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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Tuesday 5 June 2018

2.30 pm

Prayers—read by the Lord Bishop of Carlisle.

General Data Protection Regulation Question

2.37 pm

Asked by Lord Brabazon of Tara

To ask Her Majesty's Government for what purpose small clubs and charities have to comply with the General Data Protection Regulation, which came into force on 25 May.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, clubs and charities which handle personal data will need to comply with the general data protection regulation in the Data Protection Act 2018 because people have the right to expect organisations of all sizes to keep their data safe and secure and not to misuse it. Small clubs and charities may also process sensitive personal data, such as medical records or children's data. It is especially important that this is kept safe and secure and used appropriately. To assist smaller organisations, which may have more limited access to legal resources, the Information Commissioner's Office has published a range of user-friendly material on the GDPR on its website and set up a dedicated phone line for small businesses and charities.

Lord Brabazon of Tara (Con): I am grateful to my noble friend for that reply. He has confirmed that any club, however small, that keeps a record of its membership must register, and not just register but renew and pay up every year. I will not ask my noble friend to give an estimate of the numbers involved, because it must be many thousands and I do not know who on earth is going to keep track of it all. I doubt whether anybody knows the numbers. But can my noble friend tell me what these organisations are doing wrong at the moment? What ill is being done that is going to be cured by making them involve themselves in this process?

Lord Ashton of Hyde: My Lords, I am glad that my noble friend realises that it is very important to pay the fee that is required, as agreed by this House last month, in order to fund the ICO. All this is clearly explained on the ICO website under the heading, "The Data Protection Fee: A Guide for Controllers". As for ills, it is not that any organisation, or even individual, has committed any sin, or that there is an ill to be cured; this is about individual data subjects' rights. As far as an individual data subject is concerned, if his or her sensitive personal data is misused—for example, by not being kept securely—the damage done to that person or organisation is the same whether it is by a large or a small organisation. That is why the GDPR requires all data controllers, unless they are using it just for personal or household matters, to be clearer with people how their data is going to be used, to process it where it is lawful to do so, and, very importantly, to make sure it is held securely.

Lord Watts (Lab): My Lords, would it be a good idea for the Government to allow small clubs to opt out of that if their membership wished to?

Lord Ashton of Hyde: No, I do not agree with that, for the reason I have just given.

Lord Tebbit (Con): Will my noble friend explain to all of us data controllers here assembled exactly what this mischief is? I think the principal mischief is that this is a piece of legislation invented in Brussels and cursed on us.

Lord Ashton of Hyde: Of course, the noble Lord is entitled to his opinion but I do not agree with him. In this case, as I tried to explain, it does not matter whether it is a large or small organisation, or even an individual data controller, that misuses information. Individuals' personal data is very important and has grown enormously since the previous Data Protection Act 20 years ago. My noble friend will of course realise that there was a Data Protection Act 20 years ago.

Lord Addington (LD): My Lords, does the Minister agree that small clubs perform a useful function for society generally, as do small charities? If a problem becomes apparent, will the Minister give an assurance that the Government will review it and see if there is anything there? I agree with him that data should be guarded but we do not want to damage these clubs unduly.

Lord Ashton of Hyde: I am sure the noble Lord is aware that the situation for data controllers has not changed since the Data Protection Act 1998. This is not a question of problems but of protecting the data rights of everyone in this Chamber. Therefore, it applies to all organisations and to individual people, but only if they deal in personal data and are controllers of that information.

Lord Hughes of Woodside (Lab): Does the Minister accept that one of the benefits of this legislation is that now people have to write and ask you whether or not you want to receive junk mail? That is fine. But with many of them, not only do you click "unsubscribe" but they ask you why you have unsubscribed. Will the Minister make sure that these issues are vigorously pursued and there is no slacking off? Frankly, my current emails have reduced by half and could be reduced by a great deal more.

Lord Ashton of Hyde: I believe that when that happens, that is the end of it. If they ask, they obviously want to know why the noble Lord no longer wants to be in touch with them—I do not blame them for that. Of course, I accept that those emails have a benefit. One of the principal features of the GDPR and the Data Protection Act 2018 is that there is a much stronger measure of consent. People have to give active consent to have their personal data processed.

Lord Evans of Weardale (CB): My Lords, are there proposals to review the impact of this measure on small organisations? Irrespective of the fact that there

[LORD EVANS OF WEARDALE]

is continuity from the previous Data Protection Act, there is concern that small organisations, such as charities et cetera, will be disproportionately affected. It is important that we should know whether that is the case. I declare an interest as the chairman of the charity Kent Search and Rescue.

Lord Ashton of Hyde: Of course, we have to comply with the GDPR while we are members of the EU. We want to continue to have a data protection regime that is in accord with the EU's when we leave. I believe that all new legislation is reviewed after a period of time, so we will obviously keep an eye on whether there is a disproportionate effect on small organisations. Charities are obviously important but, for the reasons I set out before, individual data subjects' rights are important so there has to be a balance.

Lord Stevenson of Balmacara (Lab): My Lords, the recent document submitted by the Government to the EU as part of their negotiating structure talks about data protection and its importance for our economy. These are indeed important issues. It says, however, that the way forward is not just by an adequacy agreement, which is what I thought we were all expecting, but by a treaty. Can the Minister shed some light on that issue?

Lord Ashton of Hyde: As in, I believe, many negotiations with the EU, what we want is frictionless trade. In terms of data it is very important that there is no gap between leaving the EU, when we become a third country, and still being able to exchange personal data between the EU 27 countries and this country. We would like to get an agreement so that we have not only adequacy, which can be achieved only after we leave the EU, but an arrangement that allows us to continue exchanging data with members of the EU. That would have to be done by a treaty.

Ffos-y-Fran Opencast Coal Mine

Question

2.46 pm

Asked by Baroness Humphreys

To ask Her Majesty's Government what assessment they have made of the report by the United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes in relation to the Ffos-y-Fran opencast coalmine.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, environmental and planning issues are devolved matters. Responsibility for the setting of planning restrictions and the monitoring of their impact in relation to this site, which is located in south Wales, therefore falls to the Welsh Assembly Government and the local authority.

Baroness Humphreys (LD): My Lords, Ffos-y-Fran near Merthyr Tydfil is the largest opencast coal mine in the UK and residents have led a long campaign

against the effects of air pollution on their community. On his official visit last year, the UN special rapporteur accepted that this is a devolved matter but called on the UK Government to accept ultimate responsibility for it. He also called for an independent investigation into its potential health impacts. Will the Government accede to both those calls?

Lord Henley: My Lords, under the Government of Wales Act 2006, responsibility for planning and environmental protection, including nuisance and hazardous substances, was devolved to the Welsh Assembly Government. If there is a breach of someone's human rights, that will obviously be affected by that responsibility and will be a matter for the Welsh Government. As such, Her Majesty's Government have no powers to intervene.

Baroness Randerson (LD): My Lords, over 50 years since the Aberfan disaster, the environmental problems associated with the coal industry continue to haunt the people of Wales. In the report that my noble friend mentioned, the rapporteur referred to, "various layers of government shifting responsibility". He also said:

"Ultimately it falls to the UK central government".

I fully understand and value the importance of devolution but the issue of air quality and overall environmental standards ultimately lies with the UK Government, so what discussions and meetings have been held between the Welsh Government and the UK Government, and at what level?

Lord Henley: My Lords, I do not think that I can take the noble Baroness any further. This is a devolved matter. It is a matter for the Welsh Government, who have responded to the special rapporteur's report.

Lord Hannay of Chiswick (CB): My Lords, will the Minister explain to the House how the UK Government fulfil their obligations to the United Nations if they cease to have any obligation for matters that have been devolved? Surely the responsibility of the British Government in the UN is to fulfil obligations they enter into. How are they going to do so?

Lord Henley: My Lords, the UK Government have responded to this report. The Question relates to one part of the report relating to the Ffos-y-Fran opencast coal mine. As I have made clear, that is a devolved matter and a matter for the Welsh Government, and the Welsh Government have responded to the UN rapporteur's report.

Lord Tebbit (Con): My Lords, is my noble friend not absolutely and completely right on this issue? If matters are devolved, they are devolved, otherwise there is no point in having devolution at all, is there?

Lord Henley: My noble friend is absolutely correct.

Baroness Jones of Moulsecoomb (GP): My Lords, up to 60,000 people die in this country every year from air pollution. I fail to see how the British Government do not have a responsibility for lowering air pollution in every part of the union.

Lord Henley: If the noble Baroness wants to put a Question down on that subject, she is perfectly entitled to do so. That is not what this Question is about. I will respond to that Question if the noble Baroness puts it down.

Lord Foulkes of Cumnock (Lab): My Lords, the Minister will recall that I am a great enthusiast for devolution. However, can I point out that he is not correct in what he said? My understanding, as a long-time supporter and student of devolution, is that the UK Government would not normally intervene. That word “normally” is in the legislation. Perhaps the Minister could think again.

Lord Henley: My Lords, I am not going to think again. The 2006 Act is perfectly clear, as are the other Acts offering further powers to the Welsh Government. This is a matter for the Welsh Government, and they have responded.

Lord Lennie (Lab): My Lords, were the Minister a protestor, who would he aim his protest at? Would it be the local authority or the Welsh Government?

Lord Henley: As I said, the Welsh Government have responded to this report. Obviously the original planning application was dealt with by the Merthyr Tydfil local authority.

Home Office: Data Breaches *Question*

2.52 pm

Asked by Lord Kennedy of Southwark

To ask Her Majesty’s Government what action they are taking to ensure that documents sent to the Home Office are not lost; and what plans the department has to refer itself to the Information Commissioner’s Office when data breaches occur.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, following the implementation of the General Data Protection Regulation on 25 May, the Home Office has appointed a data protection officer who is reviewing the data breach reporting arrangements across the Home Office. This autumn, the Home Office will begin the rollout of a more complete service that will see customers enter and leave a commercial partner facility in possession of their documents, having had them scanned.

Lord Kennedy of Southwark (Lab Co-op): My Lords, repeat examples of personal documents being lost by the Home Office are unacceptable and distressing and potentially devastating for the individuals who have had their papers lost. I am pleased to hear of the action being taken by the noble Baroness, but this is not a new problem. It was raised as far back as 2012 in the other place by my right honourable friend the Member for Cardiff South and Penarth. So can the Minister give us further assurances about what is happening about personal papers and things? We cannot have a situation where papers are lost and people are potentially put in devastating situations. I did not

quite catch what the Minister said. Can she confirm that in future, if there are any data breaches, the Home Office will refer itself to the ICO?

Baroness Williams of Trafford: I thank the noble Lord for asking that question about clarity. He is absolutely right to be concerned about lost documents. It can be devastating for people, particularly for immigration or visa purposes. Following a spike last November, UKVI formed a lost documents working group to identify methods of preventing lost documents. From October 2018, the majority of customers will complete their visa application, for example, at front-end service points in the UK managed by our new commercial partner on behalf of UKVI. The noble Lord asked about breaches. They are normally reported to Home Office security and to the data protection officer.

Baroness Hamwee (LD): My Lords, the fact that there has to be a specific lost documents working party says a great deal about organisation in the Home Office. I dare say that there are many millions of EU citizens who will be delighted to know that their documents will be handled with care. I should not be so cynical. If personal information is to be dealt with more reliably within the Home Office, can we expect a reduction in the percentage of successful appeals to the tribunal, which currently stands at 40%?

Baroness Williams of Trafford: The noble Baroness raises a point that the Home Office itself acknowledges. Documents have on occasion been lost—a minute proportion of the total number of documents that it deals with, I have to say, but lost nevertheless. As I say, moving to a digitised system should help in huge part to guard against that. The reporting of data breaches in future should also help not only to highlight what has happened but, hopefully, to prevent stuff from happening in future.

Lord West of Spithead (Lab): My Lords, when I was at the Home Office we were moving towards digitising all this documentation. From what the Minister says, we do not seem to have achieved that. What level of digitisation of documents and the like have we got to in the Home Office? It was very low when we started in about 2009. What level have we got to now?

Baroness Williams of Trafford: As an example, paper documents that previously had to be submitted by hand can now be scanned and sent without the need for documents to actually change hands between the individual and the office to which they are applying for whatever purpose.

Baroness Ludford (LD): My Lords, could I ask the Minister about the related issue of record keeping? I understand that there are other groups of people who may have similar problems to those we have seen in the Windrush cases. We have discovered that the Home Office is very poor at keeping records of, for instance, people who have indefinite leave to remain. Is that issue being examined? I have seen it stated in an Amnesty publication that Chilean refugees who came in the 1970s may be encountering a problem, while a Liberal Democrat councillor who has been here for decades recently had a problem when she applied for

[BARONESS LUDFORD]

British citizenship because there seemed to be no record of her ILR from 1979. What is being done about that?

Baroness Williams of Trafford: I think the noble Baroness will recognise that for the last few weeks we have recognised some of the problems faced by people who came here before 1973 but for whom there is no formal documentation. She talked about certain individuals—indeed, she mentioned a whole host of cases—but I hope that she will recognise from the statutory instrument that the Home Secretary laid last Friday that on the issue of the Windrush generation and all those individuals who were here before 1973, every effort is now being made to regularise their status. As for her assertion of ILR, I cannot comment on the case, but if she would like me to write to her on a particular case, I will certainly look into it.

Lord Elystan-Morgan (CB): My Lords, is there any reason why the ordinary law of the land should not apply here? Could not proof of the contents of a lost document be established by way of affidavit or statutory declaration?

Baroness Williams of Trafford: The noble Lord goes a bit above my pay grade, but I am sure that he is right. The Question today refers to lost documents—that is, documents that are sent in good faith and then lost, and then the individual who has sent the document has great difficulty in obtaining whatever service it is that they wish to complete. As I say, the presence of a data protection officer and some of the digitisation that the Home Office is undertaking should help to alleviate this.

Lord Griffiths of Burry Port (Lab): My Lords, in answer to a previous Question, the noble Lord, Lord Ashton of Hyde, made ample reference to the secure keeping of people's data. In reply to this Question addressed to the Home Office, we have heard pretty good evidence of anything other than the security of people's personal data. Will the Home Office be subject to the same scrutiny, supervision and possible sanctions that small clubs will be subject to as a result of the misuse of people's data in this way? Might it be appropriate to ask the noble Lord, Lord Ashton, to reply?

Baroness Williams of Trafford: The simple answer is yes—every public body will be under the same obligation.

Lord Trefgarne (Con): My Lords, is this confined to the Home Office?

Baroness Williams of Trafford: I do not know whether my noble friend means lost documents or data protection, but I am sure that other departments have similar procedures for lost documents.

Lord Clark of Windermere (Lab): My Lords, the noble Baroness correctly referred only to the Home Office, but a lost document from any government department could be critical. Will the Minister assure us that she will draw to the attention of other departments the need to ensure the safety of documents submitted to them?

Baroness Williams of Trafford: The noble Lord is absolutely right to raise this: it applies not just to the Home Office and all government departments but to all public bodies.

Brexit: Science and Research Funding Question

3.01 pm

Asked by **Lord Fox**

To ask Her Majesty's Government what steps they will take to ensure that there will be the same levels of funding for science and research if the UK withdraws from the EU.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, as set out in the Government's industrial strategy, we are investing an additional £7 billion R&D funding by 2022, and aim to reach 2.4% of GDP by 2027. As my right honourable friend the Prime Minister made clear in her Jodrell Bank speech, we also want to continue our mutually beneficial relationship with the EU on research and innovation. This includes the option fully to associate ourselves with the excellence-based European science and innovation programmes.

Lord Fox (LD): My Lords, I thank the Minister for that Answer. The numbers are to the Government's credit: we are moving towards our research and development investment being close to where it should be. However, it has not necessarily answered my Question. In the event of the United Kingdom departing from the European Union, as the Minister alluded to, the cost of associating with a number of schemes with which, in his words, we wish to associate ourselves, will be very high. If we wish to participate—pay to play—in Horizon 2020 Future, if we wish to participate in the European defence fund, if we wish our students to participate in the Erasmus exchange programme, they alone will cost many billions of pounds. Will he undertake that there will be money additional to that number for those things to continue? If not, the United Kingdom's science and technology industry and community will lose out. Will he make that commitment?

Lord Henley: My Lords, I am not going to make any commitment in advance of the negotiations. As the noble Lord is aware, it is important that we get a good deal here, and I think it is in the interests of both the United Kingdom and the EU. The noble Lord will be aware of what Pascal Lamy said only a year ago:

"Whatever Brexit modalities are agreed between the UK and the EU by 2019, full and continued engagement with the UK within the post-2020 EU R&I programme remains an obvious win-win for the UK and the EU".

The UK has one of the strongest science bases of all European countries. We want to continue negotiating on that basis, and we think that the EU does as well.

Baroness Wheatcroft (Con): My Lords, the European Medicines Agency is leaving the UK. Last month, the foundation-stone for its new headquarters in Amsterdam was laid. Cancer specialists and experts say that cancer patients and cancer research in the UK will be hit

detrimentally by the departure of the EMA. Can the Minister please tell the House how the Government propose to alleviate that?

Lord Henley: My Lords, in answer to the original Question, I made it clear that we will continue to negotiate to make sure that we get the best deal on research. We want to be involved in all the research-based programmes with which we have been involved, and I think it is in the interests of the EU that we are involved in them. That is why I quoted Pascal Lamy on the subject. Obviously, the negotiations will continue. We will have more to say in due course.

Lord Hunt of Kings Heath (Lab): My Lords, on the question of regulatory harmony on medicines licensing, surely the point is that, unless a medicine's registered licence in this country is recognised in the EU, companies will no longer invest in R&D in this country, which has a direct impact on the question put to the noble Lord.

Lord Henley: My Lords, that is not happening at the moment, and it will not happen—

Noble Lords: Oh!

Lord Henley: It is not happening, and I think that we will get a deal that will be in the interests of the United Kingdom, because it is in the interests of the EU as well.

Baroness Afshar (CB): My Lords, are the Government aware that this is already happening? I declare an interest as a member of the University of York, where already researchers who were invaluable in the Dorothy Hodgkin programme have left because they could not renew their visas and found that it was much easier to find a similar job in Europe. It is a matter of great regret, and the loss to this country is going to be considerable. Would the Government please reconsider?

Lord Henley: My Lords, we believe that EU students, researchers and staff and our own universities make a very important contribution to the United Kingdom. We believe that we have a very strong science sector, as I made clear earlier, and we want that contribution to continue. Given the quality of our higher education sector, which has something of the order of 10 universities in the top 100 world universities, we are confident that it will.

Lord Cunningham of Felling (Lab): My Lords, is the Minister sanguine about the negotiations on our membership of the Galileo programme? Has he or his department done any calculation as to what the consequences will be for the United Kingdom if we are excluded from that very important programme?

Lord Henley: My Lords, we discussed the Galileo programme only a week or two ago, and I think from all sides of the House noble Lords are sanguine, as the noble Lord said, that we should continue to play a part in that. Government Ministers are doing all that they can to lobby their opposite numbers all around Europe to continue to take part in that. It is again in

the United Kingdom's interest but also in the interest of the rest of the European Union that we continue to play a part in Galileo.

Lord Stevenson of Balmacara (Lab): In the Minister's first response that the UK would continue to receive substantial funding from Her Majesty's Treasury for research, he gave a gross figure—I think that it was £7 billion by 2022—and then a figure of 4% of GDP by 2027. I would be grateful if he could clarify what exactly that was. The real question was whether the gap that was going to happen would be matched by the Government. What level of science and research spending is guaranteed to the science community in the UK, and for how long?

Lord Henley: My Lords, as we set out in our industrial strategy, we want to see an increase in R&D, getting up to 2.4%, if I can correct the noble Lord—I think that he said 4%—by 2027. I reaffirm the other figure I gave to which the Prime Minister referred, that some £7 billion will be put into research and development by 2022.

Royal Bank of Scotland

Private Notice Question

3.08 pm

Asked by Baroness Kramer

To ask Her Majesty's Government why HM Treasury have sold a further tranche of shares in Royal Bank of Scotland, resulting in a loss of over £2 billion to the Exchequer.

Baroness Kramer (LD): My Lords, I beg leave to ask a Question of which I have given private notice.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, last night the Government conducted a sale of shares in RBS, restarting the phased return of the bank to full private ownership. The Government sold 925 million shares overnight, raising £2.5 billion for the taxpayer. The transaction represents value for money for the taxpayer. RBS is a smaller, simpler and safer organisation than the one that the Government were forced to recapitalise in 2008, and the sale price reflects that reality.

Baroness Kramer: My Lords, why sell now, crystallising a loss that rises to in excess of £3 billion, when financing costs are included, when there is no pressure and when the Government claim to be positive about both RBS and the community? Are the Government concerned that, by acting now, they could be selling shares on an inaccurate prospectus, ignoring growing allegations about liabilities to those abused by RBS's global restructuring group? We are beginning to hear, both in the UK and now in the US, Australia and across the EU, that those liabilities are inadequately quantified, not declared and not provided for in the accounts.

Lord Bates: I thank the noble Baroness for her questions. In response to the first one, it must be remembered that when the Government paid £5.02 per share for RBS in 2008 it was an essential injection of

[LORD BATES]

capital at a time of financial crisis. The bank whose shares we sold yesterday is a very different organisation. Its balance sheet is £1.5 trillion less. It is operating in nine countries instead of 38. Because we have changed the rules, its capital buffer is now 15.1%, which is greater than it was and well above the threshold required. The noble Baroness also touches on some other important factors. These had a bearing on UK Government Investments, which advised the Government about when to sell—we act on advice in these things. It pointed to the fact that, because a settlement of £3.6 billion with the Department of Justice in the United States, announced in early May, had now happened, it judged this to be a good time to exercise this sale. The Financial Conduct Authority rightly looked into the global restructuring group, where the circumstances are very concerning for the businesses affected. Its report recognised that a number of that group's customers had been mistreated.

Lord Davies of Oldham (Lab): My Lords, the Minister has made a good fist of a very poor case indeed. He must recognise that the bank is, in fact, being sold at a level massively below its value when it was bailed out in 2008. It is, therefore, the taxpayer who is bearing the cost of this situation. It will not do for the Government to say: "We now have a bank which can pay a dividend and which has made progress. We are therefore delighted to be able to sell it into private ownership, while the public which bailed it out loses significantly on the deal".

Lord Bates: The noble Lord may say that we sold it too cheaply; I might say that he bought it too high, which is another way of looking at the £5.02. It is a fundamentally different bank to the one which was acquired then. The price which we sold at yesterday—271p—was near the top end of the present yearly average. We have signalled that we do not believe that a Government should be in the business of running these banks. The Chancellor announced in last year's Autumn Budget that we would gradually dispose of our interest in the bank over the next five years, and that is what we are doing.

Lord King of Bridgwater (Con): Does my noble friend agree that the situation as advanced by the Opposition Front Bench and Liberal Benches is a complete distortion? The loss occurred when the decision was made to buy all the shares to support the interests of all the depositors in the bank at that time. The implication of the Question is that, if we hang on to the shares, we can be guaranteed a higher price later on. This procedure is entirely sensible. We bring in some money while we can: as we know, there are a lot more shares to go. We can continue to consider at what stage we get rid of the shares and sell them at the best price we can. That was when the loss was made, not now.

Lord Bates: My noble friend is absolutely right. There is a sense here of forgetting the history of what the situation was in 2008 and the incredible damage that was done to our economy—which we are still having to clear up so many years later. That is the reality of the situation. When the National Audit

Office looked into how we would do this, the first sale was done on an accelerated book-build process, and it recognised that it offered value for money in the circumstances. However, the fact is that we are in these circumstances as a result of the realities of what happened in 2008, and we should not forget that.

Lord Browne of Ladyton (Lab): My Lords, on the "Today" programme this morning the Economic Secretary, John Glen, when seeking to justify not waiting for a better price, on that specific point said that the Government's judgment was that, looking at the market conditions, there would be no better price in the foreseeable future. What precisely are those market conditions that he referred to, which are not referred to in the Minister's answer, that the Government estimate will keep this bank's price depressed?

Lord Bates: These are matters which we take independent advice on; that is why UK Government Investments is there. It tracks what is happening in the market on a daily basis. I have already mentioned some of the things which are happening. Earlier this month there was a large settlement with the Department of Justice, of £3.6 billion; UKGI also recognised that in April, the bank turned in its first profit in 10 years. Those factors were weighed together, along with the fact that there are very few windows during the course of the year when we can dispose of assets, because of potential conflicts of interest.

Lord Higgins (Con): Does my noble friend agree that this sale does not result in a loss but crystallises it? He just referred to advice he has received; would he say what advice he received about the future likely movement in the share price? He also refers to this being value for money for the taxpayer; could he explain in what way?

Lord Bates: This is the fourth time we have undertaken this approach. We did it twice with Lloyds, and this is the second time with RBS. The last time this was done in 2015, the National Audit Office concluded that that sale of shares in RBS,

"was executed as skilfully as could reasonably be expected, and on the basis of the preparation, process and proceeds of the transaction, UKFI"—

now UKGI—

"achieved value for money".

That was what it looked at, and it will have to justify that advice; others will look at this as well, and we will keep it under review.

Lord Soley (Lab): My Lords, it seems that the Government are implying that the bank is going to do better, and I agree with that. If you look at the *FT* today, there are a lot of reasons for thinking that. However, if it is, it begins to look increasingly as if the Government are taking a wedge of money now because they have financial difficulties in the current public expenditure round rather than waiting to get the best price for the taxpayer.

Lord Bates: We have set on this process of doing precisely this. The proceeds of the sale yesterday will go directly to reduce the debt which was accumulated as a result of the actions in 2008. That is what it will be used for, and quite rightly.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend recall that, when the noble Lord, Lord Myners, was in charge of this matter and bailed out the Royal Bank of Scotland, I asked him what he expected the loss would be as a result of that involvement? He replied, “We will make a profit on this transaction”. Will my noble friend not take advice from the Opposition, which also sold our gold at a record low price?

Lord Bates: We recall the selling of half our gold reserves between 1999 and 2002 at the rock-bottom market price, but it is more important here to say that of course there is a problem. Then, in 2013 a Liberal Democrat Chief Secretary to the Treasury and a Conservative Chancellor produced a report which was put into the public domain saying what the future of RBS was. That involved radical restructuring, which is taking place, and as it is being concluded we are gradually disposing of the assets. That is the correct thing to do and we are right to do it.

Proposed Media Mergers

Statement

3.19 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, with the leave of the House, I will repeat a Statement made by my right honourable friend the Secretary of State for Digital, Culture, Media and Sport in the other place:

“Mr Speaker, with permission, I would like to make a Statement about the proposed merger between Comcast and Sky, and the proposed merger between 21st Century Fox and Sky.

In my quasi-judicial role I have considered these mergers separately, on their own merits, and want to set out my decisions taken on the basis of the relevant evidence. I would like, first, to update the House on Comcast’s proposed acquisition.

On 7 May, Comcast notified an intention to acquire Sky. As Secretary of State, I am required to consider whether the merger raises public interest concerns that meet the threshold for intervention, as set out in Section 58 of the Enterprise Act 2002. As required, I considered the need for a sufficient plurality of people with control of media enterprises, the need for a wide range of high-quality broadcasting and the need for a genuine commitment to broadcasting standards.

Last month I informed the House that I was minded not to intervene in the merger on the basis that it does not meet the threshold for intervention. I gave interested parties time to make representations and I received no further representations. As a result, I have concluded that the proposed merger does not raise public interest concerns and so I can confirm today that I will not be issuing an intervention notice.

Turning to Fox’s proposed acquisition of Sky, in March 2017 my predecessor issued an intervention notice on public interest grounds due to concerns about media plurality and the genuine commitment to broadcasting standards. The intervention notice triggered phase 1 investigations by Ofcom and the CMA. In September, having considered these reports, along with further advice from Ofcom, she referred the proposed

merger to the CMA for a phase 2 investigation on both grounds. The CMA published its interim report in January and provided its final report to me on 1 May. I have today published this report and deposited a copy in the Libraries of both Houses.

The report confirms, as previously set out, that the proposed merger passes the threshold for a relevant merger situation and provides recommendations on both public interest tests. On broadcasting standards, the CMA carried out a thorough and systematic assessment, taking into account Fox’s and Sky’s approach to broadcasting standards, both in the UK and outside, and the approach of Fox and News Corp to wider regulatory compliance and corporate governance. The CMA concluded, in line with its interim findings, that the merger may not be expected to operate against the public interest on the grounds of a genuine commitment to broadcasting standards. I agree with this finding.

On the question of media plurality, the CMA’s final report confirms its interim findings that the proposed merger may be expected to operate against the public interest. The CMA found cause for concern in two areas: first, the potential erosion of Sky News’s editorial independence, which could in turn lead to a reduction in the diversity of viewpoints available to and consumed by the public; and secondly, the possibility of an increased influence of the Murdoch Family Trust over public opinion and the UK’s political agenda.

The CMA has used a clear and logical approach and taken into account Ofcom’s media plurality framework. It has taken great care to obtain a wide range of written and oral evidence and I agree with this finding too. Where the CMA makes a finding that a merger is likely to operate against the public interest, it is then required to consider what remedy would be appropriate.

To address the media plurality concerns, the CMA considered a range of options, including those proposed by the parties. Specifically, these were: first, a firewall of behavioural commitments to insulate Sky News from the influence of the Murdoch Family Trust; secondly, a ring fence, whereby Sky News would be separated structurally from Sky but still owned by Fox, along with the same behavioural commitments; thirdly, divesting Sky News to a suitable third party; and fourthly, prohibition of the transaction as a whole.

I have considered the CMA’s detailed assessment and its conclusions on how effective and proportionate the different remedies are. I agree with the CMA that divesting Sky News to Disney, as proposed by Fox, or to an alternative suitable buyer, with an agreement to ensure that it is funded for at least 10 years, is likely to be the most proportionate and effective remedy for the public and for the public interest concerns that have been identified.

The CMA report sets out some draft terms for such a divestment, and Fox has written to me to offer undertakings on effectively the same terms. The proposals include significant commitments from Fox, but there are some important issues on the draft undertakings which still need to be addressed. I need to be confident that the final undertakings ensure that Sky News remains financially viable over the long-term, is able to operate as a major UK-based news provider and is able to take its editorial decisions independently, free from

[LORD KEEN OF ELIE]

any potential outside influence. As a result, I have asked my officials to begin immediate discussions with the parties to finalise the details with a view to agreeing an acceptable form of the remedy, so that we can all be confident that Sky News can be divested in a way that works for the long term.

Under the legislation, I am required to consult formally for 15 days on the undertakings. Subject to the willingness of the parties to agree the details, I aim to publish this consultation within a fortnight. I am optimistic that we can achieve this goal, not least given the willingness that 21st Century Fox has shown in developing these credible proposals. However, if we cannot agree terms at this point, then I agree with the CMA that the only effective remedy now would be to block the merger altogether. This is not my preferred approach.

We have followed a scrupulously fair and impartial process, based only on the relevant evidence and objectively justified by the facts. I would like to thank Ofcom, the CMA, the parties, my predecessor and my fantastic team at DCMS for all their hard work. I hope that we can reach a final agreement very soon. I want to see a broadcasting industry in Britain that is strong, effective and competitive, and I commend this Statement to the House”.

That concludes the Statement.

3.27 pm

Lord Stevenson of Balmacara (Lab): My Lords, I am obliged to the Minister for repeating the Statement made earlier by his right honourable friend the Secretary of State in the other place. On the decisions announced today, the best thing that can be said is that they are not unexpected. Comcast cast a shadow, but not as long as that of 21st Century Fox or indeed the Murdoch Family Trust. The key issue raised today is the question of what undertakings would be accepted to ameliorate the CMA finding that a Sky-21st Century Fox merger is likely to operate against the public interest on media plurality concerns. I do not disagree that divestment of Sky News to a suitable third party such as Disney is the least worst of the available options, provided that appropriate remedies are put in place to assuage media plurality concerns.

The CMA report sets out some draft terms for such a divestment and Fox has indicated that these are acceptable. However, the Statement makes it clear that more work is required on this issue and we will want to scrutinise carefully what is finally proposed, to ensure that Sky News remains financially viable over the long term, is able to operate as a major UK news provider and is able to take its editorial decisions independently, free from any potential outside influence. Will the Minister confirm that Parliament will be kept informed of progress in these negotiations?

In the conclusion to his Statement, the Secretary of State says that the Government have followed,

“a scrupulously fair and impartial process, based only on relevant evidence and objectively justified by the facts”.

I was glad to hear that. As required by the Enterprise Act 2002, the Secretary of State has been operating in a quasi-judicial role and I accept that both he and his

predecessor have been punctilious in following that approach. However, if we are reaching the end of this complex process, does the Minister accept that if,

“we want to see a broadcasting industry in Britain that is strong and effective and competitive”,

as the Statement has it, we need urgently to review whether we have the right regulatory structure and statutory powers in place for the modern world?

Does the Minister agree that there are aspects of the public interest test on media mergers which now need to be reconsidered? Many of the powers are found in the Communications Act 2003, which first brought in the public interest test for media mergers. Fifteen years on, the media landscape has greatly changed and with it comes the need to review, strengthen and future-proof this important legislative measure. We need to widen the definition of “media enterprises” to which the public interest test refers. Currently, the definition does not include enterprises such as Google, YouTube, Facebook, Twitter, Snapchat and others. Nowadays, many people take more of their audio-visual content off YouTube than from conventional broadcast channels, or they seek their news through Twitter or from apps on smartphones and thus not necessarily through broadcast platforms and channels. If the public interest can be engaged by the dominance or inappropriate control of a broadcast channel, why is it not engaged by the platform or channel through which large-scale news-related and other material is delivered to the whole population?

Ofcom needs the same powers when carrying out its Enterprise Act competition functions as are currently available to the Competition and Markets Authority, and specifically the power to require the attendance of witnesses and the production of documents. Without these powers, Ofcom is playing second fiddle. We need to think harder about the fit and proper test itself, which is currently couched as the,

“commitment to the attainment in relation to broadcasting of the standards objectives”.

However, these standards relate only to television and radio services. We need to think about how a commitment to the attainment of standards can be evidenced through the control of media enterprises that are more widely construed. This test would eliminate the risk that behaviour outside the scope of television and radio, and beyond the specifics of the broadcasting standards code, would not be able to be drawn in aid in determining fitness. Presumably we are also thinking about the question of control over other channels, newspapers and organisations. I also think that we could learn from the experience of the “fit and proper test” in other sectors such as financial services.

Finally, we need to think harder about how to protect the editorial freedom of the news services of media enterprises and see that safeguards are in place. Media plurality—the plurality of ownership—does not necessarily mean that editorial freedom is protected and safeguarded.

Lord McNally (LD): My Lords, I thank the Minister for repeating the Statement. For someone who is not always clear on these great battles, where does this put the Comcast bid and the Fox-Disney bid? Are they now parallel bids and will Sky shareholders now decide

which is the best deal? I read somewhere that Sky has advised its shareholders that it no longer stands by an earlier recommendation to accept the Fox bid. Once the procedure has been gone through, will it be a straight fight on price for Sky or are there other considerations?

I associate myself with what the noble Lord, Lord Stevenson, has just said: this keeps on happening. No other country in the world would allow important parts of its media industry to be fought over by foreign interests in such a way. We have here a battle between three massive American media conglomerates over a key part of our media industry. Moreover, as the noble Lord has just said, all this is being done in the long shadow of even bigger technology companies that may be coming in. We need a framework of defences for this key sector. As we said when we considered these issues 20 years ago, we are not talking about tins of beans. When these companies pass on to different control, we are talking about an essential part of a functioning democracy. There is a case for looking at the powers of Ofcom and the CMA and the Government's responsibilities in this media area, which are badly in need of an overhaul.

The only other thing I have to say is that it is important that we get the decision right. I am always worried when the Secretary of State gives himself timetables of 15 days, or whatever. The important thing is making sure that we get it right. I also underline the importance of Parliament being kept fully informed and consulted on decisions that are taken.

Lord Keen of Elie: My Lords, I am obliged to the noble Lords, Lord Stevenson and Lord McNally, for their observations on the Statement. Clearly, the terms of any divestment, which will be a requirement of the Fox bid, must be sufficient to ensure the remedy's effectiveness over the long term. That is why reference is made in the report to a period of 10 years.

The Secretary of State has already instructed officials to begin immediate discussions with Fox and its representatives on the detail of the proposals so that work can be done to take us towards an agreement—we hope—on the final form of any undertakings. Once that is in place and the undertakings are in a form that he is prepared to accept, the Secretary of State will be required to consult on them. He must allow a minimum of 15 calendar days for responses. Of course, Parliament will be kept informed of the consequences of that process.

Regarding the points raised about other platforms and their dominance—reference was made to Google, for example—we committed to reviewing the media public interest considerations during the passage of the then Digital Economy Bill. That can now be taken forward, as is our intention.

As far as Ofcom's powers are concerned, it is important to maintain and understand the distinction between the role of Ofcom in the phase 1 stage of an inquiry and the role of the CMA in the more intensive phase 2 stage, where the CMA has greater powers than Ofcom. However, Ofcom has indicated that it is satisfied that it has the powers it needs to conduct the form of review required under the Act in respect of a phase 1 inquiry.

The competing bids of both Comcast and Fox can be taken forward. Where that process concludes will ultimately be a matter for the shareholders of the relevant companies. In a sense, this decision leaves them on a level playing field, commercially, as far as their respective bids are concerned.

3.37 pm

Lord Lansley (Con): My Lords, this issue reflects well on this House for inserting the media plurality public interest test into the Enterprise Act, by virtue of the Communications Act 2003. The value of that has been further demonstrated. However, to return to the point made by the noble Lord, Lord Stevenson, when one further amends the Enterprise Act definition of “media” in “media plurality”, it is important to do so before the point at which that issue might be engaged by some proposed merger activity. Therefore, I ask my noble and learned friend whether the department might now make some rapid progress with its review of the meaning of “media” in the media plurality public interest test.

Lord Keen of Elie: I am obliged to my noble friend. Clearly, the department is committed to taking its consideration of these matters forward. At this stage, I am not in a position to give him a timescale, but we seek to bring the matter forward as soon as we can. If there is what is perceived by this House to be undue delay, no doubt questions will be raised.

Lord Robathan (Con): Could my noble and learned friend illuminate for me, if not for others, the implications for the future of Sky News? I do not quite understand.

Lord Keen of Elie: It appears that Sky News will be the subject of divestment and it appears that the intended party to acquire Sky News will be Disney. Of course, some have referred to that as the Mickey Mouse solution.

Automated and Electric Vehicles Bill Report

3.39 pm

Relevant Documents: 16th and 28th Reports from the Delegated Powers Committee

Clause 1: Listing of automated vehicles by the Secretary of State

Amendment 1

Moved by **Baroness Sugg**

1: Clause 1, page 1, line 6, leave out paragraph (a)

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, following the in-depth analysis of the Bill in this House, we have been looking to strengthen the definitions in Part 1 to more fully explain the purpose of its provisions. We also recognise that the measures in Part 1 relate to a complex and quickly moving technological field. As such, the specificity of language can go a long way to giving industry and consumers confidence in the Government's approach.

[BARONESS SUGG]

To that end, I have tabled government Amendments 1, 3, 5 and 6 related to the definition of the automated vehicle, to clarify exactly when and where the provisions of the Bill will relate to such vehicles. As I noted in the discussion on this issue in Committee, we do not believe it is necessary, or even possible, to provide a more detailed definition of an automated vehicle and its technical capabilities at this time. Therefore, the Bill does not specifically cover where and how automation will be defined and regulated. This is also why we are not referencing the SAE definitions of vehicle automation in the Bill, as proposed in Amendment 2 by the noble Baroness, Lady Randerson. This part of the Bill simply amends the existing motor insurance framework to enable insurers to develop insurance policies that can appropriately cover for these types of vehicles. Historically, it was the driver's use of the vehicle that had been insured rather than the vehicle itself.

During the earlier stages of the Bill, my noble friend Lord Borwick raised the important question of whether its provisions would apply, for example, to an agricultural vehicle on public roads which, while perfectly capable of autonomously running up and down a private field, could be driven on the road manually only by a human driver. This highlights an area where the definition, as currently constituted in the Bill, could be open to debate. Our proposed changes to Clause 1 and 2 resolve this issue by further clarifying that the measures in the Bill will apply only to vehicles which may lawfully be put in self-driving mode on roads or other places in Great Britain.

At this point, it is worth repeating that the purpose of the list of automated vehicles maintained by the Secretary of State is not to confer lawfulness to any vehicle. It is simply a list of vehicles that can lawfully be used in automated roads or in other public places in Great Britain. Our proposed amendment makes this clearer. I believe these changes provide greater clarity on where exactly the measures in the Bill apply to vehicles that are capable of lawfully and safely operating in automated mode.

Turning to Amendment 4 in the name of the noble Lord, Lord Tunnicliffe, the purpose of Clause 1 is to ensure that the Secretary of State creates, maintains and publishes a list of automated vehicles, vehicles that are,

“designed or adapted to be capable, in at least some circumstances or situations”,

of safely and lawfully driving themselves, without having to be monitored by an individual. The list is to ensure that consumers and industry understand which vehicles are covered by the new insurance measures. In Committee, the noble Lord, Lord Tunnicliffe, rightly noted that it is crucial for manufacturers, vehicle owners and insurers to know whether they are making, buying, loaning or insuring an automated vehicle, and whether the scope of legislation applies to their vehicle. It is for this reason, and no other, that the Bill includes the list.

In previous debates, I have outlined the Government's view that the most appropriate place for setting safety standards for automated vehicles is the technical committee on vehicle safety that operates under UNECE,

supplemented where necessary by appropriate domestic regulation. As a contracting party to UNECE's 1958 agreement, which establishes these technical standards, the UK, along with 51 other countries, is bound by international law to recognise these standards and accept vehicles approved to these standards. They help not only to deliver high levels of vehicle safety, but to facilitate international trade.

3.45 pm

It is these standards, rather than SAE levels, that form the basis of the type-approval process and vehicles that are approved against these standards can be sold in this country. This is what happens for conventional, non-automated vehicles currently and it is what we expect to happen for automated vehicles. This standard-setting process is well understood by the automotive and insurance sectors. Indeed, automotive manufacturers provide information to the technical committees that work on the standards.

The UK plays a leading role in the debates that create or amend those technical standards. I can reassure noble Lords that we work in a consultative manner with industry to influence those standards and ensure that they are fit for purpose. Therefore, automotive manufacturers are fully aware of which standards they must meet. The UNECE technical committee is, with the participation of the automotive sector, beginning to consider international technical standards for automated vehicles. The Government expect these standards to form the basis of the type-approval process that automated vehicles must pass to demonstrate that they are indeed capable, in at least some circumstances or situations, of safely driving themselves and thus be able to be sold in the UK.

In some instances, for some vehicle technology, there will be a need for domestic regulatory reform to ensure it can be used in the future. That will probably be when we have more certainty about how automated vehicles will be used. Where that is the case, I can reassure noble Lords that we will consult and lay legislation in Parliament to scrutinise with the same approach we use already once we have a better view of the landscape of the new technology and vehicle standards. Should we need to ensure the proper functioning of our vehicle-approval regime by supplementing the international technical standards with domestic regulations, we would do so in the usual way. Where existing traffic law is inconsistent with the use of the technology we would also amend this in the usual way, which is subject to parliamentary scrutiny.

As I made clear in previous debates, the automated vehicle measures in the Bill relate only to insurance, not to these detailed technical standards. This forms just one part of a wider regulatory programme to ensure that this country's motorists and businesses benefit from the potential that automated vehicles have to offer.

Given the way these standards will be set, we do not believe we should add a consultation clause to the list. Introducing a novel and competing process of consultation for setting or changing criteria for the inclusion of a vehicle on the list would add unnecessary debate and an unnecessary administrative burden, and potentially delay vehicles being added to the list. Worse still,

it could create an unhelpful degree of interpretation about whether a vehicle belongs on the list when we are working to create clarity.

Government Amendment 8 addresses another concern raised in Committee—a consistent definition of “road”. By specifically referencing the Road Traffic Act 1988 in Clause 7, this amendment ensures consistency with existing legislation and provides clarity to the public and industry on which vehicles the measures in the Bill apply to.

These government amendments aim to further clarify the Bill and I hope that they are supported by the House. I beg to move.

Baroness Randerson (LD): My Lords, I shall speak to my Amendment 2. I submitted this amendment to give us the opportunity to clarify further exactly how the Government’s definitions would apply in practice. External organisations still voice concern that the Government are not using SAE International levels 4 and 5, which they regard as an accepted international standard. I accept entirely that it is slightly complicating matters that UNECE is still discussing this issue. I wonder whether, given that it will ultimately produce the precise definition, there could at some point be reference to the fact that these will be standards according to those laid down by UNECE. I assume it will get to the end of its discussions pretty soon, otherwise the roads will be full of automated vehicles without people understanding what they are.

I do not actually think there will be much confusion about level 5—I believe they will not have steering wheels, so it will be pretty obvious that they are automated vehicles—but I still cannot entirely get my head around the wording, at line 9, that they are,

“designed or adapted to be capable, in at least some circumstances or situations”,

of safely driving themselves. That does not suggest necessarily that these vehicles are going to be in a sustained mode of automatic driving. I think that the problem will arise with what are currently called level 4 vehicles, because that is almost a gradation further than level 3; there is no absolute cut-off point between level 3 and level 4. Level 3 cars can be driven on their own in some circumstances. I understand that using the word, “safely” is a very useful way of putting it, but it could be open to interpretation.

The Government have complicated things for themselves by using the phrase, “driving themselves”. The industry does not use that term—it does not say that the car “drives itself”. That is not the technical term that it uses; therefore the Government are using in legislation phrases that might be fairly obvious to the layman but are not used by those who deal with these issues every day.

I am extremely grateful to the Minister for the number of amendments she has brought forward. She has listened carefully to what we have had to say, and we have certainly made a great deal of progress, but I would be grateful if she would go away before Third Reading and consult a bit more with representatives of the industry to ensure that the categories are watertight. As I have said here before, probably at a much earlier stage, insurance companies are extremely good at arguing

that particular situations do not apply to them and the Government are going to have to be watertight in their approach.

Amendment 4 in the name of the noble Lord, Lord Tunncliffe, is along very similar lines in that it seeks clarity. That is what concerns us. I welcome that amendment, as I do the amendments from the Minister which have added some elements of clarity in a potentially complex situation. It is complex simply because we are trying to imagine ourselves into the future.

Lord Tunncliffe (Lab): My Lords, with the leave of the House, and with apologies for being a little late, I shall speak solely to my Amendment 4. As I understand it—and I would value a nod from the Minister—she did not refer to Amendment 4 until I arrived. Amendment 4 is exactly as we moved before and we got some response to it on the issue of consultation. We heard:

“That is something that we plan to do ... we fully expect this to be subject to full consultation”.

We got something really absolute only when the Minister said that the Government,

“will absolutely consult on the detail”.

I thought, “Great, those are the sorts of absolute terms I like”, only to see that she also said,

“where we need to make further primary or secondary legislation”.—
[*Official Report*, 9/5/18; cols. 196-197.]

Well, of course you will consult when you are trying to get legislation through.

I accept that the Minister has gone some way to reassuring us but I am fearful that, given the order-making powers for conventional vehicles, Parliament may never see the safety criteria—ever. What I would like from the Minister, given the public concern about the conceptually new way of travelling, is an assurance that the safety criteria will come in front of us in one form or another before there is substantial automated vehicle activity on the roads.

Baroness Sugg: My Lords, I thank noble Lords for their broad welcome of these amendments. As I said, standards will be set separately to the Bill, both internationally and domestically, using long-established procedures that are well understood by industry. I take the noble Lord’s point, given the public concern on this and the fact that standards are usually set in this way. I fully expect that when the standards are developed, there absolutely will be an opportunity for both the public and Parliament to be consulted on them. I cannot confirm today what mechanism would be used for that. But as the noble Lord pointed out, given the concern and given that this is such new technology, different from what we have seen before, I fully expect that to happen.

The SAE levels lack the precision needed for technical standards and are not currently recognised as a technical standard in either the technical committee or the forum looking at use within the UNECE, and that is why we do not believe they should be referenced in the Bill. We have worked closely with the industry—yes, the insurance industry but also the motor manufacturing industry—on these definitions. We will certainly get in touch with them again before Third Reading to check that they are content.

[BARONESS SUGG]

The noble Baroness asked about the reference to, “in at least some circumstances or situations”.

That is in the Bill because we expect the first automated cars to be used only in specific areas, such as on motorways. There will be a procedure to safely hand back to the driver. On the point about “safely driving themselves”, this is where the line is between partly and fully automated vehicles, which will not need monitoring by the driver. That is the differentiation. At level 3 the driver needs to monitor and to be able to take control at any point, whereas at levels 4 and 5 they do not need to monitor in any way. But I take the noble Baroness’s point on the usefulness of the SAE levels and I will certainly take that back to our representatives on the UNECE. As I said, we play a leading role in that. I am sure they are discussed but I will make sure they are and will look at whether they can be referred to when the standards are set.

As I said, technical standards and future regulations will be developed with the appropriate level of scrutiny and consultation, just as current road traffic laws and vehicle standards are developed. We do not believe that a consultation clause is needed because we are confident that there will be appropriate scrutiny.

Lord Mackay of Clashfern (Con): I understood the noble Baroness, Lady Randerson, to say that the phrase used in the statute is not something the industry uses. I just wonder what the industry phrase is for this idea.

Baroness Sugg: As I said, we have been working closely with industry on this. These things are not clearly defined—that is part of the problem of writing this Bill. But “driving themselves” is something on which we worked with industry and we think that it clarifies the difference between having driver monitoring and not having driver monitoring. As far as I am aware, the industry is content but perhaps I will find out from the noble Baroness where the concerns still lie, and I will commit to speaking to it before Third Reading.

Baroness Randerson: Perhaps I may help the House by saying that that point was raised with me by representatives of the Society of Motor Manufacturers and Traders. As I understand it, it refers to automated driving or “driverless”, rather than driving itself.

Baroness Sugg: I can certainly commit to speaking to that organisation and I will let the noble Baroness know how that conversation goes.

Amendment 1 agreed.

Amendment 2 not moved.

4 pm

Amendment 3

Moved by Baroness Sugg

3: Clause 1, page 1, line 10, at end insert “, and

() may lawfully be used when driving themselves, in at least some circumstances or situations, on roads or other public places in Great Britain.”

Amendment 3 agreed.

Amendment 4 not moved.

Clause 2: Liability of insurers etc where accident caused by automated vehicle

Amendments 5 and 6

Moved by Baroness Sugg

5: Clause 2, page 1, line 22, after “itself” insert “on a road or other public place in Great Britain”

6: Clause 2, page 2, line 6, after “itself” insert “on a road or other public place in Great Britain”

Amendments 5 and 6 agreed.

Amendment 7

Moved by Baroness Sugg

7: After Clause 6, insert the following new clause—

“Report by Secretary of State on operation of this Part

(1) The Secretary of State must prepare a report assessing—

(a) the impact and effectiveness of section 1;

(b) the extent to which the provisions of this Part ensure that appropriate insurance or other arrangements are made in respect of vehicles that are capable of safely driving themselves.

(2) The report must be laid before Parliament no later than two years after the first publication of the list under section 1.”

Baroness Sugg: My Lords, in Committee the noble Lord, Lord Tunncliffe, proposed a reporting amendment to ensure that the Bill’s proposed insurance framework for automated vehicles is in place and working effectively. I committed to consider whether there was anything further we could do in this area. I absolutely agree that there is value in reporting on the impact and effectiveness of Part 1, so I have tabled Amendment 7 to determine whether this legislation is effective.

Given the uncertainty around the timing of the introduction of automated vehicles, rather than set a date in statute for issuing the report we have chosen to require the report to be laid before Parliament no later than two years after the list of automated vehicles is first published. We want the report to be as meaningful as possible. That will be possible only if the measures have been in operation for a period of time, with automated vehicles being added to the list and insurance policies being offered to drivers of those automated vehicles.

Subsection (1)(a) of this proposed new clause will require the Secretary of State to report on both the impact for consumers and industry and the effectiveness—whether or not the definitions and list work as intended—of the listing of automated vehicles. I hope that this provision will go some way to reassuring noble Lords, given the conversation we had on the previous group. Subsection (1)(b) of the proposed new clause addresses the issue raised by the noble Lord, Lord Tunncliffe, in Committee: whether the obligations and duties required by the other clauses of this part of the Bill are working to deliver an effective framework for insuring the use of automated vehicles.

I can reassure noble Lords that the insurance industry supports our intended approach to reporting on the Bill’s impact and effectiveness, and that we will work

closely with the industry when delivering the report on the operation of this part. I hope that the amendment provides reassurance that we will report on the effectiveness and impact of Part 1 of the AEV Bill, in order to ensure that it is functioning correctly, and that noble Lords will support it. I beg to move.

Lord Tunnicliffe: My Lords, I could spin this out but will the Minister settle for “Thank you”?

Baroness Sugg: My Lords, I could spin this out too but I am pleased that the noble Lord welcomes the amendment. That is probably all I should say on this matter.

Amendment 7 agreed.

Clause 7: Interpretation

Amendment 8

Moved by Baroness Sugg

8: Clause 7, page 5, line 22, at end insert—

““road” has the same meaning as in the Road Traffic Act 1988 (see section 192(1) of that Act).”

Amendment 8 agreed.

Clause 8: Definitions

Amendment 9

Moved by Baroness Sugg

9: Clause 8, page 5, line 39, after “charging” insert “or refuelling”

Baroness Sugg: My Lords, the Government believe that hydrogen fuel cell electric vehicles are an important technology alongside battery electric vehicles. That is the future we see for decarbonising road transport. Since 2014, we have provided £5 million to fund 12 new hydrogen refuelling stations and £2 million for public and private sector fleets to become early adopters of the vehicles. It is also why we announced in March an additional £23 million to leverage a ramp-up of investments from industry in refuelling infrastructure and vehicle deployment out to 2020.

It has always been the intent behind the Bill to include both hydrogen fuel cell and battery electric vehicles. However, I fully recognise the point made by the noble Baronesses, Lady Randerson and Lady Worthington, in Committee that this needs to be made clear in the Bill so that there can be no confusion as to its intent. I have tabled government amendments to add “or refuelling” throughout the Bill wherever “public charging point” is mentioned. We will continue to make this commitment clear to the consumer and to give the industry confidence to invest in both technologies to drive the uptake in zero-emission vehicles. I thank the Committee for raising the importance of highlighting hydrogen in the Bill, and I am pleased to move these amendments to improve it, by making it clear that all hydrogen fuel-cell technology is included. I beg to move.

Baroness Randerson: My Lords, I shall speak to Amendments 49 and 50, which are in this group. Before I do so, I reiterate my thanks to the Minister,

who has taken on board the criticisms of the Bill that were made in Committee by me and the noble Baroness, Lady Worthington, in relation to the slight reference to hydrogen in the Bill when it came from the other place. The Government have accepted most of the amendments and have therefore dealt with the confusion of referring to charging hydrogen vehicles when it is not a phrase anyone would use—one would say “refuelling hydrogen vehicles”.

The amendments may appear simple, but they are very significant because the terminology used sends signals to investors and markets about the Government’s wishes and what form of ultra low emission vehicles they are supporting in this legislation. As originally written, it looked as if the Government were backing battery electric vehicles over other technologies, and these amendments put things in a more balanced light and level the playing field considerably.

However, I invite the Minister to think again before Third Reading and change the title of the Bill. The Bill now refers to three specific categories of vehicles—automated vehicles, electric vehicles and hydrogen vehicles—but its title refers to only two of those three categories, so to the less-than-expert observer it would appear that the Government have no legislation to encourage hydrogen vehicles. The Government could have chosen a much more general title, but they have chosen a relatively specific title because the Bill is limited and specific, so it would be sensible to flag up to the world that the Government have this legislation by putting the word “Hydrogen” in the title. I urge the Minister to reconsider this. I have no intention of pushing this to a vote today, but I think it would be useful if the title could be amended at Third Reading.

Lord Tunnicliffe: I agree with the noble Baroness, Lady Randerson, that a change to the title would be helpful, and I accept her point that it is not something we are going to divide the House on.

Lord Brooke of Alverthorpe (Lab): Shame!

Lord Tunnicliffe: “Shame,” somebody said. The hydrogen compatibility amendments that the Minister has brought forward are very welcome. She illustrated their value by talking about what the Government are doing in investment in hydrogen. I cannot reasonably expect an answer now, but I wonder whether the Government have a fuller programme than the one she describes because, as far as I could understand from what she was saying, she was talking about the vehicle end of that, whereas I feel that with such a new technology some knowledge of government investment in the total hydrogen picture—the means of production, what the economics look like and so on—would be extremely valuable. If she is able to put that together in an interesting letter for all of us who have been involved in this debate, I would be very grateful.

Lord Craig of Radley (CB): My Lords, on the subject of title change, I think the Minister is absolutely right. I have some previous experience of trying to change the title of a Bill: the department was quite determined that the title could not be changed but further advice from the clerks of this House assured me that it could be, and that was accepted. So I hope there will be no misunderstandings this time.

Baroness Worthington (CB): My Lords, I offer the suggestion that rather than making a long shopping list of particular types of vehicles we might introduce the concept of zero-emissions vehicles, which would be a very important category to report against. When we get statistics from the SMMT it talks about alternatively fuelled vehicles as a category but that includes hybrids, which of course have tailpipe emissions, and sometimes those emissions can be higher than those from a normal car. I encourage the Government to think about zero-emissions vehicles as a catch-all.

Lord Mackay of Clashfern: My Lords, it must have already been accepted that hydrogen vehicles are within the scope of the Bill, otherwise an amendment to deal with them would not have been accepted. I should have thought that having done that, it might add a bit of clarity to add it to the title of the Bill as a supplementary amendment with very little substance except form.

Lord Spicer (Con): My Lords, whatever the difficulties, it must be right to alter the title to include the total market. After all, running a car on water is not a mean objective. That is a very important technology that has been left out of the Bill. I think those who have argued in favour of changing the title are right.

Baroness Sugg: My Lords, I thank all noble Lords for their comments on this. As I said, the Government recognise that hydrogen fuel cell electric vehicles have the potential to play a significant role in supporting our ambitions for a zero-emission-vehicle future. The technology around hydrogen vehicles is less developed than around battery electric vehicles. I assure noble Lords that in our forthcoming “road to zero emission” document/strategy, which will be published soon, we will talk about hydrogen and set out more on the Government’s position on that. I absolutely take the noble Baroness’s point that it is important that we address zero-emission vehicles, and that is exactly what that strategy is designed to do.

I am afraid I am going to have to disappoint noble Lords on the question of changing the title. The title “Automated and Electric Vehicles” covers both battery electric vehicles and fuel cell electric vehicles. Both are electric vehicles, so I think the title encompasses the vehicles that we are talking about in the Bill. Given the changes that the government amendments have brought about, it is now clear in the Bill that the hydrogen fuel cell vehicles are also covered, so I am afraid I do not believe it is necessary to amend the title. I hope that on that basis the noble Baroness will feel able not to move her later amendments. I beg to move the government amendment.

Amendment 9 agreed.

Amendment 10

Moved by Baroness Sugg

10: Clause 8, page 5, line 42, after “charging” insert “or refuelling”

Amendment 10 agreed.

Clause 9: Public charging points: access and connection

Amendments 11 and 12

Moved by Baroness Sugg

11: Clause 9, page 6, line 5, after “charging” insert “or refuelling”

12: Clause 9, page 6, line 8, after “charging” insert “or refuelling”

Amendments 11 and 12 agreed.

Amendment 13

Moved by Baroness Sugg

13: Clause 9, page 6, line 8, at end insert—

“(aa) performance, maintenance and availability of public charging or refuelling points;”

Baroness Sugg: My Lords, this group of amendments introduces a requirement on performance standards for public charge points. This is in response to an issue raised in Committee by the noble Lords, Lord Brooke of Alverthorpe and Lord Broers, and the noble Baronesses, Lady Randerson and Lady Worthington. The points raised during debate highlighted the need to take powers beyond those already in Clause 9 to set reliability, maintenance and performance standards for public charging infrastructure.

Public charge points will inevitably fall into disrepair when used in the public domain, particularly in the early stages as new technologies are developing. While we hope and expect that the market will respond to this, there is a risk that when charge points are installed and utilisation is low—hopefully, only in the early stages—then operators or host sites are less likely to repair them.

I agree that having a significant number of public charge points out of action will adversely impact on the user charging experience, inconveniencing and frustrating EV drivers. This would risk drivers running out of charge while trying to find the next available charge point and pose safety risks, as highlighted by the noble Baroness, Lady Randerson, if drivers are left stranded on public highways or in quieter rural locations. I accept the points made in Committee that greater protection is required for the consumer and that the Bill needs to go further in this regard. This group of amendments provides the Government with the necessary power to introduce regulations that would specify performance standards for publicly available EV charge points and ensure that operators take measures to ensure that faulty charge points are repaired.

I thank noble Lords for raising the issue and hope that the amendments are supported. I beg to move.

4.15 pm

Baroness Worthington: My Lords, I shall speak briefly to this group of government amendments. I thank the Minister for listening to our interventions on the topic. At the moment, we do not have good oversight of how the market will develop; we have what I feel is a somewhat unnatural market in infrastructure, as the Government have chosen to focus on charging infrastructure without sufficient attention to whether there are enough cars for people to buy and

use affordably to make use of that charging. As a result, we may have boom and bust in the charging infrastructure. We must keep those two important aspects in parallel: both the charging infrastructure and the cars. In the absence of a more natural market with more cars, it is very important that we have the regulations to ensure that where charge points are installed, they are maintained, so I am very grateful to the Minister for tabling the amendments, and fully support their intent.

Lord Deben (Con): My Lords, I just want to tell my noble friend how helpful I find the amendment and how useful it is. The climate change committee has drawn attention to the fact that one reason for the lack of uptake of such motor cars is people's feeling that they cannot rely on a charging system to travel around the countryside. The amendment is an important addition to that provision.

However, I remind my noble friend that one issue here is that people are very suspicious of the correctness of the information given to them by the motor car industry generally. Therefore, this support will be invaluable. We are still being told things about motor cars which are not true. The figures being put out for the performance of motor cars—including electric motor cars—are very different from the reality. It is in that atmosphere that the amendment is important.

I hope that the Government will recognise that in other areas in this business, too, regulation is not an imposition but an encouragement. Good regulation is a good thing. We are against bad regulation. In this area, we need regulation that gives people confidence in what is for most of them a very new technology. I thank my noble friend but also urge her to recognise that we need similar support in other areas if we are to get the change which we will need. I remind her that the Government have set far too far a target for the eradication of new petrol and diesel-driven vehicles: 2030 is necessary if we are to meet the fourth and fifth carbon budgets, so there is a real need to get on with things which will encourage people to buy these motor cars.

Baroness Sugg: My Lords, I am grateful for noble Lords' comments on this. This is a real improvement to the Bill, and the provision of this power will help to ensure that we have a working and reliable charge point infrastructure.

On the point made by the noble Baroness, Lady Worthington, I agree that this is a slight chicken and egg situation, in that we are not going to get the cars produced if there is no demand for them, and we will not get the demand for them if we do not have the infrastructure for them. It is important that we look at the two aspects in parallel—the manufacturing of cars and the provision of infrastructure.

I thank my noble friend Lord Deben for his comments. There are many provisions in the Bill on information and transparency. I entirely agree that we need to give confidence to consumers in this new area. This Bill is just part of our work as a Government on encouraging the move to zero-emission vehicles. I am going to say it again, but we will soon be publishing the road to zero strategy, which will set out in more detail how we plan to move towards zero-emission vehicles.

Amendment 13 agreed.

Amendments 14 to 17

Moved by Baroness Sugg

14: Clause 9, page 6, line 9, after “charging” insert “or refuelling”

15: Clause 9, page 6, line 13, after “charging” insert “or refuelling”

16: Clause 9, page 6, line 18, at end insert—

“(2A) Regulations under subsection (1)(aa) may, for example, require the operator of a public charging or refuelling point to ensure that the point complies with prescribed requirements (which may include technical specifications).”

17: Clause 9, page 6, line 20, after “charging” insert “or refuelling”

Amendments 14 to 17 agreed.

Amendment 18

Moved by Baroness Randerson

18: Clause 9, page 6, line 22, at end insert—

“(3A) Regulations may prohibit the removal of public charging or refuelling points unless appropriate permission is obtained from the relevant local authority.

(3B) Regulations under subsection (3A) may be limited to public charging or refuelling points whose installation was assisted by publicly funded grants.”

Baroness Randerson: My Lords, this amendment follows on very neatly from a reference in government Amendment 13 about the,

“performance, maintenance and availability of public charging or refuelling points”.

The point was made several times in previous debates that having no charging point at all is possibly less frustrating than getting to one that does not work. I am moving on to an issue that I have raised before, which is that once you have installed a charging point it needs to stay there. Since the Government appear to have accepted the principle that planning legislation will be able to take into account the provision of charging points, we need reassurance that it will also take into account that permission will be needed to remove charging points.

I am not dreaming up an obstacle out of the blue, for the sake of it. I have already come across this issue locally to where I live, where a charging point was installed and then there were moves to remove it to change the configuration of a car park. Local residents raised the issue and ran a campaign to keep that charging point there. We cannot expect that always to work. I suggest that this is a good opportunity for the Minister to say publicly that the Government intend to deal with this issue in the regulations.

I should have made it absolutely clear that Amendment 18 looks at the provision of charging points in non-residential premises. Amendment 20 looks at the requirement for charging and refuelling points in new developments. Once again, I draw the analogy with parking spaces. It is quite normal for planning permission to say that you must provide a parking space; if you are building a block of flats, you have to provide at least six parking spaces, for instance. You also need permission if you wish to remove those parking spaces.

[BARONESS RANDERSON]

My amendment suggests that there should be a requirement in the regulations that new residential, commercial and industrial developments should include charging or refuelling points in the same way as they would require parking spaces. However, I have an eye to being reasonable. There will, of course, be situations where requiring this would be inappropriate, or make the development not viable. The suggestion made by the noble Baroness, Lady Worthington, of ducting as a possible preparation for this, deals with that issue. We clearly also need some kind of standard approach to such a requirement, in the same way as to the provision of parking spaces. It would be useful if the Government were able to clarify whether they intend to address these specific issues in the regulations. Only with the provision of charging points in a variety of situations, and refuelling points where appropriate, will we deal with the issue just raised by the noble Lord, Lord Deben. The public have to have confidence in a widespread supply of places to recharge or refuel their cars. I beg to move.

Baroness Worthington: My Lords, I will speak to Amendments 19, 34 and 35 in my name. I am retabling amendments discussed in Committee relating to the changes to planning necessary to enable the huge change in our transport infrastructure which the Government have stated they wish to happen. The scale of this challenge is quite daunting. I fully support the comments made by the noble Lord, Lord Deben, who said that we need to embrace positive regulation in this instance. The natural pace of things is far too slow at the moment. If we look at what has happened in other sectors of the economy, the power sector in particular has a very good story to tell about changing our outdated structure to a modern one. That did not happen by accident: it came about through a succession of policy instruments which the Government tabled. The transport industry has been left largely alone in the last 20 to 25 years and it has delivered virtually no change, except perhaps for more diesel on the road. We have to see some interventions that will cause this industry to embrace the scale of the necessary changes. I look forward to hearing the Minister's response. I am sure that she has been consulting colleagues in the DCMS about what needs to be done in planning. I suspect the answer will be that there will be something in the zero-emission vehicles strategy—I hope so.

Amendment 19 introduces the equivalent of code rights for the installation of charging infrastructure, similar to that in the Digital Economy Act 2017. We have had a number of years of development in digital telecommunications that have justified that. I suspect that we will quite soon find ourselves in a similar position with this. We have looked for evidence that we need this now. I have to admit that it is thin on the ground, but I suspect that we will be back discussing this again before too long. I look forward to the Minister's response on that. Amendment 34 is another big topic relating to the rights of leaseholders and what they can and cannot request of landlords. We discussed this in Committee, so I will not dwell on it for too long. I have heard that there is a Law Commission inquiry on leaseholds, but that will not report until

2021—rather a long time to wait to resolve this issue when there are people who want the power today to install and pay for charging infrastructure in their properties but whose landlords are obstacles. We need a resolution of this sooner than 2021.

Amendment 35 is similar to that in the name of the noble Baroness, Lady Randerson, on the need to address the issue of non-residential buildings and to make them ready for charging infrastructure. It is crucial to say that non-residential is not covered in the National Planning Policy Framework, while residential buildings are covered. I hope to hear from the Minister what might be done to address that anomaly. It is clear that we will save ourselves money if we think about this earlier rather than later. It is always harder to retrofit rather than install at the time of build. I very much look forward to hearing from the Minister.

4.30 pm

Lord Spicer: My Lords, again, these amendments are important, particularly when the industry is new, when it can be not just inconvenient but disastrous to turn up at a point which was on the map but which does not exist. As the industry gets older and more points are automatically there, a sunset clause could be built into this amendment. However, at a time when there are hardly any points around at all, it is important that there should be such.

Lord Lucas (Con): My Lords, retrofitting can be very expensive, particularly in concrete structures and if you have not provided for the proper electricity supply or at least the potential for it. We are letting ourselves in for large bills in the future, and small bills in the present, if we agree with the idea that we should insist on new builds providing for charging points.

Baroness Sugg: My Lords, I thank the noble Baronesses, Lady Randerson and Lady Worthington, for raising amendments for consideration around housing issues and future-proofing new homes and developments. I entirely agree that if we are to move to zero-emission vehicles, as we all wish to do, we need to make sure that we have the correct infrastructure in housing and non-residential developments.

On Amendment 18 and the removal of public charge points, I hope that I will be able to provide reassurance on this matter. Where charge points are installed on local highways or land owned by local authorities, obviously local authorities already have the ability to ensure the installation of charge points, or prohibit their removal in line with any contracts they have in place. Where charge points are installed with public-funded grants to local authorities, as all public-funded charge points currently are, local authorities will have contractual arrangements in place regarding the charge points.

On the issue of planning permission, where a charge point is installed as a condition of a grant of planning permission, which could be determined in accordance with a particular policy in a statutory plan, whether it can be removed will depend on the specific conditions of the grant of planning permission as set out by the local authority itself. The developer would therefore have to apply to the local planning authority to have

that condition lifted if it wanted to remove the charge point. The planning authority has the opportunity to consider the merits of agreeing to lift the condition, but we expect that it would not, and it would be difficult for these charge points to be removed.

On Amendment 19 and the issue of charging infrastructure rights and wayleave agreements, I said in Committee that I would discuss this further with other relevant departments, which I have done. Wayleave agreements are sometimes required for rapid charge point installations if cables need to be laid across third-party land for a new connection to the grid or to upgrade the grid. Currently, the wayleave agreement is voluntary for the third party who own the land and they do not have an obligation to accept the wayleave.

As I mentioned in Committee, in cases where an agreement for a wayleave cannot be reached between the installer of electricity equipment and the landowner, we have powers under the Electricity Act 1989 which give the installer statutory powers upon which it can call if no alternative solution can be found, such as another route for the cable. This means that a statutory application can be lodged with the Secretary of State for Business, Energy and Industrial Strategy to award the installer a necessary wayleave as long as it can prove why it is necessary and expedient. This process also allows the landowner to show how the granting of a wayleave will impact on their use and enjoyment of the land. This is a different situation from that of telecom lines, which, as the noble Baroness said, following the Digital Economy Act 2017 are now considered to be critical national infrastructure. There was widespread evidence of problems there which did not have the same resolution mechanism.

Therefore, although I appreciate the noble Baroness's intentions, as she acknowledges, there is little evidence at the moment that the existing statutory powers are insufficient. Since Committee, we have discussed this issue with the trade body for the distribution network operators, the Energy Networks Association, which is of the view that the existing legislation is well established and effective, especially given the resolution mechanism.

We continue to have concerns that the amendment does not allow for the private rights of the owner of any third-party land to be taken into account or for any potential environmental effects to be considered. Because private land access rights are involved, we want to seek more evidence and consult a wide range of stakeholders before taking that any further.

Lord Brooke of Alverthorpe: Can the Minister expand a little further on that? Are the Government positively taking action, or are they waiting for a groundswell of demand before they will take action?

Baroness Sugg: Is the noble Lord referring to the granting of wayleaves? We do not think that there is a problem at the moment. After conversations that we have had, we think that wayleaves are granted. They are either resolved between the landowner and the installer or, as I said, there is a resolution mechanism. We have heard of one case that was not able to be sufficiently resolved. Obviously, in those circumstances there will be frustration on the part of one or more

parties. However, such cases are invariably resolved using the existing regulations or alternative engineering options, so we do not think that there is a need to take a power on this at the moment.

Lord Deben: Does my noble friend accept that it is a question not just of the granting of the wayleave but of the speed at which it is done? There are many such examples and in the end wayleaves are granted. I still do not understand why in these circumstances we have not applied the speed with which we deal with telecommunications because of the pressure for broadband. Why do we not do the same thing?

Baroness Sugg: We have based the Bill on the evidence that we have seen and the problems that we have heard about. I acknowledge that the resolution process can be lengthy if it has to go through the Secretary of State for BEIS, but I appreciate that in the application of new technology there is an element of learning and improvement, particularly for new entrants to the market. We will keep the current statutory arrangements under review and, if further evidence becomes apparent, we will consider what further appropriate action we can take.

We have asked the Government's new EV energy task force to look at the issue of wayleaves. As I said, we acknowledge that if there is a lengthy period before disputes can be resolved, that will put people off. The task force launches shortly and will work with government, the energy sector and the automotive sector to look at what further actions can be taken to ensure that the energy system is used more efficiently for the uptake of electric vehicles. We have specifically tasked the task force with that.

Amendments 20 and 35 in the names of the noble Baronesses, Lady Randerson and Lady Worthington, rightly highlight the importance of ensuring that new developments include provisions for necessary charging infrastructure. I entirely agree with my noble friend that it will be cheaper to get this right now than to try to do so retrospectively. The recent consultation on the National Planning Policy Framework considered the same policy. It sets out that, when developing local plans, local authorities must fully consider the inclusion of charge points in new developments.

The proposed NPPF envisages that applications for developments should be designed to enable the charging of plug-in and other ultra low emission vehicles in safe, accessible and convenient locations. It also sets out that, if setting local parking standards for residential and non-residential development, policies should take into account the need to ensure the adequate provision of spaces for such vehicles. We are considering many responses to the consultation, and the Government will respond in the summer.

In addition to the measures in the NPPF, building regulations have a big potential to play a role in the move to electric vehicles—in particular, regarding the provision of ducting and pre-cabling infrastructure for new buildings. In our industrial strategy we have committed to update building regulations for new residential developments, saying that they must contain the enabling cabling for charge points in homes. That will be an important step in future-proofing new homes and avoiding more costly retrofitting.

[BARONESS SUGG]

The NPPF addresses the specific point on non-residential buildings, but we already have the powers to introduce such changes through building regulations, so we do not think that they need to be included in the Bill. However, we have carefully considered the issues discussed in Committee, and I am pleased to confirm that we will extend our planned consultation on amending the building regulations for new residential dwellings to include appropriate provision for non-domestic buildings. We will consult on the appropriate regulatory requirements for all new buildings—residential and non-residential—to prepare for charge-point provision. As suggested in the amendments, this work will include considering the options for pre-cabling, and options for specifying a certain level of charging or refuelling points.

Amendment 34 would introduce regulation to ensure leaseholders are not denied the ability to install charging infrastructure, and I have reflected on the discussions in Committee on this issue. Of course, where leaseholders and the landlord or freeholder agree, a charger can be installed very quickly, but this amendment seeks to address those scenarios where one or other interested party has not agreed for whatever reason—we discussed what they could be in Committee. We want to consider these issues carefully. They relate to safety, ownership and cost. Following discussions with the Ministry of Housing, Communities and Local Government, I can confirm that access to electric vehicle charge points will now be considered in the work that the Government are doing on leaseholding. A consultation will be published in the autumn.

I take the point made by the noble Baroness on timing. We certainly do not want to wait until 2021 on that and we will not have to. The project has already kicked off with a call for evidence and we will add this point into it. The Law Commission is already part way through examining the responses. The formal consultation is due to be published in the autumn and the final report will be in June next year—a little quicker. That consultation will provide a good opportunity to work through the issues around leasehold.

Given the confirmation that both leasehold properties and non-residential buildings will now be included in the forthcoming consultations, along with the assurance that the Government's new electric vehicle energy task force has been specifically asked to review the issue of wayleaves, I hope that the noble Baroness feels able to withdraw her amendment.

Baroness Randerson: I beg leave to withdraw the amendment.

Amendment 18 withdrawn.

Amendments 19 and 20 not moved.

Clause 10: Large fuel retailers etc: provision of public charging points

Amendment 21

Moved by Baroness Worthington

21: Clause 10, page 6, line 26, at end insert “or

() large car park operators which are privately owned and managed and fall within a prescribed description,”

Baroness Worthington: My Lords, in moving this amendment, I will speak also to Amendments 23 and 28 in my name. We are returning to the topic of Clause 10. I have perhaps been critical of the Government's Bill in suggesting that it is a little lightweight and does not contain very much. However, it contains one interesting clause, Clause 10, which sets out that private companies which occupy an important strategic position could be required, through regulation, to make provision for charging/refuelling. It is probably the most interesting part of the Bill. However, the clause is unnecessarily narrow.

In Committee, we discussed the issue of the narrowness of this definition. I know that currently the department's thinking is that this measure is taken to address the specific issue of range anxiety while on the motorway. I have tabled this set of amendments to ask the Government to think again about why they have chosen to take all this parliamentary time and effort to focus on one element of the transition. It is an important element. All of us who drive electric vehicles and have been on a motorway know the feeling of the charge going down far faster than it does on an A road, and having to look for the next point on your journey where you can safely recharge. That will be better once this has been addressed.

However, this is just one of many instances where the infrastructure and the vehicles need to be in harmony. There are many other ways in which we could bring about an increase in the uptake of electric and zero-emission vehicles if we made sensible regulations to provide the infrastructure in a wider selection of places, the most obvious of which have to be car parks. We know that a large amount of charging will be done either overnight at home when the vehicle is not in use, or perhaps during the day, or it will be done in destinations where people are stopping already to spend time and money and can charge conveniently while doing something else. Given that, car parks would be great places to build out this strategic infrastructure. These amendments seek to amend Clause 10 so that it is not unnecessarily narrow and focused purely on fuel retailers and service stations.

I know that the Minister has been thinking about this issue since Committee, because we did talk about it, but I would put this question to her. Perhaps we can go back in time and ask why it was that the Government decided to embark on a whole Bill process to address just this one narrow question around motorway range anxiety. Would it not have been wiser to have taken a broader approach? I have even gone back to the original consultation document for the modern transport Bill. Five of the seven questions asked in relation to infrastructure related to fuel retailers and only one question at the end asked which other places might be useful. In fact, a large number of respondents suggested that lots of places such as car parks would be very useful. The consultation responses in the summary are quite hard to interpret and we cannot see the raw data, but my gut feeling is that this decision was taken a long time ago and the Government have possibly even forgotten both when and why they took it. We need to revisit the question of narrow scope and Clause 10 being so strangely focused on just one part of the

transition. The knowledge is there, but it is simply not enough to put us on the right footing to embrace the transition properly.

I hope that I will hear some words of reassurance, because Clause 10 is so important to the subsequent parts of the Bill that we will come on to. I look forward to hearing the Minister's response and I beg to move.

4.45 pm

Lord Brooke of Alverthorpe: My Lords, I rise to express my full support for the contribution just made by the noble Baroness, Lady Worthington. I regret that I was unable to be here for Committee last week, but I did speak at Second Reading and gave a list of locations which I believe would be suitable for consideration for introducing electric charging points. I understand that, interestingly, today the Cabinet is taking a decision about Heathrow. Would not life have been quite different if in 2009, when the then Labour Government took the decision to consider a third runway, a similar decision had been made that 25% of the parking at Heathrow would be for electric cars, with charging points? What clean air we would now have around the airport if people were required to use electric cars to go there rather than the diesel and petrol vehicles that they have been using over the past eight years. It would be an entirely different environment, and we are still stuck with the problem of whether to go ahead with the expansion. We could also do this at Gatwick and indeed all over the place, in many locations with great big car parks.

I share the view that this is a very modest piece of legislation, and this is one area where we should see amendments from the Government in order to see some changes coming through around the country. So I am very pleased to speak strongly in support of this amendment.

Baroness Randerson: My Lords, I also will add my support for this amendment, which is eminently sensible. Let us think about where we find electric charging points now. We find them at motorway services, in the car park adjacent to the refuelling area, and in the occasional car park. They are often found in big supermarket car parks.

The Government need to follow the lead taken so far by those far-sighted organisations that thought that charging points would be an asset to their business, as well as open the eyes of the car parking industry to encourage it to have charging points. The industry can easily integrate them into its general business model. I recall going to a car park in France that had a couple of charging points. The pricing structure made it extremely unattractive to linger on that charging spot for longer than was needed. Therefore, you were not using a space that other people might want to use; you were utilising it and attracting new customers. I strongly urge the Minister to look at this point. It is essential that the Government embrace every possible opportunity to lead people into a new mindset where charging points are an asset to a business, and do not leave it entirely up to the market. We will not overcome this issue unless the Government take a strong lead, and this is a simple way in which the Government can do that.

Lord Deben: My Lords, we are bound to discuss this very narrow amendment to a very narrow agreement by the Government, but it strikes me that there is a problem in the Bill with the extent to which the Government will be able to insist on charging points in future. For example, many public authorities do not seem to be rising to the occasion. As I understand it—I stand open to correction—the Royal Borough of Kensington and Chelsea does not have any of these charging points. It is a disgrace. Westminster has been much better. There are no party politics in this; it is just one of those things. People do not seem to have woken up to this. Does the Minister feel that the Government have enough power to insist that the public sector, not just the private sector, behaves itself and recognises that it has to rise to this challenge? Unless one can be assured of that, one is very sympathetic to the amendment—except that it does not go far enough.

Lord Campbell-Savours (Lab): My Lords, I wanted to concentrate my remarks on the final group of amendments, but I will intervene briefly on this one. We should be told—perhaps I could have the Minister's attention—who is actually objecting. We have just been told that local authorities may have concerns, but are private companies, petrol companies or garages objecting? In this particular area, somewhere along the line, there is a blockage. Can we be told whom officials are meeting? What is being said at these meetings? What is blocking this change? Clearly, there is a lot of support across the House for the amendment moved by the noble Baroness.

Lord Lucas: My Lords, Clause 10 seems a crucial part of the Bill. We absolutely need a widely available, dense network of charging points if we are to get people to move to electric vehicles. If the Government want to discourage diesel vehicles, making diesel available only at motorway service stations would be a pretty good way of doing it. It is clear that what is in the Bill at the moment is vastly inadequate. For large parts of the country, motorways are irrelevant. I include my home town of Eastbourne in that; I do not think that I use the motorway from one end of the year to another. By and large, petrol retailers are small and specialised.

As the noble Baroness, Lady Randerson, pointed out, these charging points are not in the petrol station parts of motorway service stations. They are in the parking bits associated with all the things you can do for 30 minutes while you wait for your car to re-charge. You do not want to sit next to a petrol pump for 30 minutes. You want to be doing something—at a sports club or a nail bar, or whatever it is that you are going to fill the time with. It is at these big car parks, which are associated with something you can do for 30 minutes, that we ought to insist on charge points. We should insist not because it is in some way disadvantageous to these places to put them in but because, as my noble friend Lord Deben pointed out, some people are being remarkably slow—probably because there are not many electric vehicles around at the moment—to see the advantage of being at the front of the wave in putting in charging points. It is at these big car parks around the country—there are

[LORD LUCAS]

some of them near all of us—that we have to insist on charging points. That is what will make the difference to the take-up of electric vehicles.

Lord Tunncliffe: My Lords, Clause 10 involves the classic dilemma of taking rights over private property for the greater good. I commend the fact that the clause is there, but whenever such rights are debated, you debate both breadth and reasonableness. I will listen to the response of the noble Baroness, Lady Worthington, on that breadth with interest, because I think there is a case for an incremental improvement in the breadth and power of this clause.

My three amendments are about the other side of the coin: that the regulations should be reasonable. Amendment 27 seeks assurances on the whole matter of how the regulations shall be reasonably applied. Amendment 42 is about notice. We need to be assured that private owners will not be immediately required to do things and that there is appropriate and adequate notice. Amendment 43 relates to the consultation process being appropriate.

Lord Young of Cookham (Con): My Lords, the co-pilot is in charge of this group of amendments. I am grateful to all noble Lords who have spoken to this group and made the case for seeking to expand the scope of Clause 10 beyond the destinations that are so far defined in it.

The amendments of the noble Baroness, Lady Worthington—Amendments 21, 23 and 28—seek to expand the scope of Clause 10, so that privately owned large car park operators would also be required to ensure provision of charge points at their premises. A number of noble Lords and Baronesses have spoken in support of that group of amendments. It is important that we carefully consider which location should be captured in Clause 10. As my noble friend highlighted in Committee, we believe that the Government should regulate only where there is a specific need and not where we are confident that market forces will deliver the necessary infrastructure to meet the needs of EV drivers. I seek to reassure noble Lords by giving examples of what is now happening in the private sector.

First, perhaps I can deal with my noble friend's comment about the London Borough of Kensington and Chelsea. I think it is providing a number of spaces and that the Government are taking the initiative in encouraging it to do better. Indeed, through the Government's on-street residential scheme, we have just provided funding for 50 additional lamp post charge points to be installed. I hope that is of some reassurance to my noble friend. But we are already seeing the private sector taking the lead, with charge points going in at destinations including car parks and supermarkets, as these locations begin to appreciate the advantages that offering charging facilities will ultimately have in attracting the growing number of EV drivers to their shops or to use their services. For example, NCP, one of the largest car park operators in the UK, already offers charge points at some of its car parks and is investing to grow the number of sites offering this facility.

Electrical vehicle charging points have been installed in car parks at Heathrow Airport and around 500 charge

point connectors have been installed in the UK in the last 30 days. The Office for Low Emission Vehicles has also worked closely with the British Parking Association to develop guidance for its members on investing in and installing charging infrastructure.

5 pm

As my noble friend mentioned in Committee, we are also aware of a number of supermarkets and shopping centres that have installed charge points, including Asda, which already has charging facilities at more than 100 of its stores. My noble friend's ministerial colleagues meet regularly with the charge point industry and we are confident of the progress being made in the retail space.

My noble friend also highlighted in Committee that the Government already offer a variety of grant schemes and policy measures to support the installation of charge points in a range of locations. Through government grant schemes such as the train station scheme, Plugged-in Places and the public sector estate scheme, more than 7,000 charge points have been funded in a wide range of locations, including leisure centres, libraries, park and rides, and train station car parks. We have also already committed to providing greater emphasis on the delivery of charge points at train stations as part of the rail franchising process. For private facilities, we also offer grant funding through our Workplace Charging Scheme to support the installation of charge points for employees and fleets. To date, more than 1,000 sockets have been installed in more than 300 companies since the scheme launched in November 2016. Then, there is the new £400 million electric vehicle charging infrastructure investment fund, which will support the installation of charge points across the UK, which could include privately owned car parks.

We heard while debating the previous group of amendments that the Government's national policy planning framework has just been consulted on and will continue to be an important tool in leveraging infrastructure and future-proofing new developments. It sets out that when developing local plans, authorities should fully consider the inclusion of charge point infrastructure in new developments.

The powers we are seeking in Clause 10 would allow the Government to require more charge points at motorway service areas and large fuel retailers to meet the growing demand for them. In addition to these powers, the proposed NPPF envisages that applications for developments should be designed to enable charging of plug-in and other low-emission vehicles in safe, accessible and convenient locations.

Lord Campbell-Savours: As I read it, it says that the regulations “may” require. It does not say that they are required. Why, in this particular case, can the Government not simply concede to the amendment? It is not a requirement. It says “may”, so it is up to the Government to decide how they want to proceed.

Lord Young of Cookham: The noble Lord is reverting to a discussion that I think we had in Committee, when we had a debate on “may” versus “must”.

Baroness Worthington: With respect, no. The noble Lord's point is correct. When the Minister started to discuss this amendment the statement was made that Clause 10 "will require". It does not. Clause 10 is an enabling power that enables regulations to be made at the Government's discretion subject to consultation and publication of the zero-emission vehicles strategy, which we are all waiting for and I am sure will contain lots of statements about the need to roll out charging infrastructure to places other than motorway service stations. It is wrong to represent this clause as requiring anything and wrong to miss the opportunity to take a wider enabling power now, otherwise we will have to be back here in six months taking it another time.

Lord Young of Cookham: I can assure the noble Baroness that it is the Government's intention to use the powers designated in Clause 10, but we want to consult first on exactly which destinations are included in the definitions. It is our intention to use the powers we seek to have in Clause 10. As I said, the powers we seek would allow the Government to—

Baroness Worthington: I am sorry to interrupt again, but could the noble Lord clarify that? The powers will be used and a consultation will be undertaken about which destinations they will apply to, but the Bill is very specific and narrow and says that it will be only large petrol retailers and service station providers. That is the point we are making: it is too narrow. It is not even what is necessary. The Minister has given a long list of private sector movement. Most service stations already have charge points. That is one place where you can find them. We are talking about a much wider, countrywide need, specifically—when we come on to the next group of amendments—a city-led, demand-led process that Clause 10 could enable but does not as drafted.

Lord Young of Cookham: The consultations I was referring to concern the definition of a large service station. We have not defined that and that is the consultation we want to embark on. Once that consultation has been completed, it is the Government's intention to use the powers under Clause 10 to make progress and designate areas where we want more charge points.

Lord Campbell-Savours: On that point, if it is the Government's intention to proceed, then the word "may" is not really required. Anyhow, why not leave "may" in and include the words in the amendment? I cannot see what the Government lose by accepting this amendment. It is totally at their discretion as to what happens.

Lord Young of Cookham: The Government have made this clear right from the beginning—I shall come on to this in a moment. When we consulted on measures in the Bill we determined that it was most appropriate to mandate provision at sites, such as fuel retailers and service areas, which are already invested in providing services related to vehicle refuelling. That was the basis on which we consulted and the basis on which the Bill was brought forward. What the amendments seek to do, at a very late stage in the Bill, is to broaden

the scope very widely, beyond the initial areas we identified, to include a whole lot of others. We do not think that necessary because, as I said a moment ago, the market is responding. These charge points are already being provided in supermarkets and private car parks and the Government want to take powers only where absolutely necessary.

The locations we have chosen, the motorway service areas and the large service stations, are crucial in reducing range anxiety so that drivers can be confident in undertaking long journeys that they will be able to recharge easily and quickly en route. This is an issue that will remain for the longest journey, even with developments in battery technology, so it makes the most sense to ensure that the infrastructure for those journeys is provided for now and in the Bill. We expect that for many journeys range anxiety will fall away as the battery ranges of new electric vehicles increase, reducing the need for recharging every time an EV driver arrives at their destination. For all these reasons, the Government do not believe they need additional powers to regulate in this area.

Baroness Randerson: Does the Minister accept that the problem is not just about range anxiety on long journeys? We also have to cater for people who wish to own an electric car but do not have a drive of their own or space in their domestic circumstances to recharge their car. Such people will rely on possible innovative solutions—the idea of using lamp-posts as charging points may be feasible—but also on access to a charging point in the local car park while they are in work, while they are shopping or, indeed, when they go out to the cinema, for example. They will want alternative provision. We are not talking just about long journeys. To be honest, most of us do not spend our whole lives doing long journeys. Most of us are doing local missions, are we not? Therefore, we have to open this market up to people who do not have driveways or access to domestic, on-site recharging.

Lord Young of Cookham: I am grateful to the noble Baroness. The Bill is focused on the longer journeys: that is why it is focused on motorway service areas and the major service area operators. As I said a moment ago, the market is now responding in the way I have outlined to meet the requirements of those motorists who need to recharge somewhere near their home. Progress is being made with providing charging stations at lamp-posts, for example. Following Committee, we have reflected on the debate, which highlighted the need for large fuel retailers and service area operators to be consulted in a way that enables them to fully prepare for future regulations.

I agree with the noble Lord, Lord Tunnickliffe, about the importance of clarity for those retailers in the sector covered by the regulations. We agree with the noble Baroness, Lady Randerson, that the consultation will help improve the regulations by understanding some of the limitations that these bodies could face in installing charging and refuelling infrastructure, such as grid capacity. We also agree that the consultation will assist in raising awareness among fuel retailers that they will need to consider the future.

Lord Campbell-Savours: The Minister refers to long journeys but I think that the biggest market for this product will actually be in the inner cities, where people make short journeys and will want lots of these charging points. That is the reverse of the position taken by the Government. I do not want to drive 100 miles up the M1 and call in at every service station to have a recharge. One wants to use these vehicles in the inner-city areas. The Government seem to have it the wrong way round.

Lord Young of Cookham: Many people already charge at home. If one looks around the streets just a stone's throw from the Palace of Westminster one can see an increasing number of charge points, where people who do not have access to home charging can recharge their vehicle. You can recharge your vehicle in the car park at the other end of the building.

Lord Brooke of Alverthorpe: Can the Minister say why the mayors are calling for the change in the amendment? They are on the spot in the cities around the country and know the difficulties; they are asking for the change. Why are we refusing it?

Lord Young of Cookham: The next group of amendments is indeed about the powers that the mayors are seeking, but the Government's proposal is that those powers should be constrained within the broad terms of the Bill and not extended. We will explain that when we reach the next set of amendments—if we ever get there.

I turn to Amendment 27 in the name of the noble Lord, Lord Tunncliffe. As stated in Clause 16 and detailed in the policy scoping notes, any regulations brought forward would be informed by consultation with industry, including fuel retailers, motorway service area operators, EV infrastructure providers and operators, and EV manufacturers and drivers. Regulations would need to take into careful consideration the commercial and operational impacts on the organisations that would be directly impacted. For example, detailed regulations would need to take account of: an assessment of current and planned provision at the locations in question; an understanding of the underlying fuel retail and motorway service businesses and the needs of users; and an understanding of the factors which will make particular sites more or less suited to installation and operation of EV infrastructure. In addition, Clause 15 already provides the Secretary of State with powers to create exceptions from any requirement imposed by regulations, which could be used where an expansion of land was required or other disproportionate costs were transferred to retailers and operators.

In relation to the noble Lord's Amendment 42, consultation would also help inform the Government of the time it would take industry to be compliant with any requirements, and dates for compliance can be written into regulations if necessary. It will be important to address the intention behind the noble Lord's two amendments as we bring forward regulations. Although we do not believe these amendments are needed, we appreciate his concern that industry must have sufficient time to prepare for any requirements, and we can commit today that where proposals would impose substantial requirements on operators of public

charge points, large fuel retailers or service operators, the Government will allow at least six months between the commencement of consultation on the proposals and the coming into force of the relevant provisions of any consequent regulations brought forward under Part 2 of the Bill.

Following Committee, and the report of the Delegated Powers and Regulatory Reform Committee, we have considered whether there is anything further we can do to strengthen our commitment to ensuring that large fuel retailers and motorway service areas are aware of regulations in good time before they are brought forward. My noble friend has tabled government Amendments 44 to 46 to ensure that each time the definitions for "large fuel retailer" and "service area operator" are changed, they are subject to the affirmative procedure to ensure that extra parliamentary scrutiny is afforded to these changes.

Amendment 43, tabled by the noble Lord, Lord Tunncliffe, seeks to ensure that consultations, "last for a proportionate length of time".

We have discussed this in previous stages and the Government believe it is essential to consult before making regulations to ensure that the regulations are both effective and proportionate. That is why we have included a requirement to consult in Clause 16. I completely agree that it is always important to ensure that consultations last for a proportionate length of time. Consulting too quickly will not give enough time for consideration and will reduce the quality of responses. This is why the Government's *Consultation Principles 2018* include precisely this point as one of the principles. The amendment would change the relevant principle into a requirement in the Bill.

We do not believe it is necessary to do that. The Government are already held to account for conducting consultations in line with the consultation principles. There is heavy scrutiny of those responding and of course by Parliament. The Government are also subject to the requirements of public law, and therefore to oversight by the courts, when undertaking consultations of this nature. Therefore, while I fully agree with the importance of ensuring that consultations last a proportionate length of time, I do not think it necessary to turn one of the Government's principles into a statutory requirement in the Bill.

I thank the noble Lord, Lord Tunncliffe, for raising the topic of ensuring that consultations last a proportionate length of time. I agree on the importance but, for the reasons I have set out, it is not necessary or appropriate to include them in the Bill. I hope that, with the commitments I have given and the government amendments, the noble Baroness feels able to withdraw her amendment.

5.15 pm

Lord Lucas: My Lords, before my noble friend sits down, I am sure he will agree that the House has expressed widespread disquiet over the narrowness of this clause. Will the Government commit to continuing conversations between now and Third Reading?

Lord Young of Cookham: I am possibly more aware than anyone else in the Chamber of the strength of feeling that we have had during debate on this issue.

I understand where my noble friend is coming from but I would be misleading him if I said that I could give the commitment he asks for.

Baroness Worthington: My Lords, I am grateful to the Minister for his response. I am afraid that I cannot say I am any clearer or more reassured as to the logic behind the Government's position on this issue. It feels to me as if, at some point in the distant past, a decision was made on behalf of all EV owners in the country that long-distance journeys were the problem. Where is the evidence that that is the case? What are the Government basing their policy on? Can we see the consultation document which asked, "What is your biggest fear about driving an electric vehicle?" The only consultation I have been able to find had five leading questions related to large fuel retailers and one open-ended question. The analysis of the responses indicates that there is almost no difference between those who supported mandatory provisions on fuel retailers and those who said, "We want them everywhere". There is no evidence. I urge the Government, please, before Third Reading to come into dialogue to discuss this clause, so that we can get to the bottom of where the evidence is for it. If we can do that, although I reserve the right to bring back an amendment at Third Reading given the widespread support expressed today, then I will be happy to withdraw my amendment.

Amendment 21 withdrawn.

Amendment 22

Moved by Baroness Sugg

22: Clause 10, page 6, line 27, after "charging" insert "or refuelling"

Amendment 22 agreed.

Amendment 23 not moved.

Amendments 24 to 26

Moved by Baroness Sugg

24: Clause 10, page 6, line 30, after "charging" insert "or refuelling"

25: Clause 10, page 6, line 31, after "charging" insert "or refuelling"

26: Clause 10, page 6, line 34, after "charging" insert "or refuelling"

Amendments 24 to 26 agreed.

Amendments 27 and 28 not moved.

Amendment 29

Moved by Baroness Sugg

29: After Clause 10, insert the following new Clause—
"Duty to consider making regulations under section 10 on request by elected mayor"

(1) The Secretary of State must consider making regulations under section 10 in relation to roads forming part of the key route network in a relevant area if—

- (a) the mayor for the relevant area makes a request for such regulations to be made,
- (b) conditions 1 and 2 are met, and

(c) the Secretary of State considers that the mayor has complied with any prescribed requirements before making the request.

(2) Condition 1 is that the Secretary of State is satisfied that, before making the request, the mayor—

(a) published proposals for regulations to be made under section 10 in relation to roads forming part of the key route network in the area, and

(b) consulted—

(i) persons who would be likely to be subject to requirements under the regulations (if made), and

(ii) such other persons as the mayor considers appropriate, in relation to the published proposals.

(3) Condition 2 is that the mayor has given the Secretary of State a summary of the responses to the consultation referred to in subsection (2)(b).

(4) The Secretary of State may disregard a request to the extent that it relates to the definitions of "large fuel retailer" and "service area operator".

(5) For the purposes of this section—

(a) "relevant area" means the area of a combined authority or Greater London;

(b) a road forms part of the key route network in a relevant area if—

(i) in the case of the area of a combined authority, the road is one in relation to which functions are exercisable by the combined authority as a result of an order under section 105A(1) of the 2009 Act;

(ii) in the case of Greater London, the road is a GLA road (within the meaning of the Highways Act 1980);

(c) the mayor for a relevant area is—

(i) in the case of the area of a combined authority, the mayor for the area elected in accordance with section 107A(2) of the 2009 Act;

(ii) in the case of Greater London, the Mayor of London.

(6) In this section—

"the 2009 Act" means the Local Democracy, Economic Development and Construction Act 2009;

"combined authority" means a combined authority established under section 103(1) of the 2009 Act."

Baroness Sugg: My Lords, this group of amendments considers an interesting and important point around the role of metro mayors in enabling the installation of charging infrastructure. I explained in Committee that we would reflect on the points made in that debate and my response has been to table Amendment 29. Cities, regions and counties play a hugely important role in local environmental strategies and dealing with air quality challenges. Charging infrastructure will need to be a part of these strategies and this provision would give them a lever to help deliver it locally. As discussed in Committee, it is important that the relevant highways authorities and combined authorities work together with industry to deliver local solutions, supported by government. We spoke on earlier groups about how local authorities and metro mayors are working together and I welcome the London EV infrastructure task force, launched by the Mayor of London last week, as a good example of this working in practice. We look forward to what it achieves.

Government Amendment 29 would enable metro mayors—the Mayor of London and mayors of combined authorities—to designate locations defined in Clause 10.

[BARONESS SUGG]

As we have just discussed, this is limited to large fuel retailers and service area locations installing charging infrastructure within their defined key route networks. Mayors would be required to consult on such premises and notify the intent for regulations to be made to the Secretary of State, who must then decide whether to make regulations. Reasoning would be provided to applicant mayors should the Secretary of State choose not to introduce such regulations. It is intended that these powers could only be exercised once the definitions of large fuel retailers and the factors that would determine the suitability of a particular location have been adopted in regulations. We think this would provide clarity and ensure appropriate scrutiny prior to the power being exercised.

I shall speak also to Amendments 30A, 31, 32A and 33A in this group, as we can make some movement on them. Amendment 30A, tabled by the noble Baroness, Lady Worthington, as an amendment to Amendment 29, seeks to introduce requirements that when proposed by mayors the Secretary of State must either introduce requirements following a mayoral request or provide reasoning why not when notifying the applicant mayor. I assure the noble Baroness that the Secretary of State intends to bring forward the regulations on the basis that they are appropriate, but it is right and proper that the Secretary of State would have the ability not to introduce the regulations should, for any reason, he not be satisfied that the requirements have been complied with. Should that be the case for any reason, as I said in my opening remarks, it is certainly the intention that any reasoning would be fully explained to the relevant mayor.

Amendment 30A would also delete proposed new subsection 1(c) of Amendment 29, which we want to maintain. It is important to ensure that no unreasonable burden is placed on retailers, that any approach is in line with agreed definitions and that any appropriate consultations have been undertaken. I confirm that I will bring forward at Third Reading a government amendment similar to Amendment 30A but with that provision maintained.

Amendments 31 and 33A, also tabled by the noble Baroness, Lady Worthington, seek to widen the scope of designation by metro mayors beyond large fuel retailers on the relevant key route networks or red routes in London. We have some concerns about widening the scope beyond the key route networks if motorway service areas were also included. We think it is most appropriate for DfT and Highways England to maintain a strategic national-level oversight of service areas, given their responsibilities for these motorway routes and the need to ensure sufficient infrastructure at these strategic locations. However, removing the limitation of the key route networks may be appropriate so metro mayors can take a strategic view of large fuel retailers across their areas. To be absolutely clear, this would be appropriate for charge points at large fuel retailers only, not on the roads themselves. I know local authorities have been concerned.

Amendment 32A seeks to clarify that metro mayors should consult the relevant local authority. This is something we would fully expect to happen. It is important that local authorities are involved in

infrastructure provision, and I confirm that at Third Reading we will look to bring forward government amendments similar to Amendments 31, 32A and 33A, but removing the reference to service area operators for the reasons I have mentioned. I hope that will address the noble Baroness's concern. I beg to move.

Amendment 30A (to Amendment 29)

Moved by Lord Brooke of Alverthorpe

30A: After Clause 10, leave out subsection (1) and insert—

“(1) If the mayor for a relevant area makes a request for regulations under section 10 to be made in relation to the relevant area and conditions 1 and 2 are met, then the Secretary of State must either—

- (a) make the regulations, or
- (b) notify the mayor of his or her decision not to make the regulations, and include reasons for that decision.”

Lord Brooke of Alverthorpe: My Lords, in the absence of the noble Baroness, Lady Worthington, I shall move the amendment she has tabled. I shall not speak at any great length on it. The change which has been tabled is welcome, but it falls considerably short of what we were hoping for and, in particular, what the mayors were hoping for. They do not feel that the Bill gives them the powers to tackle the fundamental problems they have with air pollution. They see it as an important part of several pieces of equipment they need to tackle air pollution. In particular, as I said in my earlier intervention, they have to be able to bring pressure to bear to ensure that there are more electric charging points in car parks. The noble Baroness, Lady Randerson, made the point very clearly. Most people using electric cars are not concerned about long journeys. They have bought their electric cars for good green reasons and for other reasons, and they are using them principally in cities. They are looking for the infrastructure to back them and, in particular, they find that in many areas in which they park there is no facility.

The mayors recognise this. They know what their cities have and what their citizens want. I am sure they will feel that while they welcome this change, there are a lot of words but little change and little benefit for them. Others may speak on this but we hope that the Government might take this away, reflect on it and see if they can come back and do better on it next time around. I beg to move.

Lord Tunnicliffe: I am somewhat confused. I thought we were still debating the group starting with Amendment 29, and my understanding of the rules is that no other amendment is yet moved. Anyway, I will make the speech that I was going to make. I thank the Minister for her help in trying to get me to understand the amendment, those that preceded it and the amendments to the amendments that preceded the latest amendments to the amendment. I have to admit that I am now totally confused. Hence I am absolutely delighted that the Minister has assured us that this group of amendments will be translated into a single government amendment. I will reserve my views on that amendment until I have seen it, and I hope it turns up quite soon. Because that amendment will be

tabled, we may choose to bring forward amendments to it at Third Reading, but I will refrain from using the time of the House any more at this point.

Baroness Randerson: My Lords, I am totally confused as well because I thought we were still on group 7. I am going to confuse everyone even further by moving and speaking to Amendment 33.

The Deputy Speaker (The Countess of Mar) (CB): My Lords, it might help the noble Baroness to know that she cannot move her amendment at this stage because it has not been called.

Baroness Randerson: I shall speak to Amendment 33, which seeks to amend government Amendment 29. This would allow the Secretary of State the power to extend the provisions in Amendment 29 to other local transport authorities as well as to metro mayors. This is where I differ from the general view that has been expressed so far, and have differed from it in our past debates, because in our view it is unfair that this power should apply only to areas with metro mayors. Perhaps that is because I come from Wales, where it is the policy of the Government not to have metro mayors so, however large the city, you have no metro mayors.

However, I can think of other areas that might want to take a lead in encouraging modern transport—for example, Cornwall, which was granted special powers on bus franchising but clearly does not have a metro mayor. I remember reading recently that a list of the most congested towns in Britain was topped by Bournemouth, which has no metro mayor. Those are all areas that would quite likely wish to encourage the use of electric cars and ultra-low-emission vehicles which in some areas suffer from considerable congestion. As we all know, congestion means increased emissions, and that is why they would have a legitimate reason to want extra powers along the lines that the metro mayors are being allowed.

The new amendment was picked up by the DPRRC in its 28th report, to which I draw the attention of the House. In its previous report, the DPRRC highlighted the fact that the power to make regulations under Section 10 should be made by affirmative procedure, and it was not convinced by the idea that only the first set of regulations should be affirmative. In its 28th report, it argued that the new clause further undermines the Government's argument. It states:

"Allowing mayors to request different regimes for their own areas, in our view, must imply that provision which will be made in such area specific regulations will be significantly different from that made in relation to the UK generally. Accordingly, we consider that the affirmative procedure should apply to all exercises of the power where regulations under clause 10 are made in response to a request under the new clause".

We are asking for the Secretary of State to have additional powers to devolve powers, no matter what local government structure is in place because, as others have said, in urban areas, there is a strong need to encourage the use of ultra-low-emission vehicles.

Lord Lucas: My Lords, I support the amendment of the noble Baroness, Lady Randerson, and others in this group. Local transport authorities ought to be able to deal with particular problems that arise.

We have a problem in Eastbourne, surprisingly enough, with high levels of particulates—seemingly related to the geography of the place. The local authority therefore wishes that we should be able to reduce them. We do not have a motorway. My noble friend Lord Young said that service centres had not yet been defined. I should be interested to know how the Government are thinking of defining service centres. In Eastbourne and, I should think, most metropolitan areas, we have a petrol station as part of a large, shared area where there is a lot of parking and a lot of other retail. Will this be defined as a service centre? It is as close as we get to a service centre. That would enable the benefits of Clause 10 to extend to an area such as ours and, if the amendment of the noble Baroness, Lady Randerson, is accepted, we might even get the full benefits of Clause 10. As that is clearly a direction in which our community wishes to move, I would very much like the Bill to give it the power to do so.

Lord Tope (LD): My Lords, I need to begin by declaring an interest that I did not have in Committee, because I think that this morning I was elected co-president of London Councils. No one has confirmed that yet and, as a Liberal Democrat, I know only too well not to take things for granted but, just in case I was successful in an unopposed election, I declare an interest as co-president of London Councils.

When we debated this in Committee, there was considerable concern about the apparent slow progress of London boroughs in acting on rapid charging units. It is therefore only fair that I put on record a response, although I do not want to dwell on it. I am told:

"The TfL transformation has impacted heavily on their ability to engage efficiently and consistently with the London boroughs and other stakeholders. We have been told by a number of boroughs that they had identified and submitted numerous locations for rapid charging points to TfL, only for the engagement to end, in some cases for months, with little or no information provided to the borough on whether the plans are progressing. In many cases local authorities have done all that is necessary and are waiting for TfL to complete the installation".

I thought it was fair to put that on record, but I really do not want to get into the blame game—none of us do; we want rapid progress to rapid charging points. To that end, now that the London borough elections are out of the way as well, I am pleased to know that discussions have taken place and continue to take place between the GLA, TfL and London Councils. I think that I mentioned in Committee that London Councils had already established a sub-group of members to deal rapidly with these issues, and I am pleased to say that that is now progressing. As a consequence, I understand, TfL has said that it will not pursue its wish for permitted development rights—and that is welcome to the boroughs and to me, having had some considerable experience as a member of the GLA and as a London borough councillor. So far, all that is good.

I turn to Amendment 29. I seek clarification; I think that I understood the Minister in moving the amendment to say that the government intention was that it would apply only to large fuel retailers and service area operators—and the Minister nods in

[LORD TOPE]

agreement with that statement. That is not what the amendment actually says. It could certainly be interpreted—and indeed I think that it says this—as relating to all roads in the key route network. Anyone reading the Bill would take that as applying to all roads in the key route network—and, indeed, the other amendments apply it to all other roads. I understand that the Government intend to come back with a further amendment on that.

I think that the Minister has clarified this issue in moving the amendment and in nodding in assent to my interpretation of it. However, if the Government are bringing back further amendments in respect of what is before us—Amendments 30A, 31 and 33A—would it not be better also to take back Amendment 29 and rewrite it clarifying what the Government want it to mean: that it applies specifically to those two areas, to area operators and large fuel retailers, rather than to all roads on the route network? That seems to me a very sensible thing to do, given that we are going to come back to the issue anyway at Third Reading next week.

Those are my points. I went through in Committee at some stage as to why it is not a good idea to give metro mayors the power over things which, certainly in London's case, are properly the matter for the borough councils as both parking authorities and highway authorities. I do not need to repeat that; I could give many instances of how that has not worked and does not work—but I hope that we are not going to go down that route and that TfL is not going to pursue that route, as I hope is nobody else. When we come back to Third Reading, I hope that the Government will bring before us amendments that make the situation absolutely clear, and we can progress to actually getting on and installing rapid charging points.

Lord Campbell-Savours: My Lords, we may not be in the blame game, but the noble Lord has actually made a strong statement there about the response of TfL to the boroughs. I reserve my comments until, perhaps, we have had a response from those who almost stand in the dock—and perhaps I can raise my comments on Third Reading.

Baroness Sugg: My Lords, I apologise if there is any confusion on this issue. Obviously, having amendments to a government amendment can lead to confusion. As I said, we will bring forward a government amendment, taking on board other comments, and we will endeavour to do that as soon as possible.

On Amendment 33, on extending the power to local transport authorities, we have a number of combined authorities with a directly elected mayor which are designed to deliver their strategic transport priorities across their city regions. We support the devolution of powers to authorities when local decision-making will support improved delivery of transport outcomes. Mayoral combined authorities and the Mayor of London provide an appropriate level of democratic accountability and strategic oversight, which individual local authorities do not necessarily have. We have made the decision to devolve certain strategic powers to metro mayors and metro mayors only and, in this case, we do not think that we should extend them to other local transport authorities.

I will move on to the issues involved in Amendment 29. We discussed London councils, TfL and the mayor at length in Committee and I mentioned this in my opening remarks. We welcome the new taskforce which has been set up and is well represented by all these organisations. There is a real will to work together to deliver these rapid charge points. We are encouraged by that and look forward to seeing progress made.

Lord Tunncliffe: My understanding from the Minister's opening remarks is that Amendment 29 is in the pot to be brought together with the other amendments in a new amendment being brought forward at Third Reading.

Baroness Sugg: Yes, the plan is to bring forward one amendment. We aim to combine Amendments 29, 30A, 31, 32A, 33 and 33A into one—we hope simplified—government amendment. On the point made by the noble Lord, Lord Tope, I make it clear that these are only regulation-making powers under Section 10, which is solely for large fuel retailers and service area operators. That is what these devolved powers refer to. I acknowledge that they do not go as far as the metro mayors want. I do not suggest that we get into another conversation about widening the scope of the Bill and the powers of the metro mayors. The Government's amendment is related purely to those operators. We will come back to this ahead of Third Reading.

The noble Baroness, Lady Randerson, referred to the DPRRC memo. We will go back to the committee with our response and I will copy in all noble Lords. Under Regulation 16(4), the first regulations made following a request by a metro mayor would be subject to the affirmative procedure so the first use of the powers would be debated by Parliament. However, any further exercise of the power is expected to raise similar issues to the first such exercise. Any such regulations would also have been subject to two periods of consultation: the metro mayor would be required to undertake local consultation before asking the Secretary of State to make regulations, and under Regulation 16(3) the Secretary of State would be required to undertake consultation before making the regulations. We think that is sufficient. I am afraid I received the letter only yesterday evening, but we will reply in the coming days and I will make sure that all noble Lords are copied in.

As I said, we will endeavour to come back as soon as possible with a revised government amendment which I hope will simplify matters.

Amendment 30A withdrawn.

Amendments 31 to 33A not moved.

Amendment 29 agreed.

Amendments 30 and 32 had been withdrawn from the Marshalled List.

Amendments 34 and 35 not moved.

Amendments 36 and 37

Moved by Baroness Sugg

36: Clause 11, page 6, line 38, after “charging” insert “or refuelling”

37: Clause 11, page 6, line 41, after “charging” insert “or refuelling”

Amendments 36 and 37 agreed.

Clause 12: Transmission of data relating to charge points

Amendment 38

Moved by Lord Young of Cookham

38: Clause 12, page 7, line 25, leave out “public charging points” and insert “provided for use by members of the general public”

Lord Young of Cookham: My Lords, Amendment 38 clarifies that Clause 12 would not place regulations directly on domestic users.

Regulations under Clause 12 would ensure the ongoing transmission of data from smart charge points to specified persons: for example, this could be the national grid or distribution network operators. This data can be used to help predict future demands on the grid and local network “hotspots” so that infrastructure is planned as efficiently and cost-effectively as possible. The obligation would fall to the operator of charge points, but it is not intended directly to apply to domestic users.

This amendment is in response to a recommendation from the Delegated Powers and Regulatory Reform Committee, which suggested that this intention should be made explicit in the Bill.

5.45 pm

Lord Campbell-Savours: I want at this early stage to clarify something. Clause 12(1) refers to, “a prescribed person or to persons of a prescribed description”. Could that be HMRC?

Lord Young of Cookham: I am not sure whether that derives precisely from the amendment that I am debating, but it is a legitimate question, and I will seek to ensure that before we finish the noble Lord has a response to whether Clause 12(1) applies to HMRC. I am not quite sure why it would, because I do not see how it is directly involved in the power generation business. However, that is an off-the-cuff remark, and an authoritative response will arrive, I hope, before we complete the next group of amendments.

The DPRRC said:

“It is very significant that the powers conferred by clause 12 will allow requirements to be imposed on domestic consumers, enforceable by financial penalties. If, as stated in the memorandum, it is not the Government’s policy for the powers to be used in this way, then we recommend that this limitation should be set out on the face of the Bill”.

These amendments represent no change to policy but provide clarification of the Government’s intent. The transmission of anonymised data from domestic charge points will still be useful to predict demands on the grid, so the obligation could still apply to domestic charge points. However, we expect that this would be done by placing the requirements on organisations which have control of the relevant data: for example, charge point or energy companies.

The amendment demonstrates the Government’s intention not to place obligations on domestic users of charge points under this clause, and I hope that noble Lords are able to support it. I beg to move.

Lord Campbell-Savours: My Lords, Clause 12(1) states:

“Regulations may make provision for the purpose of ensuring the ongoing transmission of charge point data to a prescribed person or to persons of a prescribed description”.

Amendment 41 would insert the following:

“Regulations under subsection (1) may not impose requirements on owners or occupiers of domestic premises”.

There is a big hole in the Bill. I want to know where the Government will raise their revenue from when fuel duty is reduced. At the moment we raise £28 billion per annum. Over a period of years, as the use of electric vehicles increases, there will be a revenue loss. At the moment, the duty on petrol is nearly 60p a litre, on LPG it is nearly 32p, on natural gas it is 25p, and on diesel it is roughly the same as petrol.

The Society of Motor Manufacturers and Traders has expressed concern about this. Its view is that revenue will come through road pricing, which I think some people call “spy in the sky”. This whole question of road pricing has always worried me. However, there are other forms of raising the revenue. There is road fund licensing, which would be very expensive if it is substituting fuel duty, or a tax on the meter in the home. In the end, that is where they will have to raise the tax. However, I think that it would be based on the recorded usage on the meter at the residence. If it is based on tax according to the meter at the home, there will have to be two meters in every home—one for the domestic use of electricity and one for the raising of revenue to substitute for the loss of fuel duty—which means that there will be two separate rates. We are entitled to know the Government’s thinking on this. How do they intend to raise revenue in future to substitute for fuel duty losses? In the time that I have spoken, I am sure that the civil servants in the Box have provided the Minister with an answer to my question.

Lord Lucas: Is there some rule of law that implies at the end of Amendment 41 the words “in respect of those premises”? If there is, I would like to know what it is. If there is not, then all that a vast operator of charge points has to do is to buy one house. It will then be the owners of domestic premises and this clause will no longer apply to it.

Lord Young of Cookham: I think that it would apply to it as an operator, although of course it would not apply to it as an owner of residential property. We have made it absolutely clear that it is the charge operator and not the consumer who has to supply the data. That is the thrust of these amendments. Perhaps I may reflect on what my noble friend has said and write to him, but we do not see this as a loophole whereby a charge operator can escape its obligation to notify the national grid or whoever of the volume of consumption at a particular charge point.

[LORD YOUNG OF COOKHAM]

I commend the noble Lord, Lord Campbell-Savours, for his ingenuity in seeking to broaden a rather narrow debate about data from a charge point into one about the future taxation policy as the nation moves from petrol-consuming vehicles to electricity. I am sure that there are brains in the Treasury who are aware of the potential threat to their revenue, but it is essentially a matter for the Treasury and not for this Bill. The Bill is not about taxation. The policy scoping notes and the Explanatory Notes make it clear that it is not intended to use this clause for taxation purposes in any way. The noble Lord raises important issues but, with respect, they do not arise from this narrow group of amendments.

Lord Campbell-Savours: Why, then, have these regulations? As I understand it, it would not be possible to raise the revenue from the vehicular meter in the home in the event that Amendment 41 were in place.

Lord Young of Cookham: It is important that the electricity grid is aware of hot points in the pattern of consumption in order to plan ahead. Therefore, it needs the data to find out in what parts of the country demand is coming from and at what times of the day. The amendment would simply place the obligation clearly on the operator of the charge points and not on the domestic consumer.

Lord Campbell-Savours: Perhaps the noble Lord can answer the original question that I asked. Will HMRC be one of these groups of prescribed persons?

Lord Young of Cookham: No, I do not believe that it will be.

Viscount Younger of Leckie (Con): My Lords, I think that I should intervene at this particular moment to remind the House about the rules of Report. Paragraph 8.136 of the *Companion* states that no Peer should speak twice except, with the leave of the House, to ask a brief question.

Amendment 38 agreed.

Amendments 39 to 41

Moved by Baroness Sugg

39: Clause 12, page 7, line 26, leave out “public charging points” and insert “provided as mentioned in paragraph (a)”

40: Clause 12, page 7, line 27, at end insert “(subject to subsection (3A)).”

41: Clause 12, page 7, line 27, at end insert—

“(3A) Regulations under subsection (1) may not impose requirements on owners or occupiers of domestic premises.”

Amendments 39 to 41 agreed.

Clause 14: Enforcement

Amendment 42 not moved.

Clause 16: Regulations

Amendment 43 not moved.

Amendments 44 to 47

Moved by Baroness Sugg

44: Clause 16, page 9, line 17, at end insert—

“(4A) Where—

- (a) a statutory instrument contains regulations under section 10 (large fuel retailers etc), and
- (b) the regulations amend the definition of “large fuel retailer” or “service area operator”,

the instrument containing the regulations may not be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.”

45: Clause 16, page 9, line 19, leave out “are the” and insert “are—

(a) the”

46: Clause 16, page 9, line 19, leave out “Part, is” and insert “Part, or

(b) regulations to which subsection (4A) applies, is”

47: Clause 16, page 9, line 22, leave out paragraph (a) and insert—

“() section 9(2A) or (3) (prescribed requirements for public charging or refuelling points or for connecting components), or”

Amendments 44 to 47 agreed.

Clause 16: Regulations

Amendment 48

Moved by Baroness Sugg

48: After Clause 16, insert the following new Clause—

“Report by Secretary of State on operation of this Part

- (1) The Secretary of State must, in respect of each reporting period, prepare a report assessing—
 - (a) the impact and effectiveness of regulations made under this Part;
 - (b) the need for regulations to be made under this Part during subsequent reporting periods.
- (2) Each report must be laid before Parliament after the end of the reporting period to which it relates.
- (3) The first reporting period is the period of two years beginning with the day on which this Act is passed.
- (4) Each subsequent period of 12 months after the first reporting period is a reporting period.”

Baroness Sugg: My Lords, following similar amendments in Committee, government Amendment 48 introduces a new clause on reporting for Part 2. This amendment would require the Secretary of State to produce a report to be laid before each House of Parliament every year, commencing two years after Royal Assent. This is a broad reporting clause and, for example, would allow the Government to: assess the effects of the regulations on electric vehicle uptake; assess the effects of regulations on industry and consumers; assess how regulations are benefiting the energy system and consumer electricity bills; look at the impact on the Government’s carbon and air quality targets; and consider other social and environmental impacts.

As well as this proposed new clause on reporting, the Government already have other reporting mechanisms and requirements. I explained some of these in Committee, such as the legal obligations to report, and make public, data on air quality and emissions of a range of damaging air quality pollutants, as well as the reporting duties that already exist under the Climate Change Act 2008.

In addition to those reporting requirements, the department publishes statistics on electric vehicle registrations on websites and provides data on the number and location of public charge points. The powers in the Bill will enhance this information and ensure that it is openly available.

As well as assessing the impact of the regulations made, I am also pleased to have included in the amendment a requirement for an assessment of the need for other regulations to be made under this part during subsequent reporting periods. This will help to ensure that further regulations are made in a timely and appropriate manner. I hope that noble Lords are able to support this new clause as one that will complement the Government's other reporting mechanisms, I beg to move.

Baroness Randerson: My Lords, I am pleased to see this amendment committing to a reporting procedure. It is highly sensible because of the way in which we are having to second-guess the future. The speed of response to change could well be quite rapid. I recall the noble Baroness, Lady Worthington, quoting some statistics at our last sitting. She referred to a big spike in the sales of petrol cars that matched the rapid decline in the sale of diesel cars. I use that example to illustrate that changes in this market can be very rapid in response to public knowledge, concern and awareness of environmental issues.

I will use the opportunity of this reporting amendment to urge the Government to give some thought now to the possibility of including car parks in their proposals at Third Reading. Car parks were included as a possibility for further regulations, I suggest gently to the Government that they have the discretion not to implement anything about this in the near future, but they could look, after the first report comes forward, at car parks if their measures implemented in relation to service stations have not proved sufficiently effective. That would mean that they would have the weapon in their armoury, kept in the background. They would not have to go to further legislation and further amendment, which could be difficult and time-consuming. However, I welcome the idea of regular government reports on this rapidly changing situation.

Lord Brooke of Alverthorpe: My Lords, having been critical, I now extend a word of gratitude. In particular, I welcome subsection (1)(b) of the proposed new clause in the amendment to which the Minister drew attention, because that will definitely be needed in the future. It is a very helpful amendment indeed.

Lord Lucas: My Lords, I too am grateful to the Government for the amendment. I particularly congratulate them on subsection (2) of the proposed new clause which, for those who do not have the amendments with them, states:

"Each report must be laid before Parliament after the end of the reporting period to which it relates".

A Government who could lay the report before the end of the reporting period would be some Government. This provision has no timescale, which could allow the report to be laid before Parliament 45 years after the end of the reporting period to which it relates. That is quite a commitment and again I congratulate the Government on their drafting.

Lord Tunnicliffe: My Lords, I believe that we asked for this provision in Committee, and if we did not, we meant to do so. Either way, we thank the Minister.

Baroness Sugg: My Lords, I am grateful for the broad welcome expressed by noble Lords for the reporting amendment. I can reassure my noble friend that we will lay the report within two years of the Act being passed and further reports every 12 months after that. I did raise the issue of this wording and I have been assured that it has many precedents.

As this is the last group of the day, I thank all noble Lords for their contributions. I know that some believe that the Bill is too narrow in scope and does not go far enough in the provision of electric charging infrastructure. I would like to point out that infrastructure is just one element of Part 2. We have also made provisions on access, connection, information, data, smart charging and now reliability. While I acknowledge the views of noble Lords on infrastructure, we have sought to address any issues where we find them. Again, it is a part of the Bill, not its entirety. Indeed, the Bill forms only a small part of the work that the Government are doing to ensure that we have a successful transition to electric vehicles. I may as well say one last time that our upcoming "road to zero" strategy will set out our plans in more detail.

I have listened to the arguments put by noble Lords throughout the passage of the Bill and I have moved amendments to improve it. Again, I thank noble Lords for their constructive engagement.

Amendment 48 agreed.

Clause 20: Short title

Amendment 49 not moved.

In the Title

Amendment 50 not moved.

Electronic Communications (Universal Service) (Broadband) Order 2018

Motion to Regret

6.02 pm

Moved by Lord Stevenson of Balmacara

That this House regrets that the Electronic Communications (Universal Service) (Broadband) Order 2018 proposes a universal service obligation for broadband with a download speed of 10 megabits per second (Mbps) and an upload speed of 1Mbps; notes that in its December 2016 advice to Her Majesty's Government, Ofcom modelled a scenario of superfast

[LORD STEVENSON OF BALMACARA]

broadband with download speeds of 30Mbps, an upload speed of 6Mbps and a guaranteed minimum speed of 10Mbps; and calls on Her Majesty's Government to adopt a more ambitious universal service obligation which promotes investment in broadband infrastructure and facilitates increased consumer access to ultrafast "full fibre" services (SI 2018/445).

Lord Stevenson of Balmacara (Lab): My Lords, I shall start with a brief quote from the *Guardian* in August 2017:

"Britain is a broadband laggard with an average speed ranking it 31st in the world trailing most of Europe, Thailand and New Zealand. A new report has found that across the UK ... it takes about an hour to download a ... Hollywood film ... The average speed in the UK is less than a third that of Singapore, which tops the global league table measuring broadband in 189 countries, where it takes an average of 18 minutes to download a [similar] film ... The UK falls well short of the average speeds enjoyed by European countries ... The report found that overall the UK lags behind 19 European countries, 17 of them in the European Union".

Our conversations in this House about broadband usually take the form of a question or short debate on why reception and coverage received by individual Members of your Lordship's House in such and such a place are so bad; others join in. Notspots are mentioned. Rural areas where 3G and 4G mobile coverage are to be found get discussed in little groups gathering around this Chamber as if they were places with Michelin-starred restaurants and secrets to be shared only discreetly and with close friends. Occasionally we might hear people drop in scary words like "latency" and "contention ratios". This is followed by a reassuring statement from the Minister that things are going well, investment is pouring in, and that coverage is in excess of the target and is fast approaching 100%. However, if one listens carefully, the Minister never explains 100% of what, and that is a question I want to come back to. I confidently expect that this debate will be no different.

I have no substantive issues to raise on the order before us, and indeed I want to compliment the team at DCMS for the high quality of the paperwork that has been provided, in particular the Explanatory Memorandum. What I want to do is try to set out why the government approach to this issue was wrong in the Digital Economy Act 2017 and is wrong now, and to beg them to use the powers they have in that Act to try to push forward urgently towards what we have referred to in earlier debates as the "two-gig economy".

Therefore, my starting point is an amendment to the Digital Economy Bill that we won on Report in February 2017. The early election that year meant that we did not get to ping-pong on the Bill and the amendment fell in the Commons. I like to think that our substantial win in the Division Lobby would have got us further down this track, had it been a normal year. As my noble friend Lord Mendelsohn, who moved the amendment, pointed out at the time, our amendments were about making sure that the universal service obligation being introduced met the Government's published objectives, as set out strongly in the Ofcom technical advice to the Government at the time. It still seems incredible that the Government have come forward

with the slowest of the available options. The only option that meets all the requirements was Ofcom's scenario 3, with download speeds of 30 Mbps and upload speeds of 6 Mbps, compared to what is being proposed in the USO: 10 Mbps download speeds and 1 Mbps upload speeds, which is what we proposed.

At this stage, it is worth commenting that, in my view, responses to the government consultation showed support for higher speeds than what made it into the USO. Possibly reflecting that, I think it fair to point out that the Minister's introduction to the report on the consultation said:

"I want to be clear that setting the minimum speed at at least 10 mbps is not the limit of our ambition. To support our vision of full fibre connectivity, in the 2016 Autumn Statement, the Government announced a £1.1bn package of measures to support investment in digital infrastructure, aimed at ensuring the UK has the digital connectivity it needs for the future, including full fibre networks and 5G".

That is pretty good. I think we can all go along with that. Of course, it fits very nicely with the thrust of our amendment, which was to set a very high aspirational target for the USO— but a tough, unachievable floor for the ordinary day-to-day work—require the rollout of the USO to start in rural areas and prioritise small and medium-sized enterprises. We found all those ideas in Germany, whose Government had recently legislated successfully for precisely that approach.

In framing our amendment, we asked ourselves who could possibly argue against setting an aspirational target for broadband connection speeds of 2 Gbps or more, or object to the cost-effective minimum standard of 30 Mbps download speeds. We thought that the Government would welcome us specifying that rollout must be rural and SME-focused. Indeed, we spiced up the amendment even further by adding a requirement on the Secretary of State to ensure fair competition—"This is the Labour Party talking. We want fair competition and we want it now"—and calling for universal service obligations for mobile coverage. We thought that we were playing bingo and had won the full house, but we were wrong.

Looking back at the debate on the amendment, the key points that come out are as follows. The Ofcom report to which I referred is clear that the Government's preferred USO speed of 10 Mbps will not be sufficient. It argues that even if it is possible and data usage might not require any more—a point that it says is unlikely, even when the technology gains in compression and transmission techniques are taken into account—other issues such as contention rates and latency would render 10 Mbps unfit for usage in a very short time. The best that the Ofcom report can muster in defence of a 10 Mbps download speed is that if it were adopted, it would have to be reviewed almost immediately.

Other countries have shown what happens to innovation and productivity if due care and attention is not placed on the needs of SMEs or on ensuring the widest geographical reach possible. The issue here is linked to the vacuous reliance on coverage in a geographical sense, rather than in terms of the ability of the infrastructure to provide it, now and in the future, if it is to grow and develop. Coverage of 95%—even 98%—may be where we are at geographically or in terms of the number of properties reached, but it

does not feel like that to anyone trying to use the internet to start up a business in rural parts of the UK. We need a measure for this in terms of whether one can use one's equipment wherever they are in the United Kingdom.

Last week, I was climbing in the Scottish Highlands. We could not get coverage in the glens, not unexpectedly, but once I was at the top of Sgurr Fhuaran—I will just mention that it is 1,057 metres high—I found that I was on 4G. I sent messages and photographs. I emailed my friends, as well as the many fans and admirers of my brilliant climbing skills. In fact, I have them here in my pocket if noble Lords wish to see them. It was so good that I could have tweeted about it. But these are activities which I cannot do at my home only 25 miles away from this place. I cannot even have a smart meter, of which I have heard so much, because the connectivity in Little Missenden, where I live, is so bad. Do not get me started on the connectivity in this place.

What on earth is the point of ignoring, in a USO, mobile telephony? The Government wanted to resist that from the start, even though it has been dealt with in a different way. It may be in the various directives, but it makes no sense. That is a point I want to develop.

We are at the cusp of another revolution in technology. If you have lived through and enjoyed 2G, 2.5G, 3G, and even if you are experiencing 4G, you may understand better than I do what is going to happen when we get to 5G. I gather it is not just an upgrade. This is a new, real-time communications technology which will fit seamlessly with wi-fi, providing the infrastructure is upgraded. It is the technology that will make the internet of things viable and allow us to use many other newer technologies not yet thought of. With the capacity and response times achievable with 5G, it can only happen if we install fibre now and that must mean fibre to the premises.

Driving back from Scotland on Saturday, with aching limbs and a slow puncture, I was listening to digital Radio 4. That prompts another thought for the Minister: when are we going to have digital switchover on radio? While I was waiting for my car to be repaired, I had a chance to catch up with a programme called "The Bottom Line" with Evan Davis. He and his guests were discussing what 5G will do to our current use of the internet and, in turn, to our economy. I will not repeat all the points that were made, but it was a very rich and good discussion about what we should be doing to prepare for 5G. It is available on iPlayer and well worth listening to. The point repeated by the panel time and again is that we are well behind the rest of Europe in terms of delivering fibre to the premises. FTTP must be of a new standard, because without that, we will fall even further behind the rest of the world.

FTTP has been recommended by the infrastructure commission to be part of the universal service obligation. Fibre reflects the current and likely future patterns of consumer and citizen behaviour and the increasing use of mobiles as the growing means, particularly in the younger demographics, of accessing all sorts of digital and other services, often in parallel in real time.

My main regret is that we were not successful in getting our amendment to the Digital Economy Bill into the Act. The Act gives the Minister the power to review the USO, so my plea is that he does not regret the situation that we are in and begins to review the USO immediately. Surely the architecture of the USO has to be consistent with the Government's productivity plan, industrial strategy and the national infrastructure plan. The argument is that without some ambition, the USO itself may become a constraint on all these important challenges.

The Government seem to be caught by the failure of the market structure which they are working with. The USO's construction has necessarily been shaped with the imperfections of the market structure that has succeeded in getting us on the journey, but is inadequate to address current or future technology. The department needs to use the powers in the Bill to up its game. I beg to move.

Lord Foster of Bath (LD): My Lords, may I begin by congratulating the noble Lord, Lord Stevenson, on securing an opportunity for us to discuss the Government's universal service obligation proposals? I very much enjoyed his characterisation of the many debates that we have had on this issue and related issues in this House. I suspect that the noble Lord has, as I do, a good idea of what is in the Minister's folder and what we are likely to hear at the end of this debate.

I certainly agree with the noble Lord that we should be supporting the principle of a broadband universal service obligation, and I agree with him entirely that the USO lacks ambition. Indeed, by the Government's own admission, the USO is simply a safety net and frankly, not a very good one at that. I have looked at many Ofcom documents and I cannot find a single one in which they express real enthusiasm for a USO of just 10 Mbps. The lack of ambition shown in the USO is common to much of the Government's whole approach to broadband rollout.

I want to begin by declaring two interests. First, I live in the wilds of rural Suffolk in a home as yet untouched by superfast broadband, and not even by fast broadband. At the weekend, I used the excellent Ofcom app to check my broadband speed and discovered that I have a download speed of just about 3 Mbps and my upload speed is precisely one-third of 1 Mbps. I hope your Lordships will forgive the pun, but I will be champing at the megabit to take advantage of the USO when it comes along.

6.15 pm

My second interest to declare is that I am the chairman of your Lordships' ad hoc committee on the rural economy. Although we began our work just this morning, we have already learned that the last 5% of premises waiting for—indeed, desperate for—superfast broadband represent 75% of the UK's geographical area. That means that the rural areas have been losing out. Yet in those rural areas, perhaps surprisingly, there are more SMEs per head of the population than in urban areas, but those businesses cannot begin to thrive and grow without good connectivity.

As research by McKinsey shows, businesses that have proper online presence are growing twice as fast

[LORD FOSTER OF BATH]

as those that do not. Poor internet connectivity means, for instance, that farmers have to pay extra to have agents fill in online forms for them, that freelancers struggle to make contact with potential clients, and that selling goods or services online or even joining in on a videoconference is almost an impossibility. Skills development loses out because students cannot easily access online learning resources, and people cannot use social media to counter isolation and loneliness. That is the reality in many parts of rural Britain, where, without decent broadband speeds, they are increasingly falling behind. That is why Ofcom rightly said in its recent report that there are still too many people who cannot get a decent broadband connection. Indeed, interestingly, the Secretary of State for Defra, Michael Gove, went even further in his recent NFU speech. He said:

“It is unjustifiable that ... broadband provision is so patchy and poor in so many areas”.

I acknowledge that the USO will help and it is welcome, but it is unambitious. The Government are good at talking the language of ambition in this area, but it is worth studying that language. Take the definitions used. The Government define “superfast broadband” as broadband with download speeds of 24 Mbps and above, but across the rest of Europe superfast means 30 Mbps and above. Even our own regulator, Ofcom, uses that higher 30 Mbps definition, but not our unambitious Government. Or take the figures that will no doubt be used shortly by the Minister to seek to persuade us how well we are doing. The Minister and the Government provide figures relating to access to a particular broadband speed. They rarely quote the take-up rate of those particular speeds. Surely it should be a concern that significantly fewer than 50% of premises that have access to superfast broadband actually take up the offer. We need to be more ambitious about promoting take-up through skills training, marketing the benefits, addressing barriers such as cost and developing quality technology and content. Higher take-up means lower unit costs. Only when we have a high take-up rate can we achieve the huge benefits to individuals, businesses and the country at large that superfast broadband can bring.

To date, the Government’s strategy has been almost entirely to concentrate on building up the structures, while doing very little about stimulating demand. When I raised this point with the Minister 20 months ago he replied:

“We agree with driving take-up”.—[*Official Report*, 27/10/16; col. GC 16.]

I hope that when he responds, he will tell us what the Government—not other people—have done in the intervening time. I will remind him of something else he said then:

“When it comes to digital infrastructure connectivity, we want the UK to be not only the lead in Europe, we want to be a world leader”.—[*Official Report*, 27/10/16; col. GC 13.]

Ambitious language indeed, but the reality is that, for example, around 1 million premises in this country are connected with “fibre to the premises”—FTTP, or full fibre as it is now more frequently called. Spain already has 17.5 million premises connected with full fibre.

I was very taken by a recent Oral Question from the noble Countess, Lady Mar, who asked:

“My Lords, can the Minister explain why remote parts of mountainous Norway and even remote villages in China can have high-speed broadband but we in the United Kingdom cannot?”

The Minister’s reply included a statement of the obvious:

“It is a question of getting the infrastructure in place”.—[*Official Report*, 19/3/18; col. 8.]

Indeed it is, so no wonder Ofcom has said recently that greater investment is needed to build full fibre networks.

In the debate 20 months ago, in another outburst of ambition, the Minister said:

“I think we all agree with the ultimate objective, which is to not be satisfied with just superfast broadband; we want fibre to the premises for everyone and we want increasingly high speeds because that is what the future will require”.—[*Official Report*, 27/10/16; col. GC 16.]

So the Minister acknowledges that what is required is not just superfast but fibre to the premises, which as the Minister knows means speeds being offered that are 100 times faster than we are going to get through the USO. The nearly 1 million premises like mine that do not even currently have functional broadband speeds are to be offered something which is 100 times worse than the Government believe is needed. And, of course, the offer of that “digital safety net” of 10 Mbps is conditional on the costs not exceeding £3,400.

The Digital Minister in the other place, Margot James, recently claimed:

“In the 21st century, accessing the internet is a necessity not a luxury. We are building a Britain that is fit for the future, and we’re now putting high speed broadband on a similar footing as other essential services like water and phone lines”.

The nearly 1 million premises set to benefit from the USO will not be getting what they see as high-speed broadband. They are certainly not getting superfast broadband, and they are very definitely not getting full fibre with speeds up to 1 Gbps. They will not have broadband on the same footing as water or phone lines. Yet again, we have ambitious language far exceeding actual delivery. Sadly, with the unambitious USO we have before us, the digital divide will continue.

Lord Aberdare (CB): My Lords, I add my support to the Motion of the noble Lord, Lord Stevenson, and I share his concern that the proposed broadband universal service obligation is disappointing. I have not studied the helpful documentation accompanying the order in great detail but my overall reaction, as someone with a home in west Wales—I am following the script set out by the noble Lord at the beginning—with no current mobile telephone coverage and rather limited broadband options, is that the situation of myself and others in the same boat is unlikely to be much improved by the USO as proposed. I welcome the principle of the USO and the fact that it includes a minimum upload speed as well as a minimum download speed, but 1 megabit is not enough.

One of the great potential benefits of universal broadband, as we have heard, is that it makes it possible to run a small or even medium-sized business from anywhere in the country, however remote. However, such businesses depend at least as much, if not more, on their ability to upload data to their customers and partners as on being able to download material from the internet. Unlike private users, they are less likely to

spend time and bandwidth downloading films, videos and social media postings. I recognise that full fibre, much as I would welcome it—either right to the premises or, indeed, to anywhere reasonably nearby—is unlikely to reach all of the rural areas where many of the 5% of premises not currently receiving superfast broadband are located. What will the order do to promote the development of new approaches and technologies that can reach those locations? It seems to me that far too much reliance has been placed on Broadband Delivery UK, Openreach in particular, to achieve the 95% coverage, using largely old-fashioned technologies with limited expansion capability.

We were rescued from a BT Broadband service that rarely, if ever, reached 0.2 Mbps by a local ISP, appropriately called ResQ, which offers a line-of-sight fixed-wireless service with speeds of around 10 Mbps for both download and upload. Surely it would be better to incentivise and promote competition in developing new approaches, whether based on fibre, fixed wireless, satellite or even the use of 4G mobile networks, with the capability of reaching premises everywhere in the UK with speeds more like 30 Mbps than the 10 Mbps in the order. Members of your Lordships' EU Internal Market Sub-Committee who visited the Harwell space centre recently heard from a smallish satellite company with plans to offer global high-speed broadband coverage via satellite. There are opportunities to explore technologies other than fibre.

I note from the Government's impact assessment that a USO specifying 30 Mbps download and 6 Mbps upload could reach 2.6 million premises in scope, as opposed to 1.05 million for the proposed approach. That is well over double the number of premises able to access superfast broadband for a relatively modest extra investment.

Finally, I ask the Minister to explain how the USO will actually be enforced. If I am not getting my 10 Mbps, what do I do? How soon must the service be provided and by whom? I also note with concern that if it costs more than £3,400 to provide it, the end user—that is, me—is going to have to pay the extra.

The UK is already a considerable way behind many other nations in its rollout of truly high-speed broadband. In my view, the introduction of the USO, which is indeed welcome in principle, should be grasped not as a way of trying to catch up a bit but as an opportunity to get ahead and to open the doors to all the potential internet-based applications of the future. We do not know yet what those will be but we can be pretty sure they will require more broadband capacity, rather than less.

Earl Cathcart (Con): My Lords, I am sure that my noble friend Lord Ashton of Hyde will know what I am going to say before I say it so I will not disappoint him—or the noble Lord, Lord Stevenson. I live in Norfolk and as in many other areas of the country, as everybody has said so far, we receive appalling broadband speeds. It is so bad that when Defra sends me a long farming document, I cannot download it, so I have to ring up my agent in Norwich, get him to print it out and send it to me in the post. That is hardly 21st-century communications but at least the post is reliable.

We have been promised speeds of 2 Mbps and now the universal service obligation of 10 Mbps. As my noble friend found out for himself when he stayed with me last summer, our speeds are very slow. He measured our speed and found it was a mere 0.03 megabits per second—hardly the promised 2 Mbps, let alone 10 Mbps. He helpfully gave me a number of contacts to improve our speeds and I also contacted Better Broadband for Norfolk, an organisation set up by Norfolk County Council and BT to help all those areas in Norfolk that get bad speeds.

I can now report to my noble friend Lord Ashton of Hyde that our broadband speed is still 0.03 Mbps. Nothing gets done. I have given up being frustrated by all this but I feel sorry for others in the village—architects, photographers, designers, et cetera—who rely on good broadband speeds for their business, let alone schoolchildren trying to research their homework.

My question to my noble friend is: why are the Government spending hundreds of millions of pounds on superfast broadband speeds when they have not got the basics right? Surely they should ensure that everyone has adequate speeds before embarking on a product that not everybody wants or needs. For all the good it will do me, I look forward to my noble friend's response.

6.30 pm

The Earl of Lytton (CB): My Lords, I had not originally intended to intervene on this important matter but the noble Lord, Lord Stevenson, is to be commended on raising it. I speak as someone who lives and works in a rural part of West Sussex and has business tenants in the same location. It is not that it is that rural: I am two miles from the expanding village of Southwater, with its 10,000 residents. It rejoices in having a data centre for the Royal & Sun Alliance insurance company, which doubtless has its own dedicated connection with the outside world. We are five miles from the town of Horsham and about 18 miles from London's second airport.

All this is in an acknowledged growth area and commercial hub known as the Gatwick Diamond, an area where successive Governments have expected growth to take place. Yet despite constant badgering of both BT and Openreach, my statistics for my sub 4-megabit service are, on a good day, probably comparable with the ones quoted by the noble Lord, Lord Foster. I relate to what he said. It often downloads at less than 2 megabits and is seemingly incapable of upgrade. This is about not the final mile but provider inertia, and the half mile downstream of the green cabinet before the line gets any juice. What is in between is understood to be a dated piece of twisted pair cable, which ought to have been dug up and replaced about 25 years ago. Sadly, the mobile signal is also poor in that area and, at the moment, I have not succeeded in establishing a line of sight to enable me to get a 4G signal.

This matters because I cannot at present allow my equipment access simultaneously to Microsoft 365 and Dropbox; the thing simply will not function. Sometimes I have to bring my Dropbox material up to London on a memory stick and upload it here. In fact my little 4G mobile dongle, which I travel around

[THE EARL OF LYTTON]

with, will when in signal enable me to do it far more effectively than that other paragon of communication efficiency, a Southern Rail train. The aspirations of the noble Lord, Lord Stevenson, would be heaven indeed because things such as internet banking would be revolutionised. Online returns to VAT, PAYE and income tax portals would be made viable because those things all rely on sufficiently fast communications for them to create a proper handshake and get a connection.

Before we get bogged down in the technicalities of up or down speeds, I would like to mention a word which has been implied but not mentioned before by other noble Lords: capacity. I know about capacity because, at certain times of day, I cannot get any internet access at all. I may as well go away and make a cup of coffee and a sandwich while it tries to do an initial start-up. Some while ago one of my office tenants left, specifically because for their small graphic design company the broadband speed was so utterly woeful that a member of staff had to take the material home with them to Worthing and send it from there. There are real problems with this because in West Sussex there are a very large number of microbusinesses operating from home. There are tens of thousands of home-workers in West Sussex alone, according to the information that I have been given by the county council.

Since the separation of BT and Openreach, seemingly the two do not talk to each other—at least, not very effectively—and I wonder quite what gives there. I know this because my wife is very often the one who is at home, trying to get some answers out of BT. Is the tenant's application for a faster service being processed? Might we get one as well, and why do the neighbours 200 yards down the road have one? When she asks, "Who do I go to?", BT's reply is, "We don't really deal with that side of the thing—that's Openreach, because we deal only with the cabling". Can we cut through exactly who provides what and get end-to-end configuration supplier to user? Were this a rail franchise, I think it highly likely that it would long since have been stripped of its operating licence.

What is the problem? Where is the Government's willingness to impose this USO that we have talked about for a very long time? I would like to think that we will get somewhere with this order, but I remain unconvinced because all the things that have been done in the past have simply been ignored. There are people like me and others up and down the country who are fed up with this whole system. As has been mentioned by other noble Lords, you seem to be able to get a much better signal elsewhere. In my case, it was in the middle of the Peloponnese, somewhere in Greece, where I could get a 4G signal and have a conversation with my daughter who had some problem. That is going back a few years now, yet in a reasonably affluent and well-heeled part of West Sussex, you cannot do it.

Can we have a complete outlawing of "up to" speeds? That term is a smokescreen of the first order. All it does is allow providers to conceal poor performance. Will the Minister turn his mind to these things and say what will happen about giving this measure proper teeth so that we can start seeing some real results, not at some time two or three years hence, but in the next

two, three, four months? The Government issue permits and licences and are responsible for governance here, but even if they were not, there is reason to intervene where there is market failure and there has been market failure here. There seems to have been a concentration on people streaming videos—or whatever it is they want to do—from Netflix and other providers, yet businesses cannot get the sort of download speeds they need for their day-to-day, normal-working-hours operations. I hope the Minister will be able to give us some positive news on that.

Viscount Waverley (CB): My Lords, I have heard the despairing contributions this afternoon. How on earth is the UK going to become "global Britain", which is the aspiration post Brexit?

Lord Mendelsohn (Lab): My Lords, I thank my noble friend Lord Stevenson for moving this Regret Motion and giving us an opportunity to debate the order. I also thank him for an outstanding speech setting the right context for this, and I thank the noble Lord, Lord Foster, for an excellent speech that placed in context the consequences for small businesses. I share the frustrations of previous speakers—the noble Lord, Lord Aberdare, and the noble Earls, Lord Cathcart and Lord Lytton—about these speeds. I share it although I do not suffer from any of the difficult consequences, as they do.

I live in north London. We have three suppliers into the house. We have all sorts of cabling across the house, with boosters and all sorts of signals, but I have never achieved the stated packages from any of the services. We have problems of latency, contention and all those matters. In fact, my business has a dedicated phone line, which has boosters and other cabling to try to make sure that the signal is not lost, and we are fairly close to BT Tower itself—but our service is barely better than the much cheaper super broadband. It is frequently a problem that the claimed capacities are never fully achieved. That is something that we have to be very wary of, even when we establish a universal service obligation.

I turn my attention to the universal service obligation in this particular order. I want to make the simple point that the order does not achieve its objectives, and I would like the Minister to address that problem. When the Act was passed and the level at which the USO would be introduced was set, it was based on a series of assumptions none of which I believe to be true. I do not believe any more that it achieves the purposes of equity by trying to sort out the digital divide and deal with the problems of rural communities, and nor do I believe that it achieves any of the stated benefits of economic growth.

Some rather good documents on economic growth were produced by DCMS, and I thank it for the work that it did on that. In parenthesis, I acknowledge that the digital team at DCMS has steadily improved, and I suspect that if the same team had been around during the passage of the Bill last time we would not have been stuck with this level of USO. The economic growth benefits are said to be £257 million a year, which relates to:

“Local enterprise growth ... Enterprise productivity growth ... Increased teleworker productivity ... Increased participation of carers and the disabled”.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): I apologise for interrupting. Were the figures that the noble Lord quoted from the USO? Is that what he was referring to?

Lord Mendelsohn: I will specify that the figures themselves are on page 3 of the impact assessment and are for the USO. The stated growth figures themselves came from figures previously reported by Ofcom and from other reports. I can cite the reports for the Minister, but they are all in the documents that I mentioned. The assumptions on which they were made were an extrapolation from higher numbers, so even now to suggest that these numbers are consistent with the service is suspect, largely because the key factor in what is happening in the market and in the use of these things is the software and other services that are laid on top of them, which are the applications that people use. There is an idea that this level of service can be delivered on figures a year later when software has increased in order to deal with a market of higher usage, but that does not mean we can achieve these growth figures.

The other options that were rejected, 20 and 30 megabits, still fulfil both objectives, whereas this order fails on both objectives. That has had counterproductive effects. It is certainly true for those of us who spend a lot of time in industry that by setting the USO at 10 megabits we have ended up in a situation where there has been a chill on potential investment from other players. Other people have not been able to enter the market, and even the main providers that are looking to bid have found it hard to justify business cases when the USO is at 10 megabits. That is a huge problem. I agree with all the speakers who have raised the issue that there will be a dramatic impact on our relative position with this low, unambitious target.

The Government's argument is that the reason why the level has been set is that it is all Europe's fault, or it is in the directive. I beg to differ. The directive is all about how you interpret it and we have chosen to interpret it in a more restrictive way than others have done, as well as offering interpretations of some of the aspects in the most limited possible fashion. The most significant one is about what the minimum specification is. The documents that were provided state that the connection should be available to,

“permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility”.

That interpretation has been highly restrictive in how we have looked at the issue. We assume that the sorts of things that people are using in these different areas are based on easy-to-apply averages, but that is not the case. When you start talking about 10 megabits as being the sort of level that people can use, you come to the wrong conclusion. If you are in the rural community and using many of the technological features that are now used to enhance your business, you will tend to use them on a mobile. When you look for a

broadband wi-fi connection, you will find that it does not meet the requirements that you can gain if you can get access to 4G.

6.45 pm

The blogs, comments and news reports on all the IT and rural community pages are stuffed full with people who say all those sorts of things. I have one comment here: “For the isolated rural like us, USO will deliver nothing useful. We will be pointed to 4G, which is already available”. They make a further point: that the 4G contract is now double the USO offer in terms of monthly data volume. The USO offer of monthly data volume is 100 gigabits. Even in the documents prepared by the department, it admitted that usage had risen considerably from 2016 to 2017, from 132 to 190 gigabits, but that includes all those who cannot get more than 10 megabits. Those above 10 megabits are well over 200 already on those old figures, probably touching closer to 300 now. When you look at what the average user gets, it is not the same. There is no equity. That enhances the digital divide.

While the Government say that we have to consider wider policy considerations such as market distortions, this is the greatest market distortion of itself. They suggest that it may reduce competition. Actually, we all know that only two parties are seriously bidding to implement this: BT and KCOM. All the other suppliers will not even look at this at 10 megabits. They will look at it at a larger number. They have moved on to full fibre rollout because that is the only economically viable proposition.

I note, as have others, that some smaller market players are looking at this, but again one has only to read the technology papers and the trade press to know how scoffed at is the notion that anyone will be able to come forward with a credible plan. The Government's argument is that it will reduce market investment—this has proved not to be true in full fibre rollout, other consequences or even in who will enter the USO—and that it will increase consumer prices. We will come to that later, as someone else observed.

Perhaps the weakest point in the order is the notion of the review date. The Government indeed acknowledged that 10 megabits might not be sufficient in the fullness of time—as opposed to future-proofing so that we actually deal with the problem—but sets, “if applicable”, the review date of 2028. Under the order, the Secretary of State can do this at any time—I hope that he seeks to exercise that power as quickly as possible—or when 75% of the population has access to superfast at 30 megabits.

Is it really the Government's ambition that we will hit 75% at 30 megabits in 2028? Europe's target for 2020 is 300, and ours is 30 in 2028? How is it possible to sustain an argument that we are dealing with a directive that restricts our position but allows Europe to march ahead? That does not make sense.

What does this mean for others? Where does the digital divide exist? It starts in England. In Scotland, the Scottish Economy Secretary describes the whole USO as grossly unfair. The Scottish Government are currently pursuing plans to deploy 30 megabits to all homes under a £600 million programme to be done and dusted by 2022 which will be paid for by the

[LORD MENDELSON]

Scottish Administration. Their concern is that consumers will have to pay higher prices to deliver 10 megabits across the rest of the country. That is the impact of increasing consumer prices.

To see the impact on rural communities, you have only to look at what has happened in York. In a fantastic initiative, York has established itself as the first gigabit city. The *Sunday Times* placed it as the best place to live. That has been a magnet for investment, a magnet for businesses starting up, but the worst possible magnet because the young and mobile are seeking to leave rural areas to establish their businesses there. Nothing will create a greater divide and less equity than such a consequence. I think that is a huge mistake and a huge problem for us.

I do not think that this order meets the objectives. I do not think that it is in date—it is out of date. I should be very grateful if the Minister would seriously consider when would be the appropriate time to set a proper review date and have data that do not come from 2015 or 2016 on customer usage and other things to try to calculate this, when we have something properly up to date and properly future-proofed to establish what should be the proper USO.

Lord Ashton of Hyde: My Lords, I am grateful to all noble Lords for their contributions. We are faced with a dilemma here. On the one hand, people such as my noble friend Lord Cathcart are begging for anything to be done to allow them to have some decent connection. By decent, I mean something that would enable him to receive his emails and documents. On the other hand, many noble Lords have said that we have lacked ambition. The last, very compelling speech from the noble Lord, Lord Mendelson, castigated the Government for their lack of ambition and for setting incoherent USOs, to sum up his speech very briefly.

I have to remind noble Lords that the purpose of the universal service obligation, as outlined in the universal service directive, is to ensure the provision of services to all users. Noble Lords have mentioned Europe, which at the moment has coverage of about 76%. The universal service directive applies only to fixed broadband; it does not apply to mobile. Indeed, the European Commission itself has twice reviewed mobile and concluded that social exclusion does not exist.

The universal service obligation does not exist to promote investment; it exists to make sure universal services are indeed universal and a legal right. It is intended as a safety net. The noble Lord, Lord Foster, said that that safety net lacks ambition; we will deal with the Government's ambition elsewhere in my speech. Interestingly, the noble Lord also admitted that he would benefit from the USO and cannot wait to have it.

Premises in the USO footprint will be the hardest and most costly to reach in the country. The Government's position is that the current specification of the USO is sufficient at present and strikes the right balance between meeting consumers' needs and ensuring that it is proportionate and deliverable. That was not a random decision. The Government carefully considered and consulted on a range of options and three different

scenarios that Ofcom modelled: a basic 10 Mbps service; the preferred 10 Mbps service with additional specifications, such as upload speeds, latency and data caps; and the 30 Mbps or superfast service. The 10 Mbps was selected because data usage drops considerably below this, indicating broadband activity is more restricted with speeds under 10 Mbps. Further evidence from Ofcom shows that a speed of 10 Mbps meets the needs of typical households.

I would also point out that 10 Mbps is a higher speed than virtually every USO across Europe. Sweden may be higher. However, we fully recognise the USO will need to be revised over time as consumer needs evolve, so that it continues to meet people's needs in the years to come. The Government will be closely monitoring this.

Ten Mbps will make a considerable difference. The noble Lord, Lord Foster, gave a list of things that he is currently unable to do, including combating loneliness—and my noble friend, Lord Cathcart mentioned downloading documents. Setting it at 10 Mbps will allow all those things that he mentioned to take place.

As has been mentioned, that is why the Digital Economy Act 2017 provides for the Government to direct Ofcom to undertake a review at any time, and it includes a specific requirement for a review to be undertaken when 75% of premises subscribe to broadband services of 30 Mbps or higher. By the way, despite what the noble Lord, Lord Foster, said, there is virtually no difference between the two definitions of "superfast" that Ofcom, Europe and the Government have been using. At the moment, it is 95% for the Government and 94.9% for 30 Mbps, so it really is not a significant difference.

As I said earlier, the 10 Mbps USO is a safety net, but the Government have much greater ambitions for connectivity across all parts of the UK, so on that I agree with most noble Lords. In his Motion, the noble Lord, Lord Stevenson, referred to the third superfast scenario. Thanks to BDUK and £1.7 billion of public money, over 95% of UK premises already have access to superfast speeds, with savings and clawback due to deliver at least another 2% of coverage. The majority of this access has been delivered by providing fibre to the cabinet. However, we are not content with that, and I agree with the noble Lord, Lord Stevenson, and others. In his speech to the CBI last month, the Chancellor set a national target for full fibre—not just to the cabinet, but all the way to the premises. Our aim is for full fibre to 15 million premises by 2025, and all premises by 2033. So the Government are not short on ambition.

Likewise, at the Fibre Investment Conference, organised by the DDCMS and Ofcom in April this year, the Secretary of State spoke about creating a world-leading environment for investment in full fibre, and reaffirmed how vital full fibre is to building the capacity this country needs. That is why the Government are delivering a series of measures to realise these ambitions. The local full fibre networks programme and gigabit broadband voucher scheme are delivering fibre connections now and incentivising further commercial investment. The £400 million Digital Infrastructure Investment Fund is helping to finance alternative network

providers, and the Treasury is further supporting investment through business rates relief for operators who install new fibre. The DDCMS future telecoms infrastructure review will soon publish a report looking at how we can create the best possible market structure to drive investment, and hit the Government's targets to provide full fibre to all consumers.

The USO is part of these plans, but a higher speed USO would increase the direct costs of delivery as well as increasing the number of eligible premises. This may result in greater costs on consumers' bills, and would increase competitive distortions. It would increase the risk of negatively affecting commercial incentives to invest. It is therefore crucial that, as a safety net, the USO works to support, and not unduly distort, the current and future market. The potential for market distortion limits what the USO can achieve.

I will try to respond to some of the points which noble Lords made. The noble Lord, Lord Aberdare, asked how the USO is going to be enforced. The order has been passed by both Houses and is now with Ofcom to implement. It will designate the provider and the industry cost-sharing fund. Ofcom expects this to take two years and it will consult on the provider this summer, so it is already working on that. That point was also made by the noble Earl, Lord Lytton. Once it is in place, the USO will enable the noble Earl to do exactly the things which he is complaining he cannot do now, so he should be glad about it.

The noble Lord, Lord Mendelsohn, talked about the needs of businesses, and of course he is right that in some cases a 10 Mbps speed is not sufficient. If you have a high-data business, that would not be ideal: for example, actuaries, whom I used to deal with, have huge data files. However, it will support many small businesses, and it provides access to every government service available.

7 pm

Many noble Lords have talked about the speeds and what we mean by them. It is important to note that the 10 Mbps speed is the minimum download sync speed. That means that this is the maximum speed available on the connection between the network and the premises. We therefore mean a minimum download sync speed on that; actual download speeds may therefore be greater.

The noble Lord, Lord Mendelsohn, also mentioned businesses in rural areas. Of course, we regard this as a safety net, but there are other things that rural businesses can apply for, such as the Gigabit Broadband Voucher Scheme, and Defra, for example, has allocated £30 million of grant from the Rural Development Programme for England for targeting to help connect businesses with broadband to reach rural areas. We agree that fibre is important. That is where the Government's ambition is and, both in the mobile area and in broadband, that will be helped by the government initiatives on fibre.

I said that the universal service directive does not deal with mobile, but I take the noble Lord's point. We agree that fibre is important because, to make sure that the benefits of 5G in particular are available—in which we have been helped by the Digital Economy

Act—we will need to get fibre to all the extra masts that will have to be built, every one of which will be connected by fibre. Fibre is essential, not only for better broadband speeds but for mobile.

The noble Lord, Lord Foster, also talked about take-up, as I believe he has before. Take-up at the moment is at about 40% and rising. BDUK is working with local bodies to promote take-up further. The essential point is that there has been an increase in take-up, which has resulted in more than £600 million of gain share to invest further in coverage. We agree that take-up is essential. I have to say to my noble friend Lord Cathcart that there is no point in providing the universal service obligation to those who do not want it, which is why it is a demand-based programme. The noble Lord, Lord Aberdare, also talked about how the upload in the USO is not good enough for SMEs. Again, I remind him that up to £3,000 is available for an SME to apply for gigabit vouchers.

The noble Lord, Lord Mendelsohn—this is a good place to end—mentioned Scotland's R100 scheme. This illustrates the difference, and it is also similar to the European ambition for its scheme, which is 30 Mbps. I think the noble Lord, Lord Mendelsohn, makes it 300 Mbps. The difference between the European initiative and the R100 is that Scotland has gone for a higher level of 30 Mbps, but delivery will take longer. For example, Scotland does not know whether it is possible to deliver that with its current investment. The R100 procurement makes it clear that it is,

"aiming to find suppliers who will connect as many premises as possible for the available subsidy".

The issue we want to cover with the universal service obligation at 10 Mbps is to allow people who get completely insufficient service from their broadband to have one that, while it is not future-proof or perfect, will make a significant difference to their lives, as I hope the noble Lord, Lord Foster, will realise.

I will try to end on a note of optimism. Where I agree with the noble Lord, Lord Stevenson, is in his ambition to promote better broadband speeds and more investment in full fibre connectivity. That is why we are taking the range of measures that I described. The USO has an important part to play in ensuring that no one is left behind, but a superfast or even ultrafast USO would not help achieve our ambitions and could even harm them. That is why we are proceeding with, and keeping under review, the present minimum 10 Mbps specification.

Lord Stevenson of Balmacara: My Lords, I thank all those who have contributed and have got a lot of things off their chest, which is always a good thing to do. There are times when we want to get things moving but that does not happen. The noble Viscount, Lord Waverley, gets the prize for making the shortest and least geographically located point. Asking simply where global Britain was going to come out of all this was rather clever, and I wish that I had thought of that myself. At least we did not get to go down the byways and highways of yet another county, even though that is at the heart of what we have been trying to say.

I was left with five points from the many good speeches. First, I think that the Government are making a rod for their own back if they do not nail down very

[LORD STEVENSON OF BALMACARA]

quickly what they mean by the various percentages and coverages and so on. The Minister's speech was better in that sense, as it was restricted to a couple of examples. However, if people do not know what they are being offered, cannot measure it against their real experience and then do not see what they can do to redress the point—the question was asked: where do you go when you have a complaint?—we are going to end up in worse trouble than we are in at the moment, and I ask the Government to think again about that.

Secondly, what came through was the need to think about reach as much as about what broadband is doing in terms of broadly shaping the economy—by that, I am referring to the two aspects of rural and small businesses. If we do not get that right, we will again build in trouble for ourselves, because there is a suppressed demand that we are not measuring and not seeing. Even though some people will say that they do not want particular advanced technologies, there seem to be an awful lot of other people out there who, if the technology is available, will be able to do a lot more than they can at present. We are missing a trick if we do not try to respond better to that.

Thirdly, it is good to hear about the commitment to fibre, which I have taken as a very positive output

from this debate. The aim is for 15 million premises to have a pretty good fibre connection in a reasonable amount of time, but it seems a very long time to wait for the 100% figure to be reached. I assume that 100% is 100% of everybody everywhere. If it is not, obviously we will need to know about that, but 2033 seems an awfully long time to wait for that.

I have two final points to make. The thing that I had not thought about enough when preparing for this debate was the social exclusion argument, which was made by a number of people—particularly the noble Lord, Lord Foster. It is important not to lose that in the rush to find toys for people or, more seriously, to give people the tools they need to develop their careers and the work they want to do. The social exclusion element is really important.

Finally, a review of availability is promised in the order. There is a bit of a blockage at 75% of people getting 30 Mbps or more, but if it is possible to think about that more broadly in terms of serious issues regarding new technologies, I think we will all be happier. With that, I beg leave to withdraw the Motion.

Motion withdrawn.

House adjourned at 7.09 pm.

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