly in the north, where 70% of those in need live. Even before the current restrictions, 21 million people were already in need of humanitarian assistance, and 7 million people were only a single step away from famine. Some 90% of food in Yemen is imported, and three-quarters of that comes via the ports of Hodeidah and Salif. No other ports in Yemen have the capacity to make up that shortfall. Our NGO partners in Yemen are already reporting that water and sewerage systems in major cities have stopped operating because of a lack of fuel. This means that millions no longer have access to clean water and sanitation, in a country already suffering from the worst cholera outbreak in modern times.

The current restrictions on access for both commercial and humanitarian shipments risk making an already dire situation immeasurably worse for the Yemeni people. We have heard the UN's stark warnings about the risk of famine. So again I say that we call on all parties to ensure immediate access for commercial and humanitarian supplies to avert the threat of starvation and disease faced by millions of civilians.

We also call for the immediate reopening of Hodeidah port and the resumption of UN flights into Sanaa and Aden airports, as the Foreign Office statement on 15 November made clear. Restrictions on humanitarian flights are causing problems for humanitarian workers, including British nationals, who wish to enter or exit the country.

We have been urgently and proactively seeking a resolution of this situation. Our ambassador in Riyadh has been in frequent contact with the Saudi Foreign Minister. My right honourable friend the Foreign Secretary has discussed the situation in Yemen with the Crown Prince, with whom we have emphasised the urgency of addressing the worsening humanitarian crisis. My right honourable friend the Secretary of State for International Development, since her appointment on 9 November, has spoken to both the UN Secretary-General and the Under-Secretary-General for Humanitarian Affairs about the situation in Yemen.

We are also continuing to work closely with other regional and international partners, including the UN. On 18 November, my right honourable friend the Foreign Secretary spoke to the UN Secretary-General. Central to this discussion was how the security concerns of Saudi Arabia can be addressed to enable these restrictions to be lifted. It is vital that the UN and Saudi Arabia enter into a meaningful and constructive dialogue on this.

More broadly, we will continue to support the people of Yemen through the provision of life-saving humanitarian supplies. The UK is the fourth largest humanitarian donor to Yemen and the second largest to the UN appeal, committing £155 million to Yemen for 2017-18. UK aid has already provided food to almost 2 million people and clean water to more than 1 million more.

The only way to bring long-term stability to Yemen is through a political solution. That is why peace talks remain the top priority. The Houthis must abandon preconditions and engage with the UN special envoy's proposals. The UK has played, and continues to play, a leading role in the diplomatic efforts to find a peaceful solution. This includes bringing together key international actors, including the US, Saudi Arabia, and Emirati and Omani allies, through the Quad and Quint process. We intend to convene another such meeting shortly. It is vital that we work together to refocus the political track.

The UK will also continue to play a leading role on Yemen through the UN. In June, we proposed and supported the UN Security Council presidential statement, which expressed deep concern about the humanitarian situation in Yemen. The statement called for an end to fighting and a return to UN-led peace talks, and stressed the importance of unhindered humanitarian access. It is vital that the words of the text be converted into action. The international community's unified and clear demands must be respected. I commend this statement to the House".

5.37 pm

Lord Collins of Highbury (Lab): I thank the Minister for repeating the Statement. Just under two weeks ago now, the noble Lord, Lord Bates, described the situation in Yemen to your Lordships' House as,

"the world's largest humanitarian crisis".—[*Official Report*, 7/11/17; col. 1788.]

Some 21 million people are in need of humanitarian assistance. Nearly 10 million are in need of immediate help to support or sustain life. As we have heard, the UN's top humanitarian official, Mark Lowcock, whom we all know from DfID, warned that unless the blockade was lifted Yemen would face,

"the largest famine the world has seen for many decades".

The Minster and the Minister in other place have acknowledged that the level of fuel required to supply food is at crisis point—enough left to last literally a matter of days. We know the situation is developing and changing daily. I welcome the Government's efforts, certainly the humanitarian efforts, but we know that action is needed immediately. We cannot let this continue.

I share the Minister's view that the Houthi missile strike was totally unacceptable. He and the Minister in the other place said that we need to address the Saudis' security concerns while addressing the humanitarian crisis. We have been told that the Foreign Secretary spoke two days ago to the Secretary-General, but what is the Minister's assessment of how to address those security concerns through the United Nations? What are we doing specifically within the UN to ensure that action is taken to allow the immediate start of supplies to Yemen? We are told that the Government are urging the Saudis to open up access, but at what point are we going to say that that strategy is not working? At what point do we tell the Saudis that Britain will withdraw support if they carry on with this blockade? At what point do we say that keeping licences for arms supplies under review will not just be a matter of review, but that we may start to challenge each one as supplies from this country continue, as the US has done?

This is a matter of international humanitarian law, and it is clear that Britain needs to act. We will be keen to hear about the immediate steps the Government have taken, but we acknowledge that even if the blockade is lifted tomorrow, the civilian population of Yemen will continue to suffer as long as this conflict carries on. We know that a lasting ceasefire will be sustainable only if there is political agreement on all sides. It is exactly a year and one month since Matthew Rycroft circulated a draft resolution to other members of the UN Security Council. How much longer do we have to wait? Will the Government finally bring forward that resolution and give the UN the opportunity to intervene to end this terrible conflict?

Baroness Northover (LD): My Lords, I too thank the Minister for repeating the Statement. Yemen now faces an intensified blockade. As he indicated, the UN estimates that 7 million are at risk of dying from starvation. As he has said, Yemen imports up to 90% of its daily needs, including fuel. The situation is therefore appalling. What is the upshot of the recent discussions, which the Minister mentioned, that Ministers have had with their Saudi counterparts regarding humanitarian access to Yemen's population?

Criticism has been made of the UK because we assist with humanitarian help but also sell arms to Saudi Arabia. What discussions has the Foreign Secretary had with the Secretary of State for Defence regarding UK arms sales to Saudi Arabia?

What hopes does the Minister have for the efficacy of working with international partners to restart the peace process in Yemen, which again he mentioned? What recent assessment have the Government made of

[Baroness Northover]
the need for an independent investigation of possible war crimes committed by both sides of the conflict in Yemen? In terms of the humanitarian situation, how will fuel shortages be immediately addressed? Is it recognised that this has an impact on the availability of drinkable water and that hospitals cannot be kept open without power? Does he note that refrigeration units for essential medicines are being turned off for periods of time to save fuel? What is being done to address the lack of medicines? Is he concerned that cholera and diphtheria are among some of the diseases that are currently spreading?

Does the Minister agree that food distribution systems are now under severe threat? Does he agree—it sounds as if he does—that the reopening of Aden port is simply not enough in this situation? Does he agree with those who say that what is happening amounts to collective punishment—holding a civilian population accountable? Does he agree that Saudi Arabia must lift or at least ease the blockade, and that if this does not happen we will see images of man-made famine within days?

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord and the noble Baroness for their comments. I agree with the content and the sentiments that they have expressed. Not only have we all been appalled by the horrors that we have seen unfolding on our screens but the situation is, in its utmost sense, really impacting the people who have suffered the most—the Yemeni people.

Picking up some of the specific questions, I assure all noble Lords, particularly the noble Lord, Lord Collins, and the noble Baroness, Lady Northover, that the United Kingdom continues to work at all levels. I alluded in the Statement to our work in the Quint and the Quad. We believe that those regional partners are essential in bringing peace to Yemen. I will be very open, and I have said this before about the situation in Yemen, that there are proxy wars fought within that country and it is important that all parties now call a halt to allow for humanitarian access. We maintain that a political solution and peace talks are the top priority and that a political solution is the best way to bring long-term stability. In that regard, the UK continues to support the efforts of the UN special envoy and—again, as I alluded to in the Statement—we are looking to call a meeting of the Quint and the Quad in the near future.

I mentioned, as the noble Lord, Lord Collins, and the noble Baroness, picked up, recent meetings with the Secretary-General of the United Nations. I was present in a meeting with the Foreign Secretary when this matter was discussed in great detail. We continue to make representations at the UN Security Council—I am sure that we all acknowledge the efforts of Ambassador Rycroft in this regard—but there are challenges to achieve the consensus required in the Security Council to get the traction that we saw from the presidential statement made in June this year.

The noble Baroness asked about the spiralling cholera crisis and the specific issue of diseases which are impacting the local Yemeni population. In that regard, I assure her that our response continues to be about prioritising life-saving food for 1.8 million people for at least a month, nutrition support for 1.7 million people and water and sanitation, which is acutely required, for 1.2 million people.

As well as providing this aid, the UK continues to play a leading role in lobbying all parties to allow safe, rapid and unhindered humanitarian access. To ensure that, of course we make representations at the highest level to the Saudi authorities, who continue to assure us that their intent is not to cause starvation but to ensure that missiles do not enter Yemen. However, we have once again stressed to them that any security concerns must also address the deeply harrowing scenes that we see of a deteriorating humanitarian crisis. We continue to lobby very hard in this respect.

The noble Lord and the noble Baroness also raised the issue of arms support to Saudi Arabia. I assure all noble Lords that the key test for our continued arms support to Saudi Arabia in relation to international humanitarian law is whether there is a clear risk that those items subject to the licence might be used in a serious violation. The situation, as the noble Lord acknowledged, is kept under review. When it was tested in the summer, the particular Divisional Court statement dismissed the claim that these arms may be used in the conflict in Yemen, but we continue to stress to all authorities and all parties that the first and primary aim must be to secure humanitarian access and that to do so requires the opening up of both ports and the airport. In doing so, we will continue to work with international partners to ensure that that can be done safely to allow the access which is so desperately required.

5.48 pm

Lord Marlesford (Con): My Lords, was Her Majesty's Government in a position to warn Prince Mohammed bin Salman, then defence Minister, now Crown Prince, how unwise it would be to intervene in this military conflict, for several reasons? The obvious one is that using sophisticated western weapons on their own would never win that war. The only way, as we have seen in Iraq and Syria, is boots on the ground, and the last time there was a major boots-on-the-ground intervention in Yemen was in 1964-66, when Egypt suffered 28,000 casualties.

Secondly, does he realise how undesirable it has been to extend the Sunni-Shia conflict in this way? Thirdly, it is very clear that the humanitarian results have been a disaster. Fourthly, the Statement referred to the ungoverned spaces. Those of us who have been to Yemen know that a large part of the interior of Yemen is ungoverned. The Sanaa Government had control only over the main highways. Finally, does he realise how dangerous it has been for Saudi Arabia itself? It is not unconnected with the recent purge of princes in Saudi Arabia, under the pretext of fighting corruption.

Lord Ahmad of Wimbledon: My noble friend makes a number of important points. I can assure him on one of the central points that he makes, when he gets to the heart or crux of the challenge and the issue on the ground in Yemen—the protracted dispute and regional

rivalries being played out in Yemen. In recent history, the current crisis was exacerbated when the then legitimate Government, who had support, was removed by the rebel Houthis, supported again by other regional players in the area. It is important to recognise, as he says, that, as we have made clear to all parties, including the Saudis, protracted conflict through use of military actions and the restrictions that are being applied will not result in the long-term solution required on the ground, which can be achieved only by all parties coming together. That is what we are emphasising not just through the political solution that we seek through the United Nations but through the work that we are doing with key regional players, including the Emiratis—yes, the Saudis as well—but also the Omanis, in ensuring that through the Quint and the Quad we bring all relevant parties forward towards that political solution.

Lord Hain (Lab): My Lords, will the Government accept that their one-sided approach to this whole crisis is prolonging it? The Minister made criticisms of Iran, and rightly so, but he made no criticisms at all of the Saudis, although their strategy is acting as a recruiting sergeant for militant rebels and encouraging Iranian influence in the region. Surely, there should be an even-handed attitude between Iran and Saudi Arabia to get both to accept their responsibilities for this conflict, or we will see a disaster on the kind of scale that we have seen in Syria—and I say that as a former UK Middle East Minister.

Lord Ahmad of Wimbledon: Of course, the noble Lord speaks with experience in this regard. I assure him that, as I have said already from this Dispatch Box, not just today but previously as well, regional conflicts are being played out not just in Yemen but in other parts of the Middle East, which tragically go back to a core conflict that exists in the schism, tragically, in the Islamic faith. However, that should not detract from the fact that the United Kingdom, as I assure him and all noble Lords, makes the strongest representations to the Saudis. I assure him that we have tried to ensure that the Saudis and all regional partners bring to an end this conflict, which has gone on for far too long.

The Lord Bishop of Leeds: My Lords, I endorse entirely what the noble Lord, Lord Hain, has just said, but I would really want a further commitment. The Statement said:

"The United Kingdom remains committed to supporting Saudi Arabia to address its legitimate security",

concerns, which of course are complex. Does that mean that we apply pressure on the Saudis as well to lift the blockade? We know that there are other agendas running in Saudi Arabia and that its policy is stuck in Yemen—it has got into a position that it did not want to be in. But the sheer volume of arms sales that we make to Saudi Arabia surely gives us some clout in exerting considerable pressure.

Lord Ahmad of Wimbledon: I agree with the right reverend Prelate. That is why we have done that, not only through bilateral representations but in international fora as well—indeed, as the Human Rights Minister in the Foreign and Commonwealth Office at the Human Rights Council in September, I made specific reference to the situation on the ground in Yemen. Of course, whether they are our allies or friends, we have leverage over them in influencing their policies and decisions and we continue to make representations to the Saudi Government. I assure him that we take our arms export licence responsibilities very seriously and operate one of the most robust arms and export control regimes. In doing so, we seek to ensure that all elements of international humanitarian law are respected—a point that we have repeatedly made to the Saudi Arabian Government and other members of the military coalition as well.

Lord Hannay of Chiswick (CB): My Lords, I am sure that the noble Lord is aware that, even at the height of the tension between the international community and Iraq, food and medicine were never cut off. Surely this point should be made forcefully to the Saudi Government. It is no good saying that they are cutting it off in order to make sure that no missiles are shipped in. Frankly, that is not very convincing. Will the Minister look again at the recommendation that the International Relations Committee of this House made in its report in April: namely, that it might be necessary to tell the Saudi Government very quietly—not noisily, but quietly—that if they do not play a more helpful role in this conflict, we will have to consider cutting off some of the licences we currently have? Could he please take that back and look at it again? It was a very serious recommendation; it was not a recommendation to stop all arms sales to Saudi, which would be quite unrealistic. Could he look at that again, because I think the circumstances are such that we cannot just go on wringing our hands? The Statement made all the right remarks—but none of it is happening.

Lord Ahmad of Wimbledon: I assure the noble Lord, who speaks from great international experience in this regard, that I agree with him that we need to ensure that all levers and influences are brought into play to ensure that all parties, including the Saudis, make all the necessary efforts to ensure that all life-saving aid—and not just life-saving aid but humanitarian aid—is delivered unrestricted. He pointed to the International Relations Committee report and I will, of course, look at it again.

Baroness Falkner of Margravine (LD): My Lords, given his role as a human rights Minister, does the noble Lord accept that Saudi Arabia's presence on the Human Rights Council is deeply unhelpful? Is he aware of the UN's own report, issued today, which states that the highest number of human rights-violating states have now been elected to the UN Human Rights Council? Does he think it is good enough for the Human Rights Council to have asked for a review of the situation in Yemen, which will give an oral report back in March and a written report only in September next year? Why do Her Majesty's Government not convene an extraordinary meeting of the Human Rights Council? You only need a third of members: 16 states. That is all the noble Lord has to do. He talks about working with other allies; he could start with the EU.

Lord Ahmad of Wimbledon: I assure the noble Baroness that I take a very robust approach to ensuring that we call out human rights violations through our membership of the Human Rights Council, as I am sure she well knows. The other members of the Human Rights Council are, of course, democratically voted for. I reassure her that we raise all issues connected with any kind of human rights violations regularly and consistently—and not just at the Human Rights Council. On this particular issue we have pressed very hard to reach the consensus that is required in the context of the UN Security Council. British pressure was brought to bear. That is one of the key areas where we will see traction at political level. The noble Baroness knows the area very well, and the different players involved and the different influences on the different parties to this conflict. Therefore, concerted political will is required at an international level—at the highest level—to get the peace settlement to this conflict that we all seek.

Baroness Goudie (Lab): My Lords, today is Universal Children's Day and it is appalling that we see children in Yemen in this situation. As we know, women and children bear the brunt in all war-torn areas, and this war-torn area is much worse than anything else. The Statement talks about bringing the parties together. Are local women part of that undertaking?

Lord Ahmad of Wimbledon: First, the noble Baroness makes a pertinent point. In any conflict, tragedy or humanitarian crisis across the world, it is tragic that the most vulnerable, but particularly women and young children, suffer the most. I am acutely aware that the tragedy unfolding in Yemen is impacting on them. That is why we have stressed the importance of opening up humanitarian access. On how we move the situation forward, in terms of groups on the ground, this will require a political settlement. However, I say openly that it will require political will at a much more senior and international level to ensure that we get that engagement. However, for a final solution we will absolutely require local players, including local women's groups, to ensure that we get not only access but sustainable humanitarian access points, not just for a week or two but during the resolution of the conflict.

Baroness Hayman (CB): My Lords, the Minister said that Her Majesty's Government had been assured that it was not the intention of the blockade to cause starvation. However, in a country where 7 million people are dependent on food aid, if it cannot get through, that is exactly the effect of the blockade—and because of that effect people are dying. Last week the Disasters Emergency Committee—I declare my interest as a trustee—described the humanitarian situation as "catastrophic" in terms of access to food, medicines and supplies. Will the Minister take seriously the words of my noble friend Lord Hannay and look at how we can avoid, in another fortnight's time, having exactly the same debate in this Chamber but see some progress—if not on the eventual political solution, which we all know is necessary, then on ending this catastrophic blockade?

Lord Ahmad of Wimbledon: I agree with the sentiments expressed by the noble Baroness. We are all at one on the issue that needs to be resolved first, which is that of ensuring not just immediate but consistent access to those who need humanitarian and acute medical assistance on the ground. The Government's Statement that I repeated earlier is clear. I assure noble Lords that we are working to ensure that the first priority is that humanitarian access. Of course, I listen carefully to the representations which are made in this House and I will certainly consider them further.

Lord Lea of Crondall (Lab): My Lords, not many questions on this dreadful situation have a yes or no answer—but one question certainly does, and it has been alluded to by almost every speaker. I refer to arms sales. A month or so ago the Minister's predecessor, the noble Baroness, Lady Anelay of St Johns, answered a question from me on why we have a dog in this fight. She said that we do not and that we are even-handed—or words to that effect. If that is the case, can the Minister confirm or deny the reports, which are very persistent, that British arms are going to one side and not to the other? That is not even-handed. So my question is: is that true—yes or no?

Lord Ahmad of Wimbledon: The noble Lord asked for a yes or no answer. If you are supporting Saudi Arabia as an ally of the United Kingdom, you are supporting an ally, and you do not resolve a conflict by providing arms to AN Other. We provide arms exports to Saudi Arabia, which we acknowledge. At all times we impress on it the need to respect international humanitarian law. However, I repeat what I said earlier. A judgment on 10 July dismissed a claim brought by the Campaign Against Arms Trade concerning arms exports to Saudi Arabia for possible use in the conflict in Yemen. The judgment recognised Her Majesty's Government's rigorous and robust processes to ensure that UK defence exports are licensed consistent with the consolidated EU and national arms exports licensing criteria. We are very particular about ensuring that that basis is retained and we continue our review quite robustly in that regard. The noble Lord said that this was a complex situation, and I agree. However, as I said, if you supply arms to an ally, a resolution is not to be found by ensuring that you supply to the other side as well.

Lord Elystan-Morgan (CB): My Lords, without in any way seeking to minimise or absent the questions relating to military intervention and famine, perhaps I may ask the Minister about cholera. There have been 575,000 cases since 27 April, when the epidemic was first declared, and it is getting worse all the time. However, there cannot be any solution unless a plenitude of clean water is provided for the community. Can the Government say what priority they are giving to that crucial aspect?

Lord Ahmad of Wimbledon: The noble Lord raises a very valid point. Obviously, the disease that has followed the conflict is down to a lack of sanitation and clean water. The noble Lord points to statistics, and it is true that the situation on the ground gets worse not just every week but every day. I assure him

that our priority in humanitarian terms is to look at providing appropriate vaccines, but the focus is also very much on water and sanitation—the issue that he rightly raised.

6.05 pm

Sitting suspended.

Devolved Administrations: Memorandum of Understanding

Question for Short Debate

6.30 pm

Asked by ***Lord Empey***

To ask Her Majesty's Government whether they are planning to review the operation of the memorandum of understanding with the devolved Administrations.

Lord Empey (UUP): My Lords, I begin by apologising to the House. I missed the cut by 20 seconds before the break in proceedings—my plane was slightly delayed. I apologise to your Lordships for that.

Like many Members of your Lordships' House I have been dismayed by the manner in which successive Governments have approached the constitution of our country. We have seen a series of haphazard and ill-thought-out variations to the powers and status of devolved institutions in recent times, most notably the promises made on the hoof at the time of the referendum on Scottish independence. The position and membership of your Lordships' House and the decisions in the other place concerning English votes for English laws are further examples of significant matters that have been dealt with in a less than serious and satisfactory manner.

The current debate and parliamentary activity to bring about Brexit illustrate how our constitution has been allowed to change over the years, seemingly without parliamentary challenge or even understanding. I have no doubt that a point will come when some of these matters will face legal challenge, and all the while I do not believe that the people of this country feel satisfied that the institutions of government are operating in a way that contributes to an increase in their sense of well-being.

I have been a long-time supporter of the devolution of powers to our home nations. I have always believed that this could lead to local decision-making and be more effective than the London-centric model we have become used to in this country. I also felt that local identity would be respected by these institutions to a greater extent than by those here at Westminster.

When I appeared before the Constitution Committee of your Lordships' House, I said that there was a policy in Whitehall of "devolve and forget"—in other words, once powers are devolved, Whitehall can pay little or no attention to what happens in those policy areas. This was a fatal mistake in the case of Northern Ireland when, after 1921, oversight consisted of a desk somewhere in the Home Office manned by a junior civil servant. Our Troubles might have been avoided if attention had been paid to devolution at Stormont in those days. Are we going to make the same mistake again now that there is a Scottish Parliament and a Welsh Assembly? I hope not, but see little evidence that the lessons of the past have been learned.

I believe that the memorandum of understanding should be amended to introduce some light-touch oversight by Parliament of the work of the devolved institutions. As most of the revenue raised and spent by these institutions is taxpayers' money voted to them by Parliament, it seems reasonable that there is some acknowledgment of and accountability for these vast sums of money. I do not propose any detailed scrutiny, but perhaps an annual appearance before a parliamentary committee or even a report to Parliament once a year, in a similar fashion to the requirement for devolved institutions to report to the Secretary of State for Defence on the implementation of the military covenant. If I recall, that obligation was introduced in the Armed Forces Act 2011. Sadly and ironically, Northern Ireland is the only one of the three that has not complied with this and put forward any contribution whatever. Given that, I believe it should be a requirement in statute, rather than the gentleman's agreement we currently have.

This proposal would enable Peers and Members of the other place to be aware of what is going on in the regions and get an understanding of how devolution is working in practice. I also hope that the sharing of ideas between the regions and Whitehall might do everybody involved some good. We have seen some innovative policies introduced in the devolved areas. Even last week we were talking about what the Scottish Parliament has done on the unit cost of alcohol. Other innovative movements have been made, on plastic bags, for example. There are things both sides could learn, but my anxiety is we have absolutely no connection to the regions after there is an annual vote in Parliament on the Budget—the money is transferred and basically, that is that.

I know that not all the money spent by the devolved Administrations is from Whitehall. There are locally raised revenues as well, such as fees in the case of Northern Ireland rates. The Scottish Parliament has had tax-raising powers since its inception, although it never used them. We understand they have now been extended and that there is a demand—I am sure the noble Lord, Lord Wigley, will tell me if I am wrong—for some similar powers in Wales. That is understandable; nevertheless, the vast majority of the money the regions spend, even taking out European contributions, is taxpayers' money. Yet, once taxpayers' money is sent to those regions, that is the end of it. In all the Administrations there are public accounts committees that follow up on what is done locally, but there is a gap between the regions and Parliament.

I do not believe that Parliament should be breathing down the neck of the devolved Administrations on every decision. I am talking about something I regard as light touch, but which would at least keep the regions and Parliament connected. It would also mean that the people in the devolved areas understand where most of the money comes from. Quite frankly, a lot of them do not. I have said—I do not mean to be facetious—that the devolved Administrations can at times look like giant ATMs: the money spews out and,

[Lord Empey]
when there is not enough of it, London and Westminster get blamed for not providing more. There is no accountability. In an era in which accountability and transparency are the buzzwords of the day, I see no reason why we should not, in a very light-touch fashion, do something similar with our devolved Administrations.

There is, of course, demand for different types of devolution in England. The last time a devolved parliament for the north-east was attempted, it was rejected by the people of that area. It looks as if local authority-based devolution will happen in England. That is fine, but local authorities are accountable to the people who elect them. That accountability for tax is not forthcoming for the formal three national Parliaments we have today.

I believe the memorandum of understanding between the devolved regions and Parliament, which has worked fairly well to date, should be looked at again. I hope that the Minister—I welcome her to the Dispatch Box—will indicate in her response whether the Government are looking at this. On the wider constitutional question, I appeal to her to say to her right honourable colleagues that the constitution of the United Kingdom is a delicate flower which has been subject to tremendous upheaval in recent times, and the process has not been gone through in a sensible and measured way. It has been haphazard and on the hoof, and I am not sure we yet understand the full implications of where it will lead us.

With those comments, I hope that the Minister might address this question in her reply.

6.40 pm

Lord Bew (CB): My Lords, I thank the noble Lord, Lord Empey, for securing this debate, and I support strongly the themes of his speech, in particular when he talked quite correctly about the tendency of Westminster to devolve and forget. The noble Lord speaks with the authority of someone who was not only a Minister in the devolved Parliament in Northern Ireland but also for a time an acting First Minister. He pointed out the tendency of those in the devolved regions, perhaps particularly in Northern Ireland, to forget where the money actually comes from. There is remarkably little understanding of the reality of the UK's intervention throughout the politics of Northern Ireland, and the points he made are profound.

I would go slightly further. The Question tabled by the noble Lord, Lord Empey, asks that we should,

"review the operation of the Memorandum of Understanding".

I think it is inevitable that over the next two years we are going to have to make substantial changes. One obvious reason is Brexit, which looms quite large over many passages of the existing 2013 memorandum. It is perfectly clear that it is going to lead to changes to that memorandum of understanding with the devolved regions. We have to remember that in the case of Northern Ireland we are talking about a great clutter of understandings and that, as a consequence of Brexit, all of them are either going to go or will have to be amended in a serious way. I sense that there may well be understandings with the Irish Government about the representation of Northern Ireland in the European Union and agreements there. That was in the days when there were agreements between the Irish Government and the British Government—halcyon days as regards European policy. My understanding is that documents from quite far back into the last century may be lying around, so no doubt there will have to be a big tidy-up and substantive change.

I want to support another point made by the noble Lord, Lord Empey. He is quite right when he says that the way we have gone about devolution in this country is haphazard and we stumble in and out of it in what is sometimes an unreflective way. Perhaps I may remind noble Lords of speeches made both in this House and the other place on the introduction of Scottish devolution. They do not read well because 85% of them say, "This is the answer to Scottish nationalism. Once we introduce devolution, we will never hear of it again. This is the benign compromise that will definitely work". Well, we did hear of it again and we had a really close-run referendum.

Perhaps I can say as an aside that all that was often based on the Irish argument: "If only we had done this in Ireland in the early part of the century, we would not have lost Ireland and devolution would have worked". That was very strongly supported by Conservative thinkers and historians of the highest quality. Is it not obvious that Scottish nationalism has far weaker historical roots than Irish nationalism? We know that in the period after devolution in Scotland there was a major thrust towards independence. What makes it so widely accepted that had we given devolution to Ireland in the early part of the 20th century, given the much stronger historical roots of Irish nationalism, there would not have been a strong thrust towards independence thereafter? The great problem was identified at the time by Sir Edward Carson, which is that once a devolved Parliament is set up, it is extremely difficult for Westminster, even though it may say that it will maintain supremacy, to gainsay that. You can say every day of the week that that is what you are going to do, but in fact it is very hard. We live by conventional wisdoms on devolution which are not put under any sort of profound or deeply based examination. But we have it and it is there. It is now part of the constitution of the United Kingdom and we have to look at its best working.

When we look at its best working, we have to talk about amending the memorandum. It is a working model for a world that is just about to change. Let us take just the last week in Northern Ireland when we had the public hearings into the renewable heat incentive. Here, we are talking about millions of pounds of public money going astray. At first glance, it looks to me as though we are not talking about some awful scheme of dishonesty, but that we have a devolved administrative and political system incapable of, or that has great difficulty in, coping with a problem of moderate complexity. Yet we propose to say that the same political community—if it returns to power in the next few months, as I devoutly hope—can have the power to deal with corporation tax, which will have every clever lawyer in the world crawling over every detail, and which is a problem of even greater complexity.

In conclusion, I suggest that we need to look at the memorandum again, with a view to stiffening it; the key point is transparency, as said by the noble Lord,

Lord Empey. I agree with the light-touch transparency measures he suggested, but I draw attention to the recommendation in the House of Lords report on the constitution that talks about making provision for more discussion of the affairs of the Northern Ireland Assembly on the Floor of this House. We can no longer just lock it away. I thank the noble Lord, Lord Empey, for introducing the debate.

6.46 pm

Lord Wigley (PC): My Lords, I also thank the noble Lord, Lord Empey, for arriving and facilitating this short debate. I will take a slightly different tack from him on the question of the memorandum of understanding because, as has already been mentioned, the decision to leave the EU raises quite distinct and different issues. Indeed, they are different in the devolved nations, in the context of the memorandum of understanding; Northern Ireland is clearly in difficulty because of the non-functioning of a devolved Government at present. So my comments are related more to the position in Wales, Scotland and particularly, of course, Wales.

Leaving the EU involves changes to the exercise of power relating to devolved matters, including agriculture, the environment, tourism and transport. The Sewel convention requires the UK Government not normally to intervene in devolved matters; to do so without the consent of the devolved Assemblies is seen in both Wales and Scotland as a power grab. Indeed, in a remarkable joint initiative following the publication of the EU withdrawal Bill, the SNP Government in Edinburgh and Labour Government in Cardiff issued a joint statement describing that as a "naked power grab", indicating that, without clear assurances, the Bill would be rejected by both Parliaments. Despite the matter being raised subsequently on more than a dozen occasions in the House of Commons, the UK Government have still not clarified how they will proceed if the devolved Assemblies refuse to support the Bill.

A Plaid Cymru amendment to the withdrawal Bill in the Commons that would have made the Sewel convention binding in this context was defeated, with the Labour Party refusing to support the stance taken earlier by the Welsh Labour Government. Both the Welsh and Scottish Governments agree that if we are outside the EU single market, but within a UK single market—with or without Ireland—there has to be a mechanism to co-ordinate that. However, we are still in the dark as to what such a mechanism will be. If one of the causes of the present difficulties is the total ineffectiveness of the Joint Ministerial Committee on EU Negotiations, then we certainly face a challenge there. The committee met in February, but not then until October, at a time when critical issues were arising. If that is meant to be the prototype for future co-ordination negotiations, it augurs very badly indeed.

The contrast between the embryonic UK mechanism and the one that exists between the EU member states was highlighted by Laura Dunlop QC in her evidence to the Brexit Select Committee on 17 October. She stated that,

"in the European Union, each member state has a participant in the negotiations. In our prototype framework … there is one party in the discussions that is wearing two hats, and that is the UK Government, who are also required to speak for England. That is a significant difficulty".

In his paper entitled *Brexit and the Territorial Constitution*, published by the Constitution Society, Professor Richard Rawlings warned of,

"the innate capacities of individual Whitehall departments for power-hoarding through hard-edged legal expressions of institutional self-interest".

He highlighted the danger that:

"The prospect at the expense of the devolved institutions of … 'reregulation creep'"—

via common frameworks—

"is clear and immediate".

He concluded:

"There is an urgent need for multilateral forms of intergovernmental relations which are fit for purpose".

The UK Government will ignore such warnings at their peril.

Another problem relating to the JMC (EN) is that while it is chaired by the First Secretary of State, there is no formal relationship between his department and the Department for Exiting the EU. The UK in its present form may not survive the tensions created by the current failings of Westminster to address these problems. The Welsh Labour Government have stated overtly that Brexit represents an existential challenge to the UK. If it survives, it will undoubtedly need a new UK constitution, which inevitably will be quasi-federal in its nature.

Perhaps I may quote Fflur Jones, a partner in Darwin Gray solicitors, in her report, *The EU Withdrawal Bill—A Legal Perspective*, when she concluded that Brexit,

"will require intense scrutiny to ensure … that the UK government does not ride rough shod over the current devolution settlement and the principles of the UK's evolved territorial constitution. Indeed, now is the time for that territorial constitution to be reflected in a written UK constitution so that there can be no doubt over the approach that should be adopted by the UK government to matters affecting Wales and the other devolved administrations".

I conclude with a plea, which reinforces the House of Lords Brexit committee's conclusions, for the UK Government not to treat these matters as minor, subsidiary or of little consequence. A failure to carry the devolved Administrations towards an acceptable consensus will undermine the future of the union.

6.51 pm

Lord Lexden (Con): My Lords, my noble friend Lord Empey has done us a great service by bringing forward this Question for debate. He has spoken eloquently on many occasions, as he has again tonight, about the strains which devolution, applied in different ways in different places, has put on the unity of our country. The benefits of devolution have been frequently rehearsed; the loosening of the ties that bind the constituent parts have received markedly less attention. Those ties need urgent strengthening to secure the future of our union.

My noble friend, I know, welcomed the decision of your Lordships' Constitution Committee to take up this important issue at the end of 2014, when I was a member of it. The committee published its

[Lord Lexden]
recommendations in two substantial reports, *Intergovernmental Relations in the United Kingdom* and *The Union and Devolution*. The first, which appeared in March 2015, stressed the need to make the memorandum of understanding, which is the subject of this debate, an effective instrument of good government in our country. It is one of the principal means by which devolution can be successfully reconciled with a strong union.

The memorandum sets out the arrangements under which the Joint Ministerial Committee, bringing together members of all four UK Administrations, should fulfil the vital task of maintaining accord between the powers granted to the devolved bodies and the overall interests of the union.

The first of the two Constitution Committee reports which bear on this debate made it clear that a revision of the memorandum is essential to enable the Joint Ministerial Committee to become a truly effective guardian of the unity of our country, which at the moment it is not. The Constitution Committee's report called for much greater transparency of the JMC's meetings, agendas and minutes. It also called for more frequent meetings and—a crucial point—provision for the devolved Administrations to initiate policy proposals.

A stronger union requires a stronger voice for the devolved institutions within the JMC, which might usefully be renamed the UK intergovernmental council to make everyone clearly aware of its vital constitutional role. Most urgently of all, the JMC needs to ensure that Northern Ireland's voice is always heard clearly, particularly in relation to Brexit, whether or not its devolved institutions are in active life.

The Government responded to the Constitution Committee's report on intergovernmental relations after an interval of just under two years. This hardly suggests that the safeguarding of our union—that "precious union", as Mrs May describes it—has aroused great interest yet among policymakers. The committee returned to the issue in its report *The Union and Devolution*, for which it had to wait a mere nine months for a government response. In that second report, it said that,

"a new mindset is required at all levels of government—one that recognises the devolved institutions as now being established components of the UK's constitution".

Has that new mindset now been created? The evidence is not yet compelling. The Government are disinclined to set out the framework of intergovernmental relations in statute as the committee suggested, but by such means the devolved Governments would have their place in the new constitutional order properly defined and firmly delineated.

There have been profuse promises of greater transparency, and of more information about the work of the JMC, but a series of Written Questions I put down last month yielded brief, not very enlightening replies. On 17 January, the Government referred to a commitment to a review of the workings of the JMC. When will it be completed and the results published? The Constitution Committee concluded:

"The stability of the Union requires careful management of the balance between unity and diversity".

The existing balance needs reconsideration and change. Why should people in Northern Ireland alone be deprived of the right to a same-sex marriage? Why should Northern Ireland be deprived of the benefits of the new and greatly improved libel laws?

Speaking on 9 October, my noble friend Lord Lang of Monkton, who chaired the Constitution Committee with immense skill, told the House:

"I sense that the Government have not yet fully engaged with the need to devise and articulate a vision for the future of the state and its devolution settlements".—[*Official Report*, 9/10/17; col. 28.]

We badly need that vision, to which a revised memorandum of understanding would help give practical expression.

6.57 pm

The Earl of Kinnoull (CB): My Lords, it is a great pleasure to follow the noble Lord, Lord Lexden, and his typically carefully crafted remarks. I too congratulate the noble Lord, Lord Empey, on securing this important debate. It is most unfortunate that Brexit has, I feel, to a large extent prevented us from recent consideration of the constitutional mechanics of our now heavily devolved union. I also congratulate the Minister on her new position and wish her well in it.

I note that I am the Scot speaking tonight and that there is strong representation from the other devolved parts of the UK. The memorandum of understanding is stuck in its October 2013 time warp. How different the world looked then. This was before the Scottish referendum, before the great burst of devolution that stemmed from that and before the upcoming removal of what the European Union Select Committee termed "the constitutional glue" that the EU afforded to the four nations of the UK. I have become very aware of the true and subtle extent of this through the EU Select Committee over the last 18 months. The thick sheaf of EU law and court mechanisms have led to much legal and regulatory consistency in the heavily devolved UK, consistency driven by the EU. This needs to be replicated somehow to maintain that glue and the MoU should be part of that.

Looking back, the MoU and the supplementary agreements of October 2013 were a thoroughly practical set of principles, and proportionate in the 2013 circumstances. The language concerning the secretariat in the MoU suggests to me that this most important of constitutional apparatus has no full-time staff to look after things, certainly at a senior level. I hope I am wrong. Will the Minister describe the MoU's staffing at the Cabinet Office, and in particular what full-time positions there are devoted to the MoU, especially at senior level? Whatever the answer to that question, the constitutional apparatus was designed for October 2013. Just 11 months later we had the Scottish referendum and much more power being devolved. Yet there have been no changes to the MoU, nor is there public evidence of any consideration of whether this vital apparatus needed updating.

The Smith commission agreement was published in November 2014. In the foreword, in the section headed "Inter-governmental working", the noble Lord, Lord Smith, noted:

"Throughout the course of the Commission, the issue of weak inter-governmental working was repeatedly raised as a problem.

That current situation coupled with what will be a stronger Scottish Parliament and a more complex devolution settlement means the problem needs to be fixed".

I submit that three years on this remains just as true and just as in need of action. As the senior partner in the MoU apparatus, the UK Government must take that lead.

What a large set of factors need to be considered in the review. Clearly, the MoU was not drafted for the current Northern Ireland situation. It does not work. The workings of the JMC (EU Negotiations) came under very heavy scrutiny by the EU Select Committee and we reported on many unsatisfactory features. It is not working. The noble Lord, Lord Wigley, has told us of the problems for Wales and, indeed, Scotland. Now even more power will be devolved as a result of Brexit. In her January speech, the Prime Minister made that clear and talked of the importance of,

"maintaining the necessary common standards and frameworks for our own domestic market".

The MoU is a core framework. There will therefore be other, new complexities that must be addressed in a strong and fair MoU.

Recently I met here a long-term friend who is a Canadian constitutional lawyer based in Montreal. He went over the last 20 to 30 years of history in this area in Canada. The result is today a reasonably happy one but he stressed to me how much effort is required in the maintenance of effective relations between the national Government and the devolved provinces. We should heed this lesson from another's experience. So in closing I ask the Minister to tell us if there is any update on the January plan to review and "update as necessary" the memorandum of understanding, as its paragraph 31 says should happen annually, in the light of the constitutional developments since October 2013 and the other foreseeable ones, and indeed the Prime Minister's own speech of 22 January.

7.02 pm

Lord Thomas of Gresford (LD): My Lords, I, too, thank the noble Lord, Lord Empey, for raising this very important topic.

Paragraph 20 of the memorandum of understanding states:

"The UK Government will involve the devolved administrations as fully as possible in discussions about the formulation of the UK's policy position on all EU and international issues which touch on devolved matters".

Paragraph B2.5 of the annexed Concordat on Co-ordination of European Union Policy Issues—Wales states that,

"the UK Government wishes to involve the Welsh Ministers as directly and fully as possible in decision making on EU matters which touch on devolved areas".

Nothing could more directly touch on devolved areas than Brexit. Nevertheless, the Government have failed adequately to discuss the formulation of the UK's policy position with the Welsh Government and have not involved Welsh Ministers—directly or, indeed, indirectly—in decision-making about the negotiations.

These failures have led to an impasse such that neither the Welsh Assembly nor the Scottish Parliament will grant legislative consent to the withdrawal Bill currently before the House of Commons. Welsh and Scottish parliamentarians from every political party in the devolved Administrations, including the Conservatives, met the junior Minister in Committee Room 4A last month—I was present—and made it clear to him that they were united in refusing legislative consent to the Bill in its present form.

Why is that? Currently, the Welsh Assembly and the Welsh Government are legally obliged to comply with EU law. Although legislative competence has been devolved from Westminster, their policy autonomy is significantly constrained in areas such as agriculture, environmental protection, state aid for industry, public procurement, and aspects of transport and energy by that framework of EU law. The effect of the withdrawal Bill is to remove the need for such compliance. These policy areas would, without more, fall completely under devolved control and quickly give rise to significant policy differences—so the Government, quite naturally, have concerns about the coherence of the internal UK market.

During Second Reading on 7 September the Minister, David Davis, said that the purpose of the devolution section of the withdrawal Bill was,

"recreating in UK law the common frameworks currently provided by EU law, and providing that the devolved institutions cannot generally modify them".—[*Official Report*, Commons, 7/9/17; col. 354.]

The Joint Ministerial Committee (EU Negotiations), formed under the aegis of the memorandum of understanding, met for the first time in eight months on 16 October last. It issued a weak communiqué, which posited UK frameworks setting out a common approach and common goals. But, under the Bill, it is Westminster which will have the sole power to legislate to replace the EU frameworks with UK frameworks.

We in Wales have by and large been content with the EU framework agreements, based upon a wide perspective of the needs of the states, nations and regions of Europe. Wales is indeed a net beneficiary of European funds, which have significantly helped our deprived areas and our upland farms. But, when a UK framework is created by a Conservative Executive at Westminster, other considerations are bound to come into play. The politics of cutting the cake are very different. Even supposing that European funding is replaced, there are electoral considerations. There is, above all, the English question—the asymmetric aspect of the United Kingdom. Wales is not a priority. Scotland has some clout, simply with the threat of another referendum on independence. Northern Ireland can play its cards with the problems of the Irish border and the threat of a total breakdown of the Belfast agreement—and, in any event, the DUP holds the Government's majority in its hands, not to mention a cash subsidy of £1 billion. By contrast, Wales holds no levers, and the Welsh Assembly Government is not a friend of the current Tory Administration.

There are 64 policy areas where powers returning from the EU intersect with the Welsh devolution settlement. The plan is that major powers will not go directly to Cardiff but will be retained in Westminster to be devolved, if at all, at the discretion of Ministers by statutory instrument—not even by the will of the Westminster Parliament in primary legislation. This basic lack of democratic process is at the heart of the

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disquiet voiced by all the devolved Administrations over the withdrawal Bill. In all this, the consultation aspects of the memorandum of understanding, with its joint ministerial committees meeting rarely, if at all, have been a dead letter. They should be scrapped. I am with the noble Lord, Lord Lexden: what is needed without further delay is a statutory UK Council of Ministers, drawing upon all the devolved Administrations and central government so that it can discuss and resolve the many problems that this Tory Brexit throws up.

7.08 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am most grateful to the noble Lord, Lord Empey, for initiating this debate. He speaks with wide experience of service to the devolved Government of Northern Ireland, and of course to the peace process. It has been an excellent and serious debate. We also welcome the noble Baroness, Lady Stedman-Scott, who will be winding up for the Government.

As we have heard, the memorandum of understanding underpins the relationship between the UK and the devolved countries. It includes an agreement to participate in the Joint Ministerial Committee and the concordat on co-ordination between the Administrations on EU policy issues. I agree with the noble Earl that much has happened since the MoU was brought to fruition.

I also have sympathy with the description used by the noble Lord, Lord Empey, of our haphazard approach to constitutional change. He is right; this is the way that we tend to do it. He is also right in that we sometimes a reach a point where it simply is not good enough. One area, which is rather separate from this debate, is Lords reform, which is a classic of its kind. Proposals are made simply to deal with the issue of the Lords, perhaps through an elected House, but they completely ignore the impact this would have on the rest of the constitution. I do not want to trade insults with noble Lords on the other Benches, but that essentially was the problem with the Clegg Bill. Mr Clegg seemed to have no interest in how it would interface with the Commons and the rest of the constitutional arrangements—and there are many other examples.

I do not think anyone can think, post Brexit, that we do not need to come back to look at our constitutional arrangements. My party believes that there needs to be a kind of constitutional convention to allow us to examine these matters in great detail, and I commend that to the House.

The noble Lord, Lord Empey, used the rather wonderful expression "devolve and forget". I say, for local government in England: if only that were the case. I think he is seeking to place some kind of accountability framework into the relationship between Westminster and the devolved Governments. With respect to him, I am not sure that that is entirely consistent with the spirit of devolution, although I accept that what he described was a light-touch approach—and I certainly understand the benefit of shared knowledge and experience.

I shall give one example from the area I know best, the National Health Service. Essentially, within a common philosophy, we see four countries developing different ways of organising the National Health Service. I have no problem with that, but it is very important none the less that staff are able to move between those four countries easily and that there is shared knowledge and understanding. Certainly I very much support efforts to ensure that, where we see different developments in the four countries, there is a means of sharing understanding and learning from experience—but I am wary of a formalised accountability framework.

The noble Lord, Lord Bew, mentioned the renewable heat initiative. I think he was suggesting it as an example of where Northern Ireland, in particular, has areas where it does not have the expertise or capacity to discharge a particular responsibility. That is a heavy area to go into, and I think we should see the outcome of the independent inquiry before we draw any conclusions.

Much of this debate has understandably been about Brexit. As noble Lords have commented, we have debated a series of excellent reports by Select Committees on devolution and intergovernmental relations in the UK. Clearly, Brexit gives a new context and urgency to all these issues, but the Government's stewardship of the JMC on the Brexit negotiations has left a lot to be desired. As the noble Lord, Lord Wigley, said, it did not meet between February and October—and when it does meet it does not currently have an elected voice attending on behalf of Northern Ireland, which is another problem. We would have built into the Act formal consultation with the devolved Administrations in the Brexit process, but we seem to have a rather haphazard and unwise approach to how the Westminster Government work with the devolved countries. The noble Lord, Lord Thomas of Gresford, pointed to the problem of the legislative consent Motions, which are apparently not coming from the devolved countries.

As part of Brexit, there will be a new landscape for devolution to navigate and more competencies overlapping between the UK Government and the devolved legislatures, and there are going to have to be new common frameworks on areas that at the moment are governed by EU agreements. So clearly the MoU has to be updated, and we need to see devolution strengthened and protected throughout the process.

Finally, the Bill currently going through the other place not only includes a sweeping power grab by Ministers at the expense of the sovereignty of Parliament but undermines the UK's devolution settlement. The risk surely is that in devolving areas the Bill moves power directly from Brussels to London and the plans for common frameworks appear to be simply that they will be imposed from above. We have to avoid this. This has been a very short but excellent debate, which has raised some very profound issues that we need the Government to focus on.

7.15 pm

Baroness Stedman-Scott (Con): My Lords, first, I congratulate the noble Lord, Lord Empey, on securing this short but substantive debate regarding a matter that the Government consider of great importance. I was sorry to hear in his opening remarks of his dismay and assure him that it is not "devolve and forget". I will do my best to answer all noble Lords' questions accurately and courteously. If I run out of time, I will

obviously write to noble Lords to respond to them, but I am not too keen to hide under "writing to people" any more than I have to, for good reason.

The Government have sent a clear message of our commitment to govern for the whole of the UK, working closely with our colleagues in Scotland, Wales and Northern Ireland to foster strong and sustainable relationships. To echo the comments of my noble friend Lord Duncan, who spoke in this House some weeks ago, at present, communities are facing increasing pressures on a range of matters—their economies and national security to name but two. However, I assure all noble Lords that the UK Government remain committed to strengthening our union to ensure that such obstacles do not inhibit progress across the UK.

The Scotland, Wales and Northern Ireland Offices continue to work to ensure that the best interests of Scotland, Wales and Northern Ireland are properly considered during the development of UK policy and that the UK Government's responsibilities are represented in those same territories. Further to this work, the UK Governance Group within the Cabinet Office was formed to manage the UK Government's constitutional and devolution policy. The Government are committed to ensuring they have the right support in place for the constitutional arrangements across the country. The UK Governance Group works closely with colleagues in the devolved Administrations to uphold and implement provisions of the Scotland Act 2017, the Wales Act 2017 and the Belfast agreement.

The memorandum of understanding—MoU—is a written agreement between the UK Government and devolved Administrations that underpins how the UK's four Administrations work with one another on matters of mutual interest. Supporting the MoU are several supplementary agreements which formalise the Joint Ministerial Committee as a structure for multilateral engagement, including the UK approach to matters relating to EU policy, international relations and financial assistance to industry.

The Government recognise the need to review the memorandum of understanding, not least in the light of the UK's exit from the European Union. However, this is not a decision for the Government alone. The decision to review the MoU must be taken with the agreement of the four participating Administrations—the UK Government, Scottish Government, Welsh Government and Northern Ireland Executive. We will continue to work together to identify the most appropriate time to do so. I note the importance that the noble Lord places on intergovernmental relations and assure him that the UK Government are committed to positive and productive relations with all devolved Administrations.

I shall say something about the formal structures of intergovernmental relations. There is much to do. The Government have been clear from the start that the devolved Administrations should be fully engaged in the UK's exit from the EU. The Government are committed to ensuring that constructive engagement with the devolved Administrations continues through formal structures such as the Joint Ministerial Committee and the British-Irish Council, as well as bilaterally between our Ministers and officials. As noble Lords will know, at the apex of the JMC structure is the JMC (Plenary), which is chaired by the Prime Minister and attended by the First Ministers of the devolved Administrations. There are also a number of JMC sub-committees such as the JMC (EU Negotiations) and JMC Europe, which concern themselves with the negotiation process and ongoing EU business respectively.

Important progress was made at the most recent JMC (EU Negotiations) in October 2017. The committee discussed priorities for the future relationship with the EU and agreed the principles that will underpin common UK frameworks. The UK Government are currently working with the devolved Administrations to arrange another meeting of the JMC (EU Negotiations) before Christmas. Additionally, the British-Irish Council met in Jersey on 9 and 10 November, which presented another important opportunity to discuss the UK's exit from the EU.

However, those are not the only ways that the Government engage with the devolved Administrations. For example, the First Secretary of State and the Secretary of State for Exiting the European Union have been engaging bilaterally with their counterparts since the general election this year. Noble Lords may also have noted the bilateral meetings between the Prime Minister and First Ministers of Wales and Scotland in recent weeks, which have been reported on positively by all participants. At official level, joint work has been ongoing on matters including the establishment of common frameworks to address the repatriation of powers following the UK's exit from the EU. Though not as visible as ministerial engagement, the importance of joint working between Administrations should not be overlooked. Ensuring that the principles by which our Administrations work together are fit for purpose, and can ensure the continuation of positive and productive relationships, is key.

As powers are repatriated from the EU, additional requirements will be placed on the existing structures for intergovernmental relations. It is important that we continue to engage positively, as at the last JMC on EU negotiations, on the establishment of frameworks to manage these powers, which may in turn require consideration of our existing governance structures. I hope this will give noble Lords some confidence and assurance that the points they have been raising about Brexit and its impact on the memorandum of understanding will be taken seriously and given due consideration.

Noble Lords may be interested to know that there have been six revisions of the MoU since its inception. It is important that in conducting any review the agreements remain adaptable enough to address the interests of the four participating Administrations. I stress that the four Administrations must agree to any revision of the MoU by consensus. The Government anticipate that a future Joint Ministerial Committee (Plenary) will provide the necessary forum to discuss the timing of any such review. Discussions on the date of the next JMC (Plenary) are currently ongoing, and we are working towards a meeting early in the new year.

I turn to the question of Northern Ireland at the moment. Effective intergovernmental relations can function only with the full participation of each Administration. I will therefore briefly address the situation in Northern Ireland and the current lack of

[Baroness Stedman-Scott]
an Executive. The Secretary of State for Northern Ireland and the Prime Minister are fully committed to ensuring that, as we establish our negotiating position, the unique interests of Northern Ireland are protected and advanced. They have a clear understanding of the range of views from across Northern Ireland and will continue to champion Northern Ireland's interests over the coming months.

The Government believe that all four UK Administrations should be present during meetings of the JMC, and we very much hope that this includes the Northern Ireland Executive. However, our focus remains on the full restoration of devolution to Stormont, and we will not speculate on any other outcomes.

While discussions on the matter continue, UK government officials continue to engage with colleagues in the Northern Ireland Civil Service to ensure that Northern Ireland's interests are properly represented and that civil servants continue to attend forums such as the JMC.

I now come to some of the questions that noble Lords have put to me. I am conscious of the time, but I will do my best to answer them.

One seemingly burning issue for all noble Lords, not least the noble Lord, Lord Empey, is scrutiny and accountability. The Secretary of State for Northern Ireland has set out that he will be writing to the Northern Ireland Comptroller and Auditor-General to ask that any reports that the Northern Ireland Audit Office produces relating to improper or poor value-for-money expenditure in the absence of an Executive be sent to him. In turn, he will ensure that these are laid in the Libraries of both Houses. He will also be asking Northern Ireland departmental permanent secretaries to draw their responses to his attention, so that those too can be laid in both Libraries. In that way, a proportionate approach will be put in place to allow for continued democratic accountability in this unfortunate period without a devolved Government. I hope that also answers the point raised by the noble Lord, Lord Bew.

Let me deal with one more point about accountability. As the Secretary of State for Northern Ireland made clear in taking through the Northern Ireland Budget Bill last week, we recognise that accountability and oversight are important, and it will be for the Northern Ireland Civil Service and those such as the Northern Ireland Audit Office, which oversees spending, to be satisfied as to the discharge of their relevant duties here. Were any irregularities to be identified, I have asked them to be drawn to my attention, and I would in turn draw them to the attention of the House. But I should be clear to the House that strict equality duties are placed on all public authorities in Northern Ireland, particularly via the Northern Ireland Act 1998, and I am confident that the Northern Ireland Civil Service will act in accordance with those duties in making spending decisions for the whole community.

I have run out of time on this, my first outing, and I have a lot to learn, but I am grateful to noble Lords for their contribution to what has been a fascinating debate. I share noble Lords' view that careful consideration must be given to the intergovernmental structures as we approach the UK's exit from the European Union. I hope that noble Lords will be assured that the Government consider effective intergovernmental relations to be of great importance to our United Kingdom. We will continue to work closely with our colleagues in the devolved Administrations to find an appropriate time to conduct the review.

I hope that I have responded courteously and accurately to all noble Lords. I will ensure that noble Lords are written to on those questions that I have not answered orally.

House adjourned at 7.28 pm.