

Vol. 773
No. 7



Monday
6 June 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Death of a Former Member: Lord Neill of Bladen.....	573
Questions	
Migration	573
Burma.....	575
Personal Independence Payment	578
BBC: Independence.....	580
Child Contact Centres (Accreditation) Bill [HL]	
<i>First Reading</i>	582
Political Parties (Funding and Expenditure) Bill [HL]	
<i>First Reading</i>	582
Online Safety Bill [HL]	
<i>First Reading</i>	582
European Union (Information, etc.) Bill [HL]	
<i>First Reading</i>	583
Right to Die at Home Bill [HL]	
<i>First Reading</i>	583
Cultural Property (Armed Conflicts) Bill [HL]	
<i>Second Reading</i>	583
BHS	
<i>Statement</i>	620
West Midlands Combined Authority Order 2016	
<i>Motion to Approve</i>	628
Representation of the People (England and Wales) (Amendment) Regulations 2016	
<i>Motion to Approve</i>	645
Building Societies (Floating Charges and Other Provisions) Order 2016	
<i>Motion to Approve</i>	650

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

*This issue of the Official Report is also available on the Internet at
<https://hansard.parliament.uk/lords/2016-06-06>*

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

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

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

© Parliamentary Copyright House of Lords 2016,
*this publication may be reproduced under the terms of the Open Parliament licence,
which is published at www.parliament.uk/site-information/copyright/.*

House of Lords

Monday 6 June 2016

2.30 pm

Prayers—read by the Lord Bishop of Derby.

Death of a Former Member: Lord Neill of Bladen

Announcement

2.36 pm

The Lord Speaker (Baroness D’Souza): My Lords, I regret to inform the House of the death of the noble Lord, Lord Neill of Bladen, on 28 May. On behalf of the House, I extend our deepest condolences to the noble Lord’s family and friends.

Migration

Question

2.36 pm

Asked by Lord Green of Deddington

To ask Her Majesty’s Government what further steps they intend to take in order to reduce net migration to the United Kingdom.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, we remain committed to bringing migration down to sustainable levels. The EU changes which the Prime Minister has secured will reduce the artificial draw of our welfare system. We are cutting abuse and raising standards on non-EU visa routes. The changes that we are making to the work visa system and implementation of the new Immigration Act will seek to challenge the permissive environment of the past.

Lord Green of Deddington (CB): I am grateful for that response. Is the Minister aware that the population projections that underlie all the Government’s policies simply assume that net migration will fall by 40% and stay down? Does he realise that, if the current levels of immigration should continue, we will have to build a new home every four minutes, 24 hours a day, just for new migrants and their families? Will he therefore urge the Chancellor to put much more serious resources into the immigration system to restore its effectiveness?

Lord Keen of Elie: The Government recognise that a growing demand by way of immigration has to be dealt with and can mean increased pressure on housing and public services. That is why we are working across the Government to reduce net migration to sustainable levels and delivering the investment this country needs to provide sufficient housing and effective public services.

Lord Anderson of Swansea (Lab): My Lords, one means of reducing the numbers would be to take students out of the statistics and therefore make the statistics more real. Would not another means possibly

be to ensure that there are sufficient resources to test the validity of marriages after a reasonable interval to ensure that there are fewer bogus marriages?

Lord Keen of Elie: I am obliged to the noble Lord. Where students come in legitimately for a period of study that extends to more than a year, normally to three years, there is an impact on public services, housing and other matters. It is therefore appropriate that they should be included within the net immigration figures. That practice is embraced not only by the United Kingdom but by other countries such as Australia, Canada and the United States. On bogus marriages, I concur that we need to ensure that these cannot succeed and therefore that appropriate checks are made.

Baroness Ludford (LD): My Lords, does the Minister agree that Brexiteer proposals on migration are unworkable and contradictory? Mr Farage has admitted that the Ireland-Northern Ireland border would be a back door to EU migration on Brexit unless it was sealed as a hard order. As to the proposal of Messrs Gove and Johnson for an Australian points-based system, Alp Mehmet, the vice-chairman of Migration Watch has said:

“A Points Based System might suit the Australians who are trying to increase their population but ... it is extremely complex and would be a non-starter for the UK”.

Lord Keen of Elie: There is no doubt that if the United Kingdom wished to remain within a single market it would have to acknowledge and allow for the free movement of persons as well as goods. Therefore, that would not be the panacea that some have suggested. As regards the other impacts of Brexit, one would have to acknowledge that if we did not decide to remain within the single market there would be impacts upon our economy, and if we damaged our economy that would withdraw one of the pull factors for economic migrants and we should kill the goose just because we do not want to share the golden eggs.

Lord Balfe (Con): My Lords, does the Minister agree with me, as the son of an immigrant who came here more than 70 years ago, that migrants have made a tremendous contribution to this country and its economy and that we need to stop bashing migrants all the time?

Lord Keen of Elie: I entirely concur with the observations of the noble Lord. Migration has, not only over the past 70 years but the past 700 years, had a positive impact upon the development of this country, its laws and its economy. However, we must be discerning about who we do and do not allow into this country.

Lord Hannay of Chiswick (CB): My Lords, does the Minister recognise that his reply on students was some of the story but not all of it? He did not mention that students are disproportionately unlikely to demand NHS services and are provided for by housing which is in ample supply for students on the commercial market. Therefore, the removal of students from these figures would simply make the figures with which the noble Lord who asked the question is trying to scare us stiff absolute rubbish, which they are.

Lord Keen of Elie: There is no doubt that a substantial proportion of the net migration figures is represented by legitimate students coming into this country. It is our policy to include those figures in the net migration figures, which, as I said before, is consistent with international practice.

Baroness Armstrong of Hill Top (Lab): My Lords—

Lord Pearson of Rannoch (UKIP): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, on this occasion the noble Baroness, Lady Armstrong, just pips the noble Lord, Lord Pearson, who knows how generous I am to him on many occasions.

Baroness Armstrong of Hill Top: My Lords, does the Minister recognise that in the world today one in seven people is on the move? We have 7 billion members of the human race and 1 billion of them at any time this year are on the move. In those circumstances would anyone dare say that the problems of migration and movement can be tackled by a single country on its own?

Lord Keen of Elie: The issues of migration are not national or European but are essentially intercontinental. The tragedies developing in the Mediterranean off the coast of Libya merely underline that fact.

Lord Pearson of Rannoch: My Lords, what did the Government mean when they said in their £9 million propaganda leaflet that if we stay in the EU we will “keep our own border controls”? If that is true, why cannot they fulfil the Prime Minister’s promise to bring immigration down to tens of thousands a year?

Lord Keen of Elie: It is necessary to distinguish carefully between border controls and migration. We control our own borders and we determine those who come in and those who do not, whether they come from within the European Community or otherwise; that is quite a distinct issue from the question of migration. We are already dealing with migration by seeking to address the extent of economic migration and we are determined in our ambition to bring it down to the tens of thousands.

Burma *Question*

2.45 pm

Asked by Baroness Cox

To ask Her Majesty’s Government what is their assessment of the current situation in Burma, in particular with regard to the reported continuing military offensives and violations of human rights of the Shan, Kachin and Rohingya people by the Burmese army.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we are concerned about the Tatmadaw’s recent use of force in Kachin and Shan, which has displaced hundreds

of civilians. We continue to provide support to the peace process, contributing £6.7 million in 2016-17. Aung San Suu Kyi has announced that she will hold a peace conference, which we support. We call on the Tatmadaw to work constructively with the civilian Government to achieve peace and address the desperate situation of the Rohingya people.

Baroness Cox (CB): My Lords, I thank the Minister for her sympathetic reply. I have recently returned from visiting partners in and from the Shan and Kachin states, where despite the existing ceasefire agreement the Burmese army continues to attack civilians with ground offensives and helicopter gunships, and to perpetrate extrajudicial killings, the torture of civilians, the use of civilians as human shields and forced porters, and the destruction of homes and food stores, making a mockery of the peace process. What pressures are Her Majesty’s Government applying to bring an end to the impunity which the Burmese army is being allowed by the Burmese Government to continue these atrocities against the Shan and Kachin people, as well as the well-documented persecution of the Rohingya people?

Baroness Anelay of St Johns: My Lords, I pay tribute again to the courage of the noble Baroness for working in such difficult areas over the decades. I agree with her that these recent offensives are inconsistent with the spirit of last year’s nationwide ceasefire agreement and that they risk undermining the national conciliation process that the new Government want to take forward. Aung San Suu Kyi has announced a Panglong 2 conference to reinvigorate the process and we have made it clear to the Burmese military that it should participate constructively in this initiative by the civilian Government. We have done that by making representations to the Tatmadaw at a senior level last week, and I welcome government efforts in the past week to reach out to those ethnic groups that have not yet signed up to the peace process.

Baroness Berridge (Con): My Lords, I understand that recent changes have enabled people to apply in-country for visas to come to the United Kingdom. One of the problems for certain ethnic groups in Myanmar, particularly Rohingya Muslims, is their lack of identity documentation, which could inhibit their applying for such visas. Can my noble friend the Minister assure your Lordships’ House that whether someone is Buddhist, Muslim or Christian in Myanmar, they can apply for a UK visa on objective criteria?

Baroness Anelay of St Johns: My Lords, I assure my noble friend that the UK Government apply objective criteria that do not discriminate against anyone on the grounds of their religion or of no belief. My noble friend has put her finger right on the problem, which is that, as we have discussed previously in this House, the Rohingya people do not have valid travel documents. To apply for a visa, a valid travel document must be presented. I have already referred to the fact that the Government are reaching out to areas where there are difficulties. They have been in power only since April, but in the past week the new NLD-led Government

have announced that they will start a fresh citizenship verification process in Rakhine state. However, I appreciate that the details of the process are not yet clear.

Baroness Kinnock of Holyhead (Lab): My Lords, has the Minister seen the recent evidence showing that the Burmese army, which has been given free training by the United Kingdom, continues to violate international law? Ethnic women have been raped, civilians shot and villages bombed. How much more suffering must be endured in Burma before the United Kingdom refuses to train an army that commits such atrocities?

Baroness Anelay of St Johns: My Lords, we are training the army so that its members know that they should not carry out atrocities. I feel as strongly as the noble Baroness that when members of armed forces carry out atrocities against civilians, not only are they in breach of humanitarian and international law, they are acting in an inhumane way. We are training the Tatmadaw to adhere to human rights norms. I appreciate that in certain circumstances those norms are breached, but its members are taking part and they are listening. We have the patience to carry on with that process.

Lord Wallace of Saltaire (LD): My Lords, can the Government tell us how much co-operation we are getting from Myanmar's neighbours in our efforts to encourage this rather weak new Government, faced with a surge of right-wing Buddhist nationalism against them within Myanmar, to provide negotiations on these long-standing problems? I refer to Malaysia, for example, and China is a major actor. How far are they willing to co-operate with us on this?

Baroness Anelay of St Johns: My Lords, clearly it is important that there are discussions across the region, not only on this but on other aspects of confidence-building and stability-building across the area. Those discussions are going ahead. The ones of which I am aware take place in both the United Nations and the Human Rights Council. I hope they are always considered valuable, even if we do not get quick or easy results.

Lord Alton of Liverpool (CB): My Lords, what assessment has the Minister been able to make of the remarks of the young Kachin girl who spoke here just two weeks ago? She described systematic ethnic cleansing, the expropriation of land, particularly for mining purposes, and the massive opium trade being carried out in Kachin state, which has implications for western countries such as our own.

Baroness Anelay of St Johns: My Lords, the noble Lord is right to point to there being those in Burma for whom continuing the conflict is of personal financial interest. Some of those, it is alleged, are within the military and have allegedly been part of government in the past. It is clear that the new civilian-led Government are doing what they can to address those problems. In Burma, as in other countries in the region, it seems that there are those for whom the profits from trading in other people's misery are too great for them to do what is right.

The Lord Bishop of Derby: My Lords, is it true that DfID has decided prematurely to end funding for civil rights groups and civil society organisations that are working cross-border? Given the delicacy of the situation and the efforts to turn it around that have been referred to, should that decision, if it has been made, be reviewed so that we can play our part in helping those civil society organisations to make a full contribution?

Baroness Anelay of St Johns: My Lords, DfID has given £106 million towards aid generally in Burma this last year. Announcements for the forthcoming year have not yet been made but when they are, I will look into that matter.

Personal Independence Payment Question

2.52 pm

Asked by **Lord McKenzie of Luton**

To ask Her Majesty's Government whether they have any plans to amend the Personal Independence Payment mobility criteria.

The Minister of State, Department for Work and Pensions (Baroness Altmann) (Con): My Lords, there are no plans to amend the mobility criteria in personal independence payment. The Government consulted extensively when designing the criteria, including a specific consultation on the "moving around" activity. The criteria provide a more consistent assessment for claimants with both physical and non-physical impairments, and there are now 22,000 more people on the Motability scheme than before PIP was introduced.

Lord McKenzie of Luton (Lab): My Lords, I note the Minister's reply. As she will recognise, this Question arises from a debate that was led by the noble Baroness, Lady Thomas of Winchester, about a month ago. That was about the qualifying criteria for the enhanced mobility component under PIP—particularly that those who could reliably walk no more than just 20 metres will not qualify, losing £35 a week and vital support to live independent lives. When the Minister responded to that debate, she asserted that claimants who cannot walk up to 50 metres would be guaranteed the enhanced rate. I think there has been some pulling back from that position, which is regrettable. Given that the Minister was clearly content to enunciate the policy relating to 50 metres, will she not now actively join others in seeking the reinstatement of the 50-metre benchmark as a research base measure of significant mobility impairment?

Baroness Altmann: My Lords, I have issued a correction of the response to the *Official Report*. It is indeed possible for those who are unable reliably to walk more than 20 metres to get the enhanced rate, but there is no generally accepted measurement of distance that will be recognised as appropriate. The aim of the enhanced rate is, and always was under DLA, to help people who are either unable or virtually unable to walk. Under PIP, the test is widened so that it is not just those who are unable or virtually unable to walk, but those who have barriers to mobility and who find

[BARONESS ALTMANN]

it difficult to get around. These issues need to be addressed on a case-by-case basis. They are expertly assessed. Indeed, we engaged directly with the noble Baroness, Lady Thomas, subsequent to that debate as we want to get this right.

Baroness Thomas of Winchester (LD): My Lords, I am grateful for that reply, but on the consultation that the Minister mentioned, the Government took absolutely no notice of more than 1,000 responses that were quite clear. My question is about the tribunal hearings. The Government's own research shows that for claimants whose appeal is allowed, often their evidence is oral evidence, not just written evidence from doctors. In other words, the assessors are not asking the right questions, they are not listening to the answers, or the policy is too confusing. What is going on if that is the case?

Baroness Altmann: The noble Baroness obviously makes a very well-informed point. I can assure the House that the Minister for Disabled People is actively working on this; we want to get it right. We are trying to improve the original assessment. Obviously it is in everyone's interest to get the correct decision as early as possible, so we are now giving assessors an extra 10 working days to help applicants gather their information. Many appeals succeed because they produce new evidence that was not available at the time of the original assessment.

Lord Shinkwin (Con): My Lords, I welcome the fact that the Government recently facilitated a meeting between Atos, Capita and the Royal British Legion, where I was privileged to work as its head of public affairs. Will my noble friend join me in congratulating Charles Byrne on his appointment as the new director-general of the legion? Will she undertake to explore how more disabled people, such as injured veterans, might be encouraged to apply to be PIP assessors?

Baroness Altmann: I certainly join my noble friend in congratulating the new director-general. I have already been working on his excellent suggestion and have made inquiries about how many of our assessors are disabled. I am assured that applications for assessors are open to people regardless of disability. Indeed, we would welcome disabled people applying to be assessors as they would be very well placed to make these assessments, but we do not have the figures at the moment to be able to report to the House how many of our assessors are disabled.

Lord Low of Dalston (CB): My Lords, nearly 14,000 disabled people have been forced to give up their Motability car following implementation of the new PIP rules on mobility. Motability provides a support package to anyone forced to leave the scheme as a result. This helps people to remain mobile, in many cases by purchasing a used car. What support will the Government give to Motability to enable it to provide the support package for those forced off the scheme?

Baroness Altmann: The noble Lord rightly cites that Motability offers a support package. It has volunteered to do so given its financial position, and very generously

offered to help those who lose their Motability car. I stress that although some people lost their cars, overall some 22,000 more people now have a Motability car under the PIP scheme.

Baroness Sherlock (Lab): My Lords, when the Minister wrote to me to put the record straight after the debate in the name of the noble Baroness, Lady Thomas, she conceded that her original statement that there was not a 20-metre rule was wrong. In fact, somebody who could walk 20 metres but not 50 metres could get the enhanced rate of PIP only if there was something else going on; for example, they might have a learning disability and struggle to plan a journey. When we come back to basics, this means that somebody who can walk only a very short distance, the length of two buses, will lose their Motability car simply because they will now fail a test they would once have passed. This test has been used for 35 years, is based on research evidence, and is used for the blue badge, the guidance on the built environment and lots of other tests. The Government got this one wrong. Will they not accept that now?

Baroness Altmann: The noble Baroness has significant expertise in this area. Once again, I apologise for the incorrect statement that I read out during the debate. However, I am assured that it is not a strict 20-metre rule and that some people who cannot walk more than 20 metres—of course, the reliability criterion is also important here—will receive the higher rate. I repeat that the aim was to ensure that we support at the highest rate people who are unable or virtually unable to walk. There is no one particular test—the 50-metre test is not a recognised one, either—for someone who is unable or virtually unable to walk. We are keeping this closely under review. It is widely accepted by stakeholders that PIP is now in a settled and improving state.

BBC: Independence *Question*

3.01 pm

Asked by Baroness Deech

To ask Her Majesty's Government what assessment they have made of whether regulation by Ofcom and government appointments to a unitary board are the best ways of guaranteeing the continued independence of the BBC.

The Earl of Courtown (Con): My Lords, the new charter will strengthen the independence of the BBC by giving it a powerful new unitary board and allowing it to appoint the majority of board members for the first time. Following the recommendations of the independent review by Sir David Clementi, Ofcom will become the independent regulator of the BBC. It has a track record as a successful media and telecommunications regulator.

Baroness Deech (CB): Does the Minister not appreciate that there can be no independence, or perception of independence, when half or more of the new unitary board members are to be appointed by the Government? That board will have editorial influence.

Ofcom does not have the expertise to handle complaints about impartiality and accuracy. Its board members, too, are appointed by the Government and its committees are full of ex-BBC members. Moreover, rule by charter prevents Parliament discussing and settling these matters. Is that not regrettable?

The Earl of Courtown: My Lords, I repeat that the majority of board members will be appointed by the BBC. The charter will also set out the independence of the BBC's director-general as the BBC's editor-in-chief. Non-executives will be unable to make broadcast decisions. As Sir David Clementi noted in his independent review, there was a general consensus around Ofcom as the BBC's future regulator.

Lord Alli (Lab): My Lords, I share many of the concerns of the noble Baroness, Lady Deech, and have 15 specific questions to put to the noble Earl. However, to save your Lordships' time I wrote to the Minister—the noble Baroness, Lady Neville-Rolfe—outlining those questions. Can the noble Earl assure me that I will get a reply within the customary 14 days? Will it be a substantive reply? Will the noble Earl also, for the convenience of the House, place a copy of my letter and the department's response in the Library?

The Earl of Courtown: My Lords, I thank the noble Lord, Lord Alli, for that question. I am glad—the House might have got a little impatient with 15 questions. The department is aware of the letter from the noble Lord and will respond as soon as it can. It is also willing to hold a meeting with the noble Lord to go through these items. I will not give a commitment to 14 days at this moment but if there is any more news I can give, I will report to the noble Lord.

Lord Sherbourne of Didsbury (Con): My Lords, would it not help to entrench the independence of the BBC if the appointments made to the board were for one term only so there was no risk of board members currying favour in the hope of another appointment? Indeed, did not the previous chair of Ofcom choose to serve for only one term? Is that not a record worth following?

The Earl of Courtown: My Lords, I thank my noble friend. I am sure that my colleagues in the department will take careful note of the one-term issue. I should add that the appointment process for the board members will follow OCPA guidance and public sector best practice.

Lord Foster of Bath (LD): My Lords, the Secretary of State intends to issue guidance to ensure that BBC services are clearly differentiated from the rest of the market. Many feel that this could curtail the BBC's creative freedom to make popular programmes. Will the government-appointed members of the new board be free to ignore that guidance and thus retain the BBC's editorial independence?

The Earl of Courtown: My Lords, I think the noble Lord refers to the distinctiveness issue that is in the BBC's new mission. I draw the attention of the House to the mission:

“To act in the public interest, serving all audiences with impartial, high-quality and distinctive media content and services that inform, educate and entertain”.

The noble Lord mentioned another point towards the end of his question to which I do not have the answer. I will write to him.

Lord Pearson of Rannoch (UKIP): My Lords, do the Government agree that the important thing is to make sure that the new board is composed of genuinely independent people, which it will not be if the same sort of people are appointed in the same old way by the same old establishment? Therefore, what do the Government think of the suggestion that the board, or a proportion of it, should be elected by the licence fee payers?

The Earl of Courtown: My Lords, I think that the noble Lord or somebody else mentioned that point when we previously discussed this issue. As I have said, the appointment process for board members will follow OCPA guidance and public sector best practice. The majority of board members will be put forward by the BBC.

Child Contact Centres (Accreditation) Bill [HL]

First Reading

3.07 pm

A Bill to make provision for the accreditation of child contact centres; and for connected purposes.

The Bill was introduced by Baroness McIntosh of Pickering, read a first time and ordered to be printed.

Political Parties (Funding and Expenditure) Bill [HL]

First Reading

3.07 pm

A Bill to make provision for the regulation of funding and expenditure of political parties; for phased introduction of a cap on donations to political parties; for affiliation fees from trade unions and membership organisations to political parties to be counted as individual donations in prescribed circumstances; for public funding of political parties; for moderation of rights of candidates and parties to election addresses; for limits on political parties' expenditure between regulated periods; for conferring powers on the Electoral Commission; and for connected purposes.

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

Online Safety Bill [HL]

First Reading

3.08 pm

A Bill to make provision about the promotion of online safety; to require internet service providers and mobile phone operators to provide an internet service that excludes adult-only content; to require information to be provided about online safety by internet service providers and

[THE EARL OF COURTOWN]
mobile phone operators; to make provision for parents to be educated about online safety; to make provision for the regulation of harmful material through on-demand programme services; to introduce licensing of pornographic services; and for connected purposes.

The Bill was introduced by Baroness Howe of Idlicote, read a first time and ordered to be printed.

European Union (Information, etc.) Bill **[HL]** *First Reading*

3.09 pm

A Bill to make provision for information to be available in various public places relating to the activities and organisation of the European Union; to make provision for the flying of the flag of the European Union on various government and public buildings; to provide information to further the establishment of twinning arrangements between towns in the United Kingdom and elsewhere in the European Union in accordance with the European Union's town twinning support scheme; and for connected purposes.

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

Right to Die at Home Bill [HL] *First Reading*

3.09 pm

A Bill to create a right to die at home.

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

Cultural Property (Armed Conflicts) Bill **[HL]** *Second Reading*

3.10 pm

Moved by Baroness Neville-Rolfe

That the Bill be read a second time.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, it has been a long wait for the legislation that will enable the United Kingdom to ratify the 1954 Hague Convention and I am honoured that I am able to bring it forward. Unfortunately, recent tragic events have demonstrated only too well the convention's continued relevance. I refer of course to the savage and wanton destruction of cultural heritage which has recently taken place in the Middle East and north Africa. We welcome the recent steps taken by the International Criminal Court to prosecute war crimes in Mali related to cultural destruction. This sends an important signal that the international community will take a firm stand against this kind of act. In the UK, heritage is very well protected. We have a similar duty of care to

protect the heritage, monuments and artefacts of other countries which are vulnerable to barbarism, conflict and natural disasters. I remind noble Lords of Edmund Burke's counsel that: "the only thing necessary for the triumph of evil is for good men to do nothing". I hope that future generations will not be able to point to us as examples of that wisdom.

More generally, the Government have committed to a wide package of measures to protect cultural heritage for future generations. This year we launched a cultural protection fund which will support countries in global conflict zones to protect and restore their cultural heritage. In total, £30 million will be available for projects over the next four years. The fund will be administered by the British Council, and the first round of grant applications will begin on 27 June, with grants awarded later this year. These will support projects involved in cultural heritage protection; training and capacity building; and advocacy and education, primarily focused in the Middle East and north Africa. The fund has already provided £3 million for the British Museum's rescue archaeology project in Iraq, and Iraqi archaeologists are currently in London, completing their training with the museum. The Government also announced last year the creation of a cultural property protection unit in the Army reserves—the so-called monuments men. It is hoped that this team will include individuals from academia, defence and law enforcement backgrounds to advise on the protection of cultural property that comes under threat during conflict. My officials are working closely with their counterparts in the Ministry of Defence to support their work to establish this unit.

The convention was first adopted following the devastating destruction that took place in the Second World War, and provides a framework for the protection of cultural property in times of armed conflict. The convention defines cultural property to include movable or immovable property of great importance to the cultural heritage of every people, such as monuments, works of art or buildings whose main purpose is to contain such cultural property. The definition is broad and the list of examples is not exhaustive. As well as statues or traditional art work, it could also include more modern or digital types of cultural property like very rare or unique film or recorded music. My department is considering what cultural property should be covered in the UK, alongside other policy issues related to the implementation of the convention. Of course, we will also reflect on issues raised during the passage of the Bill as part of this process.

Parties to the convention are required to respect cultural property situated within the territory of other parties by not attacking it during times of armed conflict. They are also required to respect cultural property within their own territory by not using it for purposes that are likely to expose it to damage in the event of armed conflict. The First Protocol imposes obligations on parties to seize cultural property that has been illegally exported from an occupied territory, and to return it at the end of hostilities. The Second Protocol, which came into force in 2004 for those countries that are party to it, sets out clear criminal sanctions and provides an enhanced protection regime for cultural property.

The UK signed the convention in 1954 but did not ratify, due in part to concerns that it did not provide an effective regime for the protection of cultural property. The improvements made by the Second Protocol led the Government of the day to commit in 2004 to ratifying the convention and both protocols.

The Bill introduces the domestic legislation necessary for the UK to meet the obligations contained in the convention and its two protocols. It is not retrospective and a person will be criminally liable only if they commit an offence after the commencement of the Bill. Part 2 makes it an offence to commit a serious breach of the Second Protocol, either in the UK or abroad. Serious breaches, which are set out in the Second Protocol, include: making cultural property the object of attack; using cultural property in support of military action; extensive destruction or appropriation of cultural property; and the vandalising, theft, pillage or misappropriation of cultural property in the context of armed conflict. Ancillary offences such as assisting or conspiring to commit an offence, and the role of commanders and superiors, are also covered. The maximum penalty for these offences is 30 years' imprisonment. This may seem a severe sentence but it must be seen in the context of the seriousness with which such offences are viewed in international law and is entirely consistent with our approach to the wider body of international humanitarian law.

Part 3 introduces the distinctive emblem created by the convention—the Blue Shield—and creates provisions to ensure that it is protected, by making its unauthorised use an offence. The emblem will be used to identify cultural property that is protected under the convention. It is analogous to the Red Cross in its ability to confer protection and immunity in times of conflict. As such, the Bill includes measures to prevent its potency being diminished by unauthorised use.

Part 4 implements measures to deal with cultural property that has been unlawfully exported from occupied territory and has entered the UK. This part of the Bill can apply only to cultural property that has been unlawfully exported from an occupied territory after 1956, when the convention and First Protocol came into force. Clause 17 creates a new offence of dealing in unlawfully exported cultural property, with a sentence of up to seven years. It is important to note that this offence applies only to property that is imported into the UK after the commencement of this legislation. As a result, any cultural property that is already in UK collections will not be retrospectively affected by this legislation.

The Government are clear that dealers acting in good faith have no reason to fear prosecution under the Bill. If a dealer takes temporary possession of an object for the purpose of carrying out due diligence or providing valuations, they will not be “dealing” in that object, because they are not “acquiring” the object. The rest of Part 4 outlines the circumstances in which unlawfully exported cultural property would be liable to forfeiture and creates the necessary new powers of entry, search and seizure.

Part 5 of the Bill provides immunity from seizure or forfeiture for cultural property that is being transported to the UK, or through the UK to another destination, for safekeeping.

Finally, in terms of substantive provision, Part 6 ensures that if an offence under the Bill is committed because an officer of a company or Scottish partnership—for example, directors of private military contractors—agreed to the offence being committed, or assisted in it, they will be guilty of an offence as well as the company or partnership.

In introducing this legislation, the Government intend to do only what is necessary to meet our obligations under the convention and its protocols. The Bill will fit into an existing legal framework to tackle the illicit trade in cultural property. The Dealing in Cultural Objects (Offences) Act 2003 and the Theft Act 1968, alongside the Syria and Iraq sanctions, already enable the UK to take action where authorities suspect that individuals might be engaged in illicit trade. The Bill before your Lordships strengthens these measures by filling important gaps in relation to cultural property that has been taken illegally from occupied territories that are not subject to sanctions orders.

It is important to note that the existing legislation, as well as enabling prosecution, has an important deterrent effect, aimed at ensuring that the protection of cultural property, whether in the UK or abroad, is as robust as possible. The Bill will add to that deterrent effect, so that people will know that there is no legitimate market for tainted cultural objects in the UK.

The Cultural Property (Armed Conflicts) Bill will enable the UK to become the first permanent member of the UN Security Council to ratify the convention and accede to both of its protocols. Together with our other initiatives in this area, including the cultural protection fund, this will make a strong public statement about the UK's commitment to protecting cultural property in times of armed conflict. I beg to move.

3.22 pm

Lord Foster of Bath (LD): My Lords, on these Benches, we welcome and support the Bill. We recognise that our country behaves, in many ways, as if the Bill had already been enacted. We note, for example, that the Government have said:

“Our Armed Forces already act as though bound by the Hague convention, and ... the Hague convention and its protocols already inform our Armed Forces' law of armed conflict doctrine and training policy, particularly with regard to respect for cultural property, precautions in attack and recognition of the blue shield”.— [*Official Report*, 14/1/16; col. 501.]

We also appreciate that our abiding at least by the spirit of the convention is bolstered by the work of the joint military cultural protection working group, and it was good to hear just now from the Minister how this work is progressing. It is also bolstered by the UK's efforts in sponsoring UN Resolution 2199 to support steps to prevent Daesh benefiting from the trade in antiquities from Iraq and Syria and by the £3 million provided for the Iraqi emergency heritage management project run by the British Museum, which is doing excellent work in this area. It is also bolstered by the work of the Metropolitan Police Art and Antiques Unit, by the £30 million to be made available through the new and welcome cultural protection fund and by the work of the UK National Committee of the Blue Shield, ably led by Professor Peter Stone.

[LORD FOSTER OF BATH]

All of these already give some credibility to our country's claim to be concerned about the protection of cultural property in times of armed conflict. However, our failure up to this point to ratify the 1954 Hague convention or the 1954 and 1999 protocols has limited that credibility. Commenting on the announcement, somewhat hidden in the Queen's Speech, of the intention to bring forward this legislation, Peter Stone pointed out that when, in 2003, coalition forces invaded Iraq, neither the United States nor the UK had ratified the convention, but that in 2009 at least the United States did so and that now, as he put it, the,

"UK is arguably the most significant military power (and the only one with extensive military involvement abroad) not to have ratified",

the convention. He went on to say that,

"the UK is finally on the verge of joining the international community in recognising the value and importance of cultural property to local, national and international communities and their identities".

In short, the swift passage of this Bill will strengthen our credibility and legitimacy when we seek to work alongside others to prevent the destruction of cultural property and will help us in raising awareness of the need to do so. But as the Minister herself acknowledged, it has been a long time coming, despite promises from many existing and former Ministers and support for action from all three of the major political parties, including my own, represented in your Lordships' House. It is worth reflecting that all three of those major political parties have had periods in government and have all failed to act since the first draft Bill back in 2004. So it is to the credit of the current Government that we now have the Bill before us. Of course, I accept that they have been spurred into action by some recent events, not least the wanton destruction by Daesh of antiquities in Iraq and then in Syria and the murder of 82 year-old Khaled al-Assad, the curator of important cultural sites in Palmyra. As the right reverend Prelate the Bishop of Portsmouth said in January,

"these atrocities do more than inflict physical damage. They are a callous assault on the dignity and identity of people, their communities, and their religious and historical roots."—[*Official Report*, 14/1/16; col. 492.]

If the Government were spurred on by atrocities, by such acts of cultural vandalism, and by the public reaction to them, credit must also be given to the pressure that has come from parliamentarians in both Houses through, for example, the newly formed All-Party Parliamentary Group for the Protection of Cultural Heritage, and pressure from individuals such as the noble Baroness, Lady Andrews, to whom I pay especial tribute for the work she has done in this area, the noble Earl, Lord Clancarty, my noble friend Lord Redesdale and many others. They all deserve our thanks.

The measures in the Bill have been clearly set out by the Minister and do not need repeating. I congratulate her and officials in her department for the particularly helpful Explanatory Memorandum. The section entitled "Legal background" makes it very clear why existing UK laws are not sufficient to meet in full the obligations set out in the convention and its protocols and why, while already meeting the spirit, we need to pass this

Bill to ensure that we are also meeting the letter of the convention. As the Minister has already made clear, it will show how serious we are about protecting cultural property in times of armed conflict, with the penalty for intentional damage being raised from the current maximum of two years' imprisonment and an unlimited fine to up to 30 years' maximum imprisonment.

In welcoming the Bill, I ask the Minister three brief questions. First, in January, when asked about the need for increased funding for the Metropolitan Police Art and Antiques Unit, the Minister replied:

"I have explained ... that the police budget has been protected, and I take the point that the House thinks that more resources should be spent on this. I will certainly think about that."—[*Official Report*, 14/1/16; cols. 502-3.]

Can the Minister tell us where that thinking has led her? Are additional resources to be found?

Secondly, when enacted the legislation will require the UK to identify what cultural property in the UK will be afforded general and what will be afforded enhanced protection in the event of armed conflict. In January, the Minister said the Government were already working on a statement that would set out their approach to the identification process. I am aware of the work being done by the department and agencies such as Historic England, but that has mainly focused on the enhanced list. Can the Minister update us on this work? In particular, can she tell us how world heritage sites will be treated, not least those such as the world heritage city of Bath—my former constituency—and the frontiers of the Roman empire, which cover very significant areas? Can she also tell us whether scheduled ancient monuments will be considered for inclusion in the general protection list, bearing in mind that, to the surprise of many, they were excluded from the 2008 recommendations of the House of Commons DCMS Select Committee?

Finally, when that committee, then chaired by the current Secretary of State, scrutinised the 2008 draft Bill on which the Bill before us is based it sought to establish whether it,

"would constrain military operations unduly, for instance by limiting troops' freedom to protect themselves when coming under fire from opposing forces based in a museum or mosque".

The committee concluded that the passage of that Bill into law would not impose such a constraint. Can the Minister assure us that both she and the Ministry of Defence have the same view in relation to the current Bill?

The Bill has been far too long in coming. I hope that it will now have a speedy passage through your Lordships' House and the other place so that our country can have the credibility and legitimacy it needs to work with others to provide the protection of cultural property in times of armed conflict and to persuade others of the need to do so.

3.31 pm

Lord Renfrew of Kaimsthornc (Con): My Lords, it is a great pleasure to welcome and support the Bill to ratify the 1954 Hague convention and its two protocols, for which the All-Party Parliamentary Archaeology Group has long argued. One may well ask, as the noble Lord, Lord Foster, just did, why it took so long.

Successive Governments have been surprisingly slow to ratify the convention, so I would like to express thanks to the Secretary of State for ensuring that it is included in this year's parliamentary programme. I do so on behalf of the All-Party Archaeology Group and the recently formed All-Party Parliamentary Group for the Protection of Cultural Heritage.

It is particularly welcome to see the United Kingdom ratify the more recent second protocol—which, as the Minister remarked, many of our principal allies have not yet managed to do—with its significant sanction of up to 30 years' imprisonment for breaches of the protocol. My understanding is that our Armed Forces already, in effect, observe all the provisions of the convention and its protocols and have in place measures to give protection, where possible, to sites and monuments, for instance in Iraq, implemented by the new cultural property protection unit.

Your Lordships' House has previously expressed concern at the looting last year of the Mosul museum, and the fanatical vandalism by ISIS at the Nergal gate at Nineveh and the destruction of the Temple of Baalshamin at Palmyra. No doubt these outrages, and those at Hatra, have encouraged the introduction of the Bill, but is it not an irony that these episodes, and the looting that has accompanied them, do not fall within the scope of the convention or the Bill? I was surprised that the Minister did not refer to that circumstance in her speech. Can she confirm that damage or looting by the Taliban in Afghanistan, or by ISIS in Iraq and Syria, are not covered by the Bill on the grounds that the Taliban and ISIS are not occupying states? Will she confirm that in international law occupied territory results only when one state occupies the territory of another, and that the Taliban and ISIS, whatever their aspirations, are not recognised as states?

Fortunately, dealing in looted antiquities is already covered by the Dealing in Cultural Objects (Offences) Act 2003, so I hope that the Government will be vigilant and ready to use that legislation when there is the suspicion of illicit antiquities from war zones entering the UK. The recent Security Council resolution to which the Minister referred, relating to cultural property looted in the course of the recent conflict in Syria, is also in place. When enacted, the Bill will apply to occupied territories such as the West Bank, North Cyprus and indeed Crimea, but perhaps not where it is needed most—in Syria, Iraq and Nigeria.

Irina Bokova, the director-general of UNESCO, has stated:

“The deliberate destruction of heritage is a war crime”.

It is clear that traditional shrines and images are being deliberately destroyed by Boko Haram in Nigeria. Does the Minister see a way for this or other legislation to view the destruction of heritage as a war crime and as subject to the application of international law? I quote from the *International Business Times* of 12 March this year:

“Earlier this month, the International Criminal Court in the Hague made history by initiating proceeding in the first case of cultural destruction as a war crime. It's an issue that one UN representative wants to see prosecuted more as an increasing number of world heritage sites are first over-run and then destroyed by Islamist fighters. On 1 March, a pre-trial procedure was

opened by the ICC in the case against Ahmad al-Faqi al-Mahdi who was charged with ordering and participating in alleged cultural destruction in Timbuktu, Mali. Islamist militants are accused of being behind attacks on 10 religious and historic monuments in the Unesco World Heritage city of Timbuktu in Mali”.

Our role with this Bill is to ratify the existing convention and its protocols but I wonder if the Minister could comment also on the concept of cultural destruction as a war crime, since it is disappointing that the recent outrages in Mosul, Nineveh, Hatra and Palmyra are apparently not covered by the provisions of the Bill. I feel that many Members of your Lordships' House are uneasy at seeing such deliberate destruction escaping the sanctions of international law, and wonder whether we should not be doing more. I fully support the Bill but perhaps some additional subsequent measures would be in order.

3.37 pm

Baroness Andrews (Lab): My Lords, six months ago I was privileged to lead a debate in the House in which many noble Lords spoke passionately and powerfully about the need to ratify the Hague convention and its protocols. I argued that, given the wanton violence to world heritage, not a day should be lost before we did so. That day has come, and not a moment too soon—but there is no reason to be churlish. We are delighted that we are here for Second Reading.

Many cultural and heritage agencies outside this House, such as the Heritage Alliance, have made the same case with increasing urgency—and, indeed, anyone who understands and sympathises with the universal values and culture that are expressed through the concept of “world heritage” has long wondered why we have been so slow, especially when sites such as Nineveh, Nimrod and Palmyra bind us together in human history as surely as do Stonehenge or Hadrian's Wall. Finally we have the opportunity to put this right and make up for lost time—and, as I say, there is joy abounding.

This is not a handout Bill but a government Bill, and that is excellent. Much of it resembles the 2008 Bill that fell because of lack of parliamentary time. It is an opportunity to pay tribute to civil servants such as Hillary Bauer, who spent a great deal of time getting that Bill ready, and indeed to the generation of civil servants who are responsible for it and who have been very helpful. The Minister herself has consistently made it clear that this is something that she wants to achieve.

I feared that events might conspire against the Bill but that has been confounded because all the questions that I raised in the previous debate have been answered, and legislation has been drafted to update the 2008 Bill to ensure that it fully implements our obligations and to reflect organisational and functional change in Whitehall. The Bill has support across Whitehall and the warm support of agencies such as Historic England, and I am sure that it will have a consensual passage through this House.

Like others, I am indebted to Dr Peter Stone, who holds the UNESCO Chair in Cultural Property Protection and Peace at Newcastle University, and to Professor Roger O'Keefe at University College, London, as well

[BARONESS ANDREWS]

as to all the academics and curators who have been involved on the front line in many ways in the fight to protect cultural property and to strengthen our hand in relation to this convention.

No one is naive enough to think that the Bill will stop Daesh in its tracks violating monuments that contradict its deviant mentality. In Syria, it will not stop the looting and exploiting of ancient sites by terrified and impoverished people. I fully endorse the questions that were raised by the noble Lord, Lord Renfrew. The roll call of destruction will probably go on, even though the threats may change locally. But the Bill is of signal importance to us in the UK—and not just because we will no longer be isolated from the majority of the world, which has pledged through the convention to put a stop to violence against culture and humanity.

It is much more important than that. It recognises that attempts to destroy cultural identity simply create enemies for life. The monuments which tell a story of a people's survival signify and validate their existence across time. That is why they are such a threat to an enemy who aims to wipe out—in the words of Irina Bokova, the Director-General of UNESCO—and cleanse all traces of a counter-culture. But we also know from long experience that lasting peace cannot be built in a cultural desert. History, identity and memory cannot be erased. Indeed, in 2010, in the context of the Chilcot report, the agencies documented the different ways in which,

“by failing to provide for the protection of cultural property, Coalition planners made it considerably more difficult for troops on the ground to win hearts and minds”.

The Minister has already outlined the key elements of the Bill, which are required to enable the UK to accede to the Hague convention and its two protocols. Of those clauses in the Bill, surely the most important is the introduction of offences designed to protect cultural property in the event of armed conflict at home and abroad. Questions will be raised about the clauses, not least about how we in the UK continue the fight against the illegal trade in antiquities and about where and how resources can and must be found.

I will raise two technical points, which Professor Roger O’Keefe referred to me. First, there is a need to ensure clarity and consistency in terminology. Chapter 4 of the 1999 second protocol to the 1954 convention refers to “serious violations” of the protocol, not “serious breaches”. It is not evident why the Bill uses different terminology. That is liable to create confusion—it is possible that it is a reference to “grave breaches” of the Geneva conventions—but clarity and consistency of language are extremely important.

Secondly, it is not evident why the scope of criminal liability for an ancillary offence under the law of England and Wales and Northern Ireland in Clause 4 seems to be slightly different from that effectively provided for Scotland and from that provided for in the corresponding Sections 55(1) and 62(1) of the International Criminal Court Act 2001. We must make absolutely sure not to create any unnecessary problems in the context and the content of the Bill

which could cause problems for the convention. I am sure that the Minister will have a positive response to that.

The Bill is of course a necessary hurdle to jump before we can ratify the Hague convention and the protocols. Ratification brings with it certain obligations, not least on the part of the Armed Forces. In a previous debate I referred to the work of the Military Cultural Property Protection Working Group, under the inspired leadership of Lieutenant Colonel Tim Purbrick, which brings together specialists from the three services and promotes renewed liaison between the military and the heritage sector.

I cannot resist: the Minister made a reference to the Monuments Men—the original team after the war. There was actually a monuments woman—a lady called Anne Olivier Bell, who is in her 100th year. I should like to put on the record that a woman certainly was involved, and she did an exceptional job very modestly, as one would expect.

During defence Questions in the House of Commons on 18 April it was very good to hear the Secretary of State for Defence, Michael Fallon MP, say that ratification would prompt,

“the establishment of a military cultural property protection unit”,

and that his Ministry was,

“already engaging with the Department for Culture, Media and Sport and the stabilisation unit to further develop plans for that capability to help better protect such important monuments in future”.

That is exactly what we want to hear, not least because he went on to say:

“It is also important to deny Daesh the revenue that it has earned from selling artefacts and coins from archaeological sites”.—
[*Official Report*, Commons, 18/4/16; col. 628.]

It would be very good if the Minister could bring us up to date with any additional information.

There is other good news and it is about leadership. The move to ratification—especially of the second protocol—has been welcomed by those working with the US Government, who have been waiting for a significant military ally to ratify the protocol before taking action themselves. I also understand that our decision to ratify has prompted the Government in Ireland to take positive action towards their own ratification of the convention and the protocols—in other words, we have inspired other Governments to get their act together. Now begins the hard work of making sure that we do everything in our control to protect cultural property wherever it is threatened by conflict.

Clearly, prosecution work is vital. The trial of Ahmad Al Faqi Al Mahdi, who stands accused of a war crime regarding the destruction of historical and religious monuments in Timbuktu in Mali in 2011, will start on 22 August in the International Criminal Court. But the most powerful symbol of hope that extremism can be defeated was the liberation of Palmyra from Daesh on 27 March. It is very important that, in the rush to assert that the ancient city will be rebuilt as it was before the recent destruction, caution is taken to recognise that the site is still riddled with home-made mines, that

war still rages within miles of the city, and that the civilian population is still wretched and requires more support.

That is not to say that nothing should be done. The International Committee of the Blue Shield has suggested that the whole site be treated as a crime scene in order that evidence can be collected to ensure that those responsible for the appalling destruction are brought to international justice whenever possible. Time is needed to allow everyone to understand how best to help Syria to mark and record not only the destruction of the ancient city but the destruction of contemporary heritage, including the little-reported destruction of the contemporary Islamic cemetery in Palmyra city.

There is no doubt that today we are witness to a change in the status of the leadership of the UK in this area. Through ratification of the Hague convention and both its protocols, we have become, as has been said, the first permanent member of the UN Security Council to ratify all three international instruments. But we also have a new engine and extra fuel for the work. There is overwhelming support for the Cultural Protection Fund, set up by the Government, and for the fact that the British Council has been entrusted with its management. When the fund opens for business on 27 June, I hope that—with due diligence, of course, over the process—we can not only commit but actually spend the allocated £3.3 million in what remains of this year on projects that have been submitted and approved. Anything that the Minister can do to expedite that will be helpful. The fund has been warmly welcomed by many agencies because it will finally give us the opportunity to support the Blue Shield and established organisations in their work to protect cultural property now and in the future.

We may well be recognised as a leader in the field of heritage conservation, but now there is another opportunity to create a permanent legacy. In the 1860s, the Swiss Government gambled on what must have been a very long-odds bet—to introduce greater humanity into the conduct of war by helping to create, and financially support, the Red Cross. Now we have an opportunity to establish the Blue Shield in perpetuity through a modest endowment, which would finally establish it and its willing volunteers as the global leaders in cultural protection.

A small, central team in London to co-ordinate and support the work that is needed would be a commendable legacy to last long into the future, and there will never be a better time or more support to do that. I hope that the Minister, in leading this long-overdue but most welcome Bill through the House with all our blessings, will also be able to give some thought to that idea. Unlike Ozymandias, she will then be able to contemplate a permanent legacy with satisfaction.

3.50 pm

Lord Redesdale (LD): My Lords, I also welcome the Bill. I say this because it was on the first agenda of the All-Party Group on Archaeology 15 years ago, where the noble Lords, Lord Renfrew and Lord Howarth of Newport, and I discussed it, and we have discussed it many times since. It would be churlish not to thank the Minister for her work, considering she could not confirm beforehand that this was going to be in the

Queen's Speech, and for bringing it forward, considering how many times we have been disappointed in the past. We have been waiting only since 1954, so perhaps the pace of movement has given us an opportunity to spot some of the problems in the world.

The Bill has been brought forward because of the issues raised by the actions of Daesh in Syria, in the same way that the Dealing in Cultural Objects (Offences) Bill was brought forward in 2003 to deal with the problems in Iraq, especially with the museum in Baghdad. However, the real reason behind it is that there are two elements to what Daesh is trying to do. First, it is trying to destroy cultural identity through the destruction of cultural monuments, but secondly, it is trying to finance its activities and campaigns. That should not be underestimated.

One of the greatest sources of finance for Daesh has been illegal excavations and the selling of artefacts to the art market. That is one reason why the MoD is so interested in forming the “monuments men”—which of course I will immediately volunteer for, although I might be getting slightly too old for that. Apparently, the MoD wants people who have been officers in the Army, and who have an archaeological degree and a knowledge of the Middle East. Apart from the fact that my archaeological tutors would find it difficult to believe that I have that knowledge, I would happily stand forward. The Army is certainly going to have to look at this trade if it wants to deny Daesh and other groups the ability to finance their activities in this way.

That moves me on to the point that that finance would not be available if there was not a ready and willing market for stolen items. The art market, which is cleaning up its act considerably, has a history of laundering stolen objects. I am sure that the British Museum should be questioned on some of the interesting documents explaining how it managed to smuggle artefacts out of what is now Syria, but I will not go too far into that.

Can the Minister confirm that the Bill looks only at articles imported into this country and that some of the concerns of the art market are therefore unfounded? There has been discussion about whether articles exported for loan could be seized. However, if they are articles suspected of being stolen after the 1954 Act, they should probably have been seized in this country under the 2003 Act, which the Government should have enforced much more stringently because a very large number of cultural objects in this country have come from war zones. Therefore, I do not believe that the art market can make a case for relaxing this measure. Most museums and art dealers should understand the provenance of the articles they are dealing with. If they do not, should they be dealing in those articles at all?

Cultural objects are not just artefacts. Also included are all the elements of cultural identity. The Minister mentioned saving digital archives and films. Those may be a very modern element but could also be extremely rare and based around cultural identity. Cultural identity is a key element that has been at the heart of the efforts of the Taliban and ISIS to stamp their authority. This is not a new aspect of warfare; it has taken place quite a few times in the past.

[LORD REDESDALE]

The Government have not just brought forward ratification of the Hague convention but also financed the cultural protection fund. Like the noble Baroness, Lady Andrews, I particularly welcome the £3 million that will go towards dealing with some of the problems in Syria. But this is not just an issue for Syria. The idea behind the cultural protection fund is to preserve areas that are under threat throughout the world. These are not just manmade threats but natural disasters—one issue is climate change, which will have a massive impact on historic heritage.

One problem with the cultural protection fund is understanding how the money should be distributed. The job has been given, correctly, to the British Council, but I hope that it will have the ability to fund a body that has the knowledge base to make sure that any grants given to bodies which undertake work for the cultural protection fund are precisely targeted. Although we are talking about £27 million—after the £3 million has been distributed—that is over three years and it will not go very far, but I hope that it can be renewed after that point.

We should not just talk about taking objects and storing them safely; we now have the opportunity to make a digital archive of most historic sites. We could be the leaders in this field and help other institutions, especially universities, collate all the digital records in one safe haven. That should probably be London, although digital safe havens could be based in a number of service centres throughout the world to stop any further problems with losing archives.

This important work should not just be about protecting sites in military action but widened to the whole area of cultural identity—of preserving the identity of peoples, the stories, the verbal history and other aspects. I once worked for the English Folk Dance and Song Society, after which I did the great work of getting Morris dancers exempted from the Licensing Act 2003—it is one of the things I am most proud of in my activities in this House; I also got Morris dancing included in the opening ceremony of the London Olympics—but I digress. Although that sounds funny, there are group dances and activities which need to be recorded, because populations become displaced in conflict and lose their cultural heritage. Being able to preserve that cultural heritage so that when those populations go back, there is a record of it, is incredibly important. Such heritage can be fragile, as was shown in Syria. The assassination of the person in charge of the knowledge base of Palmyra probably did as much damage as the explosives used to blow up the monuments.

I hope that such a database is run as a source of knowledge—not just to bring out the knowledge needed to direct the work of the cultural protection fund, but to bring together all the other groups throughout the world who are working to the same aims, so that we can leverage the most finance and work into one space.

The Blue Shield has been mentioned. It is a fantastic organisation that symbolises the work being undertaken. I hope that the Government will include the Blue Shield and UNESCO, as well as the active community

in this country and throughout Europe and the world, in populating a centre of excellence that could preserve this knowledge base.

3.59 pm

Lord Borwick (Con): My Lords, I first declare my interests: my wife, Victoria, the MP for Kensington, is president of BADA, the British Antiques Dealers Association, and she used to run the Olympia antiques fairs for some years; I am a part-time fundraiser for both the Science Museum and Historic Royal Palaces, the people who run the Tower of London. I commend any parliamentarian to make friends with the Tower of London. Historically that has been a wise idea.

I generally welcome the Bill. The destruction of cultural property by Daesh and al-Qaeda has been appalling and the pictures we see of the wreckage they leave behind are distressing. However, if they had not been so proud of this destruction, I am not sure that it would have been so comprehensively condemned. Perhaps more insidious, and probably more widespread, is the reported ransacking of museums, followed by the leaking of cultural property to the West. Restoring pride to the citizens and education to their children will help bring these dreadful conflicts to an end. The contents of their museums play a valuable part in that restoration.

However, The Bill could be improved. It is complex and certainly will not be understood easily by an antique shop owner without legal advice. Could it not be simplified? It talks in detail about unlawfully exported cultural property but I am not sure that this really hits the spot. Unlawfully means, I am told, without an export licence.

Does this raise the status of the bureaucracy of the occupied territory and is Daesh or ISIL an occupying state for this purpose? The point has been made more elegantly by my noble friend Lord Renfrew but it is a part of the 1950s origin of this treaty, written before Daesh was imagined. Could we not look at amendments to the Bill to widen it to include the more recent example of non-state organisations such as Daesh effectively occupying states?

Refugees from Assad or Gaddafi or any of the other despots in the area may not have been oppressed by those tyrants but by the goons working for those tyrants' regimes. To say that something is legal if those goons have issued a licence but illegal otherwise seems to address the wrong point.

I do not want to be tempted into talking much about a place which I have never wanted to visit, particularly in front of a House containing experts on the subject, so let me instead talk about the problem of refugees taking small items with them—a family heirloom, perhaps. No doubt the vast majority of refugees are without any assets other than their iPhones, but I am amazed by the cash prices reported to be paid by the refugees to the people traffickers. How do these refugees manage to pay thousands of pounds, as is regularly reported, and is the exchange control in Syria inhibiting them from taking out cash from that benighted country? I have no doubt that asking Assad's bureaucracy if you can bring out a small valuable statue will be as quickly refused as asking if you can take out \$10,000. How many export licences does the Minister think

have been issued from Syria or Somalia or any of the other countries recently? If we do not know or think the answer is zero, is the Bill answering the right question?

Furthermore, is the granting of export licences by a corrupt state a sign that a tyrant's bureaucracy has a monopoly of knowledge on what is or is not valuable and culturally important? Should not the advice of UK-based art experts be relevant? What we are trying to do here, surely, is attack the crooked curators, not the honest wealthy refugees, even though they may be as rare as each other.

4.03 pm

The Earl of Clancarty (CB): My Lords, I thank Peter Stone of Newcastle University and Historic England for their briefings.

I am grateful to the Government for introducing this Bill and for doing so so early in the Session. As we know, this will not provide a panacea for saving all cultural heritage or bringing back what is lost, but it will put us on the same footing as the countries which have ratified. This means we will be in a better position certainly in terms of having a moral authority which we previously lacked, as well as, importantly, having more of a shared responsibility for the protection of cultural heritage. By ratifying this Bill, we become part of a majority by joining the 66% of the world's countries to have done so, although one of the far fewer in number to have signed the second protocol.

I should mention the two technical issues already referred to by the noble Baroness, Lady Andrews, and add to what she said. The word "violation" is in fact used in Clause 3, so there is a confusion. As a non-legal person it feels to me that the word "breach" by itself is less strong than the word "violation", which is the term used in the convention. I notice, however, that this is the wording that was used in the 2008 draft Bill, so it has probably been simply carried over.

On the question of possible claims of ownership made on pieces which are loaned abroad, in addition to what the Minister has already outlined, one thing I would say is that other countries in Europe such as Germany have signed the second protocol, where it has been in force since 2004. Germany has an arts and antiques trade and public museums comparable to those of the UK, so the question is simply this: have any concerns been felt by Germany over the past 12 years or by other countries which signed in 1999? I have heard nothing of that.

In regard to the illegal trade in antiquities, there is clear anecdotal evidence in recent newspaper articles and on television programmes that London is a market for this trade. My feeling is that until auction houses and the antiques trade become, or are compelled by law to become, less secretive about the provenance of the goods they sell, it will be difficult to do a great deal about this. The Dealing in Cultural Objects (Offences) Act 2003 has not yet produced a single conviction, so one hopes that the strengthening of the law which the Minister has outlined will have an effect. What is the current strength of the Metropolitan Police Arts and Antiques Unit, are there plans to expand it, and what other measures might the Government use? I would

also ask the Government what is to be the strength of the new cultural protection capability for the Armed Forces—the new monuments men and women?

The £30 million fund is of course hugely welcome, but there is a question about the long term and whether there is to be a legacy, and here I echo what was said by the noble Baroness, Lady Andrews. I certainly support the idea of a Blue Shield international co-ordination centre in the UK, possibly based in London. It could co-ordinate work on a global basis, ensuring that among the much necessary work there is no unnecessary duplication of projects such as mapping. The idea is backed by, among many other organisations, the British Museum, the Museums Association and the Council for British Archaeology. This is an opportunity for the UK to be a leader in the field, and if we do not take it, another country will.

The more I learn about this area of cultural protection, the more I am convinced of its importance. The riposte to those who say that people come before cultural property is this. By protecting cultural heritage we also protect people because our cultural heritage in its broadest sense is also what we inhabit not just literally in terms of bricks and stone, but more abstractly in terms of our learning—the sciences, the arts and everything that we term as "culture"—and which we transform using our minds into the material environment that surrounds us. Of course all art and culture, if it lasts for 2,000 years, did once start off as brand new.

There are questions for the longer term of what is cultural property, and it has to be said that the perception of cultural heritage changes over time. A danger for our own culture is that we get drawn into formalising a hierarchy of cultural value where some things are worth saving and others are not. My hope for the Bill is the opposite: that it will help to raise awareness of the value of cultural heritage more generally. Even in the Middle East distinctions are tacitly made. The destruction of Palmyra, which I am sure was a trigger for the timing of this Bill, is tragic, but once you get away from the more classically influenced sites there is considerably less reporting of the destruction of sites of equal significance. I am thinking for instance of the old city of Sana'a in Yemen, itself a world heritage site. I hope that the Bill will focus our minds on how the UK might have helped better to prevent that destruction.

Cultural heritage also needs to be protected in peacetime, not just from military attack. No doubt the Minister will have seen last week's UNESCO report detailing the effects that climate change poses to world heritage sites including Stonehenge, Venice, Easter Island and many others, including natural heritage sites. The risk from fire, flooding and even simple neglect and lack of funding are also potential causes of destruction. In relation to this Bill, I understand that every four years countries are invited by UNESCO to give answers to a questionnaire specifying what they have done to protect their own cultural heritage. What preparations are being made in advance of these questions?

4.10 pm

Baroness Berridge (Con): My Lords, I, too, thank Her Majesty's Government for allowing parliamentary time for this important Bill. I declare my interest as

[BARONESS BERRIDGE]

co-chair of the All-Party Group on International Freedom of Religion or Belief. I am grateful that some noble Lords have already mentioned the fact that cultural heritage is often the religious heritage of people. The United Kingdom should be proud of its role in giving aid to refugees in Syria and Iraq but we can now also be proud of our role in protecting the cultural and religious heritage in that region.

History is full of examples of the destruction of religious and cultural heritage as a means of domination of people and limiting cultural and religious diversity. The rebuilding of the Temple by the people of Israel was just one such example. The 20th century saw Chairman Mao in China, Pol Pot and the Khmer Rouge in Cambodia and, closer to home, the destruction and abandonment of churches and mosques in Cyprus. I note that the recent restoration and new visitation rights both for Christians to churches in the Turkish Republic of Northern Cyprus and for Muslims to mosques in the republic is a key part of the peace process—a process that is a rare beacon of hope at the moment in that region. However, the Hague convention, which the Bill will enable the UK to ratify, was born, as has been noted, of the destruction of the Second World War. We can now, conversely, see inspirational stories, such as that depicted in the recent film “Woman in Gold” of the healing that the restoration of looted art brings to victims of conflict and war.

It is so important for the UK to ratify, as London is such a key centre for the sale and display of art with world-leading museums and auction houses. Stolen cultural and religious heritage is not just about wiping out the evidence of other people but is a key way for groups to raise money to fund such violence. Daesh is thought to have raised tens of millions in this way. Also, it should be remembered that for any items whose provenance is unclear, such as looted art, this is an easy way to launder money.

It is pleasing to note that the UK Armed Forces have been trained and are acting in ways already consistent with the second protocol of the Hague convention, as outlined in Part 2 of the Bill. The use of the cultural emblem in Part 3 has proved surprisingly effective, especially to avoid aircraft bombing buildings close to enemy combatants. Prior to the 2003 invasion of Iraq, the staff of Iraq’s national museum in Baghdad painted a giant blue shield on the roof of the museum. As a result, the museum was included on USCENCOM’s no-strike list and was not subjected to aerial or ground attack.

Perhaps most relevant to the UK is Part 4 of the Bill, which puts individual responsibility on people who deal in unlawfully exported cultural property. I note in Clause 17 the low threshold of only,

“having reason to suspect that it has been unlawfully exported”.

However, I join the noble Lord, Lord Renfrew, and others in my reading of Clause 16: it has to be a state that is occupying another person’s territory, not a group such as Daesh. This may just be because the Hague convention was written in the 1950s. It is now part of a wider issue that has become clear in international law, which was drafted at a time when it was the state that violated people’s human rights. We did not have

non-state actors, such as Daesh, but groups such as the Lord’s Resistance Army, which had incredible capability. I hope that we will come back to the matters in Clause 16 later in the Bill.

I am pleased to note that the Bill will cover any property that has been unlawfully exported since 1956, not when the Bill is enacted. That is important to note because property that is dealt with unlawfully in the UK, such as that already in the country from Northern Cyprus, could then be the subject of a criminal offence. I note in this context that aiding and abetting, conspiring and attempting to deal in unlawfully exported cultural property will also be an offence. It is perhaps within that realm of what we call the inchoate offences that those who seek to deal and trade in this property need to be keenly aware of the extension of the criminal law in that regard.

However, joining others, I would be grateful if my noble friend the Minister would outline whether the Met police has been given any additional resources to deal with these very specialist crimes. The officers I have met are experts in their field and provide the national policing lead, but there is only a handful of them. It is hard to know the exact extent of the crimes here in the UK and, without adequate resources, it is difficult to know how we will find out.

I am not sure that the Dealing in Cultural Objects (Offences) Act 2003, under which there has not been a successful conviction, will entirely fill the gap left by Clause 16. A cursory glance at that Act gives a different mens rea for the offence, concerning cultural objects rather than cultural property. It is important that we come back to that.

I am pleased to see that many noble Lords speaking in the debate are trustees of museums. I hope my noble friend the Minister will confirm whether the cultural protection fund outlined will be available to be used by museums to store valuable and delicate artefacts seized by the UK police or customs. Many of these items need specialist storage to avoid their being damaged. They can remain in police custody for months, if not years. Also, I do not think that the Bill currently makes clear who is to pay for the costs of storage and transportation back to the occupied territory. In many circumstances, that can involve a considerable sum. I hope my noble friend will look at whether the Government could bring forward an amendment in that regard. One can easily foresee complicated litigation, with parties arguing over who was responsible for which cost, which would potentially delay the return of the item to its rightful owner.

I notice, however, that there is growing good practice in this area. On a recent visit to Cyprus, I visited the Leventis collection and found a museum that had spent well over 10 years authenticating the provenance of every piece in that museum. I join other noble Lords in saying that until there is that clarity about the ownership and provenance of these artefacts, we will not see an end to this trade, despite this welcome legislation.

4.17 pm

Baroness Mobarik (Con): My Lords, I welcome the Bill. As other noble Lords have said, it is long overdue.

The looting and destruction of cultural heritage has gone on since the beginning of civilisation. In 1700 BC the Assyrians invaded Arab tribes and settlements on the western side of Iraq—then Mesopotamia, now Ramadi and Fallujah. This was to subjugate their stone gods, taken all the way to Nineveh and used as objects of negotiation to humiliate, so that the Arabs would have to beg the Assyrians to have their gods back. And there was the Lion of Babylon, looted by the Babylonians in antiquity from Iran and brought to Iraq to the city of Babylon, which is so famous for this giant stone lion.

Many years ago, I remember browsing through the shelves of the library at the University of Glasgow. I came across some dusty-looking documents that were lost or forgotten. They were part of an audit compiled by a British military officer of the treasure looted from one of the palaces in India around 1857—the time of the First War of Independence, or what others may refer to as the Mutiny. It was page upon page of the most staggering number of items—from gold, silver and diamond jewellery to swords, precious stones and valuable artefacts. That was just one palace of the many that were looted on the Indian subcontinent, with the contents to be melted down or sold, or to go on to grace stately homes and museums in Britain.

The Hague Convention addresses not just the destruction but the removal of culture. This clearly opens a can of worms for former colonial powers such as the UK—a possible reason why we have never ratified this treaty. The Bill would make it an offence to deal in cultural property illegally exported from occupied territory during armed conflict, and would introduce appropriate measures to deal with offenders.

The highly developed antiques and collectors markets of the UK mean that London is still the biggest market for antiquities, be they Greek, Roman, middle-eastern, south Asian, south-east Asian or Chinese. However, there has been some real and concerted effort on the part of individuals to comply with standards set by the Hague Convention. For example, the British Antique Dealers' Association has a strong code of conduct but has only about 350 members. This Bill would surely hope to encourage others to join.

It is not just the wholesale looting of the past, and which continues in war-torn countries such as Iraq and Syria, which is of such grave concern. There is also the destructive power that has increased with modern methods of warfare. When I travelled to the town of Kljuc and surrounding areas in Bosnia in 1996, shortly after the Dayton peace accord, I saw many mosques blown to rubble, recognisable only by the part of a minaret—evidence of what had stood as a symbol of faith and culture. In Sarajevo, I saw the sickening sight of a burnt-out library, where a musician had set up his piano and played a haunting melody each day in the blackened shell. As Bokava has written,

“Destroying culture hurts societies for the long term ... Warlords know this. They target culture because it strikes to the heart and because it has powerful media value in an increasingly connected world”.

Now, whole towns can be flattened with the technology and firepower available.

Despite invasions over the centuries, most Syrian towns were not destroyed—until now. Because of the nature of their construction—they are made of stone—they have stood since pre-Mongol invasions: Raqqa, Palmyra and Aleppo. Muslim, Sufi and Christian shrines alike, ancient tombs of historical figures, and the oldest minaret still standing in the Middle East, have all been reduced to rubble and are gone because of ISIS. More than 17 religious locations of Christian, Yazidi, Shia and Sunni heritage have been destroyed. Nothing and no one is spared. In 2014, when ISIS embarked on the systematic destruction of Mosul, the women of that town made a human chain and surrounded the oldest mosque, al-Nuri, with the leaning minaret which gives the town its nickname of al-Hadba—the hunchback. The women, or the human spirit, protected it from destruction. On 24 July 2014, ISIS or Daesh destroyed the Arab/Muslim shrine to—and most likely the burial place of—Nabi Yunus or Prophet Jonah. The walls surrounding the ruins of Nineveh where this shrine was located, and which dated from 700 BC, were also destroyed by Daesh in February 2015. Then, there is the cynical use of deeming things to be anti-Islamic—permission to loot for a return of 20% of the value of that loot, and if Daesh does not receive that 20%, it makes a public show of destroying the loot as an example.

I agree with the noble Lord, Lord Howarth of Newport, who said in the debate on this subject in January, that,

“More than ratification and legislation is needed,”
to tackle ISIS's

“full-blown criminal enterprise dealing in cultural property to finance terrorism”.—[*Official Report*, 14/1/16; col. 490.]

Franklin Lamb states that,

“The German government is seeking to cut the supply of illicit antiquities to the market, and thereby cut the flow of money to looting and smuggling mafias and militants”.

That is welcome. It has long been known that Munich, the second-largest market after London for antiquities, is where every mafia dealing with antiquities is based.

One motivation for looting is blatant criminality. The other is dire poverty, which is inevitable in conflict zones. It is clear that there is a real desire on the part of the Government and Opposition parties to bring into effect legislation that, although not perfect, would go some way to halting this illicit trade in antiquities. There has been real support, following the publication of the draft Cultural Property (Armed Conflicts) Bill for pre-legislative scrutiny, for the UK's meeting the obligations contained in the convention and two protocols. That is really positive. But despite the various agreements and resolutions, including the 1970 UNESCO convention and the 1995 UNIDROIT convention, and the overwhelming aversion to this illicit trade, we are still far from closing the loopholes and making it not pay. That is why it is so important to put a stop to current and future crimes. Action is required now.

The use of the cultural emblem is also to be welcomed, but how far can it protect archaeological sites and sites of historical importance? Ninety per cent of archaeological sites in Iraq have yet to be excavated since the 1920s surveys were conducted. This issue is down to the sensitivity of the various players. We know that the

[BARONESS MOBARIK]

American and British forces have maps of important historical sites in the Middle East and act with sensitivity, and that the United Kingdom already complies with the convention during all military operations. However, the existing laws are not sufficient to meet in full the obligations set out in the convention and its protocols. Although not relevant to this Bill, what about the Russians or the Syrian Government? The damage being inflicted by them on territory held by ISIS or Daesh, as well as the damage inflicted by ISIS itself, does not bear thinking about.

If the worst comes to the worst in a conflict situation, do you protect an area of archaeological importance or save the people? Of course, the saving of human life would have to be the priority but there is an admission that humanity is about more than eating and breathing: it is about the right to a cultural identity and a multitude of cultural identities, something we in this country can be proud of promoting.

The second protocol of the Hague convention, which was adopted in 1999 and entered into force in March 2004, extends and clarifies obligations under the convention and establishes a system of enhanced protection for cultural heritage. That is of particular importance for mankind. Perhaps ultimately, this Bill will enable us to undertake disaster planning, recovery and contingency planning. Can my noble friend the Minister clarify whether the £30 million to be channelled through the British Council, which has been set aside for the protection of heritage and empowering and equipping people to protect heritage, will mean a greater commitment to repair and conservation and to the restoration and rebuilding of cultural identity, both material and non-material? I suggest that the material already held in Britain's museums be used to engage the communities to which it is relevant, and thus to enrich their cultural identity, particularly the Middle East and Arab diaspora communities which have lost so much of their heritage. This would also go far in resisting destructive ideologies. Glasgow Museums is leading the way with the use of its Mesopotamian collection under the guidance of its Curator of Islamic Civilisations, Noorah Al-Gailani. More of this activity across the UK would be welcome.

As I say, I welcome this long overdue Bill. Since the Hague convention of 1954, which was born out of the Nazi looting during the Second World War, the world has seen many more conflicts, with much looting and destruction of cultural property. It is vital that we ratify the first and second protocols of the convention, whether perfect or imperfect, in order to strengthen our legislation and enable us to deal with the ongoing plunder of cultural heritage, to the ultimate cost of all humanity.

4.29 pm

Baroness Young of Hornsey (CB): My Lords, I declare my interest as a commissioner with Historic England, which, among other responsibilities, is the Government's adviser on international conventions, regulations and directives, and the UK's 29 UNESCO world heritage sites. To ensure effective collaboration across Scotland, Wales and Northern Ireland, we work closely with historic environment expert bodies in

each country. In addition, Historic England works with the UN National Commission for UNESCO, World Heritage UK and the UK national committee of the International Commission on Monuments and Sites to ensure effective joint working on international heritage issues.

Like other noble Lords, I have watched with dismay as monuments, statues, historic buildings and cultural artefacts have been destroyed deliberately or have been the subject of collateral damage. Historic England welcomes this strong statement about the UK's commitment to protecting cultural property during armed conflict, as do I, although—like other noble Lords—I wish we had signed up to the convention much sooner. There are three areas in particular to which I would like to draw the attention of the House. First, as other noble Lords have mentioned, intentional damage to cultural property will, under the Bill, carry a penalty of up to 30 years' imprisonment, which is to be welcomed. Currently, the deliberate destruction or demolition of a listed building or scheduled ancient monument is regarded as a criminal offence in England and carries a penalty of up to two years' imprisonment and an unlimited fine. The changes embodied in the Bill recognise the value of cultural property that is of international significance to communities, be they local, national, or international, and their identities.

The bold measure of establishing a £30 million cultural protection fund, which will help create opportunities for economic and social development through building capacity to foster, safeguard and promote cultural heritage in conflict-affected regions overseas, provides the necessary support. The fund is being managed by the British Council in partnership with DCMS. Initially, it will be focused on UK organisations working in partnership with bodies in the Middle East and North Africa region, specifically Egypt, Jordan, Lebanon, Libya, Iraq, the Palestinian territories, Syria, Tunisia, Turkey and Yemen.

The enshrining in law of procedures relating to cultural protection that are already practised by the Armed Forces is another area of legislation to be welcomed. It is also most encouraging, as the noble Baroness, Lady Andrews, mentioned, that the Secretary of State for Defence is committed to the establishment of a military cultural property protection unit within the Armed Forces. This is already at an advanced stage of preparation and, as stated by the Secretary of State for Defence in April this year, is working closely with DCMS. The combination of that unit from the Ministry of Defence with DCMS and the FCO's Stabilisation Unit has the potential to be a formidable force that will develop effective plans to contribute towards the protection of historically significant cultural monuments.

I move on to the categories of cultural property. Historic England has worked with sister agencies in the home countries, and with the DCMS, in identifying the categories of UK cultural assets to be protected under the Hague convention. Cultural property is defined in Article 1 of the convention and two levels of protection are afforded. The first is enhanced protection, which allows for a handful of sites to be selected that represent,

“cultural heritage of the greatest importance for humanity”.

The main focus of concern in the DCMS Select Committee recommendations in 2008 was the resource implications of developing an enhanced list. However, only five countries—Azerbaijan, Belgium, Cyprus, Italy and Lithuania—have identified a combined total of 10 sites to be listed as cultural property under the enhanced protection category, and all are world heritage properties.

The second level is general protection. While there is no legal imperative to produce a national list, further to the DCMS Select Committee recommendations in 2008 the categories identified to be covered under general protection are: listed buildings of grade 1 status, or category A in Scotland and Northern Ireland; listed historic parks and gardens of grade 1 status in England; the collections of those museums and galleries that are directly sponsored or funded by government; and, finally, the museums, galleries and universities in England with designated collections and, in Scotland, with important collections.

These categories have raised concern among some heritage organisations, as scheduled ancient monuments—archaeology—are not included in the proposed list because they are not graded in the same way as listed buildings. However, with almost 20,000 recorded scheduled ancient monuments, your Lordships can see why their inclusion as a category is deemed unfeasible. It could be argued that archaeology may not be adequately recognised under the convention. However, some archaeology will be represented since 12% of grade 1 listed buildings in England are also scheduled ancient monuments.

Most forms of categorisation are prone to at least mild confusion and anomalies, and this area would appear to require further consideration, as was suggested by the noble Lord, Lord Foster of Bath. Will the Minister commit to convening an expert group to discuss and perhaps refine these categories further? She may wish to wait to see how the current categories work in practice. However, I hope she can see the benefits of assembling such a group to hone this area of work before implementation.

Like other noble Lords, I very much welcome the Bill, as I have already said, particularly the potential to prosecute those who loot cultural treasures from other countries and attempt to gain financial benefit from stolen goods. The Minister has said that this legislation will not operate retrospectively, thus calming the nerves of those British institutions that have inherited stolen goods in their collections. I was most interested to hear the comments of the noble Baroness, Lady Mobarik, on historical acts of stealing and looting. I simply ask noble Lords and, indeed, the institutions concerned to think about the significance we are attaching to these contemporary crimes of cultural destruction when peoples from across the world make the case for repatriation of cultural objects.

It is crucial to state that history and heritage are really important and not frivolous or insignificant when lives are at stake in conflict situations. The UN Convention for the Protection of Cultural Property in the Event of Armed Conflict, published less than a decade after the end of World War II, recognises that,

“damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world”, and that,

“the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection”.

In the efforts to rebuild lives scarred and shattered by conflict, the narratives of the past embodied in monuments, sites and artefacts, whatever form they might take, constitute a record of where those communities have come from—and where all of us have come from—and thus where they, and we, might go.

We know from history that the destruction of heritage is the attempt to destroy the identity and morale of a people. We must make a real effort to ensure that the full breadth of human histories is not appropriated and destroyed because of the ideological positions of the combatants. The Bill will enable us to go at least part of the way and to act decisively to protect cultural and historic artefacts at the moment when arguably they are most needed.

4.37 pm

Lord Balfe (Con): My Lords, one of the advantages of being well down the speakers list is that a lot of what you were going to say has been said. I welcome the Bill. I am pleased that the Minister is here. It shows the range of her expertise—the last time we were here together was during the passage of the Trade Union Act. I notice that when she has finished on armed conflict, she will move on to British Home Stores—which is probably another version of armed conflict to come.

I am not sure whether these are interests or just background but I have been associated with two events that I would say are relevant. First, I am a patron of an outfit called the Dresden Trust, which was established to rebuild the Frauenkirche in Dresden. I mention that because when I became interested in Dresden, I also became interested in the impact of war on populations. There is no doubt who bombed Dresden but there is also a history that came about after the bombing, and a lot of that history was to do with looting by impoverished German citizens who had no money or artefacts to live on and who used the proceeds of the churches and many of the other buildings that were open to looting to feed themselves and their families. The point I make is not that it is right but that it is sometimes understandable. I am pleased to see my good friend, the noble Lord, Lord Dykes, in the Chamber. He is also a patron of the Dresden Trust.

I make that point because this is a complex area and a complex Bill. One other item I want to mention is how long these matters can take. For a time I was associated with an outfit called the Ethiopia Society, which had a gentleman called Professor Pankhurst, who worked tirelessly to get what was called the Axum obelisk repatriated from Italy, where it had been taken after the Abyssinian war, back to Ethiopia. An agreement was brokered by the United Nations in 1947, and the obelisk got back to Axum in 2008—61 years after. I just make the point in passing that cultural agreements can often take a lot of implementing.

[LORD BALFE]

As for the content of the Bill, there is a tendency to inflation of imprisonment, and I think that 30 years—going up from two years—is an extraordinarily long prison sentence to provide for. I will not propose any amendments on this, but I note that it is rather disproportionate given the prison sentences we have. I was also interested to see in the briefing from Historic England that only five countries—a pretty random lot, consisting of Azerbaijan, Belgium, Cyprus, Italy and Lithuania—have identified a combined total of 10 sites for enhanced protection. That is after 12 years of the convention being in place. Could a move be made to look at whether all world heritage sites should be given enhanced protection automatically under the convention?

In the definition of cultural property, the convention refers to,

“groups of buildings which, as a whole, are of historical or artistic interest”.

However, Article 6 of the Second Protocol, under the heading, “Respect for cultural property”, says that a “waiver” to the convention, allowing you to take action against this class of building,

“may ... be invoked to direct an act of hostility against cultural property when and for as long as”,

two exemptions apply. One of those is where,

“there is no feasible alternative available”.

You could have a very long debate about that, and many people would say, “Well, there was no feasible alternative; there was nothing we could do”.

The noble Lord, Lord Renfrew, mentioned that this is about occupying states. My final point is that a lot of conflict today is not between states but civil war. Last week, I was in Turkey, where there is a conflict—which I do not propose to adjudicate—between the PKK and the Turkish military authorities. In south-east Turkey there is a city called Diyarbakir, which has a very old, long-standing, historic centre. That has more or less been destroyed because one group of people, identified with the PKK, has used it as a base for street-to-street, house-to-house fighting. The Turkish army—rightly, probably—in trying to regain control over the city, has more or less destroyed a significant part of that inner city, which has happened within the last few weeks.

I knew little about this until I got to Turkey, because it has not been widely reported in the English-language press, but it is a very good example of where the convention and the Bill will not cover much at all, because the clause I read out about exemptions could clearly be invoked by the Turkish army, and of course the PKK is not a member state anyway. The Bill is very useful and I congratulate the Government on bringing it forward, but one thing that has to come to mind when we think about it is that it covers only a small part of the problem and of the consequences that arise from terrible actions of this kind.

4.44 pm

Baroness Wheatcroft (Con): My Lords, it gives me great pleasure to join all other speakers in this debate in welcoming the Bill. After having listened to so many well-informed speeches, I shall be brief, rather than repeating everything that has been said.

Cultural heritage provides a literal way of touching the past. It is a tangible demonstration of what binds a people together. In the aftermath of conflict, heritage offers a force to help rebuild communities. That, of course, is why extremists are so keen to wreak the havoc that we are currently seeing in Syria—to damage the civilisations that have gone before, and leave no trace. That is why we need to act. We can protect the world’s cultural heritage to a certain extent, despite the difficulties that the noble Lord, Lord Balfe, listed, and this Bill is an important step in that direction.

Ratifying the Hague convention and its two protocols, the second of which is the crucial one, is an important step. Crucially, the reciprocity that we will achieve in signing these documents enables us also to protect our own cultural heritage and lift it to the enhanced protection level. The UNESCO committee that has to decide what qualifies for enhanced protection has no easy task; as noble Lords have heard, only five countries have had their heritage sites approved so far. I am not sure that everybody would agree with what goes on to that list. The city of Baku in Azerbaijan may be straightforward, but maybe not everybody would see the Neolithic flint sites in Belgium as worthy of enhanced protection. But what creates cultural heritage is what the people who live in those cultures believe. While we can hope that there will never be another armed conflict on this island again, it would be foolish for us not to seek to safeguard our own cultural heritage as far as we can. Ratifying these treaties takes us along that way.

I am happy to declare my own interests as deputy chairman of the British Museum. The museum likes to be known as a museum of the world and for the world, and it is clear, to me at least, that it must fulfil the first criterion for enhanced protection. It is a site of the greatest importance to humanity. Yet just a few days ago the museum was forced to close its doors to visitors from home and abroad. The reason? Protesters from Greenpeace. We were advised that what they were doing would put our visitors in danger, and we had no option but to turn them away—some people who had come a short distance and some who had travelled across continents. I support the right to protest, but I do not support the right of any group, however strongly they might feel, to force a site of cultural heritage to close its doors to the public. I hope that noble Lords will agree with me on that.

The Government’s support for this Bill is evidence of their support for cultural heritage, and we all applaud that. The £30 million cultural protection fund, of which there has already been mention this afternoon, is testimony to the work that is going to be done and already is taking place. The £3 million fund that the British Museum is currently working with Iraq on is going to make a huge difference. We are training up teams of Iraqis so that, when they are able, they can go back to their home country and begin to rebuild their damaged heritage.

I will conclude my remarks by quoting Jonathan Tubb, the British Museum’s keeper in the department of the Middle East. He said, in response to the fund:

“Thanks to DCMS we can at last do more than monitor from afar the relentless assault on Iraq’s cultural heritage”.

That has to be good news.

4.50 pm

Lord Cormack (Con): My Lords, I shall speak briefly in the gap. As soon as I knew the Government had had the good sense, foresight and courage to put this Bill before us, I put my name down to speak. However, I had to withdraw this morning because recently there was a sad accident involving two members of the congregation of Lincoln Cathedral. They were killed in a car crash in France and their funeral was today. I felt my first obligation was to be there, but as I got back in time to hear every word of the debate, I shall say a few things.

I must declare my interest as the founder and current president of the All-Party Parliamentary Arts and Heritage Group, to which many of your Lordships belong. I have long taken a particular interest in the subject before us today. I emphasise that there is a difference between destruction, where something is gone for ever, and looting, where there is a possibility of restoration. I am reminded of destruction every time I go into the glorious cathedral in Lincoln because all the brasses that were there in the 17th century, many of them going back long before that, were taken out and melted during the Civil War. So we are not dealing with a new problem, although recent horrific events have made it all the more necessary that we ratify the convention, and this Bill is an extremely important step on the way to doing that.

I remember a few years ago going with the All-Party Parliamentary Arts and Heritage Group to an amazing exhibition at the British Museum of treasures from Afghanistan. Many of your Lordships will remember that. In those cases, we saw some wondrous objects, some of which had been brought for safekeeping at a particularly difficult time in the history of Afghanistan. This was in the wake of the destruction for ever of the great Buddhas. We looked at those marvellous things, and I felt what a great service the British Museum was doing for this country and the world by putting on that exhibition.

In this brief contribution, I want to underline and emphasise the good sense of the proposal by my noble friend Lady Berridge. She talked about displaying in this country, whenever we can, looted objects that might strike a real chord with many of the communities which are now part of our nation. Indeed, the interesting speech of my noble friend Lady Mobarik touched on similar themes. I put it to the Minister that I hope we might be able to have a special fund to enable looted objects or objects that have been brought here for safety to tour our provincial museums and galleries. That would have a dual purpose. Obviously it would bring pleasure and enlightenment to those who saw them, but more importantly it would provide a link with those communities—Muslim and others—which are now part of our nation. This could do nothing but good. Touring objects from our own museums is a very good thing. Loan exhibitions for people who cannot easily come to London bring great pleasure and joy, which I know from what we have done in Lincoln over the past couple of years. Amid the general awareness that has been aroused by the Bill, I hope there will be a determination to do one or two specific things about it.

My final point is to endorse the comments made by my noble friend Lord Borwick, who did not criticise the Bill—like me, he welcomes it warmly—but pointed to it not necessarily being the easiest Bill to understand. I hope we will be able to clarify it a bit in Committee. I give the Bill my warmest endorsement.

4.55 pm

Baroness Bonham-Carter of Yarnbury (LD): My Lords, I support the Bill, and in my response the other day to the gracious Speech I congratulated the Government and the Minister on including and introducing it. As the noble Lord, Lord Foster, has pointed out, all three major political parties represented in this House have long called for action on this matter but all three have spent time in government when no action was taken, so I repeat my congratulations today to this Government on this belated event. It has been embarrassing, and counterintuitive, that Britain is one of the last major powers to have done so, considering that we are seen as a leading light in the world of heritage, particularly due to the admirable work of the British Museum and the British Council.

As the Heritage Alliance, whose admirable notes I think many noble Lords have received, points out:

“This formal ratification is all the more urgent as military operations increase across the world. The destruction of cultural capital—the ... Buddhas and the Palmyra Arch—demonstrate that aggressors are following a long history of using cultural warfare to demoralise communities by destroying the symbols of their nationhood”.

While it is obvious that cultural artefacts are susceptible to damage and destruction where there is armed conflict, it is something that can and must be addressed. We on these Benches, along with so many people who have already spoken, welcome the introduction of the protection of cultural property fund and the development of a military cultural property protection unit within the Armed Forces.

The much-mentioned Professor Peter Stone, someone we all recognise and admire, has argued that while not all cultural property can be protected, it is surely a mark of a moral and civilised nation that it deploys its armed forces with enough training and knowledge to avert wanton and unnecessary damage to our common heritage. I think we all agree with that. He notes that there has already been work by the cultural heritage community with the military—again, something that has been mentioned quite a lot today—over the identification of cultural property prior to conflict. He gave as an example the NATO air campaign in Libya to show that specific sites can be successfully protected as a result of information supplied by NATO and Blue Shield to the Armed Forces. Apparently armed vehicles were placed around the Roman fort at Ras Almageb, thought to be in order to deflect NATO attacks. We took out the vehicles, not the fort.

When it comes to the Bill, we wholeheartedly support consultation with UNESCO, Blue Shield and other stakeholder groups about how to ensure that the money is put to best use. Will the Minister also look at our suggestion that it should be used as a way of leveraging funds from other countries around the world? Does she agree that the protection of cultural property fund needs to establish a strategy for the future if it is to be

[BARONESS BONHAM-CARTER OF YARNBURY]

used to achieve its full potential? Does she agree that co-ordination is essential and that there needs to be a central team based in London, not large but recognised and with clear credibility within the heritage community, military, police, customs and NGO sectors? Does she agree that training needs to be a core purpose, and that it needs to look to the future—in other words, to be ahead of the game in helping countries at risk to prepare for the worst? Does she agree that a balance needs to be struck between emergency response and long-term support?

However, as so many noble Lords—my noble friend Lord Redesdale, the noble Lord, Lord Borwick, and the noble Baroness, Lady Berridge—have said, the likes of Daesh of course do not just destroy. A fascinating and disturbing “Dispatches” on Channel 4 called “ISIS and the Missing Treasures”—I hope the Minister will note that I have managed to get the brilliance of Channel 4 into this debate—showed how looted treasure, which many noble Lords have referred to, funds terrorism. London is the second-largest art market in the world and items move through our ports and customs all the time, yet, as my noble friend Lord Foster mentioned, we have a tiny team to police the situation. Why are they not doing more? I take on board the question from the noble Lord, Lord Borwick, about how we treat family heirlooms that are brought out of war zones and sold, but listening to the Minister it seems that Part 4, which many noble Lords have mentioned, offers lots of opportunities to try to solve these issues.

I am afraid that I will get a little political. While we are debating and discussing—and supporting—the Bill, why are the Government simultaneously supporting and abetting the Saudi-led coalition’s destruction of cultural property in Yemen? Parts of the old city of Sanaa are gone, as is the Great Dam of Marib—a feat of engineering that was undertaken 2,800 years ago. Missiles fired from the coalition’s planes have obliterated a museum where the fruits of an American-Yemeni archaeological dig were stored, historic caked-mud high-rise dwellings, 12th-century citadels and minarets, and archaeological sites at Baraqish, Sirwah and other places, whose importance to humanity’s heritage has been recognised by the UN. There seems to have been a bit of a breakdown of our adherence to international humanitarian law, which is at odds with the welcome ratification of this convention.

Finally, there is always a danger when we talk about protecting cultural heritage that we appear to ignore the appalling suffering of the people caught up in the conflicts that threaten them—that artefacts are somehow more important than flesh and blood. Of course they are not, but destroying a people’s culture is also a way of destroying them—a point emphasised on the plight of the Yazidis by Irina Bokova, the director-general of UNESCO, who was mentioned by the noble Lord, Lord Renfrew. She uses the term “cultural cleansing”:

“What are Yazidis if they are uprooted from a place where they have been living for centuries? ... You destroy the temples, you take away what they have ... It’s really more than ethnic cleansing, because you deprive them of their identity. You just want to destroy them totally, you don’t want anything from their culture left there for humanity. It’s as if they never existed”.

We must not allow this to happen anywhere, to anyone, and the Bill is part of recognising that.

5.03 pm

Lord Stevenson of Balmacara (Lab): My Lords, how wonderful to be discussing culture and to be doing so at the very centre of the work of your Lordships’ House: the first Bill to come through in the new Parliament and as far as I recall the first Bill we have seen for nearly six years—apart from a very small gambling Bill—which deals with issues relating to that great department, DCMS. I am delighted to be here to respond on behalf of the Labour Party. Today’s debate has been of high quality and it shows that when Members of your Lordships’ House get together and talk about issues of mutual interest and concern they can bring insights and new thoughts to bear on a topic that has been far too long neglected. However, at least it is out in the open air and, indeed, the sunshine.

It is good news that after some 62 years we are bringing forward the necessary legislative arrangements for the UK to ratify the convention and the protocols of the original Hague convention. We welcome the Bill and will do what we can to make speedy progress on it, while of course ensuring that it gets proper scrutiny. As the noble Earl, Lord Clancarty, said, ratifying the treaty will not bring back what has been destroyed in Iraq, Afghanistan, Syria and far too many other places but it will help in the future, as UK ratification will not only strengthen the treaty but provide the UK with the necessary international moral authority, which of course by failing to sign the treaty it has so far lacked. It should be recalled and noted that for some time the UK has been acting as though it were already part of the Hague convention. We have been doing the things necessary to comply with it, and we should congratulate those who have had the good sense to operate in that way over the years and salute the good work that has been done.

One concern that I have about the Bill is that, because it has been necessary to adopt the original definitions of the convention—indeed, the convention appears as a schedule to the Bill—we have ended up with a definition which, as others have mentioned, is largely buildings-based and focuses on artefacts. Article 1(a) talks about,

“movable or immovable property of great importance ... such as monuments of architecture, art or history”.

Paragraph (b) refers to,

“buildings whose main and effective purpose is to preserve or exhibit the movable cultural property”,

and paragraph (c) talks about,

“centers containing a large amount of cultural property”.

As the Minister said in introducing the Bill, those paragraphs could be interpreted to include all cultural activity, but those of us who have had experience of how laws, once written down, are interpreted by people called lawyers may worry that the definitions are too tight and that they need to be reconsidered. It may not be possible to do that within the rubric of this Bill, because delaying it by trying to amend it may cause collateral damage in the sense of making it difficult to ratify and adopt the protocol. Many noble Lords who have spoken today, including the noble Lord, Lord Redesdale, who displayed great skill in making sure that morris dancing became part of our cultural fabric—it would not perhaps have been my original choice—have

made the point that I am trying to make, perhaps more graphically than I am able to do. However, I am concerned that work, which I did previously, at the British Film Institute and the BFI National Archive might not be included in the definitions, although it certainly could be if good sense were applied. I want to come back to that point later.

A related point, mentioned by the noble Baroness, Lady Young of Hornsey, is what this country is doing to exemplify the categories that might be protected under the convention, should that be required. I look forward to hearing the Minister's response to that, given the concerns that were expressed by her department in 2008, with particular reference to resources if enhanced protections are listed. The argument seems to be very clear. There is obviously an issue about scheduled ancient monuments, but not including grade 1 listed buildings and other properties of considerable cultural value to the country seems perverse. In that regard, it would be helpful if the noble Baroness could respond to the point made by the noble Lord, Lord Renfrew, about non-state cultural destruction, which a number of people have touched on—again, I should like to come back to that—and the related question of whether plans to protect UK cultural sites in case of say, terrorism, are robust. After all, we seem to have a war on terrorism but that would not be covered by this convention.

Over the years, there has been welcome evidence of an increasingly close understanding between civil and military leadership, which will be crucial if the Bill is to work properly. Going back to the original convention, two responsibilities were placed on the country, as applied to the Ministry of Defence and our military colleagues. There was not just one, and to my mind this is quite an interesting way of expressing it. The parties,

“undertake to introduce in times of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention”.

I can understand that the plans for that are not yet fully advanced but it would be helpful to probe those a little in Committee, and I give notice of my intention to do so. I believe that it would be better for us all if we could understand how the responsibilities, which are fairly significant, are to be placed on members of our military personnel.

I want to pick up a second point. There is also a requirement in the convention to,

“foster in the members of their armed forces”—

the parties concerned—

“a spirit of respect for the culture and cultural property of all peoples”.

Those are good words, but I am not quite sure how that will apply to every individual member of the Armed Forces in all its branches. However, I am interested again to probe a little further into how that is intended. It seems to me a very significant amount of work and I worry that the resourcing of it will not be sufficient. However, it is very clear that the involvement and support of the MoD and all the armed services in making the convention as effective as possible will be a crucial part of this. Present evidence is that they are doing well on this, and we want to support that as we go forward.

A number of noble Lords mentioned the trade in illegal artefacts, and I am sure that this is something we will need to come back to. As the noble Earl, Lord Clancarty, said, it is surely of some significance that, in the 13 years since the Dealing in Cultural Objects (Offences) Act came in to force, there has not been a single prosecution. Yet there seems to be evidence that something is going wrong in the art and other markets in the UK. As my noble friend Lord Howarth of Newport said in a previous debate, we surely need a cross-governmental drive on law enforcement in this area which engages the police, the National Crime Agency, the Border Agency and HMRC. Although the Metropolitan Police Art and Antiques Unit is clearly very successful in monitoring the trade, again, because of the lack of prosecutions, it may need to be additionally resourced. This is something that we might need to come back to if this section of the Bill is to work well.

It is good news that there is going to be a cultural protection fund to support this legislation, and it is good news also that that is going to be administered by the British Council. However, we will still want to probe this a little in Committee as we seek answers about how this fund is to be grown or enhanced to meet additional needs. As I understand it, it is a fixed amount of money over a fixed period, but obviously once a number of projects have got going and more work is happening, we will need to think about how that fund would be refreshed and grown.

My noble friend Lady Andrews, raised a couple of what she called technical issues—although I think they strike at the heart of the Bill—in relation to the definitions that have been used. The Hague convention refers to a “serious violation” of the protocol but the current legislation refers to a “serious breach”. It may be that there is an easy answer to this, and I hope that we will be able to resolve that by the time we get through Committee.

There is also a question around why the scope of criminal liability for an ancillary offence under the law of England and Wales differs from that in Northern Ireland and Scotland. Again, that is a matter that I am sure can be tidied up without detriment to the overall progress of the Bill.

Finally on this point, as others have pointed out, five members of the UN Security Council have still not ratified the convention, so there is some work to be done through diplomatic channels once we have joined. This needs to be picked up and driven forward. We are either all in this together, in which case there may be an opportunity to do some good, persuasive and continuing work, or there will be those who will work against it.

As I said earlier, it is a bit of a worry that during today's debate, a lot of anxiety has been expressed about how the Bill is framed and how it will work in the modern world. It is limited in definition, as I pointed out, and limited in scope, as others have picked up, and of course there are a lot of new cultural forms that might need to be included. The noble Lord, Lord Renfrew, asked why the Bill applies only to state interaction and not those that we have seen in the Middle East. There is also a new dimension that

[LORD STEVENSON OF BALMACARA] perhaps needs special focus: the idea that somehow an attack on cultural objects is part of the battle and that by destroying cultural objects one can win more than if one respected them.

These points are all important but it may not be appropriate to take them forward in this Bill. I therefore leave it with the Minister that in parallel to the progress of this Bill, we should be thinking about a third protocol—perhaps we can discuss it in Committee—to be offered as an entry prize for having signed up to the existing two protocols. We could make it three in a row and add an additional point that would update and refresh this work as we go forward. That may be ambitious progress, but it is not unachievable.

There is a duty on us all in this Parliament not to delay further the progress that has already been made in ratifying this convention and protocols so that the UK can finally show its wholehearted commitment to the protection of universal cultural heritage, establish consistency with our pride in our own history, and signal our shared human values and culture. We will do what we can to expedite the passage of the Bill, subject always to the need to ensure that no legislation agreed by your Lordships' House is done without appropriate scrutiny.

5.15 pm

Baroness Neville-Rolfe: My Lords, the debate has clearly shown that the House is united in approving the intentions of the Bill. It is pleasing to introduce a Bill with widespread support in this House.

The Hague Convention may be 60 years old, but, as so many have said, we are discussing UK ratification at a time when its effects and measures are all too relevant. Precious artefacts have been destroyed and many others are under threat. Ratification makes an unequivocal statement about the UK's position on the destruction of cultural heritage and allows us to do all we can to prevent such actions and, if necessary, to prosecute malefactors.

However, a number of noble Lords—my noble friends Lord Renfrew and Lord Borwick and the noble Lord, Lord Stevenson—have said that the Bill is a little too narrow and that we should be more ambitious. I do not see it that way. I celebrate the fact that this Bill is in the Queen's Speech after so many years of disappointment. It is ready early in the Session; it has been consulted on; it has the benefit of input from the expert and the wise; and it will introduce the necessary changes to UK law to enable the UK to ratify the convention and accede to its two protocols. It will complement and augment the strong cultural property legislation that already exists in the UK and is accompanied by an ambitious programme of initiatives to support the protection of global heritage, including the cultural protection fund. So let us get it on to the statute book.

I thank my noble friend Lord Renfrew for his words. We are fortunate to have in him one of the world's leading experts in archaeological theory and paleolinguistics, who has already done so much valuable work relating to the looting of archaeological sites. We are also lucky to have the input of the all-party

parliamentary groups and committees on archaeology, culture and the arts. These grace this House and I am grateful to all noble Lords who contribute to their proceedings, including my noble friend Lord Cormack. I was glad to see him here and sorry to hear about the death of his colleagues from Lincoln—home of such a wonderful cathedral.

As one would expect from such a distinguished and knowledgeable gathering, many great points have been made and a number of challenges raised, some of which we will have to come back to in Committee. However, perhaps I could respond in four key areas—the military, international issues, the art market and the cultural protection fund.

Concerns have been raised about this legislation placing yet another burden on British soldiers. However, as has been said, the Ministry of Defence and our Armed Forces already act as if bound by the Hague Convention, and respect for cultural property is upheld across the UK's Armed Forces in military law, our targeting policy, training and in-battle area evaluation and assessment. My department has worked closely with the Ministry of Defence in preparing the Bill. I was glad that the noble Baroness, Lady Andrews, mentioned the “monuments woman” and centenarian, Anne Olivier Bell. The joint military cultural property working group is still developing the concept of this unit. It will start to recruit specialists into the Army Reserve in the near future pending final approval.

Of course, the obligations are not absolute. The convention and Second Protocol provide that they may be waived in cases where military necessity imperatively requires it, such as if cultural property has, by its function, been made into a military objective or there is no feasible alternative available to secure a similar military advantage. It is important to note that, under the Bill, in order to commit an offence of a serious breach of the Second Protocol, a soldier must know that the property to which the Act relates is cultural property. This would protect a soldier from prosecution in circumstances where it really was not apparent that the property was cultural property. That is a long way of confirming in response to the noble Lord, Lord Foster of Bath—Bath being one of the world's greatest heritage sites—that it is the Government's view that the Bill will not constrain the military or have any negative consequences for UK soldiers or their commanders.

My noble friend Lord Balfé said that 30 years in prison seems too long a time for just destroying a building. I touched on the logic for this in my opening speech. The maximum sentence of 30 years is comparable with other similar sentences in UK law. The International Criminal Court Act 2001 covers war crimes, including directing attacks on certain buildings or monuments, which are punishable by up to 30 years' imprisonment.

Turning to the international aspect, a number of noble Lords have rightly deplored the destruction of cultural heritage by Daesh. I share these sentiments. In raising revenue Daesh relies primarily on oil sales, internal taxation, extortion and kidnap for ransom. It also derives a much smaller amount of funding from other sources such as foreign donations and, yes, of course, the excavation and removal of antiquities.

My noble friend Lord Borwick asked a number of questions about the Bill. The intention of the Bill is to introduce legislation that will enable the UK to ratify the 1954 Hague Convention and accede to its two protocols. We have been guided by the convention and protocols to ensure that we have fully met the obligations they set out and have drafted the Bill in the simplest way we can. The definition of “unlawfully exported” used in the Bill does not necessarily equate to whether or not an item has an export licence.

My noble friend and the noble Lord, Lord Renfrew, are right—the UK does not recognise Daesh or the Taliban as a state. Sanctions already exist for cultural property illegally exported from Syria and Iraq since March 2011 and August 1990 respectively. These sanctions prohibit, among other things, the importing, exporting and trading in such objects, and breaching these prohibitions is already a criminal offence under UK law. The noble Lord, Lord Stevenson, made a related point to which I am sure he will return in Committee.

Ratifying the Hague Convention would be a strong public statement of the UK’s commitment to international humanitarian law and cultural heritage and will further strengthen the UK’s international leadership on this subject. Taken together with the other government initiatives, passage of the Bill will demonstrate that we condemn all instances of cultural destruction and illicit trade in antiquities.

My noble friend Lady Mobarik asked about the cultural protection fund. Our objective is to help to create opportunities for economic and social development through building capacity to foster, safeguard and promote cultural heritage in conflict-affected regions overseas. Applications will be welcome for projects which support the protection of heritage that particularly matters to the people in the countries affected or—this is important—tells the story of the peoples that once lived there.

The noble Baroness also made an important point about the role of UK museums. I especially commend the work of the Glasgow museum, which she described so well, and other museum services which are engaged in diaspora communities around the country. These play an important part in understanding our shared heritage.

The noble Baroness, Lady Bonham-Carter, gave the Bill warm support, for which I am grateful. She rightly professed her concerns about the Yazidis. We, too, remain extremely concerned about the barbarity of Daesh relating to that important people. She shared her experience of Libya and Yemen, which I know much less about. She made a number of suggestions for bringing in funds from around the world. I am glad that she mentioned the Channel 4 documentary, which I must make sure I see before we move into Committee.

Lord Lea of Crondall (Lab): Before the noble Baroness leaves the point about Yemen raised by the noble Baroness—

The Earl of Courtown (Con): The noble Lord has not been in the Chamber for the whole of this debate.

Lord Lea of Crondall: I do not need to be in the Chamber for the whole of the debate in order to ask a question.

The Earl of Courtown: Yes, you do.

Baroness Neville-Rolfe: Perhaps I can have a word with the noble Lord after the proceedings in the Chamber have finished and make sure that I have met his concerns.

I know that the impact on the art market is of concern to some in the House. The Government believe that the legislation does not impose any obligations on dealers in cultural property that go beyond the normal due diligence they should undertake for any piece of cultural property they wish to buy or sell in accordance with the industry standards, such as the British Code of Practice for the Control of International Trading in Works of Art. During the implementation of the Bill my department will work closely with all stakeholders with an interest in the Bill, including the art market. I will ensure that the British Antique Dealers’ Association is included in those discussions, and I thank my noble friend Lord Borwick for his suggestion. I know that there have been concerns about the role that the illicit trade in antiquities may play in money laundering in the UK, although noble Lords did not focus on that strongly today. The Government will take decisive action to strengthen the UK’s anti-money laundering regime in the criminal finances Bill.

The noble Lord, Lord Foster of Bath, the noble Earl, Lord Clancarty, and the noble Baroness, Lady Young of Hornsey, all asked about the identification of sites in the UK which would be protected. Our provisional plan is to enshrine the protection of our most valuable cultural sites and property in international law through general protection listing status. This general protection is likely to extend to buildings, historic gardens and parks of grade 1 or category A status, cultural world heritage sites, nationally important collections in museums, galleries and universities, as well as the National Archives and our five legal deposit libraries. We will also consider the submission of our world heritage sites as candidates for enhanced protection. We plan to decide this list by means of a panel of cultural experts and key stakeholders. The interesting points made by the noble Baroness, Lady Young, will inform our implementation and I will consider carefully her idea of a round table. As noble Lords know, I find such meetings extremely useful, as does the Culture Minister my honourable friend Ed Vaizey, a veritable knight of the round tables.

The noble Earl, Lord Clancarty, also asked what cultural property is, so I hope that he finds this explanation helpful. He went on to ask about the impacts and changes felt in Germany following the 1999 measures, as well as the UNESCO climate change report and the UK’s response to it. I will have to write to him once I have had a look at *Hansard*. I have a personal interest in this as I come from a village close to Stonehenge, and indeed we have often debated the need for the proposed investment in the A303 to protect that extraordinary five-star site.

My noble friend Lord Renfrew asked what we could do to ensure that the destruction of cultural property is viewed as a war crime. The International Criminal Court Act 2001 already makes it an offence to direct attacks at certain buildings and monuments,

[BARONESS NEVILLE-ROLFE]

and under the Geneva Conventions Act 1957 extensive destruction of property and attacks on certain monuments are grave breaches of the convention, which of course is punishable by up to 30 years' imprisonment.

The noble Lord, Lord Redesdale, suggested the formation of a digital archive. I note that interesting proposal, and I thank my noble friend Lady Berridge for the keen interest that she has taken in police resourcing. The responsibility for decisions on operational matters of course lies with chief constables, but the National Police Chiefs Council has recently established a national network of heritage and cultural property crime liaison officers and is working to raise awareness of cultural property crime right across all police forces. She and other noble Lords asked about police funding, a point which also came up in our useful debate in January. Since then, police funding has been ring-fenced in line with inflation with an increase of £900 million by 2019-20 and the Chancellor has made a generous settlement for important cultural property protection where illegal sales can fund the most appalling regimes and crimes, a point that was extremely well made by the noble Lord, Lord Redesdale. The noble Lord, Lord Stevenson, talked about enforcement in prosecutions. There has recently been a case leading to prosecution. An individual was sentenced to three years and eight months in jail for committing an offence under the 2003 Act, as well as other related offences.

The noble Baroness, Lady Andrews, asked about "breach" instead of "violation". Breach is used instead of violation because it is a more familiar UK legal term, but I am advised that the meaning is the same. The scope of ancillary offences in the devolved Administrations is not different, but the drafting takes account of the different laws in different places across the UK. My noble friend Lady Berridge asked who would pay the costs of storage and transport. The matter of who will pay associated costs will have to be determined on a case-by-case basis. The DCMS will work closely with any museum if that need arises.

Finally, to come back to the cultural protection fund, the British Council will be responsible for managing the grants process and will draw in additional expertise for project selections. The noble Lord, Lord Redesdale, asked about the British Museum's £3 million and funding for future years. As I am sure he knows, it has not yet been allocated. Of course, the British Museum will be able to apply when applications are invited. The cultural protection fund will be open for bids later this month, and the Blue Shield organisation will be able to apply to this.

I have sought to answer the main questions. We will write where I have missed important points. This in reality is a good time to consider UK ratification of the convention, even if the reason—the great increase in devastating and mindless destruction of priceless, important artefacts—can only be a matter of great sadness. We in the UK must do our bit to counter the appalling destructive forces at large and to protect the world's heritage. I commend this Bill to the House.

Bill read a second time and committed to a Committee of the Whole House.

BHS Statement

5.32 pm

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, with your Lordships' permission, I shall now repeat a Statement made in another place by my right honourable friend the Minister of State for Small Business, Industry and Enterprise, Anna Soubry. The Statement is as follows:

"The House will remember that on 25 April I made a Statement to the House after BHS had entered administration. The administrators Duff and Phelps tried to sell BHS as a going concern, with a view to retaining all stores and as many jobs as possible. I understand that they had talks with a number of interested parties.

As reported last week, the administrators have now concluded that, although offers were received, none was sufficient to enable a deal to be completed, and they have had to take the decision to wind the business down. This will, of course, be devastating news for the workers at BHS and their families, and also for those businesses which supply BHS. This followed the sad news received by Austin Reed workers on 29 May that only a partial sale of that business was possible, with the remainder being wound down over the course of June.

A number of questions have been raised about how BHS found itself in this situation. The proper authorities—the administrators, the Insolvency Service and the Pensions Regulator—are already looking into these matters. I am clear that any wrongdoing will be taken very seriously and I will return to this later in the Statement.

Our focus now is to support all those affected and get people back into work as quickly as possible. While we await the administrators' plans for winding down the business, I can inform the House that Jobcentre Plus has already been in contact with the administrators and is preparing a range of support to assist staff. Jobcentre Plus is on standby to go into BHS stores and directly advise affected staff on their options. Already, teams are centrally tracking vacancies in the retail sector and will make local BHS branches aware of any vacancies in their area.

Jobcentre Plus also stands ready to deploy its rapid response service in acknowledgment of the scale of the job losses. This is a service with a strong record of helping people at a very distressing time. It can offer workers support, including help with job searches, CV writing and interview skills; help to identify transferable skills and skills gaps, linked to the local labour market; training to update skills, learn new ones and gain industry-recognised certification that will improve employability; and help to overcome barriers to attending training, securing a job or self-employment, such as childcare costs, tools, work clothes and travel costs.

I can also inform the House that the DWP has written to major retailers asking them to consider what opportunities they may be able to offer the workers and local areas affected as the situation becomes

clearer this week. The DWP will also be monitoring the impact of redundancies locally on a continuing basis and will provide additional targeted support to any areas particularly affected. I can assure the House we will do everything in our power to support workers and their families through this difficult time, not just for BHS, but also for those made redundant from Austin Reed.

I now turn to some of the wider issues. On 3 May, the Business Secretary instructed the Insolvency Service to begin its investigation into the extent to which the conduct of the directors of BHS led to the insolvency of BHS and/or caused detriment to its creditors. While the Insolvency Service cannot give a running commentary on its investigations, I know that the work is well under way, and I am clear that if evidence is uncovered that indicates that any of the directors' conduct fell below that to be expected, action will be taken. This can include applying to the courts to disqualify the relevant parties from being a company director for a period of two to 15 years. If there are any indications of any criminal wrongdoing relating to BHS, we will ensure that the relevant investigatory body is informed.

Members will also be aware of considerable concern about the BHS pension schemes. The BHS schemes are in a Pension Protection Fund assessment period. The test is whether or not the schemes' funds are sufficient to allow each scheme to buy annuities which will pay members at least Pension Protection Fund-level benefits. If it cannot, the scheme will transfer to the PPF and compensation will be paid. The PPF aims to resolve these issues as quickly as possible. PPF compensation is generally 100% of the pension in payment for anyone over the scheme's normal pension age at the date of the insolvency and, for everyone else, 90% of the accrued pension, subject to a maximum cap.

The Pensions Regulator is also currently undertaking an investigation into the BHS pensions scheme to determine whether it would be appropriate to use its anti-avoidance powers. This means that if the regulator believes that an employer is deliberately attempting to avoid their pension obligations—leaving the Pension Protection Fund to pick up its pension liabilities—the regulator may intervene and seek redress from the employer. There is a clear process that must be followed and this can sometimes take a considerable amount of time. When it becomes appropriate to do so, the regulator will consider issuing a report of its activities in this case. We will closely examine its findings.

As I said on 25 April, retail is a vital sector for the UK economy and we are committed to it, which is why I will be meeting key retailers in the coming weeks, along with ministerial colleagues from other government departments. While the news of BHS's closure is a huge blow, the retail sector as a whole is resilient. There are now 3.1 million retail jobs in the UK, up by 83,000 since 2010, and almost back to record pre-recession levels.

High streets remain a crucial part of our local and regional economies, creating jobs, nurturing small businesses and injecting billions of pounds into our economy. A recent report by the Association of Town Centre Managers found that town centres contribute

nearly £600 billion to the economy each year. We will continue to support the British high street. That is why we reduced corporation tax and announced the biggest ever cut in business rates in England, worth £6.7 billion over the next five years.

I know that little of this will be of comfort to BHS workers facing an uncertain future. But I can assure them and the House that this Government will do everything in their power to get every affected worker back in a job as soon as we possibly can. I commend this statement to the House".

That concludes the Statement.

5.40 pm

Lord Mendelsohn (Lab): My Lords, I draw attention to my registered interests, in particular my involvement with a distressed investment and restructuring vehicle.

I thank the Minister for her Statement on the collapse of the BHS chain in its entirety. We share the particular concern for staff and their families, and for the small businesses affected by this collapse. It is always difficult when a decision is made that the existing owners can no longer operate such a business, which must then change ownership. Huge difficulties are faced when trying to sell a loss-making business, especially—as in this case—when the business has a negative value. In these circumstances, it is not uncommon for its equity value to be nominal, the transactions supported by cash left in the business and by vendor loans. In that regard, we welcome the Insolvency Service investigation, once sold, into what transpired in the year or so of trading under Retail Acquisitions. We do not plan to continue a running commentary on this but it is a very important investigation.

I will focus on three issues and seek the Minister's observations on these matters, which have a much wider significance. Certainly, with the collapse of Austin Reed and the problems with Tata Steel, this illustrates that there are problems with our current system of dealing with pensions, particularly defined pension schemes; in dealing with the administration and insolvency process, and the attempt to rescue as much of the business as possible; and, finally, in dealing with what can be done to transition 11,000 workers back into some sort of work and economic security.

On pensions, the current arrangements are really designed for a different era. In the post-financial crisis world, and as a result of quantitative easing, the return on gilts and low interest rates make the job of pension trustees to ensure a viable tracking strategy very difficult. Many of the schemes now in deficit had performed reasonably but are now very distressed. This has affected even our largest and most profitable businesses. In the case of BT, there are £47 billion of IAS 19 liabilities and a £6 billion deficit. This is a company with a £42 billion market cap. These conditions exist in many companies and in local authority pensions, too.

On BHS, the reports and statements confirm that extensive discussions have been going on for many years. We know that these discussions were going on in many different places. The Pensions Regulator said in its annual funding statement, released on 13 May, that the average company paid 10 times as much in dividends as it did in deficit recovery contributions. It went on to

[LORD MENDELSON] say that the increase in deficits could be in the region of 20% to 35%, depending on the scheme's valuation date and hedging strategy. With this in mind and its own findings indicating that there is a wider problem than just that seen with BHS, what action is the Pensions Regulator taking to avoid another such crisis? Is the number of companies needing such discussions increasing? If so, are Ministers drawing up plans to deal with these problems?

Secondly, we have great concerns about the process of administration. Naturally, it is a great tragedy that the whole business unfortunately had to fold. It is certainly unfortunate that BHS was unable to seek supplier support and, therefore, the prospect of being able to sell the business became ever more difficult as the working capital requirement made it untenable for any bidder. In regard to this, we are also concerned that it seemed that the business was to be sold only in its entirety. Further activity and restructuring were not undertaken to save some of the business during the administration process.

For us, many of these issues are those present in a "creditor in possession" model versus a "debtor in possession" model. The Minister knows that we have a keen interest in these matters. While we do not propose to replace the "creditor in possession" model, this example certainly suggests that further consideration should be given to a "debtor in possession" model, one that would allow the company to operate and ensure that there were such regulations and laws so that suppliers were able to continue to support a business during restructuring and administration. Indeed, we proposed a model to the Minister some time ago. Certainly, it would not have been able to save such a business in these circumstances—it is very difficult to talk about a particular example—but it would certainly have given the administrators further time to look at restructuring the business and perhaps saving some or a portion of the jobs. We hope that the Minister will consider this.

Also in relation to the administration—we have also raised this with the Minister—recently there has been great concern about the position of creditors, certainly the seniority of creditors. Is it not time that we reconsidered the generous arrangements that allow bank loans always to be repaid first, and whereby taxpayer liabilities in the shape of VAT, national insurance and PAYE are always relegated to second position? We should also consider redundancy costs. Does the Minister consider that they should be paid first, in line with other secured creditors?

We are concerned that the Government should do what they can to support the workers in finding new employment. We welcome the fact that their attention extends to the workers at Austin Reed as well. We hope that the preparations they have made will be activated more quickly than appears to be the case from the Statement. We would be grateful to the Minister if she would give us more of an idea of when the intervention will occur. What more can be done actively—as opposed to plans in preparation—to allow jobcentres to contact the company more broadly? Will the Government consider appointing somebody to "hub" the activity on behalf of the department and all

the different agencies of government? In relation to the Minister's observations about the rapid response service being on standby, on what basis will this be activated? Does she consider that such a test has already been met and that it would be worth while activating the service immediately?

Baroness Burt of Solihull (LD): I, too, thank the Minister for repeating the Statement. Our thoughts are with the staff and their families. We welcome the support that has been given and the Government's ongoing investigations. The Labour spokesperson has just commented on the position of creditors, which has irked me for some time. However, the Government's complacency and short-term approach is very concerning. Eight thousand jobs have been lost and there are 3,000 in the supply chain. However, the Statement says that,

"the retail sector as a whole is resilient".

What does the Minister make of the British Retail Consortium's forecast that 900,000 retail jobs will be lost by 2025? We need a retail strategy, just as we need a manufacturing strategy. Why do the Government wait for disaster to strike? We have seen it three times now, with British steel, Austin Reed and British Home Stores. The people affected need to be retrained to do different jobs. They need lifelong learning and continuous professional development as part of a working life they enjoy and in which they can take pride. If we had a retail strategy, we could look at making the high street a destination of choice—somewhere that people want to visit as well as being able to order goods online. However, at the end of the day, if you lose your job to a computer, you had better learn how to programme one.

Baroness Neville-Rolfe: I agree with the noble Lord, Lord Mendelson, that this is a very important matter. As he said, we face the potential loss of 11,000 jobs, some of which are in the supply chain.

In answer to the noble Baroness, Lady Burt of Solihull, the retail sector, of which I used to be a member, does have a certain resilience. The Statement rightly referred to the way it has come back from the recession. With Woolworths—and I was a retailer then, not a government Minister—we found that other retailers were quick to buy the properties and adapt them to new uses. We found some of our best people from ex-Woolworths staff. I hope that the Jobcentre Plus process, which I will come on to describe, will be able to build on things in a similar way. Everything is difficult but the high street is changing, as are consumers. In our towns and cities, we need to think about that and about what other sources of employment and customer pleasure can come through. That will, of course, include things such as restaurants and catering as well as retail, and online stores as well as conventional shops.

Our approach involves the regulatory framework, and I will start with pensions. The pensions legislation was strengthened by the previous Labour Government in 2005 with anti-avoidance provisions. There are provisions for dawn raids and the regulator has strong powers. Trustees have quite strong powers, too, but I think they are always a little worried about precipitating insolvency if they move ahead too fast. As the noble

Lord, Lord Mendelsohn, said, this is not an easy area, but the Insolvency Service is undertaking an investigation and I will come back to that. The Pensions Regulator is engaged and we look forward to its report. I am sure we will be looking to make sure that trustees and regulators have the right powers in future. In the new world of lower interest rates, which the noble Lord rightly described, things are obviously much more difficult.

We are worried about this case, but it is different from steel, which was a whole sector facing unparalleled pressure. I take the point that retail is facing pressure, but I do not think it is on quite the same scale and it is not so concentrated in particular communities. It is tough for those whose jobs in town centres are lost when BHS closes but, as I said, I am hoping that, with the help of Jobcentre Plus, we can ensure that people either get jobs using their experience and training or get the opportunity to retrain. Jobcentre Plus is on standby and in contact with the administrator to plan the support. The administrator will, of course, have to make funds available for redundancy. The rapid response service will be activated and has been in contact with BIS since the administration started. I am pleased that we have had such a timely Statement and are able to update noble Lords.

5.53 pm

Lord Myners (CB): My Lords, I declare an interest as an adviser to the Joint Committee of the other place. I welcome the Statement and the early involvement of the Insolvency Service, triggered by the Business Secretary. I hope that we will dig far and dig deep. There are clearly issues here of potential fraudulent preference, creditor preference and misappropriation of corporate assets, under the direction of the directors of the company. These things must be investigated properly, openly and transparently. HMRC must also look into the ownership structure and how it managed to convince itself that these businesses are owned by Lady Green, in tax-free Monte Carlo, but run by her husband from the taxable—but receiving little income—United Kingdom.

I have two questions for the Minister. First, why is the Pensions Regulator requiring seven months to investigate this most outrageous situation? Any sensible person would be able to get to the bottom of this in a couple of months. This regulator has already shown itself to be asleep at the wheel. Ministers must encourage it to give a high priority to this. My second question is: how much is this going to cost the taxpayer?

Baroness Neville-Rolfe: The swift answer to the first question is that the Pensions Regulator is independent. We have set up the regulator in an independent way. But of course I share the view that there are questions to be answered here. It is interesting and useful that two committees of the other house are looking into this matter. It is difficult to make an estimate of the cost to the taxpayer but, obviously, a lot of the funds for things such as redundancy can come out of the existing resource. We are hoping to find jobs for those who unfortunately have lost their jobs, and that the administrator will be able to sell on some of the sites, which are often prime high street sites and will be able to be adjusted for other uses.

Lord Lawson of Blaby (Con): My Lords, I endorse entirely the remarks of the noble Lord, Lord Myners. Leaving aside the very important general issues involved in this case, which were outlined well by my noble friend the Minister and the noble Lord, Lord Mendelsohn, there are particular aspects of the BHS affair and of its governance over a number of years which—if I may use a technical term—stink. In my day there would have been a Board of Trade inquiry. I realise that that procedure no longer exists—maybe for good reason—but will my noble friend assure the House that the investigation by the Insolvency Service and any other investigation that is required will range as widely and thoroughly as a Board of Trade inquiry would have done in the old days? That is what we need.

Baroness Neville-Rolfe: I thank my noble friend. I am not familiar with the earlier legislation, which has of course been replaced, but I can say that we have set up, in good time, this Insolvency Service inquiry. We are hoping to get the results from the administrators around the end of July. There are powers to disqualify directors and any evidence of criminal behaviour can be referred to the relevant investigatory authority for investigation and, potentially, prosecution. We have to do the right things that we can do under the existing powers, and we are pushing ahead with that. Then, obviously, we need to reflect on whether or not those powers are the right ones. I should have said earlier that the funds made available for redundancy will come out of the Government budget rather than the administrator's.

Baroness Drake (Lab): My Lords, I declare my interest as a trustee of the Santander and Telefonica pension schemes. I welcome the Government's commitment to assisting the workers and their families who have been impacted by the events of BHS and Austin Reed. For them, this is a real and human story. Job loss is always stressful, people are anxious and families are affected, so anything the Government can do to find these people new employment has to be a priority. As we get into the investigation of BHS, several thousand people will be anxiously wanting to know how and when they can get into employment and fund their mortgages, children, homes and everything else.

I am conscious that there are various bodies investigating the circumstances surrounding the collapse of BHS and the implications for its pension scheme. Therefore, I do not want to express an opinion on the role of any player but I will ask the Minister two specific questions. The rules of the DB pension regulatory system were written in the context of the view taken of risk at that time. Regulation can never remove all risk but the economic and commercial circumstances have changed. We live in a post-2008 world where assumptions about growth, interest rates and investment returns are more restrained, and companies frequently change hands or corporate restructurings occur. These can happen quite quickly, so the assessment of an employer covenant backing a given pension fund has to be frequently monitored and reviewed. It cannot be done and simply put on the shelf. I know from personal experience that things can move very quickly, and the

[BARONESS DRAKE]

circumstances that you find your scheme in can be materially quite different. Will the Government consider reviewing whether the regulator's powers remain fully fit for purpose and are still sufficient to allow it to address threats to the funding of DB pension schemes?

The BHS events also confirm what I already knew as a trustee: that trustees have little or no powers to intervene in a corporate event, even when they anticipate it will weaken the employer covenant significantly or prejudice the scheme's funding level. Are the Government considering a review of the sufficiency of trustees' powers where a corporate event significantly weakens the position of the pension scheme? At the moment there is very little they can do other than report to the regulator.

Baroness Neville-Rolfe: I am grateful for the noble Baroness's thoughtful comments. I, too, used to be a pensions trustee and my experience was that you lived in constant fright of doing the wrong thing and that you really did try very hard to be on top of management and to make sure your responsibilities were fulfilled—otherwise the riot act was, rightly, read to you by pension schemes' legal advisers. You also tried to look ahead, and any suggestion of M&A was always a good opportunity to try to make sure that the pension fund always got topped up. I know that the Pensions Regulator has spent a lot of time trying to train the remaining defined benefit pension schemes to do things well.

We need to see the results of the insolvency and the Pensions Regulator investigation to see where we get to. Obviously, these kinds of arrangements are kept under review. I take the point, also made by the noble Lord, Lord Mendelsohn, that circumstances are a bit different now. Trustees have strong powers, and if you were to look at the whole situation, you would need to look at that as well. These defined benefit schemes are of course, in a way, a good thing, because the employer provides pensions for the workers so that they do not have to have state pensions. These schemes, which have now largely disappeared, can be extremely favourable for those who have them, giving them security, making them loyal to the employer and so on. It is a difficult area and I am in danger of straying into the territory of the Pensions Minister.

Lord Stoneham of Droxford (LD): My Lords, I agree very much with the noble Lords, Lord Lawson and Lord Myners, when they say that the smell of this case is not good. We do not have the full facts yet, but the smell is very bad indeed. The Statement talks about seeking redress from the employer, but this presumably is a dead end, because the current employer is insolvent, and it is the group that originally owned BHS which should be vulnerable. Can the Minister assure us that the powers exist to seek redress in that direction?

The second point is about the regulator. What in the world enabled the regulator to allow these pensions liabilities to be transferred in this way, on the basis of the facts that we have seen? Who will be responsible for holding it to account and for finding out whether the legislation and the regulator's powers are adequate to stop this sort of thing happening again?

Baroness Neville-Rolfe: My understanding is that the pension powers are quite wide-ranging, and there is therefore the possibility of previous owners being called to account and having to provide some sort of compensation. I referred to the changes made in 2005, which provide various avenues. This is probably the first Statement we have had on this subject in this House and I will certainly provide a little more detail in writing on what the provisions are, if that would be helpful to the noble Lord.

Lord Hayward (Con): My noble friend referred to investigating the pension funds and processes by which the deficit arose, and a number of other noble Lords and noble Baronesses have referred to the fact that the investigatory powers do not seem to be adequate. When the development of pension fund deficits is investigated, I ask my noble friend to concentrate specifically—or that she ask the authorities to do so—on those companies and funds whose closure would mean that no assets were left in this country. It is all very well saying that we will pursue an individual or pursue sums of money but, as the noble Lord, Lord Myners, identified, in a number of cases there are no assets left in this country and, possibly, no individuals to pursue either.

Baroness Neville-Rolfe: I am not sure that I entirely understand all the subtleties of my noble friend's remarks. Obviously, Sir Philip Green is a director of a number of active companies in this country at present, mainly in the Arcadia Group. I think that I explained that there is recourse. If it were to come to this—and I am not sure that we should necessarily leap to conclusions—it is possible to take steps against people, including criminal investigations, if those are appropriate. Of course, different member states help each other in relation to people who are located in different domiciles.

West Midlands Combined Authority Order 2016

Motion to Approve

6.06 pm

Moved by **Baroness Williams of Trafford**

That the draft Order laid before the House on 28 April be approved.

Relevant document: 35th Report, Session 2015–16, from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, the draft order that we are considering this afternoon, if approved, will create a combined authority for the West Midlands. It will also dissolve the West Midlands Integrated Transport Authority and Passenger Transport Executive, and transfer their functions to the newly established combined authority. This order is made pursuant to the provisions of the Local Democracy, Economic Development and Construction Act 2009, as amended by the Cities and Local Government Devolution Act 2016.

The seven constituent councils of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton have led a truly local, bottom-up process to produce a proposal for the establishment of this combined authority. They believe that this governance model is the most appropriate way for the West Midlands to achieve stronger, more efficient and more effective delivery of economic development, regeneration and transport responsibilities. If this order receives parliamentary approval, the West Midlands Combined Authority will be the second combined authority established since the amendments to the 2009 Act by the 2016 Act, and the seventh established in the last five years.

It is important to note that, while establishing this combined authority in no sense commits the councils concerned, or indeed the Government, to creating a mayor for the area or devolving powers to the area, the councils and the Government intend to use this combined authority as the foundation for implementing the devolution deal that we have agreed with the West Midlands.

Lord Hunt of Kings Heath (Lab): My Lords, the Minister said that the councils in the West Midlands have signed up to the issue of having an elected mayor. I remind her that, when we had a referendum in the West Midlands, we decisively voted against having mayors. There is no sign-up at all to having a mayor—it is just that her department has forced the West Midlands authorities to accept it because they would not get the powers unless they were given a mayor.

Baroness Williams of Trafford: These matters are truly local matters, and if the local authorities approach government with their wishes, the Government will consider them. We went through that during the passage of the Cities and Local Government Devolution Act; no authority will be made to do anything that it does not wish to do.

Lord Hunt of Kings Heath: Is the Minister saying that the powers that will be given to the West Midlands Combined Authority as set out in this order, and more in the future, will be available if the local authorities intimated that they would not have a combined mayor?

Baroness Williams of Trafford: My Lords, the order we are dealing with today has no bearing on whether those local authorities will have a mayor. This order is about creating a combined authority. I want to make that absolutely clear to all noble Lords. This is about creating a combined authority; it is not about creating a mayoral combined authority.

In its report, the Secondary Legislation Scrutiny Committee questioned the relationship between the combined authority we are considering today and future developments, such as establishing a mayor for the area. I shall say a little more about this later, but now I would like to address in more detail the draft order before the House this afternoon, which is the order to create a combined authority.

This order provides for the combined authority to assume responsibility for economic development, regeneration and transport across the West Midlands.

As I have said, the West Midlands Integrated Transport Authority and the West Midlands Passenger Transport Executive will be dissolved and their transport functions transferred to the West Midlands Combined Authority. This order will enable the seven councils and their partners—including the three local enterprise partnerships in the area: Black Country LEP, Coventry and Warwickshire LEP and Greater Birmingham & Solihull LEP; and the five non-constituent members: Cannock Chase, Nuneaton and Bedworth, Redditch, Tamworth, and Telford and Wrekin—to work together more effectively and efficiently to promote economic growth, secure investment and create jobs.

In laying the draft of this order we have followed the statutory process specified in the 2009 Act as amended by the 2016 Act. A key feature of this is that there is a triple lock. Establishing a combined authority can happen only if the councils concerned consent, the Government agree and this House and the other place approve the necessary secondary legislation. That is absolutely the case here. The seven constituent councils have consented to this order, the Government have agreed the draft of the order, and we are seeking Parliament's approval before making the order which will establish the combined authority on 10 June.

We have considered the particular circumstances of this proposal for a combined authority, as the law requires. We have concluded that the statutory conditions are met. First, we are satisfied that the making of this order is likely to improve the exercise of statutory functions in the area to which it relates. We also consider it would be appropriate to establish this combined authority, having regard, as the 2009 Act requires, to the need to reflect the identities and interests of local communities and to secure effective and convenient local government. Finally, we have considered the public consultation carried out by the constituent councils of the West Midlands on the proposals to form this combined authority and consider that no further consultation is needed.

I recognise that in its report the Secondary Legislation Scrutiny Committee raised certain issues about consultation. I have to tell the House that we do not share the committee's view that there are inadequacies in the consultation. We have reached this conclusion having had regard to the government *Consultation Principles* published on 14 January this year, which the Secondary Legislation Scrutiny Committee referred to in its report, and which have recently been amended in light of comments made by the said committee. In short, the consultation's use of digital measures is wholly consistent with these principles and, as the principles make clear, consultation needs to be considered as, "part of a process of engagement".

The engagement in this case has been very substantial and included: writing to a representative sample of 465 stakeholders, comprising key private sector employers, public sector bodies and third sector organisations; the establishment of an online survey which attracted 305 respondents and for which the results were analysed and published; the attendance of the three local enterprise partnerships, and the authorities within them, at shadow combined authority meetings; seeking feedback from the public via a query box on the shadow combined

[BARONESS WILLIAMS OF TRAFFORD]

authority's website; a parliamentary event; and a number of formal and informal briefings with the business and third sector communities. In short, I can confirm to the House that we believe the conditions have unambiguously been met, and that we are therefore seeking the approval of this House today to the order that the other place has already approved.

6.15 pm

Lord Rooker (Lab): On the point that the Minister has just made about the other House approving this order, how long did it spend on it?

Baroness Williams of Trafford: Virtually no time at all, I understand. It shows the merit of your Lordships' House that so many noble Lords are here today and are actually interested in this subject. I thank noble Lords for their presence here today and I am sure that I will be well and truly grilled.

I shall say a few words on devolution deals. The Government committed in our 2015 manifesto to, "devolve powers and budgets to boost local growth in England", and we see combined authorities as a mechanism for doing so. On 17 November 2015 we agreed and concluded a devolution agreement with the seven councils that are constituent councils of this combined authority. This is a major step in our devolution agenda. The footprint created by the three local enterprise partnerships of the West Midlands makes up a major economy with an annual GVA of some £80 billion. The area is also England's manufacturing heart, home to important manufacturing businesses and leading centres of advanced engineering research.

The region's leaders are committed to delivering growth, prosperity and well-being for their residents, and they see the devolution agreement that they have concluded with the Government as central to achieving that. The agreement will devolve major powers and budgets, including £36.5 million a year of devolved funding, over the next 30 years; responsibility for a devolved transport budget; control of the 19-plus adult skills funding by 2018-19; strategic planning powers; and a devolved approach to business support. It will also enable the combined authority to create an investment fund of over £1 billion through the 30-year revenue stream and locally raised finance.

In return, the area has agreed appropriate governance for the new powers and budgets, centred on a combined authority and a directly elected mayor, providing the vital, sharp, single point of accountability that is essential if such wide-ranging powers and budgets are to be handed to the area. The combined authority that we are discussing today will be the foundation of that new governance, and we will be bringing forward to Parliament the necessary orders that, with the consent of the councils concerned, will establish the new governance arrangements if Parliament approves them. Today, however, we are considering simply the order that—if this House approves, as the other place already has—will establish a combined authority with transport and economic development functions, and which, as I have said, if those concerned wish this, can be the foundation of the governance needed for us to implement the devolution deal. I commend the order to the House.

Lord Kennedy of Southwark (Lab): My Lords, the order is to approve a combined authority for the West Midlands in the area comprising Birmingham, Coventry, Dudley, Sandwell, Walsall and Wolverhampton, as the Minister said. It is an area that I know well as I lived in Coventry for many years in the 1990s.

This is one of a number of such arrangements that are in various stages of being approved, the most advanced of which is the combined authority for Greater Manchester. I should say at the outset that I am generally in favour of the devolution of power, but there are potential problems with the proposed arrangement that we in this House need to explore before we approve the order. The National Audit Office has questioned the proposals, saying that they are "untested" and may not work. In fact it said that the arrangements were experimental, and that does not seem like a good way to proceed. Perhaps the Minister can respond directly to that point. The NAO went on to say that,

"the government's approach to English devolution still has an air of charting undiscovered territory".

It is fair to say that the West Midlands deal is complex. There are the constituent councils at the core of the deal. There are the non-constituent councils such as Nuneaton and Bedworth, Tamworth, Cannock Chase, Telford and Wrekin and, I believe, Redditch. There is the prospect of other non-constituent councils such as Stratford-on-Avon, and all the other authorities which are not involved at all, such as North Warwickshire, Bromsgrove, Rugby, Warwick, and others, which all surround the West Midlands conurbation, and the various LEPs, which the Minister referred to.

It is fair to say that it could be seen as a bit disjointed and confused and not at all like the deals we have seen in Greater Manchester. Could the noble Baroness, Lady Williams of Trafford, comment on that and on the position regarding devolution deals in the counties of Warwickshire, Staffordshire, Shropshire and Worcestershire? If they are going to seek any sort of devolution deal, how will that be effected when some of the authorities are part of this deal? Maybe the Minister will say that as a non-constituent member it is not a problem and they can become a constituent member of a deal in their respective county. Again, however, that leaves a confusing picture, which I am grateful to the National Audit Office for highlighting. Can the noble Baroness also tell us something further about the proposed accountability arrangements for this devolution deal?

The other body that looked at the West Midlands Combined Authority, and in particular the way it is being established, is the Secondary Legislation Scrutiny Committee of your Lordships' House in its 35th report, which questions the use of secondary legislation to bring about major policy change such as this. In particular it questions the consultation process, and on reading the report the committee has a point. A three-week online consultation does not seem adequate when you consider the power that this authority will have, and in particular the elected mayor. It is proposed that the election for that post will take place next May, although I accept that that is not part of this order. The committee suggested a minimum of six weeks for a consultation exercise of this nature, and I agree. In

addition, having the consultation available only online disadvantages those sections of the community that are not e-enabled. I have some sympathy for the notion that for a consultation of such magnitude leaflets should also have been delivered to every home in the constituent council area.

There is also the issue of support in the local community for these arrangements; certainly Coventry—an area I know very well—appeared to be in this limited consultation the coolest when it came to the whole proposal. Can the noble Baroness, Lady Williams of Trafford, comment on the relative inadequacies of the consultation in respect of this proposed combined authority? Like the National Audit Office, the Secondary Legislation Scrutiny Committee comments that the proposed inclusion of non-constituent councils will add to the complexity and highlights even further the changes to local government structures that are being taken forward through secondary legislation. The committee used the term “combination creep” to describe what it saw in the proposed West Midlands deal.

Although the order does not bring forward the election of a mayor for the combined authority—I agree heartily with the comments of my noble friend Lord Hunt of Kings Heath in that respect—when that order comes to this House, which I am sure will happen in the next few weeks, will the Minister confirm who will vote for this mayor? Will it just be the electors in the constituent council areas or are the non-constituent council areas involved as well? I assume not, but it would be useful to have the Government’s thinking on this as well.

Although I have raised a number of points, I am supportive of devolution generally, and where it can be made to work it is great. But I feel that this is a bit like trying to run before you can walk. We have not even had a mayoral election in Greater Manchester, the concept has not been allowed to bed down, and we are already seeking to create even more complex structures with no evidence of how this will work in the future. That is the thrust of the points raised by the National Audit Office and the Secondary Legislation Select Committee, and I very much concur with those sentiments. I will be grateful if the Minister can respond to my points at the end of the debate but if she cannot, a letter will be absolutely fine.

Baroness Burt of Solihull (LD): My Lords, I am grateful for the opportunity to welcome this order today, notwithstanding and quite accepting the comments made by the noble Lord who is the spokesperson for Labour.

The order brings together the West Midlands. It lets local government think beyond its normal boundaries, and strategically, for our region. We need to look at our competitiveness—digital, manufacturing and in other areas. We need a strategy for our skills, we need proper broadband, and transport links are very overcrowded and need to be much better. We are a manufacturing region: 38% of our GVA is in manufacturing—that includes the supply chain—and we have problems.

I am very concerned about the difference in the relative wealth of the various local authorities. Birmingham is, for want of a better expression, broke.

Fortunately, other local authorities are not in such a bad position. However, I want to ask about the LEAs. There is no formal mechanism for them to consult the business community. I am always thinking about local authorities but a key player in this will definitely be business, which will have a pivotal role.

The CBI has no regional representation in the West Midlands and the chambers are fragmented. We need a West Midlands chamber of commerce. We are criticised for our lack of productivity, which the West Midlands Combined Authority shadow board says is low. It is if you take GVA over the total population, at £20,137 per head, but if you take GVA over those in work it goes up to £45,000, so we do not want to be criticised purely because we have an unemployment issue in the area. We could be a lot more productive if we had better broadband, better transport and a better skills base.

I have a few questions for the Minister. I am glad that I am not the only one who is confused about what the voting rights will be for non-constituency members and what role those members will play. On scrutiny, what part will minor parties play? Will they have a voice as well? There are a lot of smaller parties in the West Midlands. Today I have learned that the Secretary of State, the right honourable Sajid Javid, is the official sponsor of the Midlands engine. Perhaps the Minister will comment on whether she has seen any evidence of the Midlands engine in the Midlands.

Finally, Sajid Javid is apparently responsible for bringing together a politically neutral coalition of West Midlands MPs. How is he getting on?

Lord Hunt of Kings Heath: My Lords, I thank the Minister for her careful introduction to this order and I very much welcome the work that has been done by the local authorities concerned to get to this stage.

It has not been at all easy. The noble Baroness will know that there is a history of difficult relationships between local authorities in the West Midlands. First, we should acknowledge the work that has been done by the major constituent local authorities to come together and reach an agreement. That is a very positive start. Secondly, I agree with the noble Baroness and my noble friend Lord Kennedy about the huge potential of the West Midlands. It has had its problems but there is no doubt that there are some very promising signs with manufacturing development and the role played by universities.

We are also starting to see a return of media to the West Midlands, which, grievously, we had lost over a 20-year period. I do not know what discussions the Minister has with her colleagues in the DCMS but any nudge that she can give towards ensuring that Channel 4 does indeed move to Birmingham will be very much appreciated. I hope that she will ignore a typical metro article in the *Independent* today arguing that it would be quite impossible for Channel 4 to operate outside the centre of London. I am sure that the noble Baroness agrees with me on that.

I want to raise one or two issues. First, my noble friend mentioned the National Audit Office report, which made a very important critique of some of the issues surrounding the development of these combined

[LORD HUNT OF KINGS HEATH]

authorities. I assume that the Government will respond in due course but I would be very interested in the Minister's views on what the NAO said. Without quoting extensively from the report, the NAO thinks that there is quite a lot of confusion about what the core purpose is of these devolution deals, who is going to be held responsible and how that accountability is to be discharged.

6.30 pm

The Minister will recall the debates we had about health and social care in Greater Manchester. At the time, it appeared that the Department of Health was unsighted on the agreement, and certainly on the implications of the so-called devolution deal. It has become clear since then that it is not devolution, it is delegation. The comments of NHS England about the control that it is keeping in relation to health and social care seem to me to be very much a step back from the premise that was given to your Lordships when we debated the original Bill that allowed us to develop these combined authorities. It is right for the NAO to ask whether some of these agreements are indeed devolution or delegation. There is clearly a very important difference between them. I want to come back to health and social care in a moment, but I am not convinced that NHS England is really part of this in a wholehearted way. I am interested in the Minister's view on that.

The Minister will also have seen the report of your Lordships' Constitution Committee, which comments on the issues around combined authorities. Again, the report is asking for greater clarity about where we are going on all these deals. We can see what is happening in Scotland, Wales and Northern Ireland, and we are seeing different agreements in different parts of the country. I understand the point about letting a thousand flowers bloom, and obviously the logic of what is happening here is to respond to the proposals that are being put forward locally—I get that. But at some point there will have to be some kind of coherent framework so that it will be possible for parliamentarians and the public to understand who is ultimately accountable in this new picture. This is very important.

I want to pick up on the issue of consultation. I know that the Minister and her department are quite satisfied with the consultation. However, I have to say that, after a very difficult, tortuous process, on which I congratulate the local authorities, to have an online consultation of three weeks is not sufficient. There should have been greater opportunity for members of the public to have their say. I hope that this is not going to be taken as a precedent for the future. The Minister talked about a review of the consultation procedures as a result of the scrutiny committee's report, and I wonder whether she could say a little more about that.

Then we come to the issue of the mayor. I understand what the Minister is saying: that this order is about the combined authority and not about the mayor—I was almost going to say "super-mayor", but, given the proposed salary of £45,000, I do not think that that is quite the right description. The scrutiny committee itself commented on the ambiguity in the consultative

documents about this order and about what is going to happen with the mayorship. I think a draft order is now in play which will come to your Lordships' House to set up the mayor structure. I have to say that I am deeply sceptical. I have been waiting for some rational explanation as to why it is that this Government—and my own Government—seem to have fixated on this. Why is it considered important to have these so-called super-mayors? Personally, I do not get it. I do not understand why the Government think that this is the answer. In relation to the mayors that we have had so far, I do not think the record shows that that is the right way to go.

If we really believed in local government, we would let local authorities decide their own governance framework. But I am afraid that Governments of both colours have messed around with local government. Take, for instance, the insistence at one point that local authorities have either a cabinet or a mayor and not a committee—they were not even allowed to decide their own committee structure. This does not strike me as being the mark of a Government—of any colour—with a true belief in local government. The plea I make to the Minister is: if she really believes in real devolution, she should let the local authorities decide for themselves what their governance structure should be.

I do not think that many people in the West Midlands want a mayor; we simply do not want a mayor. It is clear that local authorities have been told that they have to have a mayor—I wish that the Minister's department would be honest about this. Local authorities have not signed up to this voluntarily; they have been forced to do so. We had a referendum in Birmingham on whether we should have a mayor for the city, and 57.8% voted no. That was clear cut, but a back-room deal now dictates that we are going to have a mayor and we have no say. As far as I can see, there is no proposal that the people of the West Midlands should have a vote. We are deciding on our membership of the EU with a referendum vote, but, apparently, we in the West Midlands cannot decide whether to have an elected mayor. That is a great pity.

The Minister will know that the local authorities are determined to circumvent the power of the mayor, as is quite clear from the documents and from what is being said. I do not know whether the £40,000 salary is an urban myth or reality. The very fact that the information has come out would suggest that the combined authorities are determined that the mayor should have no power. If that is the case, is it not better to accept that and let them get on with governing themselves in the way they want to, rather than forcing them to have what I am afraid is likely to be a second-rate or third-rate person elected as mayor because the job simply will not be worth doing?

Finally, on health and social care, the Minister will know that the chief executive of Birmingham City Council is leading the work on the sustainability and transformation plan for Birmingham—and is, I think, making very good progress. I hope that there will be a proposal in the months ahead for health and social care to be part of the combined authority functions. Would her department be sympathetic to a proposal coming forward? I am sure that, like Greater Manchester,

the West Midlands would benefit hugely from local authority involvement in and overall supervision of health and social care. I hope that we can make some progress on that in the next few months.

Lord Rooker: My Lords, I was very pleased by the Minister's response to my question about the other place. I thought that I had seen it on the news that the Delegated Powers Committee had met for a total of 15 minutes, but I do not know what business it had. I thought, "Well, they haven't spent long on the West Midlands, that's for sure". For those who seek your Lordships' House's abolition, this is another good example of us performing our function of scrutinising and raising issues. The one thing I am sad about is that all the speeches appear to have been from this side of the House, when there is a lot of West Midlands experience among noble Lords on the other side.

I agree with the comments of my noble friend Lord Hunt and shall not repeat them, but some central points have to be explored. No one can deny that the seven metropolitan councils are coterminous—that was how it was all designed back in the 1980s. There is a plan now for combination creep. You cannot have proper accountability arrangements where there is no clear coterminosity—the National Audit Office has said that, and I shall give more examples. We have the seven authorities which will have two members on the council and the five non-constituent councils—Cannock Chase, Nuneaton and Bedworth, Redditch, Tamworth, and Telford and Wrekin. Added to which are planned: Shropshire Council—which is in the old language a unitary county council; I shall come to that in a moment—and Stratford-on-Avon. I have also read as I have searched through the documents on this that Warwickshire County Council might want to join—it costs non-constituent councils only £25,000 to join, by the way. If so, this would push Rugby, Warwick and North Warwick District Councils into joining them. This would take the combined authority numbers up to 29 if one includes the mayor. It would get quite large—I am not criticising that—but this is not a coterminous combined authority.

The devolution deal with the Government set out in November—of which I have a copy here—clearly requires an elected mayor. It is a condition of the devolution deal with the Treasury. There is no argument: if you do the deal to get the powers you must have an elected mayor. The West Midlands Combined Authority (Election of Mayor) Order 2016 has already been published and I have a copy here. Obviously we are not discussing that order today but we could have taken both orders together because they are all part of the same issue.

Paragraph 7.2 of the Explanatory Memorandum to this order refers to the Government doing "bespoke devolution deals" with local authorities. That means they are making it up as they go along. There is no plan for Parliament to scrutinise and no plan for the National Audit Office to test their programmes for economy, efficiency and effectiveness. There is no plan and so you cannot test it, report back on it or consult on it. There may have been some consultation but the order is growing like Topsy as it progresses and other

authorities jump on the bandwagon. There has been no proper consultation within the normal meaning of the process.

The Wikipedia entry for the West Midlands Combined Authority says that it is,

"commonly referred to as Greater Birmingham Combined Authority, or simply Greater Birmingham".

This is very unfair on the better-run authorities of Sandwell, Dudley and Wolverhampton. I make that quite clear. On the other hand, it is more accurate to refer to Shropshire Council as the Greater Shrewsbury and Oswestry Council given the blatant unfair treatment of south Shropshire, thought to be because south Shropshire is wholly represented by Lib Dems and the Tory cabinet are all in the north of the county.

Leaving aside the names, there are some serious governance issues with which the Government are playing fast and loose. Unlike my noble friend, I am not opposed to elected executive mayors who are genuinely accountable. That was my position when I was a Member of the other place and it remains my position now. However, once the mayoral order, which we are not debating—its shadow is sitting here—is agreed, the mayor will not be executive and will be mayor of only part of the combined authority; that is, the seven constituent founder councils, which will have two votes each as opposed to the others having one vote each.

It was reported in the *Birmingham Post* on 26 May that this system is known as the "smothered mayor model". It makes the mayor just another member of the cabinet with the seven leaders. You smother the mayor—end of the issue. No wonder the respected West Midlands police and crime commissioner, David Jamieson, has expressed misgivings about the nature of the role. He is looking for a colossus for the role and there is not one in the Midlands at the present time. We have not got the Dennis Howells or the Adrian Cadburys any more. We need them, it is true, but we do not have them.

There is no doubt that, within the proposed combined authority area, the place with the land for major industrial investment is Shropshire, where I live in Ludlow. I was informed at a recent public meeting by the council leader that no new factories were welcome—yet this is the area of the country that gave birth to the Industrial Revolution at Coalbrookdale.

However, when the Minister was speaking, I was not certain whether we would get an update on all those who are seeking to join the combined authority. I have searched on the web because that is all you can do these days. The minutes of the Shropshire Council cabinet for 6 April on membership of the West Midlands Combined Authority is a full document from the chief executive about joining and signing up. The point is made about the fee and everything else. The document also states at paragraph 3.1.1 that it wants to support business,

"including expansion of high level manufacturing".

I firmly believe that there should be more industry investment in the West Midlands to capitalise on our reputation for making things and being the centre of the Industrial Revolution. We have too many industrial museums, with the Black Country Living Museum and Ironbridge, but not enough factories. However, we

[LORD ROOKER]

must have proper governance, and that is my concern. If there is no proper governance, companies from outside the West Midlands that are thinking of investing cannot conduct due diligence on investment locations. It cannot be done because there is no plan. I do not believe that the approach that is being planned for—I shall put some meat on this—whereby chums and mates pick up the phone to carve up the opportunities, is the proper way to do things. The informal system that is envisaged is not accountable and is not the right way to conduct public administration.

6.45 pm

My final point is this. The cabinet paper for the Shropshire decision to join the West Midlands authority contains, in paragraph 3.1.4, a very telling sentence. I will not read the whole paragraph. This was said by the chief executive to persuade Shropshire to join the authority, which it did:

“Deal making is seen by Tom Walker, the head of the CLG/BIS Cities and Local Growth Team in Whitehall, as being about a place based conversation, and therefore there will be more emphasis on what may be described as informal governance, where political leadership relies less on bureaucracy and more on networks and relationships”.

That is an incredibly dangerous sentence. It just about describes the Sir Philip Green approach to business governance that we have seen at British Home Stores. The system is informal. You ring up your chums and mates and you do not bother with the bureaucracy. This is really saying, “There won’t be too many civil servants watching what we do. We can get on and do it our own way”. That is not good enough. We are talking about large amounts of public money. We are talking about trying to encourage international, well-governed and well-managed corporations to invest in the West Midlands. They will not do it on this basis. It is slipshod beyond belief and I am really worried about this approach, which I have been looking at over the past couple of weeks, since my noble friend pointed out today’s debate. It is something I am concerned about. I cannot believe that the advisers to those large corporations thinking of investing will be immune to this, so something has to be done better to stitch it up.

I fully agree that the coterminosity or the non-coterminosity is not a deal killer, so there must be a way it can work; they are all in the West Midlands. For the mayor to be the mayor of a bit of it cannot work. The voting structure is mythical. By the way, I looked at Coventry’s papers, which more or less say the same thing. As my noble friend said, those cabinet papers show that it was clearly not happy about the process anyway.

What is being planned is dangerous and I do not want to stand here in two or three years’ time saying, “We told you so”. There must be something that can be done in central government to make this a tighter and better governed arrangement, which is really my plea to the Minister.

Lord Beecham (Lab): My Lords, I record my local government interests and very much endorse some of the remarks made by my noble friends. Given the extension of the area now to parts not actually connected

to the major authorities in what was the county of the West Midlands metropolitan area, we are apparently seeing a revival of what was the Anglo-Saxon kingdom of Mercia, part of the heptarchy about which I recall reading in my copy of the Anglo-Saxon Chronicle some considerable time ago. There is an interesting expression of view about this. The NAO report identifies this, with the local geography, and states in terms:

“The devolution deals agreed so far involve increasingly complex and administrative and governance configurations, and there are risks around alignment with the administrative geographical areas for other linked policies”.

That is certainly reflected in the view of the Secondary Legislation Scrutiny Committee, which states:

“We would also comment that the apparent ‘combination creep’ of the West Midlands arrangements to involve non-constituent councils must add to the complexity, and highlights even further the far-reaching impact of the changes to local government structures which are being taken forward through secondary legislation”.

An example of that is contained very graphically in the order which we are dealing with tonight—the precursor to the devolution deal, which is presumably the object of the Government and perhaps those who are signing up to it. The order says that:

“A decision on a question relating to any of the matters specified in sub-paragraph (6) requires both ... a unanimous vote in favour by all members appointed by the constituent councils, or substitute members ... present and voting on that question ... and ... where members appointed by the non-constituent councils or appointed from the Local Enterprise Partnerships have been given voting rights by resolution ... a simple majority of all members of the combined authority who are entitled to vote on the question to be decided (including substitute members, acting in place of those members) present and voting on that question at a meeting of the Combined Authority”.

That is a wonderfully crystal-clear administrative process which everybody no doubt is expected to understand and implement. It illustrates the complexity of some of these proposals.

I want to refer to the financial issue because we have heard little about that thus far. The Government have already made clear their intention to make additional investment funding available. That sounds rather good. We are told that in the north-east there will be, over 30 years, some £30 million a year added—that is £900 million to the North East Combined Authority. Gateshead at the moment has decided not to participate in a joint authority so there will potentially be a hole in the middle of our new doughnut. That aside, even if it is not part of this deal, it is only £30 million a year of capital investment between six councils. That is £5 million a year per council. It is peanuts. It is nothing in comparison to the vast amount of money that has been lost to local government in the region.

The same goes elsewhere. The NAO report has a table of the amount of additional investment involved in the devolution deals. It expresses that both in gross and per capita terms. It is quite interesting to look at how much the per capita annual amounts run to. In the West Midlands it will be £13 per head. That is towards the bottom end of the range. The region that will get the most is the West of England with £27 per head. My own region will get £15 a head. The smallest, rather surprisingly one might have thought given the fanfare of publicity about it, will be Greater Manchester, which will get only £11 a head.

The total, which is the more interesting point in many ways, for the 15.5 million people who will be included in the areas being considered will be £246 million a year. That is not a great deal of money given the size of the population but it pales into insignificance from the existing funding which comes from the annual growth fund, which is £461 million. The total capital spending of constituent local authorities is £4.4 billion. This is a tiny fraction added to what is currently being spent. The notion that somehow there will be a great revolution in terms of investment in these areas is complete nonsense. It is a very modest addition to what is currently being spent.

There is another question, of course: how are these combined authorities and their services to be financed—in revenue, not capital, terms—since local government will essentially now have to depend on business rates? How will that system work? What elements of redistribution will ensure that those areas with a smaller business rate base will not be disadvantaged in what they will be able to gather from their local businesses compared with better-off authorities? What redistribution methods are the Government examining and when will we have an indication of how they will play out in practice?

I am certainly sympathetic to the notion of devolution, but I am concerned, to use a phrase that I have perhaps overworked in this place, that we may see an example of the Government passing the buck but not the bucks. On the face of it, from the figures in the NAO report, that is certainly likely. We have to recognise that authorities are being put in an invidious position. As my noble friends have pointed out, it is all very well to say that they do not have to have a mayor, but if they do not have a mayor they do not get the deals. That is the reality. Pretty crude blackmail is being applied. It is unfortunate, because we ought to be able to move to a more devolved system of government, entrusting locally elected, responsible people with decision-making in their area, in partnership with the Government.

I make another plea, as I have often made in this House and elsewhere, that the Government think again about their relationships with these areas and revive what a Conservative Government introduced more than 40 years ago—one of its leading Secretaries of State is in his place—when we had government regional offices, where all departments in government eventually came to be represented in an area and a constructive, constant dialogue was made between the local authorities and the various branches of government. If we are to have any kind of devolved system, we need to look again at reinstating that provision.

I hope we can make progress. I entirely endorse what my noble friends Lord Hunt and Lord Kennedy said about the undesirability of imposing a mayoral system on these areas—particularly given what was said about a police and crime commissioner elsewhere—when the mayoral role will now absorb that of the police and crime commissioner, and presumably, if the Home Secretary has her way, of the fire service as well. An enormous amount of power will be concentrated in that single pair of hands. That is a matter of concern as well. I hope that we will see some progress here.

I raised my final concern in connection with another order some time ago affecting the Sheffield region, where district councils from the counties of Nottinghamshire and Derbyshire were keen to be involved because they are in Sheffield's economic area. Therefore, for some purposes, as with the district councils in this order, they can have a connection, in this case with what we can crudely call the West Midlands, for economic and transport purposes, but will still have their connection with their own county councils—it might be a unitary council in the case of Shropshire—for other services. Yet, health and social care may well come on the agenda. They could find themselves in a position where they are between two counties. My suspicion—I may be too suspicious about this—is that this will create a backdoor reorganisation of local government and we will have new kinds of unitary authorities not corresponding to the present pattern. That is a concern to many Conservatives in local government, as well as some of the rest of us. It would be interesting if the Minister were able to comment on how the Government will approach such suggestions—it is fairly clear from the Sheffield experience that they are likely to endorse them—that would lead ultimately to a reconfiguration of local government on a scale that we have not seen in the last 25 years or so. That is creeping up on us and has not been adequately explored or debated.

Lord Kennedy of Southwark: My noble friend just reminded me that I should have declared my own local government interests. I do so now before the end of the debate: I am a local councillor in the London Borough of Lewisham.

7 pm

Baroness Williams of Trafford: My Lords, I congratulate your Lordships' House on spending a substantial amount of time discussing this order. I certainly have quite a few questions to respond to but I start with the comments of the noble Lord, Lord Hunt, who commended all the constituent councils in the West Midlands for the way they have worked together. I acknowledge that, certainly in Greater Manchester, relationships have been built up over some 30 years and it has been an easier process there. As the noble Lords, Lord Hunt and Lord Rooker, said, the councils in the West Midlands are of a quite different type and variety. I sincerely congratulate them on the work they have done in getting to this place.

On the point of the noble Lord, Lord Hunt, about Channel 4, clearly, that is not my department but the BBC managed to uproot itself and place its home in Salford. People thought that that would never happen but it did. MediaCity provides an excellent working environment for both the BBC and ITV. I will not give my view on Channel 4, but it is possible and I hope sense will prevail.

We have strayed into mayoral combined authorities and devolution deals, and we almost cannot help that because they are so interrelated. However, this order is focused purely on the setting up of a combined authority for the West Midlands. I will start with what the noble Lord, Lord Kennedy, said about the NAO commentary

[BARONESS WILLIAMS OF TRAFFORD]

on the devolution deal. He asked several questions about the devolution deal, including on the NAO report. As I understand it, the NAO simply commented that the devolution deal in the West Midlands sets up more complex and untested arrangements than those for Greater Manchester. At face value, they appear more complex. Of course, as I said to the noble Lord, Lord Hunt, the authorities of Greater Manchester have worked together for many years, but we are confident that the agreed deal can be effective. It would be great if it could be. We are not afraid of innovation in the governance arrangements that will be put in place. The mayor in particular will provide the necessary accountability. Accountability is very important here.

The noble Lord, Lord Hunt, talked about letting local authorities decide for themselves. However, the noble Lord, Lord Rooker, firmly made the point that we should not have informality; there must be some accountability and, I think he said, tightening. Of course, none of this is about the order today but I think we have agreed that. The order implements a proposal for a combined authority made by the councils in October 2015, one month before the deal in front of us was agreed.

The noble Lord, Lord Kennedy, also talked about whether non-constituent members, as well as constituent members, could be part of future deals. Deals are about areas. The area of a combined authority is that of the constituent councils but in the West Midlands the intention is for the combined authority to support the growth of the area across the three local enterprise areas, which includes the area of the non-constituent councils. But the electorate of the non-constituent council areas do not vote for the mayor, nor does the mayor exercise functions in that area.

The noble Lord also commented on the consultation, as did a number of other noble Lords. We hold the view that there are no inadequacies in the consultation, having had regard to the government consultation principles, which were, as I said, published on 14 January this year, and to which the Secondary Legislation Scrutiny Committee referred in its report and which have recently been amended in the light of comments made by the said committee. In short, the consultation's use of digital measures are wholly consistent with these principles, and as the principles make clear, consultation needs to be considered as, "part of a process of engagement".

The engagement in this case has been very substantial and included: writing to a representative sample of 465 stakeholders, comprising key private sector employers, public sector bodies and third sector organisations; the establishment of an online survey which attracted 305 respondents, the results of which were analysed and published; the attendance of the local enterprise partnerships, and the authorities within them, at combined authority meetings; seeking feedback from the public via a "query box", as I have mentioned; a parliamentary event; and a number of formal and informal briefings with the business and third sector communities. On account of these points, we think that there has been extensive engagement and local input from communities, stakeholders and local people.

A couple of noble Lords commented on combination creep in relation to the West Midlands combined authority. However, the simple fact is that the geography of this combined authority is absolutely clear. The area of the combined authority is the area of the seven metropolitan areas of the West Midlands, which are Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton. The draft order before noble Lords provides that certain named councils outside the area can sit at the table of the combined authority. It is absolutely right and sensible that these neighbouring areas can influence decisions taken in the combined authority area. That is a sensible and progressive way to ensure appropriate governance and decision-making in this area.

The noble Baroness, Lady Burt, made some excellent points about strategic thought around skills, transport and manufacturing. She was not present for the debates on the Cities and Local Government Devolution Bill, but precisely that recurring theme arose throughout the passage of that Bill. That is precisely how local authorities should be thinking, as some are doing very well. She asked about the voting rights for non-constituent members. Any non-constituent council or LEP member of the combined authority shall be non-voting but may be given voting rights by resolution of the constituent members of the combined authority, possibly where there is an issue very relevant to that non-constituent authority. The noble Baroness also asked what part minor parties would play. I do not know whether she has heard this from her colleagues, but that issue was again much discussed during the passage of the Cities and Local Government Devolution Bill, particularly by members of her party. Combined authorities must have one or more overview and scrutiny committees, the majority of members of such a committee must be members of the constituent councils, and the committee must reflect the political balance of the constituent councils of the combined authority.

The noble Baroness also asked who votes for the mayor. Obviously, the political parties will choose their own candidates but the people who vote for the mayor will be the electorate within the constituent councils of the combined authority, so that will be Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton. Obviously, the electorate of the non-constituent councils will not have a vote for the mayor.

The noble Lord, Lord Hunt, talked about an issue which we debated long and hard during the progress of the Cities and Local Government Devolution Bill: health and social care and whether DCLG would be sympathetic to a proposal coming forward. We welcome proposals from local areas. The Government are absolutely clear that devolution is an ongoing process and not limited to one deal: that is the beauty of devolution. It is for local areas to come forward with their proposals for further devolution deals, including health proposals, as Greater Manchester has already done.

The noble Lord, Lord Rooker, talked about the mayoral order already being published. The constituent councils of the West Midlands are in the process of considering a draft mayoral order which will establish the post of mayor from 2017 at full council meetings. Following the establishment of the basic combined

authority, subject to approval by this House, the constituent councils and the combined authority will be asked to consent to the making of a mayoral order which will give effect to the devolution deal agreed between the Government and the West Midlands. The noble Lord also asked about the mayor being mayor for only part of the combined authority area. The area of the combined authority is the area of the constituent councils, that is, the area of the seven metropolitan—

Lord Rooker: My Lords, I will help the Minister by giving her time to decipher what she has got. When I said “part”, I was naturally referring to the old West Midlands metropolitan council area: in other words, the seven constituent members who will have the 14 votes in the combined authority. I fully accept that that is where the mayor will be, but the combined authority—if it gets going—will be discussed with all the others, including Stratford and Shropshire, as the West Midlands combined authority. Confusion may arise when people talk about the mayor of the West Midlands, but it only refers to the metropolitan district council areas.

Baroness Williams of Trafford: It does indeed; it is only in relation to those areas. Regarding non-constituent councils, the point is simply that certain councils outside the area of the combined authority can be at the table of the combined authority, reflecting the fact that what the combined authority and mayor might do could affect the surrounding areas. However, the non-constituent councils do not have the right to vote on decisions except, as I explained to the noble Baroness, Lady Burt, in certain circumstances where the combined authority agrees.

Finally, the noble Lord, Lord Beecham, made a point about business rates. We are working with the LGA and local councils for a planned summer consultation—which I am sure the noble Lord will be involved in—before introducing the local growth and jobs Bill later in the Session to make the necessary provisions. However, I look forward to early engagement on that, particularly with the noble Lords, Lord Beecham and Lord Kennedy, whom I am sure will be involved.

I think I have addressed most of the points, and I hope noble Lords will be content for me to write to them on those I have not. I beg to move.

Motion agreed.

Representation of the People (England and Wales) (Amendment) Regulations 2016

Motion to Approve

7.14 pm

Moved by Baroness Chisholm of Owlpen

That the draft Regulations laid before the House on 28 April be approved.

Baroness Chisholm of Owlpen (Con): My Lords, these regulations will take steps towards the Government’s vision for the future of electoral registration—one where electoral registers are as complete and accurate

as they can be and the electoral registration system is as efficient as possible, delivering value for money for electors and electoral administrators.

First, this will be achieved by amending the individual electoral registration—IER—application forms to allow applicants to identify that they are the only person resident at the address aged 16 or over and to provide discretion to electoral registration officers—EROs—as to when canvass forms must be sent where such information has been given. Secondly, the regulations will modernise the system of registration by enabling EROs to send invitations to register—ITRs—and reminders by electronic means if they wish to do so. These provisions aim to reduce the potential for confusion for members of the public by reducing unnecessary ERO correspondence and contact, and to reduce the overall cost of registration and the administrative burden on EROs. It is estimated that the regulations will reduce the overall cost of IER by around £1.1 million for the single-occupancy provision and around £7 million for email ITRs per year.

The instrument will also allow an attestor to an applicant’s identity to be registered in any local authority area in England and Wales. At present, both the attestor and applicant must be registered in the same local authority. This provision will assist those applicants whose identity cannot be verified using the Department for Work and Pensions matching process, local data matching or documentary evidence, who have to provide an attestation to verify their identity. This change will result in more eligible applicants becoming registered to vote.

In addition, the regulations make a number of minor amendments. Regulation 9 corrects an error in an existing regulation concerning the requirement to provide fresh signatures following rejection of a postal voting statement. Regulation 10 makes a technical amendment to a regulation concerning the rejected postal vote provisions at Greater London Authority elections. Regulation 11 corrects an oversight in current regulations by adding the Local Government Boundary Commission for England to the list of organisations entitled to receive a free copy of the full electoral register. The regulations make a consequential amendment; changing the name of the Local Government Boundary Commission for Wales, which is entitled to a copy of the register from Welsh EROs, to the Local Democracy and Boundary Commission for Wales.

Finally, I draw noble Lords’ attention to a minor error in the draft regulations as laid: the reference in Regulation 8(c) to paragraph (3)(aa)(ii) should be to paragraph (3)(za)(ii). We have been in consultation with counsel to the Joint Committee on Statutory Instruments in relation to this and they have agreed that due to the minor nature of this error they are content for it to be corrected when the instrument is made.

The Electoral Commission has been consulted on this instrument. The Cabinet Office agreed with the EC that it was important that the new IER forms would be available shortly after the regulations were made and that it would work with the commission on this. The EC raised a concern on the single-occupancy provision relating to the proposed removal of the

[BARONESS CHISHOLM OF OWLPEN]

requirement to send a canvass form. In a case where an ERO had determined a registration application just following publication of the revised register—say, on 1 December 2016—where an applicant indicates that they are the only person resident at the address, the ERO would then have no requirement to send a canvass form to that property at the next canvass, meaning that the property may not receive a canvass form until July 2018. To address this risk, the EC suggested that the ERO should not have to send an annual canvass form to persons with single-occupant status in cases where other records indicate that the property continues to be occupied by a single person.

The Cabinet Office responded that EROs have the duty to maintain the completeness and accuracy of the register and have discretion to conduct the canvass or check other records, where circumstances suggest it, and the EC may wish to issue guidance to EROs in this matter to support EROs in these deliberations. The ERO has the discretion and flexibility to disregard the single occupancy status and canvass a property at any time it feels it is appropriate. The ERO will be able to best decide what is appropriate according to the demographic and type of property.

Details were given to the EC of the timing of the ERO's ability to elect to suppress one canvass for single-occupancy households. This meant that generally the maximum period for a property not receiving a canvass form would be 18 months, and that EROs also had discretion to contact properties outside the canvass period; for example, many EROs contact properties before an election.

The Information Commissioner's Office—the ICO—was consulted and, in connection with the single occupancy question, requested clarity on the nature of information to be provided by the applicant about other individuals at that address. The Cabinet Office has assured the ICO that the IER application form will not require the applicant to provide any personal details about any other person resident in the property. The ICO also noted that the single occupancy information is not mandatory and would expect this statement to be clear and prominent in order that applicants are fully aware of that. The ICO's advice was passed to the EC to address during the form design process.

The Cabinet Office expert panel of electoral administrators was involved in the development of the cost optimisation measures and was supportive. One panel member suggested that it be mandatory for at least one hard copy ITR to be sent to mitigate against emails going directly into people's spam folders. We have responded that EROs will still be able to send hard copies if they wish to do so.

The Scottish Government were concerned that the removal of the requirement to send the next canvass form where the single occupancy application was determined outside the canvass period did not set a time limit, other than the reference to the next annual canvass, within which the application to register must have been made. The Cabinet Office responded in a similar vein, as it had to the concerns raised by the EC.

The Scottish Government also considered that the attestation provision should be extended to allow an ERO in England and Wales to also seek these assurances

from EROs in Scotland and Northern Ireland. The Cabinet Office responded that rather than place a burden on Scottish and Northern Ireland EROs that these EROs could not currently benefit from, joint policy on cross-border attestations should be developed with the relevant Governments in due course.

The Scottish Assessors Association requested confirmation that the original policy intention was not to differentiate between England and Wales and Scotland in terms of location of attestors, and that the Cabinet Office should hold back on the equivalent Scottish regulations due to the impending further powers in the then Scotland Bill. The Cabinet Office confirmed that that was the case.

In conclusion—your Lordships must have thought I was never going to finish—I hope noble Lords will agree that the statutory instrument helps move electors and electoral administrators towards the Government's future vision for electoral registration in England and Wales, and I commend the regulations to the House.

Lord Kennedy of Southwark (Lab): I say at the outset that I am generally happy with these regulations. As such, my remarks will be fairly limited, but I have two specific points to make and would be grateful if the noble Baroness, Lady Chisholm, could respond to them when she replies to this very short debate.

Among other things, the regulations correct an error in existing regulations concerning the requirement to provide fresh signatures following the rejection of a postal vote. However, the Government should also look at the design of the forms, because the box requiring you to give your date of birth is so close to the signature that a very common mistake, which leads to postal votes being rejected, is that people put the date they complete the form in the box rather than their date of birth. Lots are disqualified for that very reason.

The regulations also allow for the transfer of the full electoral register to the Local Government Boundary Commission for England and make a consequential amendment following the passing of the Local Government (Democracy) (Wales) Act 2013. As we have heard, EROs have a duty to maintain the completeness and accuracy of the register and have discretion to conduct the canvass or other checks on records.

I welcome the proposal to send an invitation to register and reminders by electronic means as more and more of how we engage with the state in its various forms is by electronic means, although the point about EROs still being able to use paper forms is well made and I am pleased that they will have the discretion to use either or both media when seeking to get the most accurate and complete register possible.

On page 5 of the Explanatory Notes, the Scottish Government made the point—and I very much agree with them—that EROs in England and Wales should be able to seek assurances from EROs in Scotland and Northern Ireland and, one hopes, vice versa. That is entirely right. The comment from the Cabinet Office, however, was that cross-border attestations were a matter to develop joint policy on with the relevant Governments in due course. That is a bit odd. Could

the Minister give us some idea how long “due course” is, as it is one of those phrases like “How long’s a piece of string”? As for cross-border attestations, I thought we lived in a United Kingdom. We need a review of the language used by the Cabinet Office and should never again have such phrases in documents. I am very disappointed that the noble Lord, Lord Forsyth, is not here, as I am sure he would have something to say about that—perhaps I should have brought it to his attention.

I conclude by saying that I support the regulations, which do good things. If the Minister could respond to that one point, it would be great.

Baroness Chisholm of Owlpen: I thank the noble Lord for his response. I am grateful to him for scrutinising this instrument, which will make amendments to the electoral registration process to reduce potential confusion for members of the public and enable the cost of registration and the administrative burden on electoral registration officers to be reduced.

In response to the noble Lord’s queries, the postal vote forms have recently been redesigned by the Electoral Commission after user testing. The position of the date of birth information is further up the form as a result. User testing showed that individuals had more understanding of each question asked of them; it seemed clearer.

Lord Kennedy of Southwark: When I cast my vote recently and put my postal vote in the envelope, it actually said on the envelope, “Have you put your date of birth, not today’s date?”. Clearly, everybody knows that it is a problem. One hopes that the new form will work but perhaps we can do some further testing after the referendum. Many people lose their vote in all sorts of elections because they get so confused. Normally, with signatures, you put today’s date—that is quite a common thing to do. I had not noticed that it had moved, although I am sure it has, but we should look at it for the future.

Baroness Chisholm of Owlpen: The noble Lord makes a good point. We should go back and consider making further changes to make it easier. We will do that.

As for the noble Lord’s point on borders, the mention of attestations being made across borders was the language used in the consultation response from the Scottish Government officials. We also talk about attestations being made across local authority borders. Reference to borders in that context by no means undermines the existence of the United Kingdom; it just reflects that differences exist between the situations in England and Wales. It is more a term of use than anything else.

On the noble Lord’s second point, our estimate is that it will happen in due course, as he says. I can say that I hope that it will be early next year. Productive discussions between Ministers and officials have already begun following the formation of the new Scottish Government. Both Ministers have agreed in principle to take forward joint legislation to make similar changes in Scotland, once the Scotland Act 2016 has devolved powers over the local government register to the Scottish

Parliament. Subject to the approval of both Parliaments, we anticipate that changes could be in force early next year. That is good news. That is also subject to the need to co-ordinate all the legislative processes between both Parliaments to ensure that the changes made by the Scottish Government relating to the local government register come into force at the same time as those made by the UK Government relating to the UK Parliament register.

I think I have covered all the questions. The statutory instrument before noble Lords will make useful changes as part of realising the Government’s future vision for electoral registration in England and Wales. I beg to move.

Motion agreed.

Building Societies (Floating Charges and Other Provisions) Order 2016

Motion to Approve

7.30 pm

Moved by Lord Ashton of Hyde

That the draft Order laid before the House on 8 February be approved.

Relevant document: 20th Report, Session 2015-16, from the Joint Committee on Statutory Instruments

Lord Ashton of Hyde (Con): My Lords, I beg to move that the House considers the draft Building Societies (Floating Charges and Other Provisions) Order 2016. With permission, I shall refer to this henceforth as the order.

In March 2015, the Government laid an order which commenced a provision in the Financial Services (Banking Reform) Act 2013 repealing a restriction in the Building Societies Act 1986 on the creation of floating charges by building societies. This order is the next and final step required to make sure that the reform allowing floating charges to be created by building societies is effective.

I will provide some background to this. In July 2012, the Government launched a consultation on the future of building societies, seeking views on how to maintain the distinctiveness of the sector while creating a level playing field and removing unnecessary barriers to growth. One of the proposals that came out of this was that building societies should be able to create floating charges over their assets as well as fixed charges, which they are already able to create. After consideration, the Government agreed and commenced this change last year.

It may be helpful if I explain what floating charges are and how they are used by banks. Floating charges are securities over an undefined set of assets: for example, a building society’s or a bank’s mortgage book, which will fluctuate during the course of business. This is in contrast to a fixed charge, which is over a fixed asset such as a building or a specified set of loans. Floating charges allow financial institutions to borrow money and use their mortgage book as collateral, while still being able to exchange and dispose of individual mortgages during normal trading activity.

[LORD ASHTON OF HYDE]

As a result of the previous restriction, banks denied building societies access to certain transactions. This was because a risk had become apparent that a fixed charge over the assets of a building society could be reclassified by the court as a floating charge. This would then make the security void. The Government took action on this to allow building societies to compete on a level playing field with banks, which do not face these restrictions and can create both floating and fixed charges. Initial estimates indicate that this change will save the building society sector around £2 million per year.

This order makes provision in consequence of the repeal of the restriction last year. The order amends the Building Societies Act to apply companies' insolvency legislation on receivership. It enables the appointment of a receiver, but not an administrative receiver, to enforce the terms of a floating charge. The order will ensure that there is uniform provision of receivers for banks and building societies. By allowing a floating charge holder to appoint a receiver in the unlikely event that it becomes necessary to enforce the security, this order will help provide legal certainty and ensure the effectiveness of the repeal of the restriction.

This is a technical and uncontroversial order that reaffirms previous action taken by the Government to show our commitment to maintaining diversity and competition in the banking sector and enabling building societies to compete on a level playing field. Competition in the banking sector is a top government priority. The Government recognise that building societies have been effective competitors to the major banks for many years and that the sector continues to drive competition, particularly in the mortgage market. This order is one example of the action the Government are taking to support this important objective. I therefore hope that noble Lords will support the Motion to approve this order.

Lord Lexden (Con): My Lords, I have a few comments to make on this order, and I do so as a member of the Joint Committee on Statutory Instruments. Our committee reported this order in draft for defective drafting in our 20th report of the previous Session on 9 March 2016. We did so because Article 6 of the order provided for the amendment of provisions that had been revoked.

It seems clear that the revocation was accidental. In other regulations made last year, the Treasury had intended to make only one or two modest amendments to a financial services order relevant to these matters, but instead it revoked the whole of that order. Since our committee published our 20th report, the Bank of England and Financial Services Act 2016 has received Royal Assent, and Section 37 of that Act reverses the mistaken repeal with retrospective effect. As a result, the defect in the draft order identified by the JCSI has been dealt with, so the way is clear for it to be approved by both Houses and made by the Treasury. Although this story has a happy ending, the fact remains that the statutory instrument was originally laid prematurely and as part of a number of errors by the Treasury.

Lord Tunnicliffe (Lab): My Lords, it is a pleasure again to be debating a Treasury statutory instrument with the Minister. It is an innovation for us to have

more than two speakers, and I thank the noble Lord, Lord Lexden, for his contribution. I agree that this is a technical and non-controversial order and, despite the august surroundings of the Chamber, we will not be opposing it.

However, I have two or three questions. From the Minister's speech, the essence of the problem seems to be that a court can reclassify a charge as a floating charge, thereby making the security void. I do not always understand these orders but this point has completely lost me. If the Minister could take us through it in a little more detail, I would find that useful. The essence seems to be that security becomes void and therefore there are concerns about it.

Secondly, the Minister said that there could be the appointment of a receiver but not of an administrative receiver. I cannot see why there is a distinction between the two types of receiver.

Thirdly, I think the offending area relates to paragraph 4 of Schedule 9 to the 2013 Act, which I understand was commenced on 26 March 2015. Presumably, this problem emerged on commencement. It seems an awfully long time since 26 March 2015, so I ask the Minister why this order was not brought forward earlier.

Lord Ashton of Hyde: My Lords, I echo the thanks of the noble Lord, Lord Tunnicliffe, to my noble friend Lord Lexden for adding to our debate today; he probably tripled the amount of time that it would have taken.

I shall be quick. I note my noble friend's comments. He is right that the JCSI commented on a provision in the statutory instrument that amended another provision in the Scotland Act. I say in parenthesis that Treasury lawyers disagreed with the JCSI on that point, but that is of no matter; as my noble friend said, the Bank of England Act, which the noble Lord, Lord Tunnicliffe, was involved in, corrected that. I pay tribute to the detailed scrutiny that the JCSI carries out on these points but I think we all agree that we can now go forward, thanks to the Bank of England Act.

I turn to the questions from the noble Lord, Lord Tunnicliffe. The floating charge could become void because if there were a legal case—for example, sorting out counterclaims between secured and unsecured creditors—the court could determine that the charge that everyone thought was a fixed charge was in fact a floating charge. Creditors are therefore worried about this because if that were the case—the noble Lord is absolutely right—there would be no secured position if the court had deemed that it was a floating charge, because before March 2015, building societies were not able to create floating charges. Therefore, if the court then decided that it was a floating charge and they were not able to provide them, the creditors would have no secured credit. In a sense, this order does not specifically even allow building societies to create floating charges, although they could; its real purpose is to provide certainty over the fixed charges. I am not saying that building societies will not create floating charges, but that was the main effect and intention behind the order in March 2015.

As regards administrative receivership and the fact that this concerns appointment of a receiver and not of an administrative receiver, that is simply because

the Enterprise Act 2002 prohibited companies from appointing an administrative receiver to deal with floating charges. Now that as from May 2015 building societies are allowed to have floating charges, this puts the receivership arrangement on exactly the same footing as the company regime, which is why administrative receivers are prohibited for a floating charge.

The noble Lord, Lord Tunnicliffe, asked why this has taken so long. He is absolutely right that the original order to enable floating charges was commenced in March 2015. The delay between then and today was partly caused by the general election, but quite a lot of intricate work was also required to amend the Building Societies Act by draft affirmative order. This work involved consultation with officials in Northern Ireland and Scotland and clearing the draft with parliamentary counsel and the Joint Committee on Statutory Instruments. When the order was laid in early February, the further delay was caused by the JCSI and its scrutiny, which we all approve of, and it involved waiting for the provision to come into force, rectifying

the mistake regarding the Scotland Act, which was dealt with, as I mentioned, by the Bank of England and Financial Services Act 2016. Therefore that is resolved.

Finally, there was an advantage in that the delay gave time for the building societies themselves to amend their constitutions to allow for this to come into effect. Therefore, there was some benefit. That is what happened in just over a year up to this coming into force in March.

This further legislation is required to ensure that the change the Government made last year to allow building societies to create floating charges is effective and helps building societies compete on a level playing field with banks. I hope that the House will join me in supporting this Motion.

Motion agreed.

House adjourned at 7.43 pm.

CONTENTS

Monday 6 June 2016

Death of a Former Member: Lord Neill of Bladen	573
Questions	
Migration	573
Burma	575
Personal Independence Payment	578
BBC: Independence	580
Child Contact Centres (Accreditation) Bill [HL]	
<i>First Reading</i>	582
Political Parties (Funding and Expenditure) Bill [HL]	
<i>First Reading</i>	582
Online Safety Bill [HL]	
<i>First Reading</i>	582
European Union (Information, etc.) Bill [HL]	
<i>First Reading</i>	583
Right to Die at Home Bill [HL]	
<i>First Reading</i>	583
Cultural Property (Armed Conflicts) Bill [HL]	
<i>Second Reading</i>	583
BHS	
<i>Statement</i>	620
West Midlands Combined Authority Order 2016	
<i>Motion to Approve</i>	628
Representation of the People (England and Wales) (Amendment) Regulations 2016	
<i>Motion to Approve</i>	645
Building Societies (Floating Charges and Other Provisions) Order 2016	
<i>Motion to Approve</i>	650
