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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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

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

House of Lords

Monday 5 September 2016

2.30 pm

Prayers—read by the Lord Archbishop of Canterbury.

Deaths and Retirements of Members

Announcement

2.37 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the deaths of the noble and learned Lord, Lord Goff of Chieveley, on 14 August, and of the noble Lord, Lord Rix, on 20 August. On behalf of the House, I extend our condolences to the noble Lords' families and friends.

I should also like to notify the House of the retirement, with effect from 31 July, of the noble Baroness, Lady Sharp of Guildford, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble Baroness for her much-valued service to the House.

Tributes: Baroness D'Souza and Lord Laming

2.38 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, your Lordships will have perhaps noticed something very different in the Chamber today, with the noble Lord, Lord Fowler, taking his place on the Woolsack for the first time. As we welcome him to his new role, we have an opportunity to pay tribute to his predecessor, the noble Baroness, Lady D'Souza, for her service to the House. With the noble Lord, Lord McFall, now also in place as our first Senior Deputy Speaker, it would be an appropriate time as well for us to thank the noble Lord, Lord Laming, for his service as Chairman of Committees.

Although she was only our second Lord Speaker, the noble Baroness, Lady D'Souza, made the role her own. Building on the strong foundations of the noble Baroness, Lady Hayman, and infusing the position with her own distinctive grace and poise, the noble Baroness, Lady D'Souza, served as a strong and distinguished voice for your Lordships' House. She expanded the Peers in Schools programme, through which 100 Peers have visited more than 1,000 schools since 2011. She developed a new regional outreach programme, helping to educate people up and down the country on the extremely important work this House does. She has been a true champion of retirement since its inception, helping to build consensus to secure the legislation that allowed Peers to retire, offering the River Room for receptions for those retiring, and highlighting the success of the scheme within and outside the House. In each respect, she leaves a hugely valuable legacy. We can be particularly grateful for the way in which the noble Baroness served as our representative, whether in her outreach work, her efforts to build links with parliaments across the world or in welcoming world leaders to address Parliament.

No matter the setting, she discharged her responsibilities with great distinction and was a real ambassador for your Lordships' House. Nowhere was that clearer than when she led tributes to Nelson Mandela in the days following his death. While I was not in the House, I know that she spoke movingly about his impact in a speech that was all the more profound because of its roots in the noble Baroness's own experiences fighting apartheid in South Africa. The noble Baroness discharged her duties on and off the Woolsack with warmth and good humour. She leaves office with the respect and gratitude of the whole House, and I hope she will continue to bring her considerable wisdom to our work in the coming years.

We also owe a great debt of gratitude to the noble Lord, Lord Laming. As has been said many times, he stepped into the breach in extremely difficult circumstances. As a House, we were incredibly lucky that in our time of need we could call upon the perfect man for the job, an unflappable and collegiate man who is truly dedicated to public service. Each and every one of us—certainly in my case from personal experience—can attest to his warmth and courtesy, but as Chairman of Committees we saw his other qualities as well: his expert chairmanship; his rigorous attention to detail; and his ability to navigate a straightforward path through the most complex of areas, something that I myself will have to learn. No doubt I will call on his experience.

No matter the subject, the noble Lord was assiduous in building consensus, and always with the same statesmanlike manner that he displayed in his four distinguished years as Convenor of the Cross-Bench Peers. What is more, he managed to combine the role of Chairman of Committees with the completion of his report *In Care, Out of Trouble* for the Prison Reform Trust. That he was able to discharge both responsibilities simultaneously showed off his seemingly endless reserves of energy, and I am delighted that we will continue to draw upon his expertise in his role as chairman of the Services Committee.

I conclude with congratulations and good wishes to the noble Lords, Lord Fowler and Lord McFall, as they take on their new responsibilities. While their predecessors will be hard acts to follow, both noble Lords bring with them a wealth of experience of Parliament that will equip them well for their work in the coming years. I am looking forward to working with both of them, and I am sure I speak for all noble Lords when I wish them the very best of luck and say that they carry with them the support and confidence of noble Lords on all sides of the House.

Baroness Smith of Basildon (Lab): My Lords, as the noble Baroness has alluded to, today we pay tribute to two firsts in this House: the first Senior Deputy Speaker, my noble friend Lord McFall, and the first male Lord Speaker, the noble Lord, Lord Fowler. Today is an opportunity to thank both the noble Baroness, Lady D'Souza, and the noble Lord, Lord Laming, for their services to the House.

As has been said, the noble Lord, Lord Laming, did not expect or seek the office of Chairman of Committees. If this is not telling tales, before the Summer Recess last year he shared with me that as his office as

[Baroness Smith of Basildon]
Convenor of the Cross Benches was coming to an end, he was looking to having more time for other activities in your Lordships' House; indeed, we have heard about his work on the review for the Prison Reform Trust, *In Care, Out of Trouble*. He was not to have that, though, and instead he willingly took on what has been a demanding role. At all times he has brought his customary courtesy, his impeccable manners and his thoughtfulness to his work.

The noble Lord and I have served on many committees together, and I have greatly welcomed the consideration and integrity that he has brought to at times complex issues and his willingness to seek consensus wherever possible. I have also enjoyed his style of chairing committees; I can think of no occasion where a committee member has not considered that they have had a full opportunity to contribute, and we have still finished on time.

The noble Baroness, Lady D'Souza, as only the second Peer to hold the position of Lord Speaker, has approached her term in office with enthusiasm, dedication and great personality. She has reached out to the wider public about the work of our House, which has taken her across the length and breadth of our country, debating and promoting the role and purpose of the second Chamber. I hope there is a record of all the meetings and events that she has addressed during her time in office. It should be recognised that, perhaps uniquely among parliamentarians, she was rewarded with a standing ovation at the Women's Institute.

2.45 pm

She has brought her passionate and lifelong commitment to international aid and human rights to her international role as Lord Speaker. As her role has taken her across the world, she has championed the importance of women's representation in public life and national parliaments. As well as the many formal parliamentary functions she has hosted and addressed, it is of great credit to her and to this House that both Bill Gates and President Jimmy Carter accepted invitations to speak here. Those were both fascinating and inspiring evenings.

Like other colleagues, I have taken advantage of her encouragement to use the River Room to promote and support charities, which love the opportunity to showcase their work or thank their supporters in such fantastic surroundings. However, despite the formality of her role, many of us have recognised her sense of fun. I am sure I am not the only one who has caught her eye as she has sat on the Woolsack and seen her amusement at some witty speech or comment—whether intended or otherwise.

With such commitment to her role, I am sure she leaves the Woolsack with mixed feelings but few regrets. It is a responsible, important, distinguished, and honourable office to hold. She has done so with great commitment and credit and she leaves an impressive legacy.

In paying this tribute to both the noble Lord, Lord Laming, and the noble Baroness, Lady D'Souza, we also pass on our thanks and gratitude to them, look forward to their work in future and wish their successors the same kind of success. They have our full support.

Lord Wallace of Tankerness (LD): My Lords, it is a pleasure to follow the Leader of the House and the Leader of the Opposition in paying tribute to the noble Baroness, Lady D'Souza, on behalf of the Liberal Democrat Benches, and to give our thanks to her for the dignity with which she discharged her duties as Lord Speaker. It is, of course, a comparatively new post and, building on the foundations laid by the noble Baroness, Lady Hayman, the noble Baroness, Lady D'Souza, has developed and shaped the office during her time in that role.

The noble Baroness performed her ceremonial roles with considerable dignity. I always thought that she found exactly the right words whenever welcoming and thanking visiting dignitaries. The fact that both the noble Baroness the Leader of the House and the noble Baroness, Lady Smith of Basildon, talked about her outreach work, shows the stamp she put on the office. She ensured that the office of Lord Speaker did not focus inward on your Lordships' Chamber but was outward facing. She developed an extensive outreach programme with the public. She spoke with many civil society and educational groups, attended countless public meetings across the country to describe the work of the House, and continued and expanded the innovative Peers in Schools programme, reaching out to schools far and wide.

She also sought to bring the outside world into Parliament. The noble Baroness, Lady Smith, reminded us of the visit of President Jimmy Carter. For me, it was a most memorable event. Her decision to invite him was significant because he was willing to accept. I do not know whether it was cunning or inadvertence on her part, but the initial invitation to us was just to a lecture by President Carter. It was only on the day that I realised that the subject was to be the eradication of Guinea worm disease. I must confess that I did not expect to be quite so fascinated by a parasitic infection. This lecture, given as part of the Lord Speaker's global lecture series, demonstrated again the commitment of the noble Baroness, Lady D'Souza, to strengthening links between Parliament and the wider community outside. This has been complemented by her work in strengthening the relationships of this House with many Parliaments overseas.

She had the challenge, if I may put it like that, of chairing the House Committee. I wonder how many former members of the committee share my view that her initiative in the last six months of her term in hosting the meetings in her rooms, accompanied by refreshment, boosted their productivity and seemed to shorten them.

Throughout her tenure as Lord Speaker, the noble Baroness, Lady D'Souza, fiercely sought to safeguard the reputation of this House at a time of increased scrutiny. At our regular meetings we often discussed our shared interest in upholding the good standing of this House and working through a number of difficult issues to find the best solutions for the House and all its Members. It is with much affection that, on behalf of these Benches, I wish her very well as she stands down from the role.

I also pay tribute to the noble Lord, Lord Laming, for stepping into the role of Chairman of Committees at what was, we recall, a difficult time for your Lordships' House. As they say, a volunteer is worth 10 pressed

men or women. The noble Lord was always assiduous in his role, seeking to work in a most consensual way for the benefit of the House. His courtesy, respect for colleagues, attention to detail and steady guidance have been of considerable benefit, and he has always taken care to fully understand the issues. Again, I extend our warmest and heartfelt thanks to the noble Lord, Lord Laming, and wish him well in his chairmanship of the new Services Committee, to which he brings considerable experience.

I also welcome the noble Lord, Lord McFall of Alcluith, to the post of Senior Deputy Speaker. We go back many years to our time together in the House of Commons, and I know that that post is in secure hands. I also welcome our new Lord Speaker, the noble Lord, Lord Fowler. As the noble Baroness, Lady Smith, reminded us, he is the first man to hold the post. The noble Lord's election demonstrated that he has the overwhelming confidence of this House and I wish him very well indeed in his new role.

Lord Hope of Craighead (CB): My Lords, perhaps I may be permitted to add a few words from these Benches, as both of those to whom we are paying tribute this afternoon were previously Convenors of the Cross-Bench group and it is to this group that they have both now returned.

The noble Baroness, Lady D'Souza, came to the Cross Benches when she was made a Member of this House in July 2004. Her warm and generous personality made an immediate impact, and it came as no surprise when she was elected Convenor only three years later, in 2007, in succession to Lord Williamson of Horton. She held that position for nearly four years until her election as Lord Speaker in 2011. Then it was the noble Lord, Lord Laming, who was elected by the Cross Benchers to take her place as their Convenor. When he retired after serving his full term of four years, he must have thought—as the noble Baroness, Lady Smith of Basildon, suggested—that the time had come for him to take a back seat and lead a quieter life. But, of course, those who were wondering who was best suited to take over as Chairman of Committees at a critical time had other ideas. We were so very fortunate that the noble Lord was willing to be persuaded to fill the gap. No one was better suited to do this than he was.

I well remember the day when the noble Baroness contributed her own words as Convenor to the farewell to the Law Lords when the appellate jurisdiction of this House came to an end in July 2009. We the Law Lords were all sitting that day on the Cross Benches as members of her group for the last time before we were disqualified on our move to the Supreme Court. We appreciated her kind words very much. For me, four years of disqualification followed. So I was unavoidably absent for the rest of her convenorship, for the first two years of her time as Lord Speaker, and for the first two years of the noble Lord's time as Convenor. However, when I came back in the summer of 2013 I was able to see them both in action.

It struck me at that time, and has been borne in on me even more now, that we expect an awful lot of our Lord Speaker. It seemed to me that her position on the Woolsack, although always dignified, was a rather lonely one. As others have said, her real contribution to the House has been in the work she has done outside the Chamber. For many of your Lordships much of what she did there was not obvious, but it has been my privilege during the past year to see quite a lot of her. I had regular meetings with her when she was Convenor, attended functions over which she presided and saw her work as chairman of the House Committee and as a member of the Procedure Committee and the Committee for Privileges. On each of these occasions she played an important and valuable role, always putting the needs of the House before all other considerations.

As for the functions, I remember the great ones, which included the addresses in the Royal Gallery by the President of China and the German Chancellor, Angela Merkel, over which she and the Speaker presided, as well as the more intimate ones on her own in the Reading Room, particularly the one that both the noble Baroness, Lady Smith, and the noble and learned Lord, Lord Wallace, mentioned, when Jimmy Carter came to talk to us about his work to eradicate the Guinea worm disease. My recollection of that event is that she took the risk at the end of the lecture of asking whether anyone had any questions on what he had been talking about. Anyone who has chaired a lecture knows how risky that can be. I still remember the look on her face when a wholly irrelevant and really rather naughty question was asked by a journalist: "Trump or Clinton, who will it be?". That was six months ago, long before we knew who the final candidates would be, and I remember the look of sheer relief on her face when Jimmy Carter dealt with the cheeky question head on, generously and at length, instead of refusing to answer it—although, of course, skilled politician that he is, he did not really answer the question.

The noble Baroness did us proud on these occasions, charming our visitors with her grace and the warmth of her welcome. There were hard times for her, too, as the holder of any great public office must experience from time to time. Whatever she felt inside, she bore them with remarkable courage and fortitude. We have much to be grateful for. All of us on the Cross Benches wish the noble Baroness well on her retirement from the many responsibilities that she has borne so well. We look forward very much indeed to welcoming her back to these Benches, where she still has so much to contribute.

We welcome, too, the return to these Benches of the noble Lord, Lord Laming. Let us be clear that it is certainly not because of what he has done that the role of Chairman of Committees has been reformed. He brought to that office a charming mixture of kind, self-deprecating humour and quiet efficiency. Committee meetings under his chairmanship, for which he always prepared very carefully, were always a pleasure and he struck exactly the right tone when presenting his committee's reports to the House. We have much to be grateful for and I know that I have the support of all of those who are with me on the Cross Benches when I say how much we appreciate what he has done in that role. As has already been said, we are very fortunate indeed that he has agreed to serve from these Benches as the first chairman of the Services Committee as it

[Lord Hope of Craighead]
settles into its new responsibilities. So, as I am sure he knows only too well, the work that he is doing for the House is not yet over.

On behalf of these Benches I also extend a very warm welcome to the noble Lord, Lord Fowler, as our new Lord Speaker and to the noble Lord, Lord McFall, in his new role looking after the committee system, which has been so carefully reformed. We look forward very much indeed to working with them both in the future.

The Archbishop of Canterbury: My Lords, on behalf of the Lords spiritual I join in the tributes to the noble Baroness, Lady D'Souza, and to the noble Lord, Lord Laming. The noble Baroness, Lady D'Souza, has been a great friend to the Lords spiritual, who normally arrive with even more trepidation and less familiarity with the processes of a House such as this than anyone else coming here. She has been assiduous in seeing new bishops and advising them, and then advising them later when they did not quite make it—something that I appreciated on more than one occasion. She always did it with the greatest tact and courtesy and I think that we would all say that she was an encourager of great aptitude.

I associate these Benches with the tributes to her for her work in publicising the work of the House in schools and further afield, and for her work in bringing forward the place of faith in public life. I remember well her hosting the visit of the Grand Imam of al-Azhar in her state rooms in 2015. It was a challenging and difficult meeting which, as always, she handled with extraordinary skill. She was also continually prodding us to make sure that the presence of women on these Benches became both a possibility and then, through the women bishops Bill, which she supported, a reality.

3 pm

The noble Baroness has been a regular attender at parliamentary events at Lambeth, for which we are very grateful. One of the things that she seems to have brought to the role—from which we on these Benches have much to learn—is not so much the exercise of direct power as the effective use of influence and her capacity to be a unifying figurehead. Perhaps I could learn something from that.

The noble Lord, Lord Laming, has also quite rightly had the strongest tributes paid to him. That is as it should be and I will not take up the House's time in repeating them but will merely associate myself with them. However, I will add one thing to what has been said about his unfailing courtesy, fairness, assiduous communication and determination to make the House work smoothly, which he continues to demonstrate in the Services Committee. That is his pastoral skills: the way in which he draws alongside people who may have been struggling to support and encourage them personally and quietly—for which many of us in this House are profoundly grateful. It is wonderful that both the noble Baroness, Lady D'Souza, and the noble Lord, Lord Laming, will continue to serve the House from the Cross Benches.

I would also like to associate these Benches with the words of welcome to the new Lord Speaker, the noble Lord, Lord Fowler, with whom we look forward to working very much indeed, and to the senior Deputy Speaker, the not-actually-bishop, the noble Lord, Lord McFall. He finds himself in a slightly unfamiliar seat normally occupied by the most reverend Primate the Archbishop of York. I had the pleasure of working with the noble Lord on the Parliamentary Commission on Banking Standards and know the qualities that he will bring to this House, together with the noble Lord, Lord Fowler, which can only increase our capacity in this place.

The Lord Speaker (Lord Fowler): My Lords, I will add a very brief last word. I would like to thank all those who have spoken for their good wishes to myself and to the noble Lord, Lord McFall. I must admit to a certain trepidation in breaking the 10-year female monopoly on the Woolsack. I also know perfectly well that when I make my first major mistake, the Leader of the House and the Leader of the Opposition will shake their heads and say in perfect unity, "What do you expect if you hand it over to a man?". For me, the truth is that everyone will remember the example of the noble Baroness, Lady D'Souza, and the very high standards that she set in this House and outside, such as in her work with schools. But more than that, she spoke at numerous meetings up and down the country explaining the work of this House. As the noble Baroness the Leader of the Opposition said, she spoke to the National Federation of Women's Institutes to rapturous applause, which is not always the response that all politicians receive. When she spoke of the future, it was with sincerity and common sense. Dare I say that it is not exactly controversial to say that this House is somewhat on the crowded side? We look forward to her continuing campaigns now that she has returned to the Cross Benches.

The noble Lord, Lord Laming, has also made a tremendous contribution to this House as Chairman of Committees. I remember the days when he was director of social services in Hertfordshire back in the 1980s. Those were the golden years of social services in this country. Modesty almost prevents me recalling that for six of those 10 years I was in charge as Secretary of State for Social Security. As many will understand, I use the words "in charge" very loosely indeed. But what was certain was that the noble Lord, Lord Laming, was a giant in that field. On his role in this House the best thing I can say is that I have never heard a critical word said about him. He is renowned for his patience, his hard work and, above all, his effectiveness in getting things done. The House is exceptionally fortunate that he will continue his work as the new chairman of the Services Committee. I ask noble Lords to note that any complaints about the food should be directed to him and not to me.

In brief, we sincerely thank two exceptional servants of this House.

Betting Shops: Serious Crime

Question

3.05 pm

Asked by ***Lord Beecham***

To ask Her Majesty's Government what steps they are taking to reduce the incidence of serious crime affecting betting shops and their staff.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, all those who work in betting shops should be able to do so free from fear of crime. Where crimes are committed, they should be reported to the police so that they can be investigated and the perpetrators brought to justice.

Lord Beecham (Lab): My Lords, given that betting shops account for 97% of all police calls to gambling establishments and 40% of serious crimes against businesses, and given that 7,000 machines are destroyed by gamblers in these premises each year and a growing proportion of shops have only one staff member on the premises, despite a rising tide of violent assaults on staff, when will the Government implement the delayed triennial review of the industry, and will it require a minimum of two employees to be present at all times when such premises are open?

Baroness Williams of Trafford: The noble Lord is absolutely right about the percentage, but of course betting shops make up a huge percentage of gambling establishments. He is absolutely right to make the point about tackling crime at betting shops and the police should be, and are, taking it seriously. As he will know, there are requirements around licensing to protect vulnerable people, and some of the partnership working that is going on—for example, the Safe Bet Alliance, which was set up in London in 2010—has proved very successful.

Lord Clement-Jones (LD): My Lords, the noble Lord, Lord Beecham, referred to the criminal damage suffered by some 7,000 fixed-odds betting terminals every year. Do the Government acknowledge that this is a consequence of the addictive nature of these high-stakes machines, and when do they plan to lower the stakes for these machines?

Baroness Williams of Trafford: The noble Lord makes a very good point. Of course, gamblers will be attracted to all types of gambling opportunities, whether through fixed-odds betting terminals or online, which nowadays is so easy. We will consider the report from the DCMS very carefully. To address the noble Lord's question, last year we brought in new requirements that will improve player protection by stopping unsupervised playing with stakes over £50. Some social responsibility has also been brought into the industry by allowing customers to make active choices with regard to both the money they put in and the time they spend on the machines.

Baroness Jowell (Lab): My Lords, does the Minister not accept that, by allowing the proliferation of crime, one of the founding principles of the Gambling Act, which gave this country the most regulated gambling industry in the world, is being undermined? Further, does she not accept that it is time for the Gambling Commission to become more interventionist in controlling the risks from fixed-odds betting machines and that it is time to give local authorities the partnership power to regulate planning consent to limit the number of betting shops?

Baroness Williams of Trafford: The noble Baroness makes some good points. New planning laws introduced in 2015 make it harder to open betting shops on the high street and the Government will take further action if necessary. She talks about the Gambling Commission. As I said to the noble Lord, the commission introduced some social responsibility requirements in terms of customers making active choices regarding time spent on machines and money limits.

Lord Smith of Hindhead (Con): My Lords, I know from previous Written Questions to the Home Office that the Home Office does not hold data on the number of police-recorded crimes in licensed premises, such as betting shops, or indeed in any other location. Will the Minister consider reviewing this policy?

Baroness Williams of Trafford: The most recent data that we have are from the Commercial Victimisation Survey, which includes the whole industry of casinos, bookmakers and arcades. Therefore, we have information and we take it very seriously.

Lord Foster of Bath (LD): My Lords, the Minister will be aware of research that shows a link between crime and anti-social behaviour and those areas where there are large clusters of betting shops. She has already acknowledged that some changes in planning legislation have made it slightly harder to open a betting shop. Does she not agree that the time has now come to go even further and make betting shops a single-use category under planning legislation?

Baroness Williams of Trafford: I do not agree with the noble Lord on that point but I agree that councils, the police and licensing committees all need to take into consideration some of the harms that gambling can cause. However, some of the most dangerous gambling now takes place online, where no one can see it.

Lord Rosser (Lab): I believe my noble friend Lord Beecham asked when the Government would implement the delayed triennial review and whether it would require a minimum of two employees to be present at all times when betting shops are open. I did not hear a response to that question. Could the Minister reply to the specific question asked by my noble friend Lord Beecham?

Baroness Williams of Trafford: The noble Lord is right: I did not entirely answer the question. However, I answered one of the questions the noble Lord asked. We will, of course, consider the triennial review and take action if necessary. One of the measures that gambling establishments and betting shops are taking is to have more staff. Licensing regulations require that vulnerable people, including staff, are protected.

Economy: Productivity

Question

3.11 pm

Asked by ***Lord Harrison***

To ask Her Majesty's Government what plans they have to improve the United Kingdom's productivity.

The Commercial Secretary to the Treasury (Lord O'Neill of Gatley) (Con): My Lords, UK productivity performance remains a fundamental challenge. The Government set out their approach to tackling the issue in their

[LORD O'NEILL OF GATLEY]
productivity plan, *Fixing the Foundations*. The Government have since introduced further measures that will help productivity growth—for example, the apprenticeship levy, proceeding with investments in UK infrastructure such as High Speed 2 and the biggest investment in road and rail for a generation.

Lord Harrison (Lab): My Lords, given the Prime Minister's welcome focus on our poor and parlous situation in regard to productivity in this country—we stand some 18 percentage points below the average of our rivals in the G7—what is the purpose of, and how will competitiveness and productivity be generated by, our leaving the single market within the context of Brexit?

Lord O'Neill of Gatley: My Lords, the decision to leave the EU was the result of a democratic question put to the people of this country—it was the result of that choice. What that means for the future of UK productivity remains to be determined. As I am sure many Members of the House are aware, in the past couple of weeks in particular there has been a somewhat surprising upbeat tone to some of our economic data. Among other things, this raises the possibility that productivity has not slipped any further or as much as many people may have thought.

Baroness Burt of Solihull (LD): My Lords, one of the key drivers of productivity is the need for businesses to feel confident in the long-term prospects for their business and the economy. I am sure the whole House will welcome the news from the purchasing managers index today that the service sector is bouncing back from the disastrous post-Brexit figures. However, as the noble Lord has already mentioned, many businesses remain nervous about what Brexit will mean for them in the longer term. Does the Minister agree that, if companies are to invest in the capital infrastructure, training and recruitment needed to tackle the productivity challenge, they need to see a real strategy for Brexit beyond the Prime Minister's platitude that "Brexit means Brexit"?

Lord O'Neill of Gatley: My Lords, private business needs to feel confident about many things in order to undertake further investment decisions, of which the latter part of what the noble Baroness asked may be one. However, a number of other factors are important. In that regard, it is interesting that the latest evidence on investment is not only slightly more encouraging than was the case last year but perhaps ahead of some expectations.

Lord Hamilton of Epsom (Con): My Lords, can my noble friend confirm that one of the reasons for low productivity in the United Kingdom is the seemingly unlimited supply of immigrant labour which is keeping down wage rates? Does he agree that if we manage to limit immigration as a result of Brexit, our productivity might go up?

Lord O'Neill of Gatley: My Lords, I am not sure that I would agree with my noble friend's assertion. However, I agree with the inference that many things lie behind our apparently low and disappointing productivity performance, which I spend far too many hours trying to wade into. If you look at this in the kind of detail that I do, it is interesting to note that, if you take away the negative contributions made in those areas such as finance about which people are usually the most critical, our productivity performance since the recession of nine years ago is not any worse than that of any other member of the G7. There are many reasons behind our apparent—and probably realistic—disappointing productivity performance.

Lord Watts (Lab): My Lords, the Government have cut business taxes when at the same time many companies are now cash rich. However, they are failing to invest in plant or in their staff. Why is that?

Lord O'Neill of Gatley: My Lords, the noble Lord has raised an important and interesting question. It is something that I spend quite a lot of time trying to explore. It is a feature throughout the western world that levels of cash held by corporations, including in economies that might be perceived as being more successful than ours, are very high, but despite low interest rates and favourable tax rates, the reported amount of investment being undertaken by corporations in many parts of the developed world remains disappointing. We need to understand this further and when we know why, we must try to do more about it.

Lord Davies of Stamford (Lab): My Lords, is it not the case that devaluation is the enemy of productivity because, for a time at least, it keeps in being inefficient firms whose factors of production would be better deployed elsewhere? Is it not also the case that one of the great drivers of productivity is competition, and therefore if we are serious about improving productivity in this country it would be crazy to leave the single market, whether or not we have to leave the European Union?

Lord O'Neill of Gatley: My Lords, most of the independent measures of competitiveness would actually rank the UK among the highest in the world. On the first part of the noble Lord's question, there has not been any official devaluation of our currency. It was a consequence of what happened, and in the context of what I said earlier, it is interesting to note that in recent days the pound has recovered somewhat.

Lord Davies of Oldham (Lab): My Lords, the Minister is an honest man and he will recognise that we have had a chronic position with regards to balance of payments throughout the whole time that we have had a Conservative-led Government since 2010. He will also know that in this country the average Briton still takes five days to produce what the average Frenchman can produce in four days. In a period of increasing competition—as we are bound to find as we leave the European Community—how can we possibly make progress or expect to meet this competition with such appallingly low levels of productivity?

Lord O'Neill of Gatley: My Lords, I think I heard two questions from the noble Lord. I cannot resist saying that I seem to remember that the era of chronic balance of payments problems as described goes back

to the 1960s, which precedes not only Conservative Governments; those of different colours were in town over that time. On the latter question, an important part of understanding the productivity issue in greater detail is that there is some evidence, which I have mentioned in the House before, that you have to be careful about bemoaning everything about our apparently low productivity performance because some of it is almost definitely the flip side of a very strong rate of employment. That is particularly the case in the context of making direct comparisons with France. It is an important point.

Lord West of Spithead (Lab): My Lords, would the Minister agree that our complex warship-building capacity in this country cannot increase productivity unless it has a steady drum beat of orders? I have to say that, afloat on the Solent during the summer, I hardly saw a grey-funnel ship. How will we increase productivity unless we get a steady drum beat of orders so we can make investment?

Lord O'Neill of Gatley: Of all the aspects of the productivity challenge I have focused on, this is not one I have given that much attention to. I hope it is not necessary for us to go to war to do something about boosting our productivity performance.

Airports: London

Question

3.20 pm

Asked by ***Lord Spicer***

To ask Her Majesty's Government when they will announce their decision about extra runways for London's airports.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, the Government are committed to delivering the important infrastructure projects the country needs, including delivering runway capacity to the timetable set out by the Airports Commission. As noble Lords will appreciate, it is vital we get this decision right. The Government commissioned extra work looking at the three options shortlisted by the commission. Ministers will consider this alongside the comprehensive evidence published by the commission before reaching a final view on the preferred scheme.

Lord Spicer (Con): My Lords, I warmly congratulate my noble friend on his well-deserved promotion to Minister of Aviation, which is a job I once held. Is not this whole issue getting a bit out of date? Should we consider asking not whether Heathrow or Gatwick will have another runway, but whether Gatwick and Heathrow will have extra runways?

Lord Ahmad of Wimbledon: First, I thank my noble friend for his kind remarks. He served in a very distinguished capacity as Aviation Minister, but he is also quite right to mention aviation capacity in the south-east. As I have said previously from this Dispatch Box, the Davies commission carried out quite comprehensive work in this regard. Three options were presented to the Government, which remain on the table.

Lord Soley (Lab): In this post-Brexit world, will the Minister use his enhanced position, which is well deserved—he has been a good supporter of the expansion issue—to make sure his Cabinet colleagues, and the Prime Minister, who is chairing the relevant committee, understand that it is critical that Heathrow can deliver the services the rest of the world will expect if we are to be part of that market? To follow the comment made by the noble Lord, Lord Spicer, they need to recognise that we need a better way to deal with airport expansion in this country. Expansion of airports is critical to both regional and national economies.

Lord Ahmad of Wimbledon: The noble Lord is right in that over the summer there have been a few changes in the Government and in the position of the United Kingdom. A new Government, Prime Minister and Secretary of State are in place, but I assure the noble Lord—indeed, all noble Lords—that the Government are giving this decision a high priority. It is paramount in our mind. The other element to bear in mind is that it will be in line with the Davies commission to ensure that we have this extra capacity operational by 2030.

Baroness Randerson (LD): My Lords, this decision concentrates on the south-east. It will have an adverse impact on airports elsewhere, not least because if we have more flights in the south-east we will have to have fewer in the rest of the UK to reach our carbon reduction targets. Will the Minister seek to persuade the new Prime Minister that she needs to make this decision with the interests of every part of the UK in mind?

Lord Ahmad of Wimbledon: I assure the noble Baroness that, knowing the new Prime Minister well, the right honourable lady will make all decisions, whether on airport expansion or on the economy and our position on the international stage, focusing on what is of benefit to the United Kingdom as a whole. The noble Baroness raises an important issue about regional airport capacity and regional connectivity. I assure her and the whole House again that the decision taken on expansion of south-east capacity will reflect the importance of the aviation industry and airport connectivity, in particular to our international positioning.

Lord Rosser (Lab): Are there any issues relating to additional runway capacity in the south-east and the Davies commission report that are now being considered by Theresa May's Government that were not being considered, prior to his leaving office, by David Cameron's Government?

Lord Ahmad of Wimbledon: The Government's position remains consistent. The Prime Minister may have changed but the Government's position remains that the Davies commission was commissioned to look specifically at airport capacity in the south-east. As I said earlier, there are three options on the table and they are all being considered.

Lord Mawhinney (Con): My Lords, my noble friend Lord Spicer asked when the Government's decision will be announced. I wonder whether my noble friend could answer that Question.

Lord Ahmad of Wimbledon: The best answer I can give is that the Government will be looking to make that decision very shortly.

Lord Harris of Haringey (Lab): My Lords, does that not imply that the consistency of the Government's position, which the Minister has just referred to, is that this issue is to be kept in the long grass for as long as possible?

Lord Ahmad of Wimbledon: I assure the noble Lord that there is no long grass. To continue with that metaphor, I have the lawnmower at the ready if there was any such long grass. I do not think it is inconsistent at all. The Government have given priority to this decision. The previous Government and the previous Prime Minister commissioned the Davies commission to look at this important issue. I have already reiterated the point that the Government are giving high priority to this issue. The decision will be made shortly.

Lord Stoddart of Swindon (Ind Lab): Does the decision of the Government to widen the M4 to an eight-lane motorway indicate that the decision has already been made for a new runway at Heathrow, in spite of the enormous opposition to such a project?

Lord Ahmad of Wimbledon: I assure the noble Lord that no decision has yet been made.

Lord Cormack (Con): My Lords, is "shortly" sooner or later?

Lord Ahmad of Wimbledon: That is a very open-ended question but I would be very much inclined to say to my noble friend: sooner.

Lord Clinton-Davis (Lab): My Lords, I congratulate the noble Lord, Lord Spicer, on his unremitting campaign for the best interests of British aviation. Is it not clear that the longer a decision on this vital issue is delayed, the worse it will be for British aviation? In my view, a decision should have been made long ago, and the Government are playing for time. The more we encounter delay, the more British aviation will suffer while its rivals manage to march forward unremittingly.

Lord Ahmad of Wimbledon: I agree with the noble Lord about the way in which my noble friend Lord Spicer has ensured that this issue is kept at the forefront. I assure all noble Lords that the importance of the aviation sector is a high priority for this Government. I further assure the noble Lord that the decision that will be taken will be in the best interests of the aviation sector, as well as of the country as a whole.

Schools: Drama

Question

3.28 pm

Asked by ***The Earl of Clancarty***

To ask Her Majesty's Government what steps they are taking to encourage the teaching and study of drama in schools.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, we want all pupils to participate in and gain the knowledge, skills and understanding associated with the artistic practice of drama. All maintained schools are required to teach drama as part of the national curriculum in English. Teachers are expected to introduce pupils to works from a range of genres, historical periods and authors. Pupils are taught about role play, improvisation and performance, as well as studying the art of playwriting.

The Earl of Clancarty (CB): My Lords, is the Minister aware of the latest figures—among them fairly catastrophic figures for arts subjects—which show a drop in England of 16% in the take-up of GCSEs in drama over the past six years? Does the Minister share the widely expressed concern that with drama being offered less and less in state schools, the acting profession will become accessible to only the well-off and privately educated? If so, what action are the Government going to take?

Lord Nash: What the noble Earl says about acting as a career could equally be said about many other careers, sadly, and that is why we have invested so much in school reform over the past five years. Specifically, we have provided means-tested support to ensure that talented 18 to 23 year-olds from all backgrounds receive the training they need to succeed in acting careers, and we have funded the Royal Shakespeare Company to provide all state schools with a free copy of its toolkit for teachers and to support young people performing Shakespeare in theatres.

Lord Storey (LD): My Lords, we all know how important the creative industries are to the economy of this country so it seems strange that we are allowing there to be a decline in the creative arts subjects in our schools. The Minister can quote little odd examples but the facts show that for all the creative arts subjects, there has been a decline in the number of hours taught and the number of teachers teaching those subjects. Does he think the new Secretary of State for Education might look again at the cataclysmic effects that the EBacc will have on creative subjects?

Lord Nash: I entirely agree with the noble Lord about the importance of the creative industries in this country. That is one of the reasons why we have reformed computing and D&T GCSEs and A-levels to make them more relevant and ensure that our pupils have the necessary skills to succeed in these great industries. However, I remind him of the situation we inherited in 2010, where only one in five pupils in state schools was studying a basic academic curriculum that would be regarded as absolutely common fare in any independent school and in most successful

jurisdictions. That is why we introduced the EBacc, because that curriculum is so important, particularly to pupils from disadvantaged backgrounds who do not get that cultural education at home. We have doubled the number of pupils taking EBacc and we intend to double it again, and more. We hope that by stimulating the intellectual juices of our pupils to study better academic and creative subjects, they will in time want to engage in the arts more widely.

Baroness McIntosh of Hudnall (Lab): My Lords, as the Minister has mentioned the Royal Shakespeare Company, I should declare an interest as a governor and board member of that company. He will probably also be aware that his right honourable friend David Cameron, the former Prime Minister, recently hosted the Royal Shakespeare Company at No. 10 Downing Street in connection with its Associated Schools programme. Therefore, I assume that there is some level of support from within the Government for what the Royal Shakespeare Company and other arts organisations are doing to promote education in the arts. However, the Minister will also know that all those organisations are extremely anxious about the decline in take-up of arts subjects, mostly as a result of concentration on the EBacc. He may also want to know that the Royal Shakespeare Company, which is extremely assiduous and invests heavily in education, is particularly anxious about the, frankly, rather lukewarm support that is coming from government about arts subjects in schools. Can he reassure the House, and beyond the House the education sector, that that support will get a little warmer as time goes on?

Lord Nash: I entirely agree that the Royal Shakespeare Company has a huge role to play, and has played a big role in our education system; and I am sure that the noble Baroness is pleased that pupils will now study a minimum of three Shakespeare plays during their secondary school career. In addition to the toolkit, earlier this year we provided funding to help the Royal Shakespeare Company stream "The Merchant of Venice" into all schools. I can assure the noble Baroness that we regard this as an extremely important part of the curriculum.

Lord O'Shaughnessy (Con): My Lords, does my noble friend agree with me that although the noble Earl's sentiment is correct—we must open up professions—the quickest way of opening up professions to people of all backgrounds, especially disadvantaged backgrounds, is to give them a very rigorous academic education that can act alongside arts subjects and other subjects, so enabling them to get into apprenticeships and higher education and opening the doors to those kinds of professions?

Lord Nash: I agree entirely with my noble friend: studies have shown that this has had the effect of doing that with pupils. As I say, that is why we are so heavily focused on the EBacc. It is appalling that, until a few years ago, so few of our pupils were accessing such a curriculum.

Lord Watson of Invergowrie (Lab): It is through programmes operated by theatres such as the Young Vic that schoolchildren get the opportunity to experience theatre production, which is so important in learning about and understanding drama, yet the National Association for the Teaching of Drama has reported that, increasingly, schools are removing theatre trips from their timetables because of the difficulty in balancing their budgets. At the same time, the number of drama teachers is decreasing: it went down by nearly 20% between 2011 and 2014. As Sir Peter Bazalgette, the chair of Arts Council England, said, the state sector,

"doesn't generate quite the creative and acting talent that it could were people in that sector given the same quality of education in performing they get in private schools".

Sir Peter also argued that it should not be possible for an Ofsted rating of outstanding to be granted to any school unless it offers a vigorous and wide-ranging arts education. Does the Minister agree with that?

Lord Nash: We are working with exam boards and Ofqual to make sure that all students see live drama in the theatre, as part of their drama qualifications, and we expect this to be in place from September next year. It is of course not just about GCSEs; many students choose to pursue drama through their school drama societies and in school plays. I cannot think of a school that I have visited which does not have an active drama society and puts on school plays. Ofsted inspects against how well the school supports the formal curriculum with extra-curricular activities for pupils to extend their knowledge and understanding, and to improve their skills in a range of artistic, creative and sporting activities.

Investigatory Powers Bill

Committee (4th Day)

3.36 pm

Relevant documents: Pre-legislative scrutiny by the Joint Committee on the Draft Investigatory Powers Bill, Session 2015–16; 1st Report from the Joint Committee on Human Rights; 2nd Report from the Delegated Powers Committee; 3rd Report from the Constitution Committee

Amendment 191

Moved by ***Lord Paddick***

191: After Clause 206, insert the following new Clause—

"Notification by the Investigatory Powers Commissioner

(1) The Investigatory Powers Commissioner is to notify the subject or subjects of the use of the investigatory functions mentioned in section 205(1) to (3), including—

(a) the interception or examination of communications,

(b) the retention, accessing or examination of communications data or secondary data,

(c) equipment interference,

(d) access or examination of data retrieved from a bulk personal dataset,

(e) covert human intelligence sources,

(f) entry or interference with property.

(2) The Investigatory Powers Commissioner must only notify subjects of investigatory powers under subsection (1) upon completion of the relevant conduct or the cancellation of the authorisation or warrant.

(3) The notification under subsection (1) must be sent by writing within 30 days of the completion of the relevant conduct or cancellation of the authorisation or warrant.

(4) The Investigatory Powers Commissioner must issue the notification under subsection (1) in writing, including details of—

(a) the conduct that has taken place,

(b) the provisions under which the conduct has taken place, and

(c) any known errors that took place within the course of the conduct.?

(5) The Investigatory Powers Commissioner may postpone the notification under subsection (1) beyond the time limit under subsection (3) if the Commissioner assesses that notification may defeat the purposes of an ongoing serious crime or national security operation or investigation.

(6) The Investigatory Powers Commissioner must consult the person to whom the warrant is addressed in order to fulfil an assessment under subsection (5).”

Lord Paddick (LD): My Lords, Amendment 191 is in my name and that of my noble friend Lady Hamwee. It would insert a new clause after Clause 206 requiring the Investigatory Powers Commissioner to notify those who have been subject to the powers contained within the Bill, as set out in Clause 205(1) to 205(3), once the operation against them is complete or the warrant is cancelled. There are various conditions for notification and the ability to postpone notification in certain circumstances following discussion with the person to whom the warrant is addressed.

Citizens are entitled to the protection of the law but, as the Bill is drafted, it is impossible to challenge the Government and the use of state instruments of interference in people’s private lives if they have no idea that they have been the subject of surveillance. To quote the briefing provided by Liberty, if a person’s Article 8 rights—to a private and family life—and other Human Rights Act rights have been engaged and potentially violated,

“in order to have access to an effective remedy, as required under human rights law, the person must first be made aware of a possible breach”.

Cases in 1978 and 2006 before the European Court of Human Rights upheld this view. In 2007, the court went further and said that,

“as soon as notification can be made without jeopardising the purpose of the surveillance after its termination, information should be provided to the persons concerned”.

Post-event notification is already in place in some form in Germany, Belgium and the state of California in the United States of America.

There must of course be safeguards and these are built into the amendment, allowing the Investigatory Powers Commissioner to postpone notification if he assesses that it might defeat the purposes of an ongoing serious crime investigation or national security operation, after consultation with the body that issued the warrant. The right honourable Theresa May, the Prime Minister, repeatedly stated when she was Home Secretary that this is world-leading legislation. If that is the case, let us be radical and implement this amendment. I beg to move.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, as the noble Lord explained, Amendment 191 would insert a new clause that would see subjects of the lawful and proper use of investigatory powers notified of that fact.

There are a number of problems with that proposition, both in principle and from a practical perspective. First, let me be clear that I agree with the principle that where a serious error has occurred in the use of the investigatory powers, the commissioner should be able to inform a person affected. Clause 198(1) makes this absolutely clear.

However, I do not agree with the principle that, as a matter of course, anyone subject to the lawful use of an investigatory power must be notified, unless it would damage an ongoing serious crime or national security investigation. A principle of that kind would mean, for example, that we would need to notify suspected criminals and terrorists that they have been under investigation just because a specific ongoing investigation had stalled or, indeed, had concluded with evidence of wrongdoing but with insufficient evidence to bring a prosecution.

As noble Lords will know, suspected criminals and terrorists will often appear on the radar of the police and the security services at different times in the context of different investigations. It would clearly not be appropriate to inform them that investigatory powers had been used against them in a particular case as this could prompt them to change how they behave or communicate, which could hamper a future investigation. This is particularly important in relation to national security because this amendment would require the commissioner to make the subject of interest aware of,

“the conduct that has taken place”.

That would not just run contrary to the long-standing policy of successive Governments of neither confirming nor denying any specific activity by the security and intelligence agencies, but would essentially require the techniques the agencies use in specific cases to be made public. That would clearly assist terrorists in their operations, allowing them to stay one step ahead of the agencies.

Beyond the principled objections to this amendment, there would be numerous practical problems. It would not be practical, for example, for the commissioner to make everyone whose data were subject to a data retention notice aware of that fact. For example, he would have to require the relevant telecommunications operator to provide him with a list of all relevant customers, and it would have to inform him every time a new customer joined its service. It would not be difficult for criminals to use that process to identify services that they could use to avoid detection.

Equally, I suggest to the noble Lord that it would put unreasonable burdens on all public authorities covered by this Bill to require them constantly to need to make a case to the commissioner as to whether it would hamper national security or serious crime investigations if subjects were told that investigatory powers had been used against them. It would surely be better for the police to spend time and money on investigating criminals, rather than on determining whether individuals should be informed about perfectly lawful investigative activity.

Furthermore, in the context of bulk warrants under parts 6 and 7, the public authority or commissioner would need to examine all the data collected under the

warrant to identify the individuals whose data have been collected. That would not only be impractical, but data would be looked at that otherwise there would have been no need to examine. This new clause would therefore actually lead to greater intrusions into privacy than would otherwise be necessary, which I am sure cannot be the intention.

I submit to the noble Lord that the proposed amendment is at best unnecessary and at worst threatens fatally to undermine the work of law enforcement and the security and intelligence agencies.

Let us be clear what the effect would be. It is not innocent, ordinary, law-abiding people who would be notified, because the agencies do not seek or obtain warrants against such people; it is suspected criminals and terrorist suspects. They would then change their behaviour, and we would have less chance of bringing them to justice. That point lies at the nub of the argument I have put to the noble Lord. I am sure that cannot be his intention, so I hope he will consider it the right thing to do to reflect on this point between now and Report, and withdraw the amendment at this stage.

3.45 pm

Lord Beith (LD): My Lords, before my noble friend responds, which I think he is about to do, I will take the opportunity to say that the motivation behind my noble friend's amendment is a very sound one. The fact that you do not know whether you are being wrongly investigated is contributing to a sense of unease about the intelligence provisions in this legislation. This is a problem we have to try to address.

The Minister has put forward some genuine, practical considerations which would make it difficult to implement a clause such as my noble friend's. This is not a new problem: throughout the history of the Investigatory Powers Tribunal, we have had the problem that the only answer that could be given is that no unlawful activity has been carried out, which does not tell you whether any activity has been carried out. If it was carried out, it was lawful, but maybe it was not carried out at all. It was an infuriating answer for people who suspected that they might have been subject to investigatory powers but had no way of knowing or being certain.

It is a problem which even existing procedures sidestep. The Minister referred to ways in which notification may take place in cases where a mistake has been made. Included in the category of people to whom that might apply would be the very people he said he did not want to assist by bringing to their attention that on this occasion, they had been unsuccessfully investigated but there might well be reason to investigate them in the future. The Minister was wrong to say that the people to whom we would be imparting this information were criminals or people threatening the security of the state. If an investigation has not been successful in identifying who is involved in a radicalisation ring or in planning a kidnapping, that may well be because some of those people genuinely were not involved in any way, and some other factor—a mistaken number, for example—had drawn them into the net of the inquiry. Maybe they were known to others involved but genuinely played no part in it, and that emerges from the intelligence.

We should recognise, in considering this suggestion, that strong fears arise from uncertainty and from an inability to establish whether you have been the subject of investigation or not, when there is no reason for you to have been so subject. That of course places a very heavy burden on the commissioners, because rather like special advocates, they have to represent the concerns of people with whom they cannot check—they cannot ask, "How do you feel about this?". At the very least, it is a salutary reminder of the importance of the processes which this Bill will introduce and of the involvement of judicial commissioners, and we may need to revisit this issue in the future.

Lord Hope of Craighead (CB): My Lords, I absolutely understand the motivation behind the amendment, but I wonder whether the Minister might consider another objection. He referred to the risk of the person who was notified changing his practices in the knowledge that what he was doing was being observed by one or other of these various methods. The problem may be not the individual himself but the people with whom he is in contact. One does not know how wide the web is of the group to which he belongs, and it would be so easy for that message to be passed around to people to warn them that there is a particular mechanism in play which is tapping into what he does and that those who operate in the same way as he does will be subjected to the same kind of scrutiny. I rather suggest that the problem is more wide-ranging than the Minister was telling us in his very careful reply to the amendment.

Lord Carlile of Berriew (LD): My Lords, with great respect to my noble friends Lord Paddick and Lord Beith, I am with the Minister and the noble and learned Lord, Lord Hope, on this one. What my noble friends may have overlooked is the strength, distinction and effectiveness of the Investigatory Powers Commissioner. If there was any evidence to indicate that the commissioner, whether the present one or a future one, was likely to behave in a malign way and not reveal where improper action had taken place, then my noble friends' concerns might have some validity. As has been said, though, the Bill is a world leader, not least in the protections that it contains. I commend to the House the provisions that have been placed in the Bill without these unnecessary amendments.

Earl Howe: My Lords, I shall briefly respond to the points that have been made. I am grateful to the noble Lord, Lord Beith, for amplifying the case that his noble friend made in introducing the amendment. In the end, we come back to the point that the noble Lord, Lord Carlile, has just articulated. We are talking here about the proper, legitimate use of the powers that the Bill contains, with robust oversight and mechanisms for redress built in, and the Investigatory Powers Commissioner is indeed an important safeguard in that context.

We are absolutely on board with the proposition that where an innocent person has been completely wrongly subject to the use of the investigatory powers—that is, where a serious error has occurred—there is no

[Earl Howe]
argument that that person should be informed. However, I submit that one cannot talk in the abstract about someone who has been "wrongly investigated", which I think was the phrase used by the noble Lord, Lord Beith. You can be wrongly investigated if you are completely innocent, but you can also be wrongly investigated if there is perhaps not enough to pin on you as the culprit in a particular case but you might nevertheless, subject to further evidence, be implicated in a serious crime or a threat to national security. So we have to be clear about our terms in this context.

I come back to the fact that there are issues of principle and practice here that make this particular amendment unworkable. I also take on board the very good point made by the noble and learned Lord, Lord Hope, that it is not just an individual who could react to the news that they had been investigated in a way that would frustrate law enforcement agencies or intelligence services but a whole group of people. That in turn could affect national security, or indeed the conduct of criminals, much more widely.

Lord Paddick: I am grateful to the Minister and to other noble Lords who have contributed to this short debate. I was heartened when the Minister started to say that he could see in principle what the amendment was driving at and therefore the merit of it to that extent. He then gave a lot of practical reasons why it would not work in practice. I have to say that I found a lot of those unconvincing, particularly when you look at the wording of the amendment and the fact that:

"The Investigatory Powers Commissioner may postpone the notification … if the Commissioner assesses that notification may defeat the purposes of an ongoing serious crime or national security operation or investigation"—

which would cover the point made by the noble and learned Lord, Lord Hope. Presumably the police and security services would know that this individual was part of a wider network and therefore would not inform that individual—at least, not at that stage.

So I think we are on to something here in principle, although I accept the practical difficulties that the Minister pointed out. We need to go back and rethink the amendment to address the practical problems that he highlighted and see whether we can allay his fears at Report. But, at this point, I beg leave to withdraw the amendment.

Amendment 191 withdrawn.

Clause 207: Error reporting

Amendment 191A

Moved by ***Baroness Hamwee***

191A: Clause 207, page 159, line 37, leave out "must" and insert "may"

Baroness Hamwee (LD): My Lords, I will speak also to Amendments 191B, 191BA, 191C, 191D, 191E, 191F, 191FA, 191G, 191GA, 191GB, 191H and 191J—on this occasion, I do not think that the importance is in inverse proportion to the number of amendments, as one often finds.

Taken together, these amendments would give the Investigatory Powers Commissioner greater scope to report errors—this is not unrelated to the previous amendment—and create a more level approach by removing many of the strict limitations which would prevent many errors being reported. The objective is to ensure that the protections in place for the agencies do not restrict those for the general public in learning whether an error involving them has been made. I must thank the organisation Big Brother Watch for drawing several points to our attention.

The first two amendments simply seek to bring more objectivity to the exercise.

Amendments 191C and 191D deal with when an error should be reported. According to the Bill, that should happen when it is "a serious error" and,

"it is in the public interest for the person to be informed".

I suggest that the default should be that a person who has been the subject of an error should be informed unless there is a good reason for him not to be. The clause does not say that the person should be informed unless it is in the public interest for the person not to be informed. In the debate on the previous amendment, the Minister talked about prejudicing an ongoing investigation. Without consulting my noble friend Lord Paddick, I would regard that as being something that would be in the public interest to create a block on information. We have the phrase "serious error". To me, "serious" risks an ever-higher threshold being set on reporting an error. One of my amendments suggests the term "not trivial" as an alternative that would provide a proportionate response to the issue.

Amendment 191E would delete Clause 207(3). Subsection (3) provides that,

"the fact that there has been a breach of a person's Convention rights (within the meaning of the Human Rights Act 1998) is not by itself sufficient for an error to be a serious error".

The requirements of the Human Rights Act are a particular consideration under Clause 2, which is the privacy clause. I would regard any breach of the convention rights as something about which to be very careful. Article 8, the right to private and family life, is not absolute; there may be interference with it in accordance with the law where it is necessary in a democratic society, in the interests of national security and given other matters set out in the article. I have two questions, and it looks from the way he is writing notes as though they should be addressed to the noble and learned Lord, Lord Keen. First, how does subsection (3) affect Clause 2, the privacy clause? Can the Committee be assured that that clause is in no way weakened by Clause 207(3)? Secondly, is Clause 207(3) included in order to meet the wording of Article 8, which is that it does not apply if the breach is "in accordance with law"? Is this clause bringing that situation within the scope of being in accordance with law?

Amendment 191F requires the Investigatory Powers Commissioner to consider matters which are the subject of Clause 2, the privacy clause. This part of the Bill is not referred to in Clause 2. The safeguards to protect privacy are referred to in Clause 205(5) but that is in connection with a review under Clause 205. How does the privacy safeguard apply to this clause?

Amendments 191G and 191GA—probably best read the other way round by noble Lords who are managing to follow this, which is not a stream of consciousness but a stream of amendments—would provide that the details which the commissioner considers necessary for the exercise of the right to apply to the tribunal and "other details" should be made public and be proportionate. If an error is made, why should information about it be limited to details necessary for an application to the Investigatory Powers Tribunal? There may be other rights in play, and should the person not be informed? People do not always want to exercise a right, but nevertheless if an error has been made they should have the information about it. The second of this pair of amendments, which refers to proportionality, may not be quite right in its drafting, but I am sure that the noble and learned Lord will understand that I am seeking to find the balance between individual rights and national security and so on.

I turn to Amendment 191GB. Clause 207(9) provides that an error which prompts action under the clause is an error by a "public authority". For this purpose, do public authorities include telecommunications officers? They should do, which is why the amendment adds them if they are not already there, because those operators carry out a very significant amount of surveillance work on behalf of public authorities.

On Amendment 191H, we are told that errors must be of a description identified in a code of practice. The important term here is "code". The codes of practice are variable: they are not part of the primary legislation. I know I am going to be told about scrutiny of them, but they limit what will be a relevant error and I am a bit doubtful about the sort of scrutiny one is able to give to this type of instrument or document. You would have to be very diligent and on the ball to pick up the connection with this clause.

Finally, Amendment 191J suggests that the Investigatory Powers Commissioner should include these matters in a report—Clause 210, which we are coming to, provides for periodic reports—and make recommendations. I dare say I might be told that he could, of course, make recommendations arising from his reviews of relevant errors and of the definition of a relevant error, but it would be appropriate to link the reviews to the statutory report. I beg to move.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, Clause 207 is clearly of the utmost importance. It provides that if a person has been the subject of a serious error, and it would not be contrary to the public interest, the commissioner must inform them of the error and of their right to apply to the Investigatory Powers Tribunal. The judicial commissioner must provide such details as the commissioner considers necessary for the person to bring a claim. I understand the intention behind the amendments to this clause and, of course, support the principle that individuals should have the right to seek appropriate redress if they have suffered serious harm or prejudice as a result of use of the powers under the Bill. However, I do not consider that it would be appropriate for an individual to be notified if that went against the wider public interest.

The threshold that has to be reached before an individual should be notified has been considered very carefully. It has been set to ensure that the rights of the individual who may have suffered as a result of a serious error are balanced against the wider national interest of preserving the operational capabilities of the security and intelligence agencies and those of law enforcement. That is a delicate balance and it is right that the commissioner, with his independence and expertise and with all the facts in front of him—or, indeed, her—is best placed to take that decision on a case-by-case basis.

Amendment 191GB seeks to expand the definition of "relevant error" to include errors by telecommunications operators, who are not, in response to the question posed by the noble Baroness, Lady Hamwee, public authorities. The definition of what constitutes a relevant error is important for the reporting duties placed on public authorities and telecommunications operators and it is right that those persons should be under a duty to report any relevant errors to the Investigatory Powers Commissioner. The amendment is also unnecessary. Telecommunications operators already report their errors to the Interception of Communications Commissioner's Office. The IPC can comment on any CSP errors in its annual report and can disclose information via Clause 211(2), and the Investigatory Powers Tribunal can investigate errors by telecommunication operators. I hope noble Lords will appreciate that errors by telecommunications operators are very much in the minority.

The Investigatory Powers Commissioner is under a duty to keep under review the definition of a relevant error, so will no doubt raise concerns if they feel that the definition is incorrect. The commissioner's reports under Clause 210 may include recommendations. They do not, therefore, need to be put under a duty to make recommendations, as Amendment 191J would achieve, if the definition of relevant error is working as intended and there is nothing to recommend.

Clause 207(3) states that a breach of a person's convention rights is not necessarily a serious error. The noble Baroness, Lady Hamwee, observed that any breach of convention rights is a matter about which we should be very careful. I do not disagree with that. She asked how subsection (3) would affect the privacy provision in Clause 2. It would in no way weaken that clause, I suggest. As for Clause 207(3), which addresses the wording of Article 8, as the noble Baroness, Lady Hamwee, observed, Article 8 refers to proceedings that are in accordance with law, and therefore the provision is there in Clause 207(3). Subsection (3) really brings about only a factual clarification. The test for whether an error is serious is whether it has caused significant prejudice or harm to the person concerned. It follows that a breach of a person's convention rights is not necessarily, or per se, a serious error. It may well be, for the reasons already outlined, but a technical breach that does not cause harm or prejudice may not be sufficiently serious for it to be necessary to inform the person.

One of the amendments seeks to require notification where the error has not caused serious harm or prejudice but may do so in the future. Given the difficult balance

[Lord Keen of Elie]
that has to be struck here, it is not necessary or appropriate for persons to be informed when the error has not caused them harm or prejudice but may do so in the future. We also consider that this would place the commissioner in the difficult position of speculating. Of course, we would expect the commissioner to keep under review the circumstances related to such an error. If harm was then caused to the person, the commissioner may then decide it is necessary to notify that person.

There will be transparency about this process. Clause 207(8) means that each year the commissioner has to publish the statistics of his or her decision-making. They have to publish the number of errors that they are aware of, which proportion of these they consider to be serious, and then what proportion of those errors were so serious that the public interest was best served by an individual being informed. This provision will ensure that the information will be in the public domain and that the IPC's approach to errors will be subject to significant scrutiny.

Amendment 191F would require the commissioner, when deciding whether to notify a person, to take into account the matters in the new privacy clause. However, I am afraid that I do not think that the considerations in the privacy clause are directly or strictly relevant to this decision. If a public authority has failed to have regard to the matters in the privacy clause, that in itself may constitute a serious error. However, that will anyway be the case under the Bill as drafted and so this amendment is not necessary on that basis.

Amendment 191FA seeks to remove the need for the IPC to consider whether it is in the public interest for the individual to be informed. If this amendment were accepted, we would end up with a situation in which an individual was informed of an error even if it was completely contrary to the wider public interest for them to be so. I do not consider that that would be appropriate.

The Bill provides that the Investigatory Powers Commissioner must provide the individual with the details the commissioner considers necessary to bring a claim in the Investigatory Powers Tribunal. That is the manner in which the individual will vindicate their right of relief and is the manner provided for in the Bill. Amendment 191G would additionally require the provision of information "to be proportionate". We do not think that these requirements are needed and they would tend to erect an additional threshold to be met before information is provided to a potential claimant. Therefore, they might well defeat the amendment's intent. We think it is sufficient that the person is provided with such information as is necessary.

Similarly, Amendment 191GA seeks to amend Clause 207(6) so that, when informing an affected person, the IPC would have to inform them not only of their rights to apply to the IPT but also of "other details". Presumably, these details would be over and above what was needed by the individual to bring a claim in the Investigatory Powers Tribunal and, of course, further disclosures can be handled by the IPT in the normal way. I am not sure what these extra details would be and they have the potential to damage national security if too much information was given to an individual. I repeat the point made earlier that the Bill provides that the means by which an individual can vindicate their right is by way of an application to the IPT, and they are to be given the necessary information for that purpose. Given all those circumstances, I invite the noble Baroness to withdraw the amendment.

4.15 pm

Lord Beith: My Lords, these amendments address the fact that the fundamental principle in Clause 207 is very heavily qualified, even in cases where the error might be serious. I draw your Lordships' attention to paragraph 5.42 of David Anderson's report on bulk powers, in which he deals with errors. He rightly sets this in the context of a strong culture of compliance and self-reporting in the agencies when things go wrong. I agree with that, and it is right that we discuss it in that context. However, the fact remains that there are errors and, as the Minister pointed out, the statistics of errors are reported, so we know what they are. My concern is to be satisfied that most of these errors, if they impinge on the rights of a citizen, are notified to the citizen so that they know they can take further action.

I particularly draw attention to one case. David Anderson says in paragraph 5.42:

> "In one very serious incident in 2014, an individual who deliberately undertook a number of unauthorised searches for related communications data had his employment terminated and vetting status withdrawn".

That clearly indicates the point I made earlier: the agencies take this matter very seriously. I am interested in whether in that case the individual or individuals who may have been the victims of that improper use of the powers would be notified under the provisions of this clause, or whether the clause is so qualified that they might not be. Quite clearly, powers were abused by an individual acting without authority and wrongly, and the individual and the agency paid the price for doing so—he lost his job, which, from the limited description, seems entirely right. However, it is not clear whether the citizen, who had wrongly been the subject of this investigation, would know and would therefore be able to pursue his rights.

Lord Keen of Elie: Clearly, I am not in a position to comment on a particular case. However, in the context of what is said at paragraph 5.42, one has to remember that there is the further issue of whether it would have been in the public interest to make disclosure. That necessary test would have had to be met before there would have been disclosure, however serious the original breach.

The Earl of Erroll (CB): My Lords, I have been listening to the debate and realised that of course people are concerned because they do not know what information is held. Sometimes people get into trouble because something is held on file and they do not know what it is. Only the subject knows what affects them and what does not. To take the example just given, where data may have been gathered by someone who is subsequently fired, that information may have been quite sensitive if revealed to someone in another organisation, and only the individual who was the subject

of those unauthorised requests would know that. Therefore, this area bears examination. I am not sure how we should deal with that, but to rely just on the commissioner to know exactly how this would affect everyone would be difficult as well. It is worth thinking about this further.

Baroness Hamwee: My Lords, on the example my noble friend mentioned, it is hard to think that it would not be in the public interest for somebody who has been the subject of,

"a number of unauthorised searches for related communications data",

to be notified. Of course I thank the noble and learned Lord for his detailed reply, although I am not sure whether he responded to my amendment on the code of practice.

I do not disagree about the national interest but it does not answer my point about reversing the burden so that the default position would be that there is notification unless it is not in the public interest—or, to put it another way, notification rather than notification only if it is in the public interest that somebody is informed.

On telecommunications operators and the report to the ICO, as the Bill seeks to do throughout, I sought to join up some of the dots in this landscape. Importantly, on the Human Rights Act, the noble and learned Lord says that the considerations in Clause 2 are not relevant; we may have another go at this on Report with a slightly different approach. However, he also said—I know that this was simply a turn of phrase—that Clause 207(3) does not weaken Clause 2, "I suggest". I hope that he will be able to say that that amounts to an assurance to the Committee. Perhaps I may invite him to do that, otherwise we will certainly come back to this for an assurance.

Lord Keen of Elie: I was expressing my thoughts upon the matter but I hope that I was entirely positive about the point.

Baroness Hamwee: I may have to consider that.

Finally, I turn to the question of whether just details would give rise to a right to make a claim to the tribunal. The way this issue is described, it is almost as though the commissioner is standing in for the tribunal and making an assessment of what has happened. I think that it should be up to the individual to assess that for himself on the basis of information. However, we are in Committee and I beg leave to withdraw the amendment.

Amendment 191A withdrawn.

Amendments 191B to 191J not moved.

Clause 207 agreed.

Clause 208: Additional functions under this Part

Amendment 191K

Moved by ***Baroness Hamwee***

191K: Clause 208, page 160, line 47, leave out "require" and insert "request"

Baroness Hamwee: My Lords, this takes us to Clause 208 concerning additional functions. Clause 208(1)—there should be a limit on the size of Bills so that one can handle them easily—provides that a judicial commissioner must give the tribunal the documents and so on as the tribunal requires. The first of my amendments would substitute "request" for "require". These words are often used as synonyms, but the use of "require" suggests that the documents and information—the matters mentioned in Clause 208(1)—are objectively necessary for the tribunal. I should have thought that the tribunal would have the scope to ask for what it wanted, because I think that one can rely on it not to be frivolous in making requests.

I should have said that I would be speaking to Amendments 191L, 192A, 192B, 192C and 194G. Government Amendment 192 is also in this group. Amendment 191L relates to Clause 210 concerning annual reports. It would require the Investigatory Powers Commissioner to report on the operation of the Act. He or she will have a great deal of experience of far more than simply the functions of the judicial commissioners, as provided for in the Bill. Again, I may be told that this is not necessary because the IPC can always make suggestions about changes to the Act or how it is applied, but in their Amendment 192 the Government have added to the list of non-exclusive items in this clause, and that very amendment suggests to us that it would be appropriate to add our words. The operational purposes are a step removed from the judicial commissioners' functions, so I do not think that our amendment is out of place. Amendment 192A is consequential.

With regard to Amendment 192B, David Anderson, at paragraph 2.26(g) of his report, wrote:

"The operation of current bulk interception powers is subject to the audit of IOCCO, including its technical inspectorate, and will in future be audited by the IPC. The 2015 ISC Report recommended that the oversight body be given express authority to review the selection of bearers, the application of simple selectors and initial search criteria, and the complex searches which determine which communications are read. That authority is (I am assured by the Home Office) inherent in clauses 205 and 211 of the Bill".

In a footnote he referred to the Clause 205(5) duty on the IPC to,

"keep under review the operation of safeguards to protect privacy".

Clause 205 is a general oversight clause. Clause 211 applies to the judicial commissioner in a particular case.

I baulked at the task of trying to deal with the terms "bearers", "simple selectors", "initial search criteria" and "complex searches", so I have opted for a more straightforward amendment to get on record, I hope, the assurance to which Mr Anderson refers—that the authority to review these matters is inherent in Clauses 205 and 211— together with an explanation as to the application of the authority raised by the ISC. I am fairly certain that I have provided this explanation to officials. I hope that the Minister is aware of this and that his briefing covers it—he is looking puzzled—because I sent it to the officials last week. If not, he will perhaps wish to come back to it after today.

[Baroness Hamwee]

Amendment 192 is about the definition of a "relevant person" for the purposes of the judicial commissioner's powers under the clause. The clause includes "any member of a public authority". However, given the definitions in other legislation, "a public authority" is not fully defined. My background, as is that of our new Home Office Ministers, is in local government. Therefore, when I hear the term "elected member", it suggests an elected member, not the authority itself. The authorities listed in Schedule 4 suggest that the schedule is talking about the authorities, not members of authorities. So when a "relevant person" has to disclose documents, provide assistance and so on, who are we talking about? Who is a board member of, say, HMRC or a government department? I do not know and the amendment seeks to understand that term.

Amendment 194G is concerned with the commissioners keeping the performance of the board under review. The TAB annual report stated:

"At the next review the Terms of Reference should be expanded to include sponsor's obligations, based on Cabinet Office guidance. This should include the requirement to review the performance of the TAB annually, although the scope to carry out such a review will be limited unless and until its main advisory function is called upon".

The amendment seeks to add that comment to the Bill. I beg to move.

Lord Rosser (Lab): Perhaps I might raise a couple of points: one on an issue raised by the noble Baroness, Lady Hamwee, and another on government Amendment 192, to which I assume the Minister will be speaking in his response.

The noble Baroness referred to paragraph 2.26(g) of the Anderson report. Without going through the whole issue, the noble Baroness, Lady Hamwee, referred to David Anderson's sentence at the end of that paragraph, which states:

"That authority is (I am assured by the Home Office) inherent in clauses 205 and 211 of the Bill".

I, too, would be grateful to hear the noble and learned Lord repeat that the authority is inherent in Clauses 205 and 211, as David Anderson asked, so that it is very clearly on the record. If the Minister will do that, it will save having to pursue the matter at a later stage.

4.30 pm

As I understand it, government Amendment 192 seeks to give effect to a recommendation of the parliamentary Intelligence and Security Committee by requiring the Investigatory Powers Commissioner to publish information about the operational purposes specified on bulk grants issued under Parts 6 or 7 of the Bill during the relevant reporting period in his or her report to the Prime Minister after the end of each calendar year. I am certainly in no way opposed to the amendment but will simply ask: how extensive will the information be about the operational purposes specified during the year in warrants under Part 6 or Part 7? Who will determine whether it is in sufficient detail to meet the terms of the amendment? Will it be the Prime Minister, somebody else, or simply the author of the report?

Lord Keen of Elie: I am obliged to the noble Baroness and the noble Lord. I will begin by responding to the two particular questions raised by the noble Lord, Lord Rosser. First, with regard to the observation made by David Anderson in his report at paragraph 2.26(g), I confirm it is the Government's position that the authority is inherent in Clauses 205 and 211. On the provisions of Amendment 192, which I will come to, it will be in the first instance for the commissioner to determine the content of his report—but if that is not considered adequate, questions will be raised as to whether further particulars should be given.

I come back to Amendment 191K to Clause 208, moved by the noble Baroness, Lady Hamwee, which relates to the relationship between the commissioner and the Investigatory Powers Tribunal. I believe that the amendment is unnecessary. The commissioner will be under a duty to provide all documents, information and assistance that the tribunal needs for its investigation, consideration or determination of any matter. If the tribunal judges that it requires assistance, the commissioner is under a duty to provide it. Just as one wishes to rely on the tribunal's judgment, so one wishes to rely also on the judgment of the commissioner. That is why it is sufficient in these circumstances that the word "require" should be provided for in the clause. In reality, of course, we expect the commissioner and the tribunal to have a strong working relationship, under which the tribunal will be free to call upon the expertise of the commissioner and their staff as necessary.

I appreciate the intention behind Amendments 191L and 192A to Clause 210 on the reporting duties of the commissioner—but, again, I believe that they are unnecessary. Currently, the Investigatory Powers Commissioner must make an annual report about the functions of the judicial commissioners and may make recommendations about their functions. Clause 205 is clear that the function of the commissioner is to review the use of the powers in the Bill by those who are authorised to use them. Therefore, the content of the commissioner's annual report will be about the operation of the Act once it is in force.

Government Amendment 192 brings forward a change to Clause 210 to make it clear that the commissioner must publish a summary of the use of operational purposes in each of his or her annual reports. No doubt we shall talk more about operational purposes in the coming days in Committee, but this amendment will enhance the oversight and transparency of the use of operational purposes, as the noble Lord, Lord Rosser, observed. I hope that I have given sufficient clarification of how that report should proceed. Clearly, we will be open to further discussion about that as we go forward.

With respect to Amendment 192C, Clause 211(7)(a) places a duty on,

"any member of a public authority",

to provide assistance to the judicial commissioners. The Government intend for this duty to be a broad one, encompassing everyone working for that public authority. But I note the observations of the noble Baroness, Lady Hamwee, and if that intention is not

clear from the drafting, we will reconsider the clause. I therefore invite the noble Baroness to not move her amendment.

Amendment 194G seeks to amend Clause 220, which replaces Section 13 of the Regulation of Investigatory Powers Act 2000 and provides for the continued existence of the Technical Advisory Board. As I mentioned in previous Committee sessions, the board will advise the Secretary of State on cost and technical grounds if a notice given under Parts 4 or 9 of the Bill is referred by a telecommunications or postal operator for review. The board comprises a balanced representation of those on whom obligations may be imposed by virtue of notices—namely, telecommunications operators—and of those persons entitled to apply for warrants or authorisations under the Bill. These individuals will have a detailed technical understanding of the capabilities provided for by the notices.

Amendment 194G would provide for the Investigatory Powers Commissioner to monitor and report on the performance of the board. This, I suggest, is unnecessary. The Technical Advisory Board and the Investigatory Powers Commissioner conduct very different functions during the review process. The primary role of the board is to advise the Secretary of State on cost and technical issues during a review. Should the Secretary of State decide to vary or confirm the effect of the notice after considering this advice, the Investigatory Powers Commissioner must review and approve the Secretary of State's conclusions as to the necessity and proportionality of the notice.

Noble Lords will see that the board will provide a different viewpoint from that of the commissioner during a review. Indeed, the robustness of this safeguard lies precisely in the fact that the board and the Investigatory Powers Commissioner play distinct roles in the review process. As such, it simply would not be appropriate for the Investigatory Powers Commissioner to oversee the work of the board.

It is of course right that the Government keep under review the performance of their non-departmental public bodies, including the Technical Advisory Board. This is part of the normal process of ensuring that those bodies adhere to best practice: for example, in their management of resources. I assure noble Lords and the noble Baroness, Lady Hamwee, that the Home Office, as sponsor of this board, already does so, adhering to Cabinet Office guidance in the process. The board's annual report is published on the internet for public scrutiny.

Although I consider that oversight of the board by the commissioner would be inappropriate, I wish to make it clear that the Bill already provides for the commissioner to comment on the work of the board in his or her annual report. Clause 210 allows the Investigatory Powers Commissioner to make recommendations about any matters relating to the commissioner's functions. The commissioner has oversight of the giving of notices and can therefore make such recommendations as he or she considers appropriate on matters relating to notices, including the role of the Technical Advisory Board in respect of such notices.

I hope that this satisfies the noble Baroness that oversight of the board's performance by the Investigatory Powers Commissioner really is not necessary. It is my view that the scrutiny of the board's performance and any changes to its membership continue to be overseen by the sponsoring body, the Home Office, and its Secretary of State, and not by another independent body.

It is also worth noting that, to date, the board has never been required to fulfil its statutory role—hence there has been very little work to scrutinise. This reflects the close consultation between the Government and communications service providers before a notice is given.

I appreciate that Amendment 192B intends to highlight the importance of safeguards to protect privacy. I share this sentiment, and there are safeguards to protect privacy running through the Bill. However, it is for those who are actually utilising the investigatory powers to ensure that safeguards to protect privacy are applied. It is then the job of the judicial commissioner to ensure that they are actually being correctly applied. The Government introduced an amendment to Clause 205(5) to make it clear that the commissioner must keep under review, by way of audit, inspection and investigation, the operation of safeguards to protect privacy.

In these circumstances, I invite the noble Baroness, Lady Hamwee, to withdraw the amendment.

Baroness Hamwee: My Lords, I am aware that there are a number of noble Lords in the Chamber for the next business, so I will be very brief and mention just a couple of things. On the question of a "public authority", will the Minister, in one of the very helpful letters that we receive following Committee days, tell us the Home Office's further thoughts on this to save a possible further amendment at Report?

Lord Keen of Elie: I will endeavour to ensure that that is done before Report in order that the position can be clarified.

Baroness Hamwee: I am grateful for that. My next request is for an explanation of the assurance given with regard to paragraph 2.26(g) of David Anderson's review. I do not doubt the assurance, but it would be helpful to understand the logic.

Lord Keen of Elie: Again, I am content to write to the noble Baroness on that point.

Baroness Hamwee: I am very grateful for both those assurances and beg leave to withdraw the amendment.

Amendment 191K withdrawn.

Clauses 208 and 209 agreed.

Clause 210: Annual and other reports

Amendment 191L not moved.

Amendment 192

Moved by ***Lord Keen of Elie***

192: Clause 210, page 163, line 28, at end insert—

"( ) information about the operational purposes specified during the year in warrants issued under Part 6 or 7,"

Amendment 192 agreed.

Amendment 192A not moved.

Clause 210, as amended, agreed.

Clause 211: Investigation and information powers

Amendments 192B and 192C not moved.

Clause 211 agreed.

House resumed.

Yemen: Breaches of International Humanitarian Law

Statement

4.44 pm

The Minister of State, Foreign and Commonwealth Office and Department for International Development (Baroness Anelay of St Johns): My Lords, with the leave of the House, I shall repeat as a Statement the response to an Urgent Question given in the other place by Mr Tobias Ellwood MP on the Government's assessment of breaches of international humanitarian law in Yemen. The Statement is as follows.

"Mr Speaker, I would like to thank my right honourable friend for raising this important matter. Indeed, recognising the importance of the issue, my right honourable friend the Foreign Secretary issued a Written Ministerial Statement today to update Parliament on the situation in Yemen. This update specifically includes references to international humanitarian law.

We are aware of reports of alleged violations of international humanitarian law by parties to the conflict, and as I have said on many occasions we take these allegations very seriously.

The Government regularly raise the importance of compliance with international humanitarian law with the Saudi Arabian Government and other members of the Saudi Arabian-led military coalition. The Foreign Secretary raised the issue of international humanitarian law compliance most recently with his Saudi counterpart, Foreign Minister al-Jubeir, on 22 August, and I did so on 25 August in Jeddah.

It is important that, in the first instance, the Saudi Arabian-led coalition conducts thorough and conclusive investigations into incidents where it is alleged that international humanitarian law has been breached. They have the best insight into their own military procedures and will be able to conduct the most thorough and conclusive investigations. It will also allow the coalition forces to understand what went wrong and apply the lessons learnt in the best possible way. This is the standard we set ourselves and our allies.

In this respect, Saudi Arabia announced more detail of how incidents of concern involving coalition forces are investigated on 31 January. The Saudi Arabian-led coalition Joint Investigations Assessment Team publically announced the outcome of eight investigations on 4 August, and further publications will follow.

I would also like to reiterate that clarifications made in the 21 July Written Ministerial Statement do not reflect a change in position. The changes were made to ensure that the parliamentary record is consistent and that it accurately reflects policy.

As outlined in the Statement of 21 July, it is important to make it clear that neither the Ministry of Defence nor the Foreign and Commonwealth Office reaches a conclusion as to whether or not an international humanitarian law violation has taken place, in relation to each and every incident of potential concern that comes to its attention. This would simply not be possible in conflicts to which the UK is not a party, as is the case in Yemen.

The Ministry of Defence monitors incidents of alleged international humanitarian law violations using available information. This is used to form an overall view on the approach and attitude of Saudi Arabia to international humanitarian law. This, in turn, informs the risk assessment made under the consolidated criteria and whether there is a clear risk that it might be used in the commission of a serious violation of international humanitarian law. We are not acting to determine whether a sovereign state has or has not acted in breach of international humanitarian law but instead, as criterion 2(c) requires, we are acting to make an overall judgment.

In conclusion, I am sorry that there has been confusion. We are responding to two Written Ministerial Statements that were in error. After trawling through other such Statements, of which there are more than 90, four more were seen to be in error. I came to the House today to clarify that. But as soon as I became aware of it, I made a Statement and wrote to the right honourable gentleman and the chairs of the International Development Committee, the Committees on Arms Export Controls and the Foreign Affairs Committee. I hope that that has clarified the situation".

4.48 pm

Lord Collins of Highbury (Lab): My Lords, we had a debate in this Chamber on these matters in January, when I asked the Minister whether it was sufficient to leave these serious breaches in international humanitarian law to conversations with the Saudi Government. It now transpires, eight months later, that we have been under the misleading impression that the Government have been undertaking investigations and reaching evidence-based conclusions, when they have not. The conflict in Yemen is ongoing and the UK is still selling arms to the Saudis. Clearly, the time must be now for the UK Government to suspend arms sales so that there can be a proper investigation into these serious breaches of international humanitarian law.

Baroness Anelay of St Johns: My Lords, as I mentioned a moment ago in repeating my honourable friend's Answer, the UK Government do not carry out investigations in

these circumstances. Those taking part in the incidents are better placed to report on them. I referred to the press statement put out by the joint incident assessment team, which makes clear its conclusions with regard to the eight incidents. I would be happy to make sure that a copy of it is available to the noble Lord by putting a copy in the Library, as other noble Lords may wish to see it. We have very carefully taken an overall view. Looking at the available evidence, it is clear to us that, given the guidance under the consolidated arms criteria and the EU criteria, the level has not been reached where those criteria have been breached. We therefore do not believe that we are in a position where any of the contracts awarded should be withdrawn.

Lord Wallace of Saltaire (LD): My Lords, the Statement says that we are not a party to this conflict but surely the supply of arms and weapons to the Saudis makes us an indirect party to it, which gives us a degree of responsibility. We have just had a referendum result which those who supported leaving Europe declared was a declaration of independence from Europe. Those of us who are concerned about British foreign policy are anxious that we should not as a result become more dependent on the Sunni Arab states and the Chinese, since we depend on their markets. Since the Saudis appear to be making a huge mistake by defining a conflict which has deep historical and local roots within Yemen as a Sunni-Shia regional conflict, should we not be more critical of and a little less acquiescent to the Saudi approach?

Baroness Anelay of St Johns: My Lords, we are never acquiescent if there are breaches of international humanitarian law and there is evidence to that fact. With regard to the conflict in Yemen, a UNSC resolution—I think that it is Resolution 2216, but if I am to be corrected I will make sure that the noble Lord knows of it—recognises that the current President is a legitimate President. Saleh is not the legitimate President and therefore the Houthis are carrying out a violent activity which is not legitimate. The United Nations has clearly made the point that it is right for us all to seek a solution to the Yemen crisis. I am certainly disappointed that it has not been possible in these last weeks—my honourable friend Tobias Ellwood has recently been in the region—but we strongly support the work of the UN special envoy, Ismail Ould Cheikh Ahmed, and his tireless efforts. That is what we need to do.

Lord Howell of Guildford (Con): My Lords, I know that this question is mostly about arms supplies to the Saudis and Saudi activities, and the tragic and horrific incidents in Yemen. However, can my noble friend confirm, first, that these matters have been raised not only by the Foreign Secretary but, it is reported, by the Prime Minister at the highest level with the Saudi authorities? If so, I welcome that very much. Secondly, although this is not mainstream to the Question, we are told in reports that some of the worst suffering—starvation and the lack of water or food of any kind—is taking place on a very large scale in Yemen at the moment. There is a gigantic humanitarian crisis on top of everything else. Have we any news at all on what steps can be taken with the UN or other international agencies to begin to ameliorate this horrific and terrible situation?

Baroness Anelay of St Johns: My Lords, I can confirm that the Foreign Secretary has raised these matters. I will check whether the current Prime Minister has done so; I know that the previous Prime Minister did. However, I will check on that and get back to my noble friend, who raises the point which must affect us all: that one-fifth of the world's total population who are in need of humanitarian aid live in Yemen. It is 21 million people or 80% of that population. The UK is the fourth-largest donor and we have more than doubled our commitment to Yemen over the last financial year, but what really needs to be done is to find the peace.

Lord Hain (Lab): My Lords, surely the Minister will accept that at the heart of this deepening and horrific conflict, with its humanitarian disasters, is the proxy war being fought between Saudi Arabia and Iran in that arena. Is it not our duty to use our historic alliance with the Saudis, in particular, and our new-found relations through the nuclear treaty with Tehran to make sure that they seek a rapprochement instead of fighting each other at tremendous cost to local people in Yemen?

Baroness Anelay of St Johns: The noble Lord makes a very acute observation. I would call upon Iran to make best efforts to avoid doing anything to protract the conflict in Yemen. It is important that in both circumstances Saudi Arabia and Iran are in a position where they make sure that peace can happen. For any country anywhere to carry out a proxy war is something we should deplore.

Lord Lea of Crondall (Lab): My Lords, is it not a concern to Her Majesty's Government that, although in the UN system and so-on ex-President Saleh is not the legitimate Government, the legitimate Government have been attacked? The attacks on the ex-government forces are legitimate, according to the UN system. I am following the noble Lord, Lord Wallace of Saltaire, here. The Statement says it,

"would … not be possible in conflicts to which the UK is not a party".

Are the Government not concerned that we are thought to have a dog in this fight and that we are on the side of the Saudis?

Baroness Anelay of St Johns: My Lords, to use the noble Lord's rather straightforward analogy, we do not see ourselves as a dog in the fight. We see ourselves as the dog in the peace, working through the United Nations to try to achieve peace. The quad met last week, and we are disappointed that it was not possible for peace to be achieved. We are not going to give up on that. We will continue our work through our allies, and particularly through the UN, to achieve what Yemen needs: to be in a position where 80% of its population can feed themselves instead of being in such dire conditions.

Exiting the European Union

Statement

4.57 pm

The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley): My Lords, with the leave of the House I will now repeat a Statement made in the other place earlier today by my right honourable friend the Secretary of State for Exiting the European Union.

"Mr Speaker, I thought it would be useful to the House to be brought up to date on the working of my department after the referendum of 23 June.

Our instructions from the British people are clear: Britain is leaving the European Union. The mandate for that course is overwhelming. The referendum of 23 June delivered a bigger popular vote for Brexit than that won by any UK Government in history. It is a national mandate, and this Government are determined to deliver it in the national interest.

As the Prime Minister has made clear, there will be no attempt to stay in the EU by the back door, no attempt to delay, frustrate or thwart the will of the British people, no attempt to engineer a second referendum because some people did not like the first answer. The people have spoken in the referendum offered to them by this Government and confirmed by Parliament, and all of us, on both sides of the argument, must respect the result. That is a simple matter of democratic politics.

Naturally, people want to know what Brexit will mean. Simply, it means the UK leaving the European Union. We will decide on our borders, our laws and taxpayers' money. It means getting the best deal for Britain, one that is unique to Britain and not an off-the-shelf solution. This must mean controls on the number of people who come to Britain from Europe but also a positive outcome for those who wish to trade in goods and services.

This is a historic and positive moment for our nation. Brexit is not about making the best of a bad job. It is about seizing the huge and exciting opportunities that will flow from a new place for Britain in the world. There will be new freedoms, new opportunities and new horizons for this great country.

We can get the right trade policy for the UK. We can create a more dynamic economy, a beacon for free trade across the world. We want to make sure our regulatory environment helps rather than hinders businesses and workers. We can create an immigration system that allows us to control numbers and encourage the brightest and the best to come to this country.

But I want to be clear to our European friends and allies: we do not see Brexit as ending our relationship with Europe. It is about starting a new one. We want to maintain or even strengthen our co-operation on security and defence. It is in the interests of both the UK and the EU that we have the freest possible trading relationship. We want a strong EU, succeeding economically and politically, and working with Britain in many areas of common interest. So we should all approach the negotiations to come about our exit with a sense of mutual respect and co-operation.

I know the House will want to be updated about the work of my new Department for Exiting the European Union. It is a privilege to have been asked to lead it by the Prime Minister, and the challenge we face is exciting and considerable. It will require significant expertise and a consistent approach. Negotiating with the EU will have to be got right. We are going to take the time needed to get it right, and we will strive to build a national consensus around our approach.

We start from a position of strength. As the Prime Minister said yesterday, there will be challenges ahead. But our economy is robust, thanks in no small part to the work of my right honourable friend the Member for Tatton. The latest data suggest our manufacturing and service industries and consumer confidence are strong. Businesses are putting their faith and money in this country. Over the summer, SoftBank, GlaxoSmithKline and Siemens all confirmed that they will make major investments in the UK. Countries including Australia have already made clear their desire to proceed quickly with a new trade deal for the UK. As other nations see the advantages to them, I am confident that they will want to prioritise trade deals with the UK. But we are not complacent. Our task is to build on this success and strength and to negotiate a deal for exiting the EU that is in the interests of the entire nation.

As I have already indicated, securing a deal that is in our national interest does not and must not mean turning our back on Europe. We are leaving the European Union—we are not leaving Europe. To do so would not be in our interest, or Europe's. So we will work hard to help establish a future relationship between the EU and the UK that is dynamic, constructive and healthy. We want a steadfast and successful European Union after we depart.

Therefore, as we proceed, we will be guided by some clear principles. First, as I said, we wish to build a national consensus around our position. Secondly, while always putting the national interest first, we will always act in good faith towards our European partners. Thirdly, wherever possible, we will try to minimise any uncertainty that change can inevitably bring. Fourthly, crucially, we will, by the end of this process, have left the European Union, and put the sovereignty and supremacy of this Parliament beyond doubt.

The first formal step in the process of leaving the European Union is to invoke Article 50, which will start two years of negotiations. Let me briefly update the House on how the machinery of government will support our efforts, and the next steps we will take. First, responsibilities: the Prime Minister will lead the UK's exit negotiations and will be supported on a day-to-day basis by the Department for Exiting the European Union. We will work closely with all government departments to develop our objectives and to negotiate new relationships with the EU and the rest of the world. Supporting me is a superb ministerial team and some of the brightest and best in Whitehall who want to engage in this national endeavour. The department now has more than 180 staff in London, plus the expertise of more than 120 officials in Brussels, and we are still growing rapidly with first-class support from other government departments.

As to the next steps, the department's task is clear. We are undertaking two broad areas of work. First, given that we are determined to build a national consensus around our negotiating position, we are going to listen and talk to as many organisations, companies and institutions as possible—from the large plcs to small business, and from the devolved Administrations through to councils, local government associations and the major metropolitan bodies.

We are already fully engaging with the Governments of Scotland, Wales and Northern Ireland to ensure a UK-wide approach to our negotiations. The Prime Minister met the First Ministers of Scotland and Wales and the First Minister and Deputy First Minister of Northern Ireland in July, and last week I visited Northern Ireland for meetings with its political leaders, where I reiterated our determination that there will be no return to the hard borders of the past. I will visit Scotland and Wales soon.

My ministerial colleagues and I have also discussed the next steps with a range of organisations. My first meeting was with the general secretary of the Trades Union Congress, followed by key business groups, representatives of the universities and charitable sectors, and farming and fisheries organisations.

However, this is just the start. In the weeks ahead, we will speak to as many other firms, organisations and bodies as possible—research institutes, regional and national groups and businesses up and down the country—to establish the priority issues and opportunities for the whole of the UK. As part of this exercise, I can announce that we will hold round tables with stakeholders in a series of sectors to ensure that all views can be reflected in our analysis of the options for the UK's withdrawal from the EU. The first of these will take place later this month. I will also engage with the member states and am beginning this with a visit to Dublin later this week.

I am working particularly closely with the Foreign Secretary and the Secretary of State for International Trade. They have been meeting counterparts in Washington, Brussels, Delhi and the capitals of other EU member states. While we do this, my officials, supported by officials across government, are carrying out a programme of sectoral and regulatory analysis that will identify the key factors for British business and the labour force that will affect our negotiations with the EU. They are looking in detail at over 50 sectors and cross-cutting regulatory issues. We are building a detailed understanding of how withdrawing from the EU will affect our domestic policies to seize the opportunities and ensure a smooth process of exit.

The referendum result was a clear sign that the majority of British people wish to see Parliament's sovereignty strengthened and so, throughout this process, Parliament will be regularly informed, updated and engaged.

We are determined to ensure that people have as much stability and certainty in the period leading up to our departure from the EU. Until we leave the EU, we must respect the laws and obligations that membership requires of us. We also want to ensure certainty when it comes to public funding. The Chancellor has confirmed that structural and investment fund projects signed before the Autumn Statement, and research and innovation projects financed by the European Commission granted before we leave the EU, will be underwritten by the Treasury after we leave. Agriculture is a vital part of the economy, and the Government will match the current level of annual payments that the sector receives through the direct payment scheme until 2020, thus providing certainty.

In terms of the position of EU nationals in the UK, the Prime Minister has been clear that she is determined to protect the status of EU nationals already living here, and the only circumstances in which that would not be possible are if British citizens' rights in European member states were not protected in return—something that I find hard to imagine.

I am confident that together we will be able to deliver on what the country asked us to do through the referendum. I am greatly encouraged by the national mood: most of those who wanted to remain have accepted the result and now want to make a success of the course that Britain has chosen. Indeed, organisations and individuals I have met already that backed the Remain campaign now want to be engaged in the process of exit, and are identifying the positive changes that will flow from it as well as the challenges. I want us all to come together as one nation to get the best deal for Britain.

In conclusion, we are confident of negotiating a new position that will mean this country flourishing outside the EU while keeping its members as our friends, allies and trading partners. We will leave the European Union, but we will not turn our back on Europe. We will embrace the opportunities and freedoms that will open up for Britain. We will deliver on the national mandate for Brexit, and we will deliver it in the national interest".

5.08 pm

Lord Collins of Highbury (Lab): My Lords, I thank the talented Minister for repeating that Statement. We have heard the mantra that "Brexit means Brexit"—simply leaving the EU—but the Prime Minister has suggested that she does not see the UK making an Article 50 application before the end of the year. Would the Minister explain in a little more detail—in these circumstances, he needs to—what he expects to happen between now and the end of the year with regard to that application?

The Secretary of State wrote in July:

"The negotiating strategy has to be properly designed, and there is some serious consultation to be done first".

This is one reason for taking a little time before triggering Article 50. We have heard in the Statement about the numerous consultation meetings that have been taking place. I welcome those meetings, but the Government have to set out in starting proper consultation what are their objectives. Consultation is meaningless if you do not know what you are being consulted about.

It is also unacceptable that the Prime Minister has taken the undemocratic step of refusing to guarantee Parliament a vote on triggering Article 50. It is vital that Parliament is engaged in the process; we received assurances on this in the past. The specifics of the

[Lord Collins of Highbury]
UK's future relationship with the EU are not yet known, and such a constitutional change needs direct parliamentary involvement.

If Brexit is seriously about seizing opportunities and putting the national interest first, it means that the Government must have a view on what a successful outcome to negotiation looks like. If they do, when will they tell Parliament and the British people? We need to know.

The Statement refers to uncertainty, and of course we have seen uncertainty creating stress to our economy and particularly in our communities. I return to the subject of EU citizens currently living and working in the UK. They must not be used as a bargaining tool. There are first principles here that need to be addressed. I again ask the Minister to reassure those citizens that they will have the right to remain—to stay—after Brexit. It is not good enough simply to say, "If this happens, that will not happen". It must be a matter of first principle.

Finally, many parts of the Statement talk about seizing this opportunity. Let me make clear that one thing that I hope will not be seized is the removal of the hard-won rights of workers and people in employment in this country. The protection of those rights will be one of the tests we will put on the successful outcome of the negotiations.

Baroness Ludford (LD): My Lords, I, too, thank the Minister for repeating the Statement. We on these Benches are very glad to get this opportunity to try to get information from the Government. I fear, however, that we have not got much beyond the slogans of "Brexit means Brexit" and "We'll make a success of Brexit"—those soundbites. We do not have much that is more concrete. Even if the machinery of government could not have been prepared for a leave result—which I doubt anyway—the apparent lack of political consensus at the top of the Conservative Party on the aims of a Brexit negotiation is disconcerting, to put it mildly. There is anxiety and puzzlement across the political spectrum. For instance, former Education Secretary Nicky Morgan in the *Times* today demanded a clear plan. On the constitutional side, there is great concern about the unity of our kingdom and the future of peace in Ireland.

The Statement says that there will be no hard border in Ireland, which would indeed be welcome—but how realistic this is depends on whether we are in the single market, whether there is free movement and whether we are in the customs union.

In the words of our EU Select Committee, it would be "inconceivable" that that negotiations on withdrawal and future relations should be conducted "without effective parliamentary oversight". In the Statement, we are told that the Government want to put,

"the sovereignty and supremacy of this Parliament beyond doubt".

But the only promise is that we will be,

"informed, updated and engaged".

That is much less than accountability and real oversight. We on these Benches, like the Opposition, believe that accountability and oversight should be marked by a parliamentary vote on triggering Article 50. Liberal Democrats do not seek or support a second referendum in the term of art which means a rerun of 23 June—but the need for public endorsement of a Brexit deal is an entirely different matter. That is essential, because it will be the first time that voters get any chance to evaluate the reality, and not the fantasy, of Brexit. We on these Benches will hold the Government very carefully to account on how their Brexit actions meet the real interests of this country.

Lord Bridges of Headley: My Lords, I thank the noble Lord and the noble Baroness for their contributions. Between now and the end of the year we will continue to do what we have started to do: to collect, analyse and look at the evidence on the challenges we face with Brexit. That is the right process and I am very keen to ensure that all noble Lords are involved in it. I have written to the chairmen of the major committees of the House, offering to meet them, and obviously I am willing to give evidence to them. We will do that in a structured way and as openly as possible. As I said, I am very keen that we build a national consensus on this point. On workers' rights, we wish to consult very closely with the Trades Union Congress—we have already begun this—and others on that precise point and I heed what the noble Lord said.

I know from what noble Lords have been saying from a sedentary position, as well as in the last few minutes, what the views are in some parts of this House on triggering Article 50. I will repeat what the Prime Minister said. The British public gave a very clear instruction on Brexit. We intend to see that through and not to backslide from it. However, we believe—although this matter has been challenged—that the decision to invoke Article 50 is a matter on the international plane and is governed by royal prerogative. As I have said, we will involve Parliament: we will abide by the conventions that already apply and, when it comes to looking at the European Communities Act, by the necessity of Parliament taking votes on that Act and elsewhere.

I am not able to say more than I have already said on reassuring EU citizens. I hear what the noble Lord said about the need to reassure them. As the Prime Minister has already said, we wish to ensure that the rights of EU citizens are protected, so long as the rights of UK citizens across the EU are also protected. We do not imagine that that will not be possible—but that will be a matter for the weeks and months ahead.

Finally, I am sure that noble Lords will have views on what kind of outcome we should look for in these negotiations. Again, as the Prime Minister has said, we are starting the process of looking at the position, analysing the data and coming to a view on what the outcome will be. We are not, therefore, looking at an off-the-shelf approach. This will be a British solution to the challenges that lie ahead.

5.18 pm

Lord Elystan-Morgan (CB): My Lords, does the Minister agree that there are three technical realities that we should very much bear in mind in connection with this? First, although it is not mentioned in Article 50, we cannot be rushed at all into giving notice. It is a matter for us to select the timing and nobody can accelerate that process.

Secondly, in paragraph 2 of Article 50 there is a provision for negotiating an agreement for leaving and that agreement should be concluded by the Council on behalf of the European Union. There is nothing at all in the article which sets out what those conditions should be—nor, specifically, what the timing should be.

The third paragraph of Article 50 ordains that the final leaving should be either the date set in the negotiations or two years. It does not say whether it should be the longer period. But it goes on to say that that period can be extended by the unanimous decision of the Council and the agreement of the leaving state. I am sorry to have taken such a long time, but I am sure that the Minister will agree that these are matters of the utmost, supreme importance.

Lord Bridges of Headley: My Lords, the noble Lord speaks with a lot of experience on this. On his first point, he is absolutely right: the decision on timing the invocation of Article 50 is obviously within our power. That is why we must use this period, mindful of the calls to bring greater certainty and clarity to the situation, to ensure that when we invoke Article 50 we are in possession of all the facts and have a clear idea of the strategy and outcomes we wish to achieve. That seems eminently sensible; to do otherwise would be a complete abrogation of what I believe to be in the national interest, and we should not do so.

As regards unanimity on the decision to extend Article 50 and the deliberations on that, the noble Lord is absolutely right.

Lord Howell of Guildford (Con): Will my noble friend ensure that in getting possession of the facts, as he puts it, and formulating our position, he gets the message to his ministerial colleagues, experts, would-be negotiators and so on that the European Union itself—the other side of the negotiation—is in the grip of enormous forces of change on every side, which affects its fundamental structure and relevance to the modern world? The single market itself is not the single market of the 20th century or even the single market of 10 years ago; it is a completely different structure in which the very nature of export trade means that exports accumulate value in a variety of countries, so the whole export rule of origin system is collapsing at the roots. The additional value of a product is added in all sorts of ways, affecting most modern products and services in many different countries. That means that, with the vast supply chains developing across the world, we should realise that the single market of the past has changed. Therefore, we must be careful that we are negotiating not with the past but with today and tomorrow when we go into these arrangements in future.

Lord Bridges of Headley: My noble friend makes a very good point. I thank him for sparing the time to talk to me during the summer about a number of these points. He is absolutely right: clearly, across Europe there are many changes and challenges that we will continue to face, some of which are common to us all. We need to be mindful of the fact that we will wish to do so with our European partners, once we have left the EU.

As regards the shape of the single market, again, my noble friend is absolutely right. He has written eloquently on the subject. I saw it in the private sector myself—for example, not least how the digital revolution is changing whole reams of sectors, how people work, and so on.

Finally, I re-emphasise the point that we approach these negotiations to work in good faith with our European partners. We intend to play our full role, respecting the obligations and rights that we have as a member until we leave, and we shall do so in good faith so that, once we have left, we continue to have a strong working relationship.

Lord Campbell-Savours (Lab): My Lords, the Government have committed themselves today once again to substituting for European expenditure on agriculture; it was said again today in the Statement. Why do they not equally commit themselves to maintaining funds spent by the European Union in the United Kingdom on regional development, where a very large number of jobs are involved? Why just agriculture and not regional development at this stage—or will there be some later statement on that matter?

Lord Bridges of Headley: I am more than happy to meet with the noble Lord. I do not know whether he has had a chance to look at the letter the Chief Secretary has placed on the Treasury website; if not, I shall make sure that it is placed in the Library. It was quite a full statement, covering European structural investment funds, saying that,

"the Treasury will work with departments, Local Enterprise Partnerships and other relevant stakeholders to put in place arrangements for considering those ESIF projects … signed after the Autumn Statement",

so they,

"remain consistent with value for money and our own domestic priorities".

I am sure that there will be other funding issues that we will want to discuss. My door is absolutely open, and there may be further points to be raised after or around the Autumn Statement. If the noble Lord would like to meet me to discuss them, I would be happy to do so.

Lord Garel-Jones (Con): Does my noble friend agree—I am sure he does—that, given the complexity of the negotiations to which he referred, speculation at this stage about what the final terms might be is probably not very helpful? That said, when those final terms are known, is it the Government's intention to stick to the Constitutional Reform and Governance Act 2010, which specifies that both Houses need to consent to any new treaties that the British Government enter into, or is Parliament going to be bypassed by what was in fact a non-binding referendum?

Lord Bridges of Headley: We intend to stick by the conventions as they are set out in law. Clearly, this is a very complex set of negotiations; it makes the Schleswig-Holstein question look like a GCSE question. However, we should not use that as an excuse to dither or delay. We are therefore pressing ahead will all the points I set

[Lord Bridges of Headley]
out this afternoon to collect and analyse the information as best we can and then to come to a clear decision on the best way forward.

Baroness Smith of Newnham (LD): My Lords, will the Minister clarify two points in the Statement he has just repeated? Why are the Government building a detailed understanding of how withdrawal from the EU will affect our domestic policies now, rather than before the referendum was held? Secondly, will he explain how it ensures certainty for EU nationals to be told that their rights will be protected, unless other countries are not protecting the rights of UK nationals? That seems to me the very definition of uncertainty, not certainty.

Lord Bridges of Headley: On the second point, I cannot go beyond what I have already said. I note what the noble Baroness has to say. Contingency plans are a matter for the past. We can obviously have a debate about why that may not be the case but I am now focusing on my new role and the future, and making sure that we get the best deal for Britain.

Lord Empey (UUP): My Lords, the Minister will not be surprised to hear me raise the core question of the relationship with the Republic of Ireland. Has he received any representations from the Irish Government to the effect that they feel that our decision to leave Europe is a breach of, or threat to, the Belfast agreement? Will he give the House an assurance that the Government remain totally committed to that agreement and will not allow our decision to exit the EU to interfere with the terms and conditions agreed in a referendum in 1998?

Lord Bridges of Headley: My Lords, the UK's exit from the European Union does not change the commitment of the UK Government and the people of Northern Ireland to the settlement set out in the agreement and its successors and to the institutions they establish. As I said, my right honourable friend the Secretary of State will visit Dublin later this week. I am sure that these matters will be raised then.

Lord Davies of Stamford (Lab): My Lords, the noble Lord has talked a lot about opportunities but they seem to be pretty pious aspirations at this point. He has said nothing at all about the costs, many of which are immediate, palpable and already visible. One appeared today, for example—the threat that the European Medicines Agency, which employs 900 people, will leave this country and perhaps go to Sweden. That is serious enough but, much more seriously, the European headquarters of a number of international pharmaceutical companies will follow the agency if it leaves this country. What are the Government doing about that? Do they care about that sort of thing at all? Do they have a policy on that matter?

Lord Bridges of Headley: I cannot comment on the specifics but I am certainly not sanguine about the costs. There are clearly numerous challenges. I have already met a number of businesses, business organisations and others who have pointed to them. That is what we are trying to assemble right now. If the Statement suggested that we were being complacent, that is absolutely not the case. I am entering into this looking at a glass half full and with a sense of optimism, not pessimism.

Lord Tugendhat (Con): My Lords, the Government make it clear in the Statement that they want a regulatory regime that helps rather than hinders business. That is clearly a highly desirable objective that I am sure everybody can agree with. However, does the Minister also agree that a number of siren voices are now being raised, trying to suggest that the process of exiting the EU should be used as a device for undoing some of the regulations and rules that have been introduced to govern our financial sector—rules and regulations that are very important in the light of what happened in 2008? Can he give us an assurance that the Government will resist any attempted rush to the bottom through which our regulations become conducive to allowing the sort of abuses we have seen earlier?

Lord Bridges of Headley: My noble friend makes a good point. I will pick my words with extreme care, and I hope your Lordships will forgive me for not being very open about the specifics. The regulations and the regulatory reform package we have gone through since the crash have enabled us to restore financial stability and credibility to the system, and we will need to proceed with extreme caution on that. As regards looking at regulations in the round, the noble Lord asked earlier about workers' rights and I put this in the same package. We need to build a national consensus around where we go, treading with care and caution to ensure that we protect our economy and its strength. The overriding aim of this is to leave the European Union, full stop.

Lord Hannay of Chiswick (CB): My Lords, can the Minister fill in what I think was a gap in the Statement? There was no mention at all of justice and home affairs and the co-operation we have on matters such as counterterrorism, dealing with drugs and human trafficking, and so on. Surely that ought to be a high priority in the work his department is doing on preparing negotiations. Secondly, can he enlighten the House as to what use his department is making of the balance of competences review, which was done at such enormous cost by the previous Government?

Lord Bridges of Headley: The noble Lord makes some good points. On justice and home affairs, he is absolutely right. Obviously, we will very much focus on our future relationships in that area. As regards the next few months and years, Julian King has been appointed to look after security issues, so we will also look to him to support our work in this area. The balance of competences review was an enormous piece of work and, as others have suggested to me, we need to look at that, too.

Lord Hain (Lab): My Lords, I acquit the Minister of any responsibility for this astoundingly vacuous Statement, because he is simply delivering it. However, it is deeply disturbing that we do not have a clue what

the Government's agenda is; for example, the Japanese Government wrote an unprecedented letter to the UK and the Prime Minister contradicts the claims and objectives of the Brexit leaders, who themselves are reneging on them. The Minister promised to update, inform and engage Parliament, and that is welcome, but surely we need a promise of an amendable Motion, tabled in both Houses, on the final deal, with the people then having a chance to make a decision on that deal.

Lord Bridges of Headley: My Lords, I do not agree with the noble Lord's final point. As regards where we are right now, he cites the Japanese Government and their ambassador. The Japanese ambassador this morning praised the "cautious and very patient" approach of the Prime Minister and said that what was needed were,

"well-thought through considerations before you start any negotiations".

That is exactly what we are trying to do and, with the help of your Lordships, I am sure we will make a good job of it.

Viscount Hailsham (Con): My Lords, when the terms are negotiated and finally agreed, there will be nothing undemocratic or inappropriate about seeking the votes and views of the electorate as to whether they want to depart the European Union on the negotiated terms. In the meantime, this House and Parliament as a whole have a right to be consulted in detail about what is being discussed and to be given an opportunity to vote on a votable resolution.

Lord Bridges of Headley: It pains me to disagree with my noble friend, for he is a friend—at least, I hope he is. I am sorry to say that, as the Prime Minister has made clear on many occasions, we intend to see Brexit through. As I said, it was the biggest ever vote as regards the mandate we have for this, the Conservative manifesto pledged to respect the outcome of the referendum, and Parliament voted for the referendum by a margin of six to one. That is the current position, and I am sorry to say that it will not change.

Lord Wallace of Saltaire (LD): My Lords, we wish the noble Lord luck in his new post, and I am sure everyone in this House will accept the outcome of the referendum, although the idea that it was a clear decision seems ludicrous to many of us. Our job as the House of Lords is to question in detail the Government's proposals as they are put to us, and I am sure we will do that. The Government's job will be to take account of the national interest as well as how they interpret the outcome of the referendum. Can the Government, as an early task, set out what they regard as the relationship between the domestic regulatory framework and changing international regulatory frameworks? The single market was, after all, a Thatcherite achievement. Mrs Thatcher pressed for common regulatory frameworks across Europe as an improvement on the previous situation. As the noble Lord, Lord Howell, said, now we have to adapt it to the digital world and so on, but some of the Minister's colleagues—Liam Fox, for example—appear to think that we are still in a 19th-century free-trade world in which tariffs are all that matter. It might help to clear the air if the importance of regulatory frameworks, domestic, European and global, were spelled out by the Government as they set out how they will go ahead.

Lord Bridges of Headley: I heed what the noble Lord says; he and I have spoken about these points recently. I completely understand the complexity—and he touches on just part of one area of complexity here. We are looking at that, and I would like to talk to the noble Lord about that in person. As regards when we set that out, as I say, I am not in a position to go into further detail at this precise juncture.

Lord Grocott (Lab): We have heard a good deal about votes and democracy. Can the Minister confirm my reading of the situation, which is that, as I recall, there have been two crucial votes? One was the overwhelming vote in this House and in the Commons to have a referendum on whether we should remain in or leave the European Union. In brackets, for me there is no ambiguity about the word "leave"—I have never encountered that in any correspondence I have ever had about anything. The other vote was the vote of the British people, by a substantial majority—a two-thirds majority in large sections of the West Midlands, which is the area I know best—to leave the European Union. Does he therefore agree that for this House to have a Division on whether to implement Article 50, which to all intents and purposes would be a vote on whether we accept the verdict of the British people in the referendum, would be a dangerous and profoundly undemocratic route for this House to take?

Lord Bridges of Headley: I completely agree with the noble Lord. I have a copy of the ballot paper in front of me and it is very simple. It states:

"Remain a member of the European Union",

or, "Leave the European Union". There is no small print or anything else. I agree with every word he said.

Lord Cormack (Con): My Lords, does my noble friend agree, however, that the essence of a parliamentary democracy is that the Government of the day are answerable to Parliament, not the other way round? Therefore, when terms have been agreed—I profoundly hope that they will be good terms that we can all applaud—it is essential that Parliament votes on those terms, and absolutely crucial that the elected House of Commons has the final say in that regard.

Lord Bridges of Headley: I repeat what I said in response to my noble friend Lord Garel-Jones: we will respect the conventions and the law as they currently stand. I respectfully point out to my noble friend our pledge in the Conservative manifesto to respect the outcome of the referendum.

Lord Wood of Anfield (Lab): My Lords, the Minister has rightly prioritised providing certainty. Can he therefore reassure Britain's businesses that, when it comes to a negotiating position, the Government will argue for retaining full access to the single market?

Lord Bridges of Headley: My Lords, as I said, we are looking at all the evidence before us as regards the needs, challenges and concerns of business. As the Prime Minister herself said, at this juncture we are not in a position to go into detail on this other than to say that we are not looking at an off-the-shelf response to what the outcome might be. We wish to come up with a strategy that will deliver for Britain.

Lord Falconer of Thoroton (Lab): I agree with the assessment by the Department for Exiting the European Union that it has a superb ministerial team and some of the brightest and best in Whitehall. An indication of the brilliance of the team is that we have probably spent 40 minutes on this topic and have gleaned two new facts in the course of this question and answer session. Those two facts concern the number of meetings that Ministers will have between now and our leaving the European Union. I go back to the question about justice. What work is being done on whether we are going to keep the European arrest warrant arrangements and will continue to share information in accordance with the Prüm agreement? Why is there a delay in coming to a conclusion on those two issues?

Lord Bridges of Headley: I cannot answer the noble and learned Lord—who speaks, as he does so often, with incisiveness and complete clarity—on those two specific points, although I can certainly write to him. As I said, a lot of work is going on in relation to the whole area that was raised earlier. We will continue to engage with the noble and learned Lord and others right across the House to ensure that we come up with the best outcome.

Lord Lea of Crondall (Lab): My Lords, does the noble Lord not think that describing membership of the internal market as a detail, as he just did in answer to my noble friend Lord Wood of Anfield, will be seen as astonishing by 26 other countries looking across the English Channel? What is going on here? If a decision is postponed for very much longer, will we not be left with a dog's breakfast? The British Bankers' Association has written an article in the *Financial Times* saying, "All this is okay. We can leave the internal market for other people as long as it does not affect us. We'll have a deal that is good for us", and the agricultural community says the same. Everybody thinks they can cherry pick, but that will not work in a negotiation with the rest of the Community.

Lord Bridges of Headley: My Lords, I must correct myself if I said that it was a detail. I do not believe that. The ability to trade with EU member states is vital to our prosperity. As regards cherry picking, the whole purpose of the undertaking that we are now engaged in—that of collecting evidence—is to understand individual sectors' challenges, concerns and opportunities as we go ahead, and then to assemble all that and come up with a comprehensive strategy. On that, I cannot really go further.

Lord Teverson (LD): My Lords, following the consultation that the Government are undertaking at the moment and before they decide to trigger Article 50—however they do that—should not we, as Parliament, receive, in the form of a White Paper, a Green Paper or at least some sort of substantive document, details of the opening negotiation position of the British Government so that we as Parliament and the British electorate, whichever way they voted, understand where we are starting from?

Lord Bridges of Headley: My Lords, I cannot comment in detail on whether we will adopt the vehicle and the approach that the noble Lord sets out, but obviously I will take away that point and discuss it. I simply repeat that we will keep Parliament fully informed and engaged as we go along.

Baroness Royall of Blaisdon (Lab): My Lords, the Statement mentions that the Minister's department now has more than 180 staff in London, plus the expertise of more than 120 officials in Brussels. We are at the very beginning of the whole process of renegotiating and drafting legislation, and we are going to need far, far more officials. Where are they going to come from? Can the Minister reassure me that the Government will not get expertise from companies such as McKinsey? I have nothing against McKinsey but it is hugely expensive to get people in from those companies. We need more civil servants, but where are they going to come from and when will they arrive?

Lord Bridges of Headley: We are fully aware of the challenge that we face and the noble Baroness is absolutely right. We have been inundated with offers—not just from consultancies but from right across the board—from individuals and organisations wanting to help. We are fully engaged. As the noble Baroness rightly implies, the first step is to ensure that we use the best talent that already exists, and we are doing that. We have spent the last few weeks assembling a team and an office to make sure that we get into a good position to do all the things that I have been talking about this afternoon. That work is continuing, and we are continuing to build up the team. We know that the challenge we face is considerable and that on the other side of the table will be a sizeable and equally experienced team. If the noble Baroness has ideas on who to talk to, I shall be happy to hear them.

Lord Framlingham (Con): My Lords, if the Minister is having difficulty with the foot-dragging that is going on and the criticism of government policy, I simply say to him that a large number of Members of your Lordships' House believe that any project, however difficult, is best supported by wholehearted enthusiasm for getting on with it. I am one of those people. I believe that many in your Lordships' House agree with what he is doing and wish the Government well in this project.

Lord Bridges of Headley: I thank my noble friend very much. I use this opportunity to say once again that my door is very much open to all your Lordships to discuss the matters and challenges that lie ahead.

Baroness Crawley (Lab): My Lords—

Lord Stoddart of Swindon (Ind Lab): My Lords—

Noble Lords: Cross Bench!

Lord Stoddart of Swindon: My Lords, I am very pleased that the Prime Minister has made it very clear that Brexit means Brexit and that there will not be another referendum. The people have spoken and, if I may quote somebody else, long live the people. Perhaps I may ask the noble Lord two questions. First, in the vote in 1971, did Parliament give all the treaty powers to the Government, and does any other treaty abrogate what was then done?

Lord Elystan-Morgan (CB): 1972.

Lord Stoddart of Swindon: No, it was 1971. There was another vote in 1972 on a different matter, but the 1971 decision was to hand over the power of Parliament to the Government of the day. I am asking whether that has been abrogated since. Secondly, once Article 50 is brought into operation, surely we do not have to take two years to negotiate a settlement. Can we not make the negotiation shorter than that? Perhaps the noble Lord can answer that.

Lord Bridges of Headley: I hope that the noble Lord will forgive me as I will need to come back to him on the position in 1971—I was not very old at the time—but I completely take his point that this matter is key. I repeat that we will stand by the conventions and the laws that currently exist as regards treaty ratification. As regards Article 50, I think the noble Lord is referring to paragraph 3. The point here is that it will take two years to get to the end of the process. There would obviously still need to be a deal following that and we would need to go through the process set out in Article 50 to get that ratified by the Council. The noble Lord may be right but perhaps I may write to him to clarify that point.

Lord Inglewood (Con): My Lords—

Baroness Crawley: My Lords—

Noble Lords: Time!

Junior Doctors: Industrial Action

Statement

5.48 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, with the leave of the House, I will now repeat a Statement made in the other place by my right honourable friend the Secretary of State for Health on the junior doctors' industrial action:

"Mr Speaker, I regret to inform the House that last week the British Medical Association announced it was initiating further rounds of industrial action over the junior doctors' contract. It involves a series of week-long all-out strikes between now and Christmas which was scheduled to start next Monday, although this afternoon the BMA delayed the first strike until 5 October. This afternoon's news delaying the first strike is of course welcome, but we must not let it obscure the fact that the remaining planned industrial action is unprecedented in length and severity, and it will be damaging for patients, some of whom will already have had operations cancelled.

Many NHS organisations, including NHS England, NHS Providers, the NHS Confederation and NHS Improvement, have expressed concern about the potential impact on patient safety. Indeed, this morning the General Medical Council published its advice to doctors on the strike action. While recognising a doctor's legal right to take industrial action, it urges all doctors in training to pause and consider the implications for patients, saying that,

'given the scale and repeated nature of what is proposed, we believe that, despite everyone's best efforts, patients will suffer'.

Many others have also questioned whether escalating strikes is a proportionate or reasonable response to a contract that the BMA junior doctors' leader, Dr Ellen McCourt, personally negotiated and supported in May. She said then the new contract was:

'Safer for our patients, safer for our junior doctors … and also fair'.

She also said that with respect to junior doctors the new contract,

'really values their time, values them as part of the workforce, will really reduce the problem of recruitment and retention, emphasises that all doctors are equal, and has put together a really good package of things for equalities'.

We recognise that since those comments the new contract was rejected in a ballot by BMA members, but it is deeply perplexing for patients, NHS leaders and indeed the Government that the reaction of the BMA leadership, who previously supported the contract, is now to initiate the most extreme strike action in NHS history, inflicting unprecedented misery on millions of patients up and down the country.

We currently anticipate around up to 100,000 elective operations will be cancelled and up to 1 million hospital appointments will be postponed, inevitably impacting upon our ability to hit the vital 18-week performance standard. Today I want to reassure the House that the Government and NHS are working around the clock to make preparations for the strikes. All hospitals will be reviewing their rotas to ensure critical services such as A&E, critical care, neonatal services and maternity services are maintained. The priority of all NHS organisations is to ensure patients have access to the healthcare they need and the risks to patients are minimised, but the impact of such long strikes will severely test this.

As with previous strikes, we cannot give an absolute guarantee that patients will be safe, but hospitals up and down the country will bust a gut to look after their patients in this unprecedented situation and communicate with people whose care is likely to be affected as soon as possible.

Turning to the long-term causes of the dispute, it is clear that for the BMA negotiators it has been about pay, but I recognise that for the majority of junior doctors there is a much broader range of concerns, including the way their training is structured, the ability to sustain family life during training periods,

[LORD PRIOR OF BRAMPTON]
the gender pay gap and rota gaps. After the May agreement we set up a structured process to look at these concerns outside the contract and I intend this work to continue.

Health Education England has been undertaking a range of work to allow couples to apply to train in the same area, to offer training placements for those with caring responsibilities close to home, to introduce a new catch-up programme for doctors who take maternity leave or time off for other caring responsibilities and to look at the particular concerns of doctors in their first year of foundation training. Today HEE has set out further information for junior doctors about addressing these non-contractual concerns and we are proceeding with the gender pay review that I mentioned in my last Statement to the House on this issue.

We have also responded to specific concerns raised by Dr McCourt. First, the BMA, NHS Employers and Health Education England have agreed changes to strengthen whistleblowing protections for junior doctors beyond the scope of existing legislation so that junior doctors can take legal action against HEE, in relation to whistleblowing, as if HEE was their employer.

Secondly, in direct response to the concerns raised by Dr McCourt over the role of the independent guardian of safe working hours, NHS Employers has written to all NHS chief executives to set out in considerable detail the expectations for the new guardian role. As of 2 September, 186 out of 217 guardians had been appointed with the involvement of BMA representatives, with a further 15 interim arrangements in place, and it is expected that all will be appointed by early September.

Many junior doctors have expressed concern about rota gaps and the new contract acknowledges and tackles this concern. The guardians of safe working hours will report to trust and foundation trust boards on the issue of rota gaps within junior doctor rotas. This will shine a light on this issue and it will be escalated, potentially to the CQC and the GMC, where serious issues are not addressed. I would strongly urge all those contemplating taking industrial action to consider the progress that is being made in all these areas before making their final decision.

With respect to the broader debate about seven-day care, we recognise that many doctors have concerns about precisely what the Government mean by a seven-day NHS. As Sir David Dalton publicly stated last week, we offered to insert details of our seven- day plans into the May agreement, in particular to reassure doctors that we do not intend simply to stretch services currently delivered over five days over seven days. However the BMA asked us to remove that reassurance from the May agreement, so it is extremely disappointing that it now says the need for more clarity over seven-day services is one of the reasons for the strike.

Let me therefore repeat further reassurances on that front today. First, while the changes to the junior doctors contract are cost neutral—that is, the overall pay bill for the current cohort of junior doctors will not go up or down—our seven-day service policy is not cost neutral and will be funded out of the additional £10 billion provided to the NHS over this Parliament.

Secondly, while the pay bill for the current number of junior doctors will not increase, we do expect the overall pay bill to go up as we have committed to employ many more doctors to help meet our commitment on seven-day services. That means our plans are not predicated on simply stretching the existing workforce more thinly or diluting weekday cover.

Thirdly, we recognise that junior doctors already work very hard, including evenings and weekends, and while we do need to reduce weekend premium rates that make it difficult to deploy the correct levels of medical cover, we expect this policy to have greater implications for the working patterns of other workforce groups, including consultants and diagnostic staff.

Finally we have no policy to require all trusts to increase elective care at weekends. Our seven-day services policy is focused on meeting four clinical standards relating to urgent and emergency care, meaning vulnerable patients on hospital wards at weekends will get checked more regularly in ward rounds by clinicians, and clinicians will be able to order important test results for their patients at weekends.

Even despite these reassurances there may remain honest differences of opinion on seven-day care, but the way to resolve them is through co-operation and dialogue, not confrontation and strikes which harm patients. To those who say these changes are demoralising the NHS workforce, I say that nothing is more demoralising or more polarising than a damaging strike. It is not too late to turn decisively away from the path of confrontation and put patients first, and I urge everyone to consider how their own individual actions in the coming weeks will impact on people who desperately need the services our NHS offers.

This Government will not waver in their commitment to make the NHS the safest, highest-quality healthcare system in the world, and I commend this Statement to the House".

5.57 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the noble Lord for making the Statement.

Clearly the prospect of a series of five-day strikes is very worrying, coming after the protracted negotiations, agreement between the negotiators and then the subsequent ballot rejection. The promised action, though now delayed, would have a damaging impact on patients, the NHS and the junior doctors themselves. However, the Secretary of State and the Government cannot escape their own responsibility for the threatening catastrophe.

At the heart of this dispute is a complete absence of trust by the junior doctors in the Government and, specifically, the Secretary of State. It is not hard to see why. Towards the end of the Statement the noble Lord mentioned a seven-day service. It is the conflation of the seven-day service issue with the junior doctors' contract which has exacerbated an already difficult situation, particularly as it is the junior doctors on whom the service is so dependent for out-of-hours working.

The Minister did not mention the advice received from officials but he knows that the documents obtained by the media outlining the risks detailed by officials on

the seven-day NHS were clear in their assessment that the NHS was likely to have too few staff and too little money to deliver a truly seven-day NHS. Moreover, it gives the lie to the last sentence of the Statement where the Secretary of State comes out with all that blah about making the NHS the safest, highest-quality service in the world when everyone knows that it is crumbling through a lack of resources, a lack of staff and a lack of leadership. We have a Secretary of State who is in his own world, one that is occupied by no one else. He is charging ahead with implementing the seven-day working week without the resources, staff and support needed to do it.

Let me be clear: no one more than I would like to see a truly seven-day working NHS, but that is dependent on the resources being available to ensure its proper implementation. What I deplore—and this is a core reason for the disenchantment among junior doctors—is the Secretary of State's distortion of the statistics in relation to weekend mortality figures to justify the imposition of the contract.

I would like to ask the Minister a number of questions. First, he referred to the contingency plans being put in place by the NHS, but clearly with the postponement or cancellation of the first proposed action there is now time for the NHS to give more consideration to those contingency plans. I wonder if he can tell the House a little more about them. Secondly, the chief executive of NHS Providers has warned that with little notice the unprecedented action,

"will cause major disruption and risk patient safety".

What discussions have taken place between Mr Hopson and Ministers to discuss his concerns? Thirdly, where elective operations and clinics may be cancelled as a result of the promised late action, what assurances can the public be given that new dates will be scheduled as quickly as possible?

Can the noble Lord say what discussions have taken place between the Department of Health and junior doctors? In its statement today announcing the postponement of the action, the BMA has said that it will call off further action if the Secretary of State stops his imposition of the contract, listens to the concerns of junior doctors and works with the BMA to negotiate a contract based on fresh agreed principles that have the confidence of junior doctors. What is the Minister's response to that statement by the BMA? It has been reported in the media that the Secretary of State has refused to engage with the junior doctors. Can he confirm whether that is the case, and if so, why is that the position?

Finally, what are the Government's plans to restore junior doctors' trust in the National Health Service? There is a clear risk that the morale of a whole generation of doctors is being destroyed as we speak. When that is put alongside the implications of Brexit and the potential loss of experienced staff through the decision by many junior doctors to leave the profession or to go abroad, this is a worrying position. I have met a number of junior doctors over the past few months. They are clever, articulate and passionate about the NHS, but they have told me about the pressures that they are under, of the risky gaps that we now have in rotas which have developed over the past few years, of locums not always being available, of existing staff having to cover gaps at short notice, and of being hugely dependent on the good will of many staff, including junior doctors. The Statement of the Secretary of State is full of warm words about junior doctors' working conditions, but as the Minister knows, the fact is that they do not have confidence in them. Frankly, I also do not think they have confidence in local management to implement the proposed contract in a way that is sensitive to their working conditions.

At the annual meeting of the Royal College of Physicians, its chairman pointed to the need for junior doctors to be valued, supported and motivated. Some months ago the RCP wrote to the Secretary of State outlining recommendations for improving conditions in training, including protected time for training and the promotion and support of flexible working, publishing rotas earlier and prioritising handover sessions. What progress has been made in responding to the sensible suggestions made by the Royal College of Physicians, and above all what are the Government going to do to endeavour to get back the confidence of junior doctors in the NHS and thus seek an end to this action?

Lord Prior of Brampton: My Lords, the noble Lord has raised many questions in his response to our Statement. He may well have read the article published earlier this week in the *Times* by Sir Simon Wessely, the president of the Royal College of Psychiatrists, which goes to the heart of what I would call the non-contractual issues that have bedevilled, coloured and provided the context for this dispute:

"Changes to the way that doctors are trained means that juniors face switching not just jobs but addresses every few months without much say about where they end up and when. Many seem condemned to spending years rootlessly shuffling from one place to another like lost luggage. Without any familiar faces, long hours are endured in relative isolation and managers who change all the time provide little or no recognition, let alone reward".

This in a sense is what lies behind much of the dispute. The fact is that we had a contract that was wholeheartedly welcomed by Dr Ellen McCourt, now the president of the BMA, and by the association itself. The issues of difference in the contract were pretty small.

We have been discussing this contract for three years now and the Government have made 103 concessions. The Secretary of State's door has been open throughout that time. The new contract is due to be introduced in October and at some point we really have to get on and introduce it. There is provision within it to review aspects as it goes forward. We have committed to looking at the gender pay issues that have been raised by the BMA and today HEE has published the work that it is doing on non-contractual issues with the BMA when the association is prepared to talk to it. The Government are bending over backwards to meet the BMA, but there comes a point where we just have to bite the bullet and go ahead with the contract that has been agreed, and that is the place we are in now.

The noble Lord referred to a lack of trust in local management and in the Secretary of State, but we now have the guardians of safe working hours built into the contract. They have a contractual commitment to report every quarter to the boards of trusts and to the GMC and the CQC every year. Plenty of independent

[Lord Prior of Brampton]
safeguards have been built into the new contract. So while of course I understand many of the issues raised by the noble Lord, the Government have gone the extra yard every time they have been asked to do so and now we must get on and introduce this contract.

Baroness Walmsley (LD): My Lords, I apologise to the Minister for not getting up quickly enough to add my questions from the opposition side before he gave his last response. We on these Benches welcome the fact that the strike planned for next week has been postponed. I think we have all taken very much to heart what was said by the GMC this morning. I hope the Minister can give an assurance that the Secretary of State will take this breathing space as an opportunity to get back around the table with the junior doctors not only to explore the details of the contract, which may not yet have been hammered out to everyone's satisfaction, but to get to the core of the reasons why they are so up in arms.

I am very impressed by the fact that when junior doctors are marching along the street, they are not shouting, "Save our weekend pay" or "Save our training structure", they shout, "Save our NHS". That is what every single doctor in this country is committed to. The reason why doctors are so concerned is not the Government's intention to make tests or more frequent investigations available on Saturdays and Sundays for patients in hospital, it is the fact that there are gaps in the weekday rotas now. The Minister is saying that there will be extra money and extra doctors. Where are they going to come from? Does he know how many doctors have investigated the possibility of emigrating or have even actually emigrated since the beginning of this dispute? I ask this because I am hearing about it all the time. I wonder where the new doctors will come from in order first to fill the gaps in the weekday rotas and then to provide extra services at the weekend. The £10 billion mentioned in the Statement is clearly not enough when we already have a £22 billion black hole in the NHS.

Over the Summer Recess we had so many news stories about units being closed, not just to reconfigure the services and provide better service for patients, but to save money, because the system is desperate to do that in the short term. The sustainability and transformation plans clearly do not have the confidence of the doctors, partly because they are very opaque and partly because they are very short term. They are picking up on any short-term economies they can make, rather than looking at the very long-term savings that might be made and bring better provision for patients. Will the noble Lord say where the extra doctors are coming from and how the Government plan to convince existing doctors in this country that they will be fully supported if they are to implement the Government's policy?

Lord Prior of Brampton: My Lords, the noble Baroness made a valid point when she said that when she meets junior doctors on their demonstrations or marches, they are concerned about the NHS—rightly so; it will be a sad day when doctors are not concerned about the future of the NHS—but that is no reason for going on strike over this contract. We are perfectly happy to have a debate with them. We will disagree and agree on some things, but to launch a wave of strikes over this cannot be right. As the noble Baroness indicated, it is not the contract that they are worried about at all; they are worried about much more general things than the state of the contract.

Staffing is a big issue. There is no question but that after the Mid Staffordshire tragedy, we saw a huge increase in agency staffing. We saw that increase because we did not train enough of our own doctors and nurses. That is a long-term issue about increasing training numbers, but, in the meantime, part of the £10 billion of extra money we agreed to put into the NHS, which the noble Baroness's party agreed to do at the last general election, has to go towards increasing staffing in our hospitals.

6.12 pm

Viscount Hailsham (Con): My Lords, my noble friend should take every opportunity to remind the electorate and the public who will be affected by these strikes that junior doctors are now refusing to accept and proposing to strike against an agreement that many of their leadership, including those now defending the strike, characterised as safe and fair. That is an absurd proposition.

Lord Prior of Brampton: My Lords, it is important that we distinguish between junior doctors, who are working incredibly hard in the NHS, and the BMA leadership in this case. I think the vast majority of junior doctors bitterly regret having to go on strike and will be extremely concerned about the huge damage it will do to patients' interests. We are perfectly entitled to remind everybody that it was the leadership of the BMA who characterised this contract as being safe for patients and good for doctors.

Lord Warner (Non-Afl): My Lords, I ask the Minister to go back to the non-contractual issues. As Sir Simon Wessely explained very well, they are the nub of this. The Secretary of State now has a major trust problem because these negotiations have gone on for so long. It has become very personal. If he wishes to convince the medical profession, in particular those thinking of coming into the medical profession, that he is serious about putting the medical workforce's house in order, he has to do something—possibly step aside—to develop these ideas with the profession.

Can the Minister confirm that the number of people applying to medical school has dropped by nearly 14% over the last two years? There are so many vacancies now in medical schools that they have to recruit people to fill those slots through UCAS clearing. One-fifth of middle grades in the junior grades are vacant. In this situation—with people emigrating and with Brexit—we cannot expect young people to join this profession. The Secretary of State has to take some responsibility for changing that culture, bringing in some people to help change it and convincing the profession that it has a future.

Lord Prior of Brampton: My Lords, the noble Lord makes a number of extremely good points. I am not aware of that 14% decline in applications to medical

school. If that is true, it is clearly very serious. I did hear a rumour that one medical school had to use clearing to fill the number of students coming in, but overall there is still a huge demand for people who want to go to medical school and they are still recruiting people with the best academic and other qualifications. On the noble Lord's fundamental point, we have to rebuild trust in the medical profession. It was for that reason, in the main, that the Secretary of State asked Health Education England to lead the discussions on non-contractual issues, rather than being involved with it directly himself. I am sure that is the right way to approach this issue.

Lord Davies of Stamford (Lab): My Lords, during the previous Statement the Government were at great pains to emphasise that they are totally committed to implementing all the promises made by the Brexit campaign to the British people during the referendum. We now hear reports that the very prominent promise made to the British people during that campaign to give the NHS another £350 million a week will not be fulfilled. Why have the Government decided to renege on that particular promise?

Lord Prior of Brampton: I am not sure the Government ever made that promise. That was a promise made by the Brexit campaign. The Government have committed to putting an extra £10 billion into the NHS over the course of the Parliament, but they are certainly not in any way committed to fulfilling promises or pledges made by the Brexit campaign.

Lord Ribeiro (Con): My Lords, we can all be gratified that the junior doctors have decided to postpone their strike. I am sure that this is partly as a result of the pressure being put on them by senior doctors. They are the ones who know the consequences for patient safety because they are ultimately responsible when things go wrong. David Watkin, a past president of the Association of Surgeons, has written a letter to the *Times* today in response to Simon Wessely's letter. He makes the interesting point that there is a real issue about the way our junior doctors feel supported—or should I say unsupported. There has been the loss of the firm structure whereby junior doctors worked part and parcel in a team, and they and a consultant knew each other, trusted each other and could rely on each other. As mentioned by the noble Lord, Lord Hunt, that has gone partly because of shift working, rota gaps and the need to fill those gaps.

Brexit provides an opportunity, whether we like it or not, to take time and look again at two regulations: the European working time directive, and the new deal. The main thing about the European working time directive is that some junior trainees—particularly in my specialty, surgery—wanted to work longer than 48 hours a week. For all other specialties you have to acquire knowledge, but for surgery, cardiology, nephrology and some other specialist areas, you have to learn the skills. Learning and acquiring skills takes time. Can we look at Brexit as an opportunity to assure some of our junior doctors, who feel unloved and unsupported, that there may well be a way to look at and improve their working practices?

Lord Prior of Brampton: My Lords, the origins of this dispute and lack of trust go back many years, to the end of the old firm structure. Many junior doctors feel a lack of support. It is easy to lob bricks at the Government, but the senior doctors and the royal colleges need to look at themselves pretty carefully and pretty hard in the mirror because they have some responsibility for this as well. I hope they will be very much part of working through some of these non-contractual issues, along the lines my noble friend suggested.

Lord Willis of Knaresborough (LD): My Lords, does the Minister accept that this does not impact simply on junior doctors but that these strikes and the current chaos affect all the manpower within the NHS, particularly the registered nurses, who have to pick up a great deal of the slack in the absence of junior doctors, particularly when they are on strike? Rather than look at these issues at silos, I implore the Minister to look at the whole workforce and try to ensure that the modern workforce serving a modern NHS is one where integrated services mean integration of staff as well.

Lord Prior of Brampton: My Lords, the noble Lord makes a very good point. The changes that are coming upon the NHS, whether from technology or forced upon us, in a sense, by demographic change in the UK—meaning that much care that has traditionally been delivered in hospitals will need to be delivered outside hospitals in people's homes and much care will be delivered by technology rather than directly by people—are all going to have a huge impact on a whole range of different staff levels, not just junior doctors.

Lord Naseby (Con): Is my noble friend aware that I am in a doctors' family? My wife worked full-time in a big practice. She worked every weekend and did her share of out-of-hours work. My son is a doctor. I hope some of the grandchildren will be. These young men and women volunteer to enter this profession, do they not? They take an oath, do they not? What the public find incomprehensible is that after several years of negotiation, they understood there to be an agreement and a recommendation from the then leadership of the junior doctors—agreed to by even the present leadership of the junior doctors—but once again the public are back on the rack. Is that not totally unacceptable?

I am afraid that I draw an analogy with the three-day week. I was the director of an advertising agency, responsible for the standby advertising. The miners' strike required the Government of the day to publish the terms that they were offering to the miners on that occasion. I urge my noble friend to consider whether the time has not come for the public—the people, the patients—to be told exactly what was agreed in the summer and what additional benefits will be put forward to the junior doctors; I understand there are some. The public are the ones who will suffer. I do not want—as I am sure the rest of the House does not—to see patients suffer.

Lord Prior of Brampton: My Lords, the contract that has been offered to the junior doctors is not confidential. It can be made available to the public.

[Lord Prior of Brampton]
Indeed, I think the main terms of that contract have been made available to the public. My noble friend is absolutely right that members of his family—and, indeed, my family and others we know—enter the medical profession as a vocation or a calling. It is an awful shame that that seems to have been lost in the dispute that has been happening over the past few months.

Lord Cormack (Con): My Lords, following on from that point, is there not a case for the presidents of the royal colleges to have a greater leadership role? Is there not a case for the Secretary of State and my noble friend, in whose negotiating skills I have very great confidence, calling in the presidents to discuss this and see whether there is not some opportunity of rebuilding trust between individuals at the head of the profession and those junior doctors who are clearly disenchanted, disaffected and, frankly, behaving in a way that is not compatible with a true vocation?

Lord Prior of Brampton: My Lords, I agree with my noble friend. I think there is a huge opportunity here—actually, a necessity—for senior leaders in the profession, in the royal colleges, to play a really serious leadership role. Rather than standing on the touchline, if you like, they need to get on the pitch. There is a role for them. To some extent, they were instrumental in getting the two sides back to work again back in May. They were successful in doing that. Certainly, I know the Secretary of State would be very happy to listen to any thoughts that they have.

Investigatory Powers Bill

Committee (4th Day) (Continued)

6.24 pm

Amendment 193

Moved by ***Earl Howe***

193: After Clause 211, insert the following new Clause—

"Referrals by the Intelligence and Security Committee of Parliament

(1) Subsection (2) applies if the Intelligence and Security Committee of Parliament refers a matter to the Investigatory Powers Commissioner with a view to the Commissioner carrying out an investigation, inspection or audit into it.

(2) The Investigatory Powers Commissioner must inform the Intelligence and Security Committee of Parliament of the Commissioner's decision as to whether to carry out the investigation, inspection or audit."

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, in the House of Commons, in response to the chair of the Intelligence and Security Committee—my right honourable friend Dominic Grieve MP—the Government agreed that the ISC could refer matters to the Investigatory Powers Commissioner but that it would be entirely at the discretion of the IPC as to whether or not he or she undertook further investigation. On Report my right honourable friend suggested that this was unsatisfactory as previously he had written to the Interception of Communications Commissioner and had not received a response. Accordingly, we have now drafted government Amendment 193, which places a duty on the IPC to respond to the ISC with his or her decision on whether or not he or she is going to undertake any work on the issue that the ISC has referred. I hope that the Committee will welcome this proposed change. I beg to move.

Lord Janvrin (CB): I rise to speak to Amendment 194 in my name. I remind the House of my membership of the Intelligence and Security Committee. Obviously, we support government Amendment 193. Our very small additional amendment suggests that there should be a further subsection which will ensure that the Intelligence and Security Committee has sight of the commissioner's findings or report, subject to the rules governing the ISC's access to information under the Justice and Security Act 2013, to which we make reference in the amendment. This seems to us a small but sensible addition to the Government's amendment.

The Marquess of Lothian (Con): My Lords, I welcome the government amendment and support Amendment 194. I, too, am a member of the Intelligence and Security Committee. Indeed, I have to admit to having been a member of that committee for more than 10 years now.

The Government have tabled a very sensible amendment. There have been times during our investigations when we have come across issues which were really not for the committee to look at in detail but much more for the commissioners. This power for us to refer to the commissioners is a very valuable addition to the way in which we can make sure that the scrutiny of how this legislation works is done fairly and on a broad basis.

I support Amendment 194 because it is the additional element to what the Government are proposing, and makes total sense. For the committee to refer something to the commissioner yet not be able to hear the result of that investigation after it has been carried out does not seem very sensible. Indeed, as many of these issues will arise in the process of the committee investigating rather broader, more strategic interests, while needing to know the result of the commissioner's investigation, it really would make logical sense to accept the addition made by Amendment 194.

Lord Paddick (LD): My Lords, we, too, very much welcome the Government's amendment but we also support Amendment 194, for the reasons outlined by noble Lords. Surely, if there is an investigation, the committee deserves to know the result of that investigation as well.

6.30 pm

Lord Murphy of Torfaen (Lab): My Lords, I also support the two amendments in this group, the first from the Government and the second on behalf of the Intelligence and Security Committee. The amendments are very sensible. It does not seem to me at all right that the IPC should not say why an investigation should not be pursued.

Let me say very briefly how important it is that the role of the Intelligence and Security Committee is acknowledged in this House as part of this Bill. Indeed, scattered throughout the Bill and the Joint Committee's report on the Bill are references to the Intelligence and Security Committee. I had the great privilege of chairing that committee for about two years and I believe that, since then, there has been enormous change in its powers and its membership—we have two distinguished members here today. That is so important to give confidence, not just to Members of this House and the House of Commons but to the public in general, that whatever happens—and which cannot be revealed, inevitably, because of the nature of this business—there is a committee of Parliament charged, as it is, with a highly distinguished membership, a very eminent chair and an expert staff. It is so important that that is recognised and that the Government support the amendment from the ISC.

Lord Rosser (Lab): As has been said, government Amendment 193 places a statutory duty on the Investigatory Powers Commissioner to inform the Intelligence and Security Committee of Parliament of his or her decision as to whether to carry out an investigation, inspection or audit in cases where the Intelligence and Security Committee has referred a matter to the Investigatory Powers Commissioner with a view to the commissioner carrying out such an investigation, inspection or audit. Amendment 194, in the name of the noble Lord, Lord Janvrin, is very similar to the government amendment, except it also requires the Investigatory Powers Commissioner to provide the Intelligence and Security Committee of Parliament with the outcome of any investigation, inspection or audit carried out under the terms of the government amendment. I do not know whether the Government are going to accept Amendment 194—we shall find out shortly—or, alternatively, give reasons why it is not acceptable. They may simply say that this will happen anyway and that the amendment is therefore unnecessary.

However, I have one other, I think very minor, point to raise. I accept before I start that it may display a degree of confusion about another part of the Bill. Clause 206(1) enables the Prime Minister to give direction to the Investigatory Powers Commissioner, provided that it,

"does not apply in relation to anything which is required to be kept under review by the Investigatory Powers Commissioner under section 205".

Clause 206(3) states that:

"The Prime Minister may give a direction under this section at the request of the Investigatory Powers Commissioner or the Intelligence and Security Committee of Parliament".

Where the direction under subsection (3) has been given by the Prime Minister to the Investigatory Powers Commissioner at the request of the Intelligence and Security Committee of Parliament, will the terms of government Amendment 193 and Amendment 194, if accepted, apply in respect of the commissioner informing the Intelligence and Security Committee of Parliament of his or her decision and the outcome of any investigation, inspection or audit? If not, why not?

Earl Howe: My Lords, let me start my response to the noble Lord, Lord Janvrin, by endorsing the point ably made by the noble Lord, Lord Murphy, and paying tribute to the work that the ISC does. Its members have proven themselves adept at holding the security and intelligence agencies to account and they are more than capable, I believe, of investigating any issue that falls within their remit.

It is conceivable, however, that the ISC may uncover an issue that merits further investigation but which is outside its remit to investigate. In those instances, it is right that the committee can refer the issue to the Investigatory Powers Commissioner, who can then decide whether to investigate further. It is also right that, having referred the issue, the ISC is then informed about the commissioner's decision on whether to take further action. That is what the Government's amendment seeks to achieve and I am glad that it has found favour with the committee.

The amendment put forward by the noble Lord, Lord Janvrin, would go further than that and mean that the commissioner must then report to the ISC the result of the investigation. I find that difficult to accept for two reasons. First, the IPC should report solely to the Prime Minister, who is ultimately responsible for our national security and therefore best placed to take any national security decisions that arise as a result of the reports. Secondly, if an issue has been referred to the IPC because it is outside the remit of the ISC, it does not necessarily follow that the ISC should see the result of that investigation.

It is worth focusing for a second on how things work in the real world. I am sure that, in practice, the IPC and the ISC will strike up a sensible and solid working relationship and keep each other informed of their work. But we do not have to provide for that in statute. On that basis, and in the light of the government amendment, which achieves almost all of what is intended by the ISC, I hope that the noble Lord, Lord Janvrin, will feel able not to press the amendment.

Let me address the point raised by the noble Lord, Lord Rosser, which is not a trivial point. Prime ministerial direction would come into play in a scenario in which, upon request of the ISC, the IPC declined to investigate further in the area suggested. In that situation, the ISC could progress the matter by asking the Prime Minister to direct the commissioner to undertake an investigation. That is provided for by Clause 206(3).

I do not think it is appropriate for this Bill to provide a mechanism whereby the IPC has to report in a certain fashion. We have to be a little careful here to ensure that the IPC is not seen as an arm of the Intelligence and Security Committee—it is not. However, there is a memorandum of understanding between the Intelligence and Security Committee and the Prime Minister. I understand that that memorandum of understanding will come up for review in the reasonably near future. I suggest that, at that time, if it is thought appropriate, the MoU could provide a vehicle to offer some further reassurance in the area that the noble Lord, Lord Janvrin, is seeking.

I recognise the issue that has been raised by the noble Lord, Lord Janvrin. As I said, I think that in the real world it will be a non-issue. However, if there is

[Earl Howe]
concern in this area, perhaps I can send a signal to those involved that, when the MoU is further considered, this issue will also be factored in.

Lord Janvrin: I too share the view that the Minister has expressed: I can imagine, and I sincerely hope, that in the real world there will be the closest possible working relationship between the IPC and the ISC. I take entirely the point that the Investigatory Powers Commissioner reports to the Prime Minister. However, the point we are trying to make is that where the ISC is involved in looking at an issue and has seen an area that it thinks is for the Investigatory Powers Commissioner to look at, and that has been accepted as is provided for in Amendment 193, some kind of reference back seems common sense and what the committee needs. However, given the point made by the Minister about the MoU, I will not press this amendment.

Amendment 193 agreed.

Amendment 194 not moved.

Clause 212 agreed.

Clause 213: Funding, staff and facilities

Amendment 194ZA

Moved by ***Baroness Hamwee***

194ZA: Clause 213, page 165, line 27, at end insert "funds to cover"

Baroness Hamwee (LD): My Lords, on behalf of my noble friend Lord Paddick and myself, I shall speak to this amendment and to Amendment 194DA.

The first amendment provides that the Secretary of State should provide "funds to cover" the hiring of staff, the arrangement of facilities and so on for the judicial commissioners. The amendment simply probes whether the appointment of staff—indeed, the hiring and firing of staff—is a matter for the Secretary of State or for the IPC. I would be grateful if the Minister will help me on how—in the real world, which has just been referred to—that will be dealt with.

Amendment 194DA provides for a new clause—although it is not so very new—to create a role in this for the president of the Investigatory Powers Tribunal. RIPA provides for the Secretary of State to pay members and expenses—remuneration, allowances and so on—with the approval of the Treasury. I have not sought to delete the Treasury's control—I am realistic to that extent—but wanted to add a role for the president. Should expenses, for example, be a matter for the Secretary of State? I beg to move.

Lord Beith (LD): My Lords, it is quite important that we get this right. As I think the noble Lord, Lord Murphy, will remember, one of the commissioners under the previous arrangements was found by the ISC to have been hopelessly inadequately provided with staff, to such an extent that there was a huge build-up of correspondence. That was some years ago and it took some effort by Members of our party as well as of his to ensure that that was quickly remedied.

I also have experience as a constituency Member of Parliament in dealing with an employee issue, the merits of which I will certainly not go into but which was not helped by its being unclear who the employer was. I am talking about somebody who was engaged in the office of one of the commissioners. So I am grateful to my noble friend for trying to make sure that we get this bit right.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I turn first to Amendment 194ZA, regarding the provision of funds to the Investigatory Powers Commissioner, and I note that the noble Baroness, Lady Hamwee, has referred to this as a probing amendment.

I entirely agree with what this amendment seeks to achieve. The Investigatory Powers Commissioner must be free to appoint whomever he or she thinks is right and proper and to arrange their office as they see fit. It is certainly true with the current independent commissioners that, although they receive their funding from the Secretary of State, they are free to employ whomever they think best suited for any role they have to fill.

It has always been the intention under the Bill that the commissioner should appoint whom they wish. However, I would not want to accept this amendment as drafted since it may preclude the Secretary of State providing non-monetary assistance to the IPC. I will consider further whether anything more should be done to put beyond doubt that the commissioner will have autonomy over the appointment of staff, but I hope I have made the intention absolutely clear in response to the request from the noble Baroness. On that basis, I invite her to withdraw the amendment.

On Amendment 194DA, it is certainly the case in practice that the president of the Investigatory Powers Tribunal is consulted before the budget allocated to the tribunal is settled. The tribunal then has sole responsibility for paying the salaries and expenses of the tribunal. This is a sensible way of doing things and ensures that the tribunal has sufficient funds to conduct its business. I see no reason for changing this practice.

6.45 pm

In addition to making consultation with the IPT a statutory requirement, the first limb of this amendment would also remove the role of the Treasury in approving levels of pay and allowances for the members of the tribunal. Since the Treasury is ultimately responsible for the allocation of public funds, I consider it appropriate that it should continue to play a role.

The second limb of the amendment aims to give the president of the IPT control over determining and providing money for expenses of the IPT, and accepting this amendment would mean that there was no role at all for the Secretary of State in providing funds for the tribunal. Consequently, the tribunal would have to negotiate directly with the Treasury to receive its funding. That would make it unique within the tribunal system.

I do not believe that the tribunal would receive a higher financial settlement if it negotiated directly with the Treasury, and in any case I do not believe at present that the tribunal needs a higher financial

settlement. There has been no suggestion from the president of the tribunal, including in the tribunal's recent report, that it is underfunded. Indeed, the oversight commissioners are consulted about their budget allocations, and as far as I am aware no commissioner has ever suggested that they have been constrained in performing their duties due to a lack of financial resources. I therefore consider this amendment unnecessary and I invite the noble Baroness not to press it.

Baroness Hamwee: My Lords, I had no idea that I had read my noble friend's mind—there was no communication between us on this. The noble and learned Lord's last comment, about there never having been a problem, was perhaps anticipated by my noble friend. The tribunal is to be independent of the Home Office. There is, of course, a link between these issues and that independence. Indeed, I believe the Home Office is keen to present the tribunal as independent. The issue that my noble friend raised about who employs the commissioners is clearly important.

Autonomy for the IPC is important. As ever, as one stands up to move an amendment, one thinks, "I could have drafted that slightly differently", as the Minister himself has pointed out. This all might sound like minor stuff but, in practice, it is probably quite important. Of course, I am not going to pursue these matters today and will ask to withdraw the amendment, but perhaps more has come out of this than I expected. I beg leave to withdraw.

Amendment 194ZA withdrawn.

Amendments 194A and 194B not moved.

Clause 213 agreed.

Amendment 194BA not moved.

Clause 214: Power to modify functions

Amendment 194C not moved.

Amendment 194CA

Moved by ***Lord Rosser***

194CA: Clause 214, page 165, line 33, leave out "modify the" and insert "extend and augment the oversight"

Lord Rosser: Clause 214(1) provides that the Secretary of State may by regulations modify the functions of the Investigatory Powers Commissioner or any other judicial commissioner, subject to the constraint in subsection (2). On the face of it, that is a fairly wide-ranging power and it would be helpful if the Minister could say what functions of the IPC the Government think that they might need to modify by regulations, and whether that would include a diminution in the role and responsibilities of the Investigatory Powers Commissioner or any other judicial commissioner.

One could surely argue that the functions of the commissioner or of any other judicial commissioner should be set out in primary legislation and modified only through primary legislation, particularly where it reduces their role and responsibilities. What modifications of the functions of the Investigatory Powers Commissioner or of any other judicial commissioner, subject to the provision of Clause 214(2), would the Government think it inappropriate to deal with by regulations under Clause 214?

Our amendments seek to remove the power to modify by regulations by amending Clause 214(1) to say that the Secretary of State can by regulations only,

"extend and augment the oversight",

functions of the Investigatory Powers Commissioner or any other judicial commissioner, and only in order that those functions should be able to keep up with technological or other developments. This would also appear to have some relevance to the recommendation in the Anderson *Report of the Bulk Powers Review* that a technology advisory panel should be established to advise the Secretary of State and the Investigatory Powers Commissioner.

We also have an issue in this group in relation to Clause 242 standing part of the Bill. The reason is that in its report published on 8 July of this year, the Delegated Powers and Regulatory Reform Committee raised a number of concerns about the powers conferred on the Secretary of State under Clause 242 to make such consequential provision as she considers appropriate by regulations, with this power being able to be exercised by amending or otherwise modifying the provisions of primary or subordinate legislation, including future enactments. The Delegated Powers and Regulatory Reform Committee also considered the powers conferred by paragraph 33 of Schedule 8 to be inappropriate to the extent that they permit amendment by regulations of future enactments passed or made after the current Session, as well as amendments to Schedule 8 itself.

There are other amendments in this group relating to the concerns and views expressed by the DPRR committee on the Bill, of which I am sure the Government are aware. I will therefore not go into further detail on this score but instead simply ask the Minister to say what action the Government intend to take in the light of that committee's report.

Baroness Hamwee: My Lords, my noble friend Lord Paddick and I have Amendments 194CC to 194CE, 238A and 238B, 240A and 240B, and 242A in this group. First, of course, there are the amendments of the noble Lord, Lord Rosser. The first of these is very similar to Amendment 194C, which we debated before the Recess, and which would have replaced the word "modify" with "extend or augment". The amendment of the noble Lord, Lord Rosser, would do the same, except that it says,

"extend and augment the oversight".

The Minister's reply on the third day of Committee referred the Committee to the affirmative regulations which would be required and to the scrutiny involved. I am often not convinced by an argument that secondary legislation provides adequate scrutiny regarding the protection that might be given. I will probably never be wholly convinced about this as a mechanism until there is a mechanism to amend secondary legislation. I dare say that the response will be the same; if it is not, that will be interesting in itself.

[Baroness Hamwee]

On Amendment 194CB, I do not think that I would want to limit the modification which is the subject of this to keeping up with technical developments. There could be some other reasons if it is found that the powers are not quite spot on. But this is certainly an area of concern.

Amendments 194CC to 194CE deal with Schedule 7, which relates to codes of practice. I have already expressed some reservations about them. The first of the amendments would add to the procedural requirements that the Secretary of State must consult on a draft code as well as consider representations on it. The Minister may say that the Secretary of State will have to consult because she cannot consider representations without consulting. I am not quite sure whether that would be a logical or complete answer, but assuming that the Secretary of State will be expected to consult, we should say so.

Two other amendments concern the terms "taking into account" and "having regard to". I realise that we discussed the hierarchy between these terms—if there is any—on a previous day, so I apologise to the Committee. I think that the answer was that it would be inelegant not to use different terms in the clause, which would otherwise suffer from very clunky wording.

The noble Lord, Lord Rosser, referred to our other amendments, which indeed come from the report of the Delegated Powers and Regulatory Reform Committee. I am extremely grateful to the Public Bill Office and in particular to Nicole Mason, with whom I had some quite long discussions and email exchanges as I tried to get to drafting that would pick up the points made by that committee. This is what these amendments seek to do. The noble Lord referred to the concern about a power to amend future enactments—not only those later in the same Session as the Bill, which would be understandable, but whenever they are made.

The committee also quoted a paragraph from the memorandum on delegated powers, which advised the House that,

"this potentially wide power is constrained by the requirement",

on the Secretary of State to consider,

"the provision to be appropriate in consequence of this Act. Accordingly, the power is effectively time limited".

The committee said that it found this paragraph difficult to understand—and so did I. It also said that it is not convinced that it is necessarily right. Its recommendation was that,

"the powers conferred by clause 242(2) and (3) are inappropriate to the extent that they permit amendment of future enactments passed or made after the current Session".

7 pm

The committee also commented:

"While the Government accept the general principle that changes to primary legislation by secondary legislation should be subject to the affirmative procedure they consider that there will be cases where the negative procedure is appropriate".

The committee also referred to the Government's view that,

"it is not practicable to spell out on the face of the Bill those cases where the affirmative procedure is appropriate",

and that,

"the Government suggest that it should be left to Ministerial discretion".

The committee remained,

"unconvinced by the Government's arguments",

saying that there will be relatively few occasions when powers to modify primary legislation in the way that is the subject of all this need to exercised. It stated:

"Accordingly, we remain of the view that the affirmative procedure should apply to the exercise of a power to amend primary legislation—even if it is dressed up as a power 'to otherwise modify'"—

do we really have a split infinitive in all this?—

"save in very exceptional circumstances which need to be convincingly justified".

That is what underlies the amendment: adding "repeal" to require the affirmative procedure.

Earl Howe: My Lords, let me turn first to Amendments 194CA and 194CB in the names of the noble Lord, Lord Rosser, and the noble Baroness, Lady Hayter, which deal with Clause 214.

Clause 214 allows a Secretary of State to modify the functions of the Investigatory Powers Commissioner or other judicial commissioners. This will allow the functions of the judicial commissioners to be extended, but also to be changed to reflect any potential changes to the investigatory powers that the commissioners oversee. The judicial commissioners will oversee the use of a wide range of powers, including some in other enactments. Those powers may in due course be changed or updated, perhaps in the same way that this Bill is replacing parts of RIPA. In such a case, it is right that the functions of the judicial commissioners could be modified to reflect the changes. However, this may not mean an extension of the judicial commissioners' oversight. The change may be entirely neutral—for example, a public authority changing its name or something of that sort. If these amendments were accepted, such a sensible change would not be possible.

I hope I can reassure noble Lords that this power will not be used to reduce the oversight provided by the commissioners. The Government have been very clear on this point. It is also worth reminding the Committee that this power is subject to the affirmative procedure and that Parliament will have to approve any regulations made under this clause. So any attempt to diminish the commissioner's oversight responsibilities, were such an attempt to be made, would no doubt be scrutinised extremely carefully by each House of Parliament, particularly in the light of the assurance that I have just given.

The Committee will recall that the Delegated Powers and Regulatory Reform Committee expressed a concern about the breadth of the order-making power, as was made clear by noble Lords. It recommended that it should not extend to the IPC's functions relating to the authorisation of warrants. The Government accepted this recommendation, and this clause has been amended accordingly.

Amendments 194CC, 194CD and 194CE deal with changes to Schedule 7. Amendment 194CC would require the Secretary of State to consult persons interested in a code of practice before issuing such a code. This amendment is unnecessary as the clause as drafted provides for the publication of codes in draft and for the Secretary of State to consider representations on

the draft codes. In order for the Secretary of State to hear representations on the code, the Bill requires a consultation to be conducted.

I understand that Amendments 194CD and 194CE are intended to probe whether the use of "have regard to" or "take into account" strengthens or weakens the effect of the consideration of a failure to comply with a code conducted by a supervisory authority or a court or tribunal. Having taken advice on the matter, I can assure your Lordships that the choice of language is based on the context and it is appropriate to refer to a court or an oversight body taking matters into account. However, that form of words does not provide any greater or lesser degree of consideration.

Amendments 238A, 238B, 240A, 240B and 242A I believe respond to the recommendations made by the Delegated Powers and Regulatory Reform Committee in its report on this Bill of 8 July 2016. These amendments relate to the parliamentary procedure used where primary legislation is modified and to the power to make consequential amendments not being time-limited in relation to Clause 242(2) and Clause 242(3).

The proposed amendments to Clause 238 seek to ensure that whenever a delegated legislative power is used to modify primary legislation the affirmative procedure should apply. This is a point which has been raised by the committee in the context of a number of Bills, and I am afraid that it is one that the Government cannot accept. Where secondary legislation amends the text of primary legislation, the Government agree that such legislation should be subject to the affirmative procedure. The Government have committed that, wherever possible, changes to primary legislation will be made by textual amendment rather than by modifying the primary legislation. There are likely to be relatively few occasions when the powers to otherwise modify primary legislation need to be exercised—I apologise for the split infinitive which the noble Baroness pointed out. However, it remains the Government's position that there are some cases where it is necessary to modify primary legislation and that it is not possible to specify which kinds of modification of primary legislation should attract the negative procedure and which the affirmative procedure without creating legal uncertainty.

The Government have set out their position in the Delegated Powers Committee memorandum on this Bill, and in relation to a number of different Bills, and remain of the view that the position is justified and that the powers in the Bill are subject to the appropriate level of parliamentary scrutiny. I have in fact today written to my noble friend Lady Fookes, the chair of the Delegated Powers and Regulatory Reform Committee, setting out the Government's position and the reasons for it in response to the committee's view on this issue and on the point raised by the committee on the power to amend Schedule 8. I will, of course, place a copy of that letter in the Library of the House. I therefore ask that these amendments be withdrawn.

The proposed amendment to Clause 242 seeks to constrain the power to make consequential amendments so that it could not be used to amend legislation passed after this Bill receives Royal Assent. Clause 242 contains the usual power to make amendments to other legislation consequential on the provisions in the Bill. However, as currently drafted, the power would permit the amendment of legislation passed at any time in the future. Amendment 242A would in fact go further than the committee's recommendation, which recognised the necessity of amending of enactments passed or made during the current Session. I can confirm that the Government will bring forward amendments on Report which would restrict the powers conferred by Clause 242 and the similar power in Schedule 8 to the Bill in response to the committee's recommendation.

The power to make consequential amendments to enactments passed in the same Session is necessary because other Bills before Parliament at the same time as this Bill touch upon the powers and public authorities covered by this Bill, such as, for example, the Policing and Crime Bill. Since it is impossible to predict how those Bills or the Investigatory Powers Bill may be amended during their parliamentary passage, and which Bill may achieve Royal Assent first, it is necessary to allow for the possibility of consequential amendment of future enactments.

I have just been handed a note to amplify what I said on Amendment 194CC in relation to consultation on codes of practice, and will just add that consultation comprises publication of a draft and consideration of any representations made. I suggest to the noble Baroness that publication, by its nature, is conspicuous and is the means by which government consultations are established. I hope she is satisfied on that point.

Finally, government Amendment 241, which is in this group, makes it clear that a statutory instrument containing regulations made under Clause 50(3)—the designation of relevant international agreements under which interception may be carried out—is subject to the negative parliamentary procedure. This amendment is consequential on the amendment to Part 2 which was considered in July. I hope that the House will agree to that amendment when I come to move it.

Baroness Hamwee: My Lords, I apologise for the rather cheap gibe about the split infinitive. I recognise that I am old-fashioned, and styles have moved on. It would obviously be inappropriate to pursue the points made by the Delegated Powers and Regulatory Reform Committee at this point, given that the Minister has written to it, and we will wait to see if anything more happens on that. However, I will just say, on the question of consultation, that the Government are often very good at being proactive in consulting and at contacting organisations which they know have an interest. That is something that should be encouraged. To my mind, consultation which simply involves publication on a website—or perhaps in common parlance, "slipping something out"—the day before a recess and waiting to see whether there are any comments is not good practice. That was why I was concerned to spell this out. I am not of course suggesting that anyone on the Front Bench at the moment would indulge in such a practice, but it has been known to happen. This is not an unnecessary point, but I will not pursue it this evening.

Lord Rosser: I thank the Minister for his response, although clearly the answer that he has given on behalf of the Government is not the one that we might

[Lord Rosser]
have been hoping for in relation to the Delegated Powers and Regulatory Reform Committee's report and the concerns and views it has expressed. However, rather than making any more specific statements than that at this stage, I simply confine my observations to saying that I will wait and read the letter that I understand the noble Earl said was sent to the noble Baroness, Lady Fookes, which is presumably responding to the issues that have been raised. I will take the opportunity to read that letter and then decide whether to pursue the matter further or not at a later stage. I beg leave to withdraw the amendment.

Amendment 194CA withdrawn.

Amendment 194CB not moved.

Clause 214 agreed.

Clauses 215 and 216 agreed.

Schedule 7: Codes of practice

Amendments 194CC to 194CE not moved.

Schedule 7 agreed.

Clauses 217 and 218 agreed.

Amendments 194D and 194DA not moved.

Clause 219 agreed.

Clause 220: Technical Advisory Board

Amendments 194E to 194G not moved.

Clause 220 agreed.

House resumed.

7.17 pm

Sitting suspended.

Health: HIV

Question for Short Debate

7.23 pm

Asked by ***Lord Black of Brentwood***

To ask Her Majesty's Government what plans they have to move toward the elimination of HIV infection in the United Kingdom.

Lord Black of Brentwood (Con): My Lords, I am honoured to lead this debate on what remains a profoundly important issue of public health: tackling the spread of HIV and doing so in a way that over time would allow us to eliminate the virus, which has been responsible for so many deaths and so much suffering. I thank all noble Lords for taking part.

It is just over 35 years since the first reports in the US media of an unidentified illness that seemed disproportionately to affect gay men and to kill them. What was identified as the human immunodeficiency virus, an incurable disease, left a generation of those infected facing certain death. Many more living in its shadows had their lives shaped by it. However, 35 years on we have turned the horror of HIV/AIDS from a death sentence into a manageable chronic condition through the use of antiretroviral treatment. That we can today even begin to contemplate its elimination is a tribute to many brave and visionary people. There is not time to name them all tonight but I want to make two exceptions. The first is to praise the campaigning groups, especially the National AIDS Trust and the Terrence Higgins Trust, which fought tirelessly to keep this issue on the front line of the public health agenda. The second, on this very important day for him, is to recall the vital role that our new Lord Speaker played in the earliest days of this epidemic. As Secretary of State Fowler, he showed enormous courage in tackling the issue, and in doing so saved thousands of lives. Our gratitude to him is eternal.

As we know, HIV is a massive global issue, but it also continues to be one of the fastest-growing serious health conditions here in the UK, with an estimated 6,000 new diagnoses—115 a week—and the rate of new infection is increasing. The year 2014 saw the highest ever number of men who have sex with men diagnosed with HIV. Some two-fifths of people were diagnosed late, long after they should have started treatment. One in six of those with the virus still does not know their status and, for many of the 104,000 people living with HIV, economic hardship, stigma and discrimination are all too real.

So if anything, despite the huge life-saving advances in treatment and care globally, the situation here in our own back yard, particularly with regard to testing and prevention, is deteriorating. We need to take tough and determined action to reverse the tide, and that will require a strategic approach from the Government to tackling every aspect of HIV, with the aim of eliminating the transmission of the virus in the UK and bringing its reign of terror to an end.

For the first time we have the ability to do just that because we have at our disposal the means to stop transmission. As a study published last month showed, it is nearly impossible for someone living with HIV to pass on the virus if they are undergoing effective antiretroviral therapy and have an undetectable viral load. This is of profound importance in producing a strategy for tackling HIV, as we have seen in other countries. A recent study about HIV in Denmark, from the University of California and Copenhagen University Hospital, provided the first unambiguous evidence of the link between high rates of viral suppression and falling HIV incidence. Because of the Danish policy of treatment as prevention, HIV incidence among gay men—still the group most at risk—is now so low, at 0.14% a year, that it almost meets the annual incidence rate that the World Health Organization has set as the threshold for eventually eliminating the epidemic.

There is no reason why such a remarkable success should not happen here, given that we have exactly the same tools to use. To do so, however, three things must happen. First, self-evidently, to cut transmission through the effective use of antiretrovirals, those who have the virus need to know about it and get on treatment. Far too many still do not, with devastating consequences. It is a terrible statistic that over 80% of all HIV transmissions in the UK are from the undiagnosed. We need a step change in the volume of tests that are undertaken regularly by those at greatest risk, and in access to testing. Yes, there has been much good progress and innovation—the introduction of home-testing kits, for example—but it is not enough. There should be much more routine testing of populations at risk, and more support needs to be given to GPs and primary care providers, and indeed to local authorities, to deliver it. Of course there is the continuing need for publicity to explain its importance. I pay real tribute to the extraordinary example set by His Royal Highness Prince Harry, whose live broadcast of his own HIV test has done more than anything else in recent times to raise the profile and make HIV testing the norm.

Secondly, one of the major reasons why people do not get tested is that they fear the stigma of a positive result. The 2015 *People Living with HIV Stigma Index* revealed a continuing problem with HIV stigma and discrimination, with too many people reporting everything from verbal harassment or physical assault to exclusion by their families. Given the crucial role of stigma in encouraging testing, there is a strong case for a public information campaign to raise awareness and tackle some of the myths that still exist. I also commend to the Government the recent NAT report *Tackling HIV Stigma*, which draws together international best practice.

Improving education about HIV and sexually transmitted illnesses more generally would also be of real benefit, especially as the increase in HIV incidence among young people is particularly sharp, up 70% in the last three years. It is time to look again at what is being taught about this issue, particularly as Department for Education guidance is now 16 years old. It is really important for young people to understand about HIV and to learn how to avoid it through condom use, but also to be taught the importance of being supportive of those living with HIV and not to fear or stigmatise them.

Finally, while improved testing and tackling stigma would help to identify those who have the virus and get them on treatment, the flip side of the same coin is preventing HIV by using medication to protect HIV-negative people from acquiring it. Again, we have the tools to hand in the shape of pre-exposure prophylaxis, or PrEP. Two studies, including the PROUD trial here in the UK, show PrEP to be highly effective at preventing HIV infection in men who have sex with men. Properly taken, the success rate is well over 90%. This is a revolutionary development in the fight against HIV which can transform the public health landscape. Only this week, new statistics from San Francisco showed that it had cut its rate of new infection by a third in the past three years as a result of PrEP.

Inevitably, as PrEP is a drug linked with sex, it has become the subject of controversy and misinformation. It is argued that contracting HIV results from a lifestyle choice and that it is not appropriate for the NHS to pick up the pieces from such actions. This ignores the point that the NHS is treating, curing and preventing illnesses diagnosed from lifestyle choices all the time—cigarette smoking, overeating, overdrinking or riding a bike without a helmet—and PrEP should be no different.

The other argument, of course, is money, and it is estimated that it could cost up to £20 million each year to provide. However, that figure is dwarfed by the existing cost of HIV to the NHS. The lifetime cost of treating someone with HIV is now in the region of £380,000. As people live longer, that figure will only increase. It is Mickey Mouse economics to refuse to fund effective prevention measures for those most at risk at the cost of just £400 a month—a sum soon likely significantly to reduce—when you set that against the huge cost of treating someone who contracts HIV. If PrEP prevented just a handful of infections each year, it would easily be saving money for the NHS and the taxpayer.

Regrettably, that is now a matter before the courts, but I hope that common sense will prevail and that the original decision in the case—that there is no legal impediment to NHS England providing PrEP—will be upheld. That is vital because it is the last element in the jigsaw alongside effective treatment, more testing, tackling stigma and promoting condom use, which will allow us finally to move towards the elimination of HIV transmission, something genuinely within our grasp.

Earlier this year, the UK, as a member of the World Health Organization, committed to the goal of eliminating hepatitis C—another deadly condition—by 2030. NHS England is now working on plans to make that goal a reality through prevention, testing and treatment. We must have the same ambition for HIV. I ask my noble friend whether the Government will be as bold with HIV as they have been with hepatitis C, commit to the elimination of new transmissions by 2030 at the latest and work with NHS England on a strategy to achieve that.

Thanks to the miracles of genetic science, we now know where and when HIV began. We do not yet know when it will end, but end it must, and tonight's debate should be a staging post on that journey. In memory of the countless millions who have died, in deep honour of those who have pioneered treatment and dispensed loving care and in solidarity with those living with the virus, let this country have the ambition to show the way in consigning the greatest public health peril of our age to the history books.

7.34 pm

Baroness Bottomley of Nettlestone (Con): My Lords, warmest congratulations are due to my noble friend Lord Black of Brentwood on securing this important and particularly timely debate. The arrival and availability of PrEP, the benefit that it can provide, is something that I hope we all support and strongly urge. Even timelier, as my noble friend pointed out, is the arrival of the first male Lord Speaker. I appreciate that we have had the most distinguished female Lord Speakers, but perhaps it is now time for a male Lord Speaker. We welcome him most warmly to the Woolsack. As my

[Baroness Bottomley of Nettlestone]
noble friend said, the noble Lord, of all people, deserves enormous credit for his pioneering and courageous campaign, "Don't die of Ignorance", the shocking, bold, unstoppable campaign of 1987.

My noble friend mentioned the noble Lord, Lord Fowler, but I want to mention one other person, the then Chief Medical Officer, an eminent physician and epidemiologist, Sir Donald Acheson. Uncompromising, he on the whole thought that Ministers had to be tolerated. As long as he got his way, which he was determined to do, he was happy and easy to work with, and he worked with great principle and distinction. When he first became CMO in 1983, fewer than 30 AIDS cases had been seen. By 1985, two years later, 121 people had died and 10,000 were thought to have the condition. That was the most phenomenal situation: the greatest new public health threat of the 20th century.

Following that was a model of the way in which a Government can decide that they are going on a war footing against a new condition. There was not only the great public health education campaign in the health service. In the voluntary sector, my noble friend paid tribute to the Terrence Higgins Trust and the National AIDS Trust, but there was also London Lighthouse, Mildmay and Landmark. It was extraordinary how the voluntary sector mobilised, rather in the way that all the children's charities mobilised at the end of the 19th century, holding the Government to account in every area, even in the Diplomatic Service.

I took over at the Department of Health, only being half the man of the Lord Speaker, because he manfully was able to handle both the enormous Department of Health and the then Department of Social Security, now the Department for Work and Pensions. No mere mortal Secretary of State has been able to handle those two enormous responsibilities since then, but he did so with great distinction, so perhaps he will be the man to handle our colleagues' business here. At the time, there was a real problem internationally because in many African countries, acknowledging the development of HIV and AIDS was thought to be a threat to the tourism industry. I remember going to the World AIDS Conference in Paris in 1990, when the British ambassador to France was proud in his red ribbon, which I think his mother would have been amazed to see him wear. There was a campaign to try to persuade the Russians to accept that HIV/AIDS was a serious problem in Russia. All of us in our different times have had different campaigns to handle this real threat to the human race which so extraordinarily, through the work of our scientists and the pharmaceutical industry, has become a manageable chronic condition, if only it can be identified, diagnosed and treated.

I confess to a tension I held in my term of office, because there was resistance to testing when there was no available cure or treatment. I found it very difficult because, without going into too much detail, any women in the House who have had a baby will know that you are tested for all sorts of different things without any counselling or consent; that is what we are told we have to do. Nevertheless, at the time it was felt that people should not be forced to have assessment or treatment, even if they were going into hospital for a major operation, without counselling.

I tracked down where the source of all that lay and then declared war in the most joyful way on the insurance industry. The ABI used to weight people on their insurance if they had had an HIV test. It did not matter whether the test was negative—the fact that they had been tested meant that they were high risk and therefore should pay the penalty on their insurance premium. Prince Harry would then have been a wonderful example which one could have used. I fear that I was just rather aggressive, insistent and disagreeable, but I am delighted to say that since 1994, ABI policies have been absolutely clear that a negative test is not a barrier to obtaining insurance. All the way through, we see stigma, resistance and obstacles. Together we can unite and work to overcome these many barriers and improve diagnosis and treatment.

There is no doubt that that early campaign was a model which many of us felt proud of internationally. My noble friend has pointed out that we now have more to learn from other parts of the world which are developing their services and approach faster than us, but it remains the case that, as a percentage of the population, France, Spain and Italy each have twice as many people living with HIV as we do in the UK. As my noble friend said, HIV has been responsible for the deaths of over 35 million people worldwide, including 1.1 million in 2015 alone. There is still a long way to go. The WHO reported in 2015 that there were approximately 26.7 million people living with HIV worldwide. In South Africa, Zimbabwe and Uganda, 19%, 14.9% and 7.1% respectively of the adult population is living with HIV. In the UK, it is 0.3% and in the US 0.6%, but any percentage, any number, is something we cannot tolerate without greater effort.

The UN sustainable development goals, established in 2015 to end poverty and fight inequality and injustice, include the commitment to end the epidemic of AIDS by 2030. UNAIDS has set interim targets for 2020 which have been agreed by political declaration by UN members, including the UK. This goes back to the part we can play internationally as well as nationally. Noble Lords may feel that the international is not part of the debate today, but in this extraordinarily permeable world, with mass migration, there is no such thing as looking at the situation in the UK without having regard to the international situation, such is the movement of people. Whatever the outcome of Brexit may be, I doubt we will bring an end to the mass migration of populations.

As my noble friend has pointed out, we are not doing well enough because we are still finding that one in 6 of those 100,000 people living with HIV in the UK now is unaware of it. Only 82% of those with HIV know that they have the condition. If a person is diagnosed a long time after they have been infected with HIV, it is more likely that the virus will already have seriously damaged their immune system. Late diagnosis is a huge contributing factor to illness and death for people with HIV and, if an individual is unaware of the situation, to further transmission. In 2014 it was estimated that 40% of the adults in the UK—

Baroness Mobarik (Con): My Lords, I apologise for interrupting the noble Baroness, but she will be aware that this is a time-limited debate. The guide time has been increased to eight minutes but I hope she will be seeking to conclude quite quickly.

Baroness Bottomley of Nettlestone: I apologise to the House; such is my enthusiasm to support my noble friend in his excellent work. I had another 40 minutes of speech here, but I will now bring it to an end and simply commend my noble friend and our most distinguished Lord Speaker. I hope to support them in every way that I can.

7.44 pm

Lord Lexden (Con): My Lords, it is a great pleasure to follow my noble friend Lady Bottomley, who is as enthusiastic today as she was when she held office, with such distinction, as Secretary of State for Health.

In the last few years, the House has become accustomed to returning, from time to time, to this grave public health issue. So often the impetus has come from the noble Lord, Lord Fowler, an unwavering friend to all of us, regardless of party, who believe strongly that, though very significant progress has been made, not least as a result of his courageous work in the 1980s, much remains to be done. Above all, the country at large needs to be made aware that the disappearance of stories of heart-rending agony from the front pages of our newspapers does not mean that a great crisis has been almost entirely resolved and that the political agenda no longer needs to make much provision for it. As we have heard, HIV continues to spread rapidly. Public opinion requires a wake-up call. In these circumstances, it surely must be right for us to press the Government to commit themselves firmly to the objective of eliminating this terrible scourge.

My noble friend Lord Black, a close personal friend for exactly 30 years, has performed a signal service by securing this most timely debate. Concerns about the prospects of steady further progress are accumulating to such an extent that serious anxiety now exists among the valiant organisations that work so hard on behalf of actual and potential HIV sufferers. Wide publicity has been given to one of the principal concerns, the delay in introducing a miraculous new drug. It is tragic that protracted action in the courts should have become necessary. It is tragic, too, that some have sought to create tensions between those dedicated to the relief of HIV and others suffering grave hardship from other sources. As my favourite *Times* columnist, Janice Turner, put it recently, at its heart, the PrEP controversy shows where tolerance of gay lives ends.

I will touch briefly on another of the many sources of concern. It is becoming evident that, as a result of the Health and Social Care Act 2012, the provision of HIV and other sexual health services is in danger of becoming seriously fragmented. The crux of the problem seems to be that the division of commissioning responsibilities between NHS England, clinical commissioning groups and local authorities is confusing and unclear. The damaging implications have been the focus of a detailed inquiry by the All-Party Group on HIV and AIDS. Its report will be published shortly. In the light of it, the Government will surely need to consider how they can ensure that HIV prevention and testing are not set back, particularly at a time of falling local authority budgets. They will also need to clarify where the responsibility for commissioning HIV support services actually rests.

Finally, I will say a word about Northern Ireland, for this debate relates to the whole United Kingdom. I have always been particularly interested in all that happens there, including during the time that my noble friend Lord Prior's father was its deeply committed Secretary of State, more than 30 years ago. The greatest concern of Positive Life, Northern Ireland's only HIV-specific charity, is the heavy stigma that still attaches to HIV in the Province. It is pressing for investment in education and the raising of greater awareness in both schools and the wider community. It states:

> "There has been little communication with the public since the 1980s and a recent public health advertising campaign did little to address the misinformation and myths that surround the condition".

There could be no more telling reminder of the continuing need to combat prejudice wherever it arises, a point made repeatedly by the noble Lord, Lord Fowler, and emphasised in his book *AIDS: Don't Die of Prejudice*. Policy in Northern Ireland is, of course, determined at Stormont, but its leaders must always be able to look to the Government here for an unwavering, resolute approach to combating HIV and for encouragement to emulate it.

7.49 pm

Lord Scriven (LD): My Lords, I start by thanking the noble Lord, Lord Black of Brentwood, for this timely and important debate. I personally believe that the good work that has happened with HIV prevention and treatment in the UK is now at a crossroads because of public policy. That may not be intentional, but we are at a crossroads. It is going to need political leadership—not the courts—to deal with the increasing number of HIV infections happening in the UK. I shall come back to that in a moment.

It is very nice to see our new Lord Speaker, the noble Lord, Lord Fowler, in his place. His voice has been not just important but critical in the fight against HIV, not just in the UK but across the world, and many thousands and millions of people owe him personal gratitude for the work that he has done.

I am not going to concentrate significantly on the key issues already raised about education, access to testing, treatment and stigma—although I shall come back to the point about stigma. I will major on one issue—that of PrEP, a treatment to stop the replication and transmission of HIV within the UK. It is a treatment widely available in France, the United States, Israel and Kenya, and other countries are using it. It is a treatment that Public Health England modelled: if PrEP were widely available to high-risk groups, particularly men who have sex with men, it could prevent 7,400 cases by 2020.

Noble Lords have already referred to the PROUD study, which showed that the treatment is 86% effective in preventing HIV transmission, and also to the cost. The noble Lord, Lord Black of Brentwood, made it very clear that the lifetime cost of treating somebody

[Lord Scriven]
with HIV is up to £380,000; the cost of PrEP is £400 a month. That is the equivalent of 83 years' worth of PrEP to treat one person living with HIV. The economics are not questionable in terms of the costs of PrEP.

So how have we got to the position whereby two parts of government are slugging it out in court over who is going to pay for this preventive treatment? Interestingly, as I am sure the Minister is aware, both parts of government are funded by the Department of Health. Local government's prevention is funded by the Department of Health, as is NHS England. In July, I asked House of Lords Question 1425—what stops the Secretary of State intervening and asking the Department of Health to commission PrEP? I got a very nice Answer about NICE, but I did not get the answer to my Question. So I will ask the Minister: what legislation stops the Secretary of State tonight telling NHS England that it can commission PrEP? What law stops that? The advice given to NHS England made it very clear that that could actually happen, so I am interested to know why it does not happen, particularly when the NHS national plan puts prevention at the heart of future health care. The whole argument about why NHS England cannot provide PrEP is that it is a prevention measure. If the whole NHS five-year plan is about prevention, why cannot the NHS step up to do this?

There is a lack of political leadership on this issue. It is not a lack of managerial leadership, although there may be with NHS England. There is a lack of direction from the centre to say that PrEP is so important, as the studies have shown, that it should be commissioned by NHS England. I declare an interest in that my partner works for NHS England in specialised commissioning. The work does not have anything to do with this area, but it is an interest that needs to be on the record.

Political leadership is needed because NHS England is taking a particularly aggressive and nasty approach on PrEP and in the arguments for why it cannot be used. A statement by Dr Jonathan Fielden on 2 August, on the day of the judgment—he is the deputy medical director of NHS England and the director of specialised commissioning—was at best unfortunate and at worst showed institutionalised homophobic language by NHS England. I do not use those words simply for effect. I shall read out what the statement said, because it was highly emotive and highly charged and used language that I do not think is worthy of a senior doctor of this country. He said that PrEP is,

"to prevent HIV transmission, particularly for men who have high risk condomless sex with multiple male partners".

He went on to compare it with not being able to afford treatment for children with cystic fibrosis or children who do not have limbs.

That is clearly an attempt to put it into the public mind that there are deserving and non-deserving people with regard to specialised commissioning, which is not the kind of approach or language we would expect from our National Health Service. As a number of noble Lords have said, it creates a stigma. It is not acceptable for a senior doctor in the commissioning part of one of our national treasures—the National Health Service—to use that kind of language about deserving or non-deserving people. Does the Minister agree with the sentiment or tone of that press release? If not, will he say exactly why he disagrees with what the deputy medical director of NHS England said?

Finally, I will turn to the pharmaceutical company manufacturing the drug Truvada, which is the PrEP drug of choice in the UK. It is clearly about to come off patent, so what discussions have the Government had to reduce the cost? One issue is to do with cost—that NHS England or local government cannot afford the drug. As someone who has been a council leader and is still a councillor, on the issue of local authorities buying the drug, I can go to any sexual health clinic in the country and be anonymous and get PrEP as a preventive measure. If it was down to one local authority to give way on this, everyone would go there, but if it is a national preventive service that we are trying to provide, only one organisation can provide it—the National Health Service. That is why it is important that NHS England is asked to look more seriously and urgently at providing PrEP as part of its National Health Service provision.

I hope that the Government will discuss these matters with the pharmaceutical industry, and in particular with the company promoting the drug, to reduce costs. That way, even if it were to go through NICE, the cost-effectiveness question would be unanswerable.

7.57 pm

Lord Maude of Horsham (Con): My Lords, I join other noble Lords in congratulating my noble friend on securing this debate on an incredibly important subject. It is particularly important for me, personally, because just over 23 years ago my parents, my two sisters and I lost my older brother to AIDS. He had contracted HIV some seven years previously, at a time when the whole treatment of HIV and AIDS was at an early stage. I often reflect, as I think of him, that had he contracted HIV even five years later he might very well still be with us today. One thing to celebrate in this otherwise quite gloomy story is that medical advances have meant that HIV is not today the death sentence that it was for my brother Charles but a chronic condition that can be managed successfully.

It is a pleasure to see a new Lord Speaker on the Woolsack and to recall and celebrate what he did at that time in the mid-1980s, in leading that brave campaign of public information on the transmission of HIV. I had a very minor walk-on part as the very young Whip attached to the DHSS, and was in a number of those meetings, although I was not privy to any meetings that the Lord Speaker would have had with the Prime Minister at the time. However, given that the then Prime Minister was a scientist, I like to think that she would have been readily persuaded of the need for urgent action on this issue. At that stage a huge stigma was attached to this condition which undoubtedly deterred many from going through a test. My noble friend Lady Bottomley talked about the action of the ABI and insurance companies, which certainly deterred people from having tests which they would otherwise have done. The role that the current Lord Speaker played at that time is of historic importance and one of which he should be enormously proud.

I wish to make one or two reflections on the points made by other speakers in this important debate. My noble friend Lord Black is completely right: you cannot separate treatment and prevention. In the case of HIV they are very closely linked. We know that the more effective the treatment given to HIV-positive people, the less the condition will spread. There is a huge premium on people with HIV being given effective treatments that are easier for them to take and keep on taking, resulting in the viral load being lowered and therefore lessening transmission. Obviously, the more effective the prevention, the less the need for treatment. We have to think of prevention and treatment not as separate things but the same.

I also have one or two reflections on the vexed issue of PrEP, about which other noble Lords have spoken. I urge my noble friend the Minister to take back to the department the concern of many in this House that this is not a good way for the Government to proceed. We are told that the cost of making PrEP available is some £20 million a year. After the lawyers have had their cut from protracted legal action and several appeals, I doubt whether there would be much change from £20 million. We know for sure that the cost of people becoming infected with HIV is huge, protracted and continuing. Given the way in which our Government operate, we have very much a silo approach to government. This is not a feature of the current Government but goes back to the middle of the 19th century. As the noble Lord, Lord Scriven, said, there is an argument between two different bits of government in this regard but in this case local government is the agent of central government. This is not even a case of different pockets within the taxpayers' disbursement. The reality is that we are talking about taxpayers' pounds and they need to be used in the best way possible.

As people live longer, a key factor in the success of our society will be how good we are at keeping people well and living independently at home. As we live longer, more people will live with chronic illnesses. The cost of people being sick and needing active treatment, particularly hospital treatment, is borne not just by the health service as social care costs are involved. As people's working lives are extended—as they certainly will be—costs will arise from the loss of tax revenues when they are sick. There are additional costs arising from welfare support for carers. These costs are disbursed in different pockets of taxpayers' funds but also over time. Government is not well equipped to understand or harvest the benefits of savings that will accrue later if we spend modest amounts of money now.

We still suffer from the use of analogue structures. I noticed that Nick Clegg, the former Deputy Prime Minister, was quoted in a newspaper this morning as saying how frustrated he was when he was Deputy Prime Minister to discover that we used analogue structures in the processes of decision-taking that were ill equipped to deal with the pressures and tempo of the digital age. I completely understand and sympathise with that frustration. However, more important in this context is the analogue structure, the model deriving from the mid-19th century, as I say, with a theology of departmental sovereignty that is intolerant of central decision-taking and which makes it unbelievably hard to justify relatively modest expenditure in one part of the state apparatus because the consequential savings are disbursed over many different budgets—in this case both the costs and revenue losses of central government, the cost to the NHS and the cost to local government. We need to find better ways of doing this. I hope that in some way the debate my noble friend has initiated on this subject will help us to make progress towards that.

8.05 pm

Lord Patel (CB): My Lords, I thank the noble Lord, Lord Black, for initiating this debate. I agree with him and the noble Lord, Lord Maude, that prevention, testing and treatment are part of the same healthcare, which needs to be joined up. We are talking today about prevention, particularly the use of PrEP, the pre-exposure anti-viral treatment to reduce the incidence of HIV. This debate is about the elimination of HIV. We now have the possibility to do that. However, we will fail to do so if we do not address this issue urgently.

Reducing the incidence of and eliminating HIV requires biomedical, behavioural and structural intervention. However, we also have to adopt any new treatments or preventive treatments that come along. I was interested to read what the Health Committee had to say about our public health strategy in its recent report, published last week:

"We welcome the focus on public health but recognise that reducing health inequality will also need to address the wider determinants of health, such as … the environment. This will require cross-Government working. We recommend that a Cabinet Office minister be given specific responsibility … at national level".

Will the Minister comment on what the Health Committee said? It also said:

"Local authorities face a number of challenges and have had to cope rapidly with major system change. In addition they face real terms cuts … of £200 million … Cuts to public health and the services they deliver are a false economy as they not only add to the future costs of health and social care",

as exemplified by the cost of treating a patient with HIV as opposed to the cost of prevention, as many others have mentioned.

The committee goes on to say:

"Commissioning for certain services is divided between different bodies, creating the potential for confusion and fragmentation. Where … progress on resolving them is in the best interests of patients and the public. Sexual health provides a clear example of such fragmentation".

The committee refers to the,

"responsibility for and funding of preexposure prophylaxis, PrEP, for HIV",

as many other noble Lords have mentioned.

I come back to why PrEP is so important. Others have mentioned the evidence that is now public in two studies, one conducted by PROUD and the other by Ipergay. They both found that PrEP was 86% effective, as has already been mentioned—that is, it stopped 17 out of every 20 HIV infections. They tested different ways of taking PrEP. In the case of the PROUD study, it was a daily dosage. In the Ipergay study it was an intermittent dosage. Despite that, both ways of taking PrEP are effective, so it does not have to be taken daily. Studies with heterosexual men and women equally

[LORD PATEL]
show that PrEP works well in people who are able to take it consistently. For example, an African study showed that it was 75% effective—that is, it stopped 15 out of 20 HIV infections that would have occurred without PrEP.

PrEP is needed if HIV infections are to start going down in the UK and even to be eliminated, especially in gay men. It is estimated that 2,800 gay men in the UK acquired HIV in 2014—about eight gay men got HIV every day. PrEP is necessary in England because while condoms, testing and treating HIV-positive people are just about containing the HIV epidemic at its current level, infections in gay men are not decreasing, and more and more gay men are living with HIV every year. PrEP will save money, as has already been mentioned, because the cost of treating HIV patients is so high compared to prescribing.

I will also address some of the other issues that have come out in the debate on who pays: NHS England or the local authorities. Instead of having a debate about who pays, we have got confused about the clinical efficacy of PrEP. Absolutely convincing, good studies show that it is highly effective, so that should not cloud judgment about who pays. Concerns have been expressed that it could lead to other unintended consequences; for example, what about condoms and PrEP? There is little evidence that providing PrEP will result in big changes in condom use. People who use condoms carry on using them. People who do not use them, particularly gay men having sex with other men, need to be targeted. Another concern was about other sexually transmitted infections—none of which, by the way, are as serious as HIV. There is little sign that PrEP causes rises in other STIs.

Side-effects were also mentioned, but PrEP rarely causes them. Clinical resistance to the drug was another issue, but there is no evidence that PrEP will lead to many more cases of HIV drug resistance. The cost-effectiveness models have already been mentioned but, in the studies conducted, other, different cost-effectiveness models were used, and all of them were found to be effective.

The bottom line is: given to gay men at high risk of HIV, PrEP will be cost effective or could even start saving money now, especially if it is as effective as it was in the PROUD study and if at least a proportion of users take it intermittently. Even taken intermittently, it is effective. Therefore, there is no reason why we should not introduce this now. The argument about who pays needs to stop. The same taxpayer pays at the end of the day. The only issue is who tells whom to start introducing this treatment. I hope that the Minister will respond positively to that.

8.13 pm

Baroness Walmsley (LD): My Lords, I too congratulate the noble Lord, Lord Black of Brentwood, on introducing this important debate, and at a particularly serendipitous moment—the very first day of the noble Lord, Lord Fowler, as Lord Speaker. I join with noble Lords who have expressed their admiration for his vision and energy. Not many of us in this House can say that we have saved hundreds, if not thousands of lives; the Lord Speaker did.

One of the subsidiary UN sustainable development goals is to end the epidemic of AIDS—by which is meant HIV—by 2030. UNAIDS has set interim targets for 2020 which have been agreed by UN members, including the UK. Individual nations are expected to develop a national strategy for HIV. However, England has not had one since 2010, which is what we have been exploring in this evening's debate. Therefore, my first question for the Minister is: why not? We have the tools now. How sad it is to think, as we heard from the noble Lord, Lord Maude, who lost his dear brother many years ago in the early days of HIV infection, that if the tools we have today had been available then, many of us would not have lost close family members and close friends. I too lost a dear friend years ago, in the early days, and I still mourn and remember what a lovely person he was and feel so sad that it happened at a time when research was in its early stages. As we have heard, part of the problem is that although we do quite well on treatment, we are falling behind on diagnosis. Thousands of people have undiagnosed HIV, which means they will pass it on without knowing it. They will also develop associated conditions for which proper treatment will be difficult because of the undiagnosed HIV.

Since April 2013, prevention of ill health generally has been funded from the ring-fenced public health budgets of local authorities. But while NHS funding has been protected, public health has been subject, as we have heard, to repeated government cuts—£200 million in one year—which I and others have lamented in the House many times. We are also told that there will be further cuts of 3.9% a year over the next five years. Government proposals to abandon the ring fence or even fund public health through business rates could further lessen the funds available for this work.

HIV prevention funding is already inadequate to meet changing needs and behaviours and is a fraction of what it was 15 years ago. It is also 55 times less than the amount spent on HIV treatment. In this situation a more effective and widely available prevention strategy is needed. If we can have a strategy on hepatitis C, why can we not have one on HIV? HIV prevention needs a strategy because it requires a combination approach, including traditional forms of outreach, sexual health counselling, condom schemes, harm reduction and of course—I say this particularly because the noble Baroness, Lady Gould of Potternewton, is not able to be with us this evening, and she and I share an interest in this—good sex education in schools, with frank discussion of the risks and of how young people can protect themselves. That is what is needed. Information is power when it comes to health, as the noble Lord, Lord Fowler, proved in his campaign many years ago.

Most HIV sufferers are very responsible about their condition. However, the majority of onward transmissions occur when the transmitter is not aware that he or she has AIDS. The majority of those already diagnosed are in treatment and, since treatment reduces viral load to the point where transmission is almost impossible, new cases are not coming from there; they are coming from people who do not know that they have the disease. Therefore, better diagnosis is essential in defeating the epidemic.

Why, then, when the number of diagnoses is rising, does the NHS refuse to make use of or fund PrEP—the most effective preventive treatment yet devised, as we have heard very clearly—and then appeal the decision of the High Court? I find it very difficult to understand why the NHS wants to spend its money on lawyers instead of treatments. We have to balance the cost of treating a patient pre-infection against the cost of treating the disease if it happens, as well as against the loss to the public purse of the talents of that person and the taxes that would be paid if he or she was fit and healthy and not suffering from HIV.

Prevention has long been at the heart of our NHS. Vaccination was one of the most beneficial discoveries of medical science and has been used over the years to save lives and to save the NHS many billions of pounds. Those of us who were war babies will remember that we had orange juice to increase our vitamin C level when we could not get citrus fruits, as well as cod liver oil to give us vitamins A and D to ensure that we did not get rickets. Programmes such as those prevented a lot of ill health and saved the NHS billions of pounds. Surely, pre-infection prophylaxis of such a dangerous disease corresponds to many of the vaccination and supplement programmes that have saved the lives of babies and children over the years.

For diagnosis to be improved, we need an effective programme of testing, as we have heard, but in 2014-15, contrary to national guidelines, 60% of high-prevalence local authorities did not commission any HIV testing outside the sexual health clinic setting. That is probably because they are so cash-strapped. Putting the financial burden of PrEP on them will not help the diagnosis rate; nor will it help them provide the support that many patients need to take their medication. On the whole, HIV medication requires a high level of adherence and some patients need support and help with that.

So we need a proper strategy, including PrEP being made available on the NHS for people in risk groups, not just for the sake of those at risk but for the sake of the many people to whom those patients might transmit the disease in the future. We must be realistic: risky behaviours happen and we have to live with that fact. Unless we protect from infection those who take part in those behaviours, we fail to protect the whole population. If the international community can help very poor African countries to eliminate a highly infectious disease such as Ebola, why cannot a wealthy country like ours eliminate HIV? We should get on and do it. We know how to do it but, as others have said, it needs leadership.

8.20 pm

Lord Hunt of Kings Heath (Lab): My Lords, I too very much welcome the debate and the thrust of the argument put forward by the noble Lord, Lord Black, for the elimination of HIV. Like many other noble Lords, I echo the tribute that he made to organisations such as the National AIDS Trust and the Terrence Higgins Trust, as well as, of course, to the noble Lord, Lord Fowler, whom it is marvellous to see in the Speaker's chair tonight. The noble Baroness, Lady Bottomley, mentioned Sir Donald Acheson, who was the powerful, dynamic Chief Medical Officer at the time, and it is right that we remember the role that Chief Medical Officers have played in this story over many years.

In opening his debate, the noble Lord reminded us that HIV is a global issue. The UK has played a proud role in global efforts but HIV remains a major challenge in this country. The noble Lord, Lord Patel, and the noble Baroness, Lady Walmsley, referred to some of the statistics but, for me, the two most striking are the 2014 statistic showing that more than 6,000 new people in the UK were diagnosed with HIV and that in the same year an estimated 18,000 people were living with HIV but were unaware of their infection. The argument that the noble Lord put forward for testing, and for publicity about testing, is very important, and I hope that the Minister will be able to respond positively in that regard.

That then leads us to the wider issue of tackling stigma. I very much commend the argument that the noble Lord, Lord Black, made for a public information campaign. However, I would link it, as the noble Baroness, Lady Walmsley, did, with sex and relationship education. That is vital but the statistics are frightening. We know that only 40% of secondary schools in the state maintained sector have proper sex and relationship education on the curriculum and that primary schools, academies and free schools do not need to teach SRE. I do not think that that is right. I hope the noble Lord's department is in earnest discussions with the Department for Education about a proper change in policy in this area.

The noble Lord mentioned that the last government advice around these areas was produced 16 years ago, and it is the same in relation to sex and relationship education and guidance. There is a need for new guidance. A lot of water has flowed under the bridge in those 16 years—not least the introduction of same-sex marriage, the mass use of mobile phones, the internet, and all the issues in social media that that brings in relation to sex and relationships. The Government need to look at these issues very carefully.

I cannot add much in relation to PrEP because noble Lords have covered the subject adequately. The argument for its use is overwhelming, as is the economic case if we look at it in the round rather than from a narrow departmental point of view. It has never been explained why NHS England has taken this perverse point of view. It is equally puzzling why it is carrying on with the case having been comprehensively shown, in the judgment, the error of its ways. I am also puzzled why Ministers have simply not called in the chairman of NHS England and told him to sort his body out. We have had no cohesive explanation as to what this is about.

I completely put aside the argument that this should be for local government. It is a nonsensical argument which no one in the field believes is true. Clearly it is a device for NHS England to avoid committing itself to the expenditure of this money. If it is, it should come clean on it. If you look beneath the emotive language, essentially that is what the press release to which the noble Lord, Lord Scriven, referred is saying. I agree that many of the organisations involved in specialist services feel that blackmail is being undertaken by

[LORD HUNT OF KINGS HEATH]
NHS England at the moment. It is a hard word to use, but when a senior medical official talks about making comparisons between people who indulge in high-risk sex and children with cystic fibrosis, I find it a disgraceful use of words. I am surprised that Ministers have not called that official to account.

We all know that in the current climate hard choices are being made. However, I cannot believe that Ministers do not think that PrEP should be funded. The noble Lord may quote the 2012 Act in terms of the relationship between Ministers and the NHS Executive, but he knows only too well that Ministers are accountable to Parliament and that they should discharge that accountability.

On public health budgets, the noble Lord, Lord Lexden, pointed out one of the problems with the 2012 Act—the fragmentation of effort in this area. There are two issues here: one is that there is fragmentation between local government and the health service; the second is that some local authorities are not taking their responsibilities and that others, particularly those in the big city areas, are having greater pressure put on them because individual patients are going to them because their own local services are not available. This needs review. We should probably work in partnership with the Local Government Association to see whether we can iron out the inconsistencies.

Another problem is the issue of public health budgets, which have taken more than their fair share of reductions as a result of the financial stringency. It makes it difficult to make sense of the overall five-year forward plan of NHS England, which promotes public health and prevention, yet in the budgeting decisions seems to detract from the ability of services to play their full part.

This has been an excellent debate and I endorse the points put forward by all noble Lords. It would be nice if the Minister were to say that it is the Government's intention and aim to subscribe to the thrust of the noble Lord's Question and, above all, to sort out some of these problems, particularly the issue of PrEP and the integration of services between health and local government.

8.29 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, this has been a very good debate and everyone who contributed to it has had something of interest to say. For me it has been a wake-up call. As has been reflected in a number of speeches, I thought this problem had somehow been sorted out, but clearly it has not been. My noble friend Lord Maude talked about the tragedy of his own brother, and of course for him it was not sorted out. I had thought that since then we had made huge progress, and of course we have done so. I would like also to echo the comments of my noble friend Lady Bottomley about our new Lord Speaker because I can feel his presence glowering down at me on this issue. He said to me not all that long ago that when he took up his new role he would not be able to pester me about the long-term sustainability of the NHS. But I can feel his presence this evening.

My noble friend Lord Black made an outstanding speech, which brought all the threads of the arguments together. Perhaps I may pick out a few of the individual points that have been raised. I know Jonathan Fielden, the deputy medical director at NHS England. He is a very humane, decent and experienced doctor and I think he would be horrified to feel that what he said or how he said it—I have not seen his exact words—would be interpreted in the way it has been. I will write to him with a transcript of this debate and I will leave how he would like to respond to it up to him. I am sure that the last thing he would want to do is leave the impression that he clearly has with the noble Lord, Lord Scriven, and indeed with the noble Lord, Lord Hunt.

My noble friend Lord Maude talked about the cross-government and cross-ministerial issues and how difficult it can be for one department to bear the cost when the benefit is being received by another. It is worth saying that in this case the cost of treatment lies with NHS England, so it seems entirely reasonable that the cost of prevention should also lie with NHS England and that they are kept within the same budget. The noble Lord, Lord Patel, suggested having a cross-government Minister. All my experience of cross-government Ministers has been that they are not all that effective because the silos that we have created in British Government are very strong. The noble Lord also drew a comparison with the strategy for hepatitis C. In a sense we face the same problems dealing with hepatitis C as we do with PrEP and countless other drugs: there is a limit to the money we have available. There is a cost. The noble Lord says that it will all end up with the taxpayer, but the fact is that the taxpayer has given us a certain amount of money for the NHS. We would like to spend a lot of it on treating hepatitis C, on PrEP and on other drugs, but we simply do not always have the money to spend as we would like.

Perhaps I may turn to the speech that I had prepared beforehand. It falls short in some respects of what I have been asked to do this evening. I was struck by that when listening to the quality of the debate, but noble Lords will have to be the judge of my speech more than I can be myself. I am hugely impressed by what has been said this evening and I am sure it will have a big impact outside the Chamber as well as within it.

It is worth restating that the NHS provides excellent treatment and care for people living with HIV. The success of our treatment services means that the UK is already ahead in meeting two of the three ambitions set out in the UNAIDS 90-90-90 target: 90% of people with HIV being diagnosed; 90% on ARV treatment; and 90% viral suppression for those on ARV treatment by 2020. In 2014, of all those attending for care, 91% were on treatment, of whom 95% were virally suppressed and very unlikely to be infectious to others. So we have achieved more than 90% on two of those UN goals.

There are other positive indicators of success. Late diagnosis of HIV, defined as a diagnosis made after the point at which treatment is recommended, has declined from 50% of diagnoses in 2010 to 40% in 2013, but that is still too high. Reducing late diagnoses remains important since people who are diagnosed

late have a tenfold increase in the likelihood of death in the first year of diagnosis compared with those diagnosed more promptly. Reducing late diagnosis is included as an indicator in the public health outcomes framework. We are also reducing the proportion of people with undiagnosed HIV, which was down to about 17% in 2014 from an estimated 25% in 2010. More progress is needed to reach the global goal, but things are improving in the right direction.

I had been doing a bit of work with a colleague of the medical director of NHS England, Bruce Keogh. She is a specialist in HIV. She sent me a note. I should say that she is very supportive of PrEP. I would not want to mischaracterise her view. She said that around 80% of HIV infections in men who have sex with men are transmitted by the 20% of individuals who are unaware that they are HIV positive. She tells me that people who are not aware of their diagnosis do not make the same effort to modify their behaviour—for example, the consistent use of condoms—to reduce transmission. Undiagnosed individuals are not on treatment, so have high levels of HIV in their blood, which makes them more likely to pass on the infection to others. There is no dispute between us on the importance of early diagnosis.

Overall, new diagnoses of HIV remain stable, with an estimated 6,151 new diagnoses in 2014, up very slightly from 6,000 in 2013. Of course, we must not be complacent. We know that much more needs to be done to reduce the new number of HIV infections, especially in men who have sex with men, where we continue to see increases in new infections. We also know that transmission is continuing among black African men and women who are acquiring their infection within the UK.

So what are we doing? To really tackle rates of HIV infection we must increase regular HIV testing and promote safer sexual behaviour, particularly condom use. In England, the Government continue to invest £2.4 million each year in national HIV prevention. This funding is allocated across three main areas. First, funding has been allocated to seven new innovative local HIV prevention projects. Activities being undertaken include providing full sexual health screening in saunas and other similar premises, to working with faith leaders to promote HIV prevention and testing among black and minority ethnic communities. A further round of funding for 2016 and 2017 was announced in June this year. The successful projects will be announced in September. We will be building on learning from the year one projects.

Secondly, we know that early testing and diagnosis reduce the risk of onward transmission of HIV. This is the basis of the new HIV home sampling service, which my noble friend Lord Black referred to. It is one of the first of its kind. Some 27,173 HIV self-sampling kits were ordered between November 2015 and May 2016; 13,992 kits were returned, of which 197—1.4%—were reactive. This is encouraging, given the challenge of identifying those living with undiagnosed HIV. Central funding was provided through PHE until January 2016, when the service transitioned to local authorities. Eighty are now signed up to funding the service. PHE will look to build on these numbers.

The third and final strand of funding is from the Terrence Higgins Trust, which has been awarded a new contract to lead and manage a national partnership to deliver information and resources to improve the proportion of individuals in highest-risk populations able to make safe and sustainable sexual health choices and reduce HIV incidence. The programme will focus on social marketing and local HIV prevention activity, as well as monitoring and evaluation activities.

I turn to PrEP, which, as most noble Lords will know, is a new use of HIV drugs that has shown clinical effectiveness in research trials at preventing HIV in people at higher risk of getting HIV. The trials recruited men who have sex with men engaged in high-risk behaviours and people with HIV positive partners—this is the PROUD clinical trial. As noble Lords mentioned, it has been extremely successful. It is important to note that the drug used for PrEP, Truvada, is not yet licensed for this use in the UK. It is licensed only for treatment, not for prevention. However, progress is being made with an application to the EMA and a licence is expected to be granted very shortly.

PrEP should not be seen as a silver bullet. It is only one of a range of activities to tackle HIV. As with any new intervention, PrEP will need to be properly assessed in relation to clinical and cost effectiveness, including how it compares with existing cost-effective approaches, to see how it could be commissioned in the most sustainable and integrated way. The NICE evidence review is considering the published evidence on PrEP and will be published shortly. We know, however, that cost-effectiveness is very sensitive to HIV incidence in the target population and effective targeting; the adherence to taking the medication, which affects clinical effectiveness—although I was interested in the comments of the noble Lord, Lord Patel, about intermittently taking the drug—and the cost of PrEP drugs.

Time is running out. There has been criticism about the handling of this by NHS England. NHS England has provided an assurance that all the proposals considered as part of its prioritisation process will be subject to the same robust assessment of clinical and cost effectiveness and relative prioritisation within the resources available, as well as the impact on people from vulnerable and protected groups.

I felt that the leader in the *Times* got the balance about right when it said:

> "There are reasons, however, to resist the conclusion that HIV prevention should be left to the HIV-positive. Few would be comfortable if the state stepped back from HIV treatment altogether, just as it would be thought indecent of a society to let smokers die of lung cancer or allow the obese to succumb to heart disease on the basis that such illnesses are behaviourally induced".

There is no intention at all on the part of NHS England or the Government to discriminate in any way against the use of PrEP because of people's lifestyle choices. I can give that absolute assurance to noble Lords. The appeal is taking place on 15 September and I cannot comment further on the court case, but I can assure noble Lords that the decision on whether or not to use PrEP will be assessed in an absolutely normal way.

I will make just one last comment, which I do not expect some Members of this House to agree with. The decisions about which drugs to prioritise and how

[Lord Prior of Brampton]
to prioritise drugs should surely be made by clinicians and NHS England, not politicians. The noble Lord is shaking his head but that is the whole thrust of the way that the NHS has been set up, and the involvement of politicians in picking one drug against another is surely not the right way forward. I have to leave it as it stands.

House adjourned at 8.43 pm.