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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Thursday 2 March 2017

11 am

Prayers—read by the Lord Bishop of Newcastle.

Short-Term Letting for Holiday Purposes

Question

11.06 am

Asked by ***Baroness Gardner of Parkes***

To ask Her Majesty's Government what assessment they have made of the impact of short-term letting of residential flats for holiday purposes contrary to the terms of the lease; and whether they plan to introduce measures similar to the restrictions introduced in New York and Berlin.

Baroness Gardner of Parkes (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and declare my interest, which is in the written register.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the Government support the shared economy and have no plans to introduce a blanket ban on whole-property listings. London boroughs can already apply to the Secretary of State for consent to restrict short-term letting in a particular area where necessary. We welcome Airbnb's recent decision to amend its systems so that entire-home listings in London are not available for more than 90 nights in any given year without appropriate planning permission.

Baroness Gardner of Parkes: I thank the Minister for that reply, but is he aware that many—possibly even most—Airbnb lettings are of properties which are not allowed to be let on a short-term basis, as they are in long-term residential blocks of flats? In New York, these short-term lets are no longer allowed in any block which is long-term residential, because of the degree of disruption. Is he further aware that seven London boroughs have called for legislation on this issue?

Lord Bourne of Aberystwyth: My Lords, taking up the very relevant last point first, London boroughs have the power—indeed, the responsibility—to enforce that in their areas. The matter rests with local authorities if hosts and tenants are breaking the law on the 90-day limit—not 90 consecutive days but 90 days in any given year; they have that power. There are restrictions in New York, but it is still possible to operate there, albeit within different limits from those in London.

Lord Clark of Windermere (Lab): My Lords, does the Minister realise that the short-term holiday lets referred to in the Question are distorting the longer-term letting market in not only heavily urbanised areas but in some of the most attractive parts of the country? Is he aware how attractive this is? A modest house without a view of a lake or a hill can be let in high season for more than £3,000 a week in the Lake District National Park. There is no incentive for landlords to rent out houses to local people or people who want to work in the area on a long-term basis.

Lord Bourne of Aberystwyth: My Lords, I am aware that outside London there are undoubtedly many possibilities for the sort of let the noble Lord describes. He cited the Lake District, and there are other areas such as Bath, the Cotswolds, Oxford and Cambridge.

I am meeting Airbnb to discuss its response to the concerns expressed, which has been favourable. There are other providers as well, which I will be seeking to speak to. There are provisions in leases that can be enforced by landlords; where appropriate, there are provisions on statutory nuisance and private nuisance; and I come back to the point that within London, although not outside, the boroughs can act themselves.

Lord Tope (LD): My Lords, I am pleased that the Minister is going to meet Airbnb, which is, I guess, the market leader. Is he aware that this is a significant problem in parts of central London? For instance, research by central London amenity societies shows that 20% of housing stock has been lost; indeed, in some blocks of flats the figure is as high as 80%. Is the answer a tough licensing regime which includes data-sharing, an opportunity to call out on problems and so on? Will he discuss all these issues when he meets Airbnb and report back to the House on the outcome?

Lord Bourne of Aberystwyth: My Lords, as I have indicated, within London, which the noble Lord cited, there are restrictions already, so I do not believe that this is distorting the market in the way he suggests because there is that 90-day limit. I will certainly be discussing these matters when I meet Airbnb, and in all fairness to it, it has responded to concerns and ensured that its listings make absolutely clear what the law is and that it is operating within it. I do not think we can ask for more than that.

Baroness Hooper (Con): My Lords, regarding the tourist industry, is it not unfair that hotels and other licensed premises are subject to business rates, which are due for a great rise, whereas Airbnb premises and, I understand, Uber escape them? Are the Government planning to adjust this situation?

Lord Bourne of Aberystwyth: My Lords, as my noble friend will be aware, we discussed business rates yesterday and we are looking at the position of businesses that have had steep increases. Many hotels around the country have not had steep increases and, indeed, some will have experienced a fall in business rates. In answer to the general point, we also need to be aware that many consumers benefit from this. This is very popular, as is evidenced by the fact that it throws up some concerns. We have to consider the matter in a balanced way.

Lord Beecham (Lab): What steps does the Inland Revenue take to collect tax from the owners of properties that are let out on this basis, including capital gains tax, where a property is disposed of after such use?

Lord Bourne of Aberystwyth: My Lords, the taxation rules would apply in the normal way. Where there is a capital gain, the owner of the property would be responsible for that in the normal way, subject to reliefs, and the owner would be responsible for schedular income tax in the normal way.

Lord Campbell-Savours (Lab): The Minister said that local authorities can enforce the law. These cases cost thousands of pounds. Why should the council tax payer pick up the bill? Surely there has to be another solution.

Lord Bourne of Aberystwyth: My Lords, under the Deregulation Act there is responsibility for enforcing this against a particular owner of a property. Initially, of course, there would be a discussion—I do not suppose that the first thing that happens is that it ends up in court—but for those defying the law, there is potentially a £20,000 fine on summary conviction and an unlimited fine on indictment, which would be a considerable incentive to obey the law. That is what we are finding in the great bulk of cases.

Baroness O'Cathain (Con): My Lords, surely the great growth element in our economy is tourism. Families coming from abroad have much more opportunity to see things in London if they can get reasonably cheap bed and breakfast or Airbnb. To bring a family of three children and their parents to London for a week would cost an enormous amount, whereas this way, they can at least have reasonably priced accommodation and then spend the money in other areas.

Lord Bourne of Aberystwyth: My Lords, my noble friend makes a very material point. I have certainly spoken to people from overseas who have used Airbnb in London and had fantastic experiences. Largely, it operates very effectively and without concern. There are some concerns, which I understand, and I know my noble friend Lady Gardner of Parkes has been relentless in pursuing some of the issues. However, I come back to the point that there are means of enforcement—through the local authority, statutory nuisance provisions and provisions in leases—and I encourage tenants to get on to their landlords, where appropriate, to make sure they are enforcing their leases.

HMS "Queen Elizabeth"

Question

11.14 am

Asked by ***Lord Touhig***

To ask Her Majesty's Government on what date the aircraft carrier HMS "Queen Elizabeth" will begin sea trials.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, HMS "Queen Elizabeth" is currently undertaking harbour trials as part of her test and integration phase. Sea trials will begin on successful completion of this phase.

Lord Touhig (Lab): My Lords, we were told in the review of the SDSR that the carrier HMS "Queen Elizabeth" would begin sea trials in the spring. Alas, in the words of Ella Fitzgerald, "spring will be a little late this year", because Ministers now say that that will happen in the summer. But lo and behold, just two weeks ago, when my noble friend Lord West of Spithead asked whether summer was,

"defined as … from the summer solstice to the September equinox, or … June to August",

he was told by the Minister that summer "was not defined" and that rather, it was a,

"broad indication of the likely timetable".

This milestone in Britain's maritime history is turning into a farce. I invite the Minister to come clean, tell us what has caused the delay and give us a firm date for the sea trials.

Earl Howe: My Lords, perhaps I can clarify the timetable a little bit. "The summer" means "a little later than shortly". To address the substance of his question, this is about the need to test systems. The Queen Elizabeth class carriers are the largest and most complex warships ever built in this country. It is essential that we thoroughly test the ship's many complex systems before she begins sea trials. None of the issues now being tested will affect acceptance of contract of HMS "Queen Elizabeth" later this year. The work is within the tolerance that we had anticipated in the contract schedule.

Lord Spicer (Con): When the carriers have been sorted out, can we have a Spithead review so that we can see for ourselves the size and might of the new British Navy?

Earl Howe: I am sure that the First Sea Lord will be very interested in that suggestion.

Baroness Smith of Newnham (LD): I had the privilege of seeing the Queen Elizabeth class carriers at Rosyth last week, and the "Queen Elizabeth" was doing her harbour trials. My question relates to the aircraft that are meant to go on the carrier. Will the F-35s be available when the "Queen Elizabeth" is set to sail, or are the delays to the carrier simply to enable the F-35s to be delayed as well?

Earl Howe: My Lords, the 2015 strategic defence and security review set out our intent to have two front-line operational F-35B squadrons by the end of 2023, and we plan to buy 138 Lightning aircraft over the life of the programme. To date we have taken delivery of eight F-35B aircraft, with a further six, currently in production, to follow very shortly. The next annual production contract is scheduled to be let next month, and we intend to order a further three under that part of the contract.

Lord Singh of Wimbledon (CB): In her visit to Washington, the Prime Minister made the highly significant statement that we would stop trying to change the world in our image. While this will come as a considerable relief to the 22 countries we have not invaded at some time or other, does the Minister agree that the Prime Minister's important statement should lead to a reassessment of foreign policy and a possible defence saving?

Earl Howe: My Lords, I cannot give the noble Lord that precise assurance. I say that because we are clear—and I am sure that most noble Lords in this House are clear—that NATO must remain the cornerstone of this country's defence and the defence of western Europe. It is very important that we remind ourselves of the significance of NATO in that context.

Lord West of Spithead (Lab): My Lords, the first thing to say is that we should be extremely proud of these carriers. They are going to be a force for stability and good all around the world. They are the only conventional capability we have with true strategic global significance, and that is why the Americans are so keen that we should have them. My question is similar to that of the noble Baroness. We last lost an aircraft carrier in 1942, and she did not have her air group with her. It is actually very difficult to find and kill an aircraft carrier, but she did not have an air group. When HMS "Queen Elizabeth" sails on her first operational deployment, particularly if it is east of Suez, will she have a full air group of Sea Lightnings, Crowsnest and the supporting ships—frigates, destroyers and nuclear submarine—which make a carrier battle group? The group I took to Hong Kong had 14 ships. Will we be able to do that, looking at the pressure on resources at the moment?

Earl Howe: My Lords, the initial operating capability for carrier strike, which is scheduled for no later than December 2020, will consist of one carrier, one squadron of Lightnings and Crowsnest. As the noble Lord will know, the carriers will operate as part of a maritime task group which will be tailored to meet the required task, so the precise number and mix of vessels deployed will have to depend on the operational circumstances of the time. We will be able to draw from a range of modern and highly capable vessels to support the carriers, such as the Type 45 destroyers, Type 23 frigates, Astute class submarines and, in the longer term, Type 26 frigates.

Lord Robathan (Con): My Lords, given that the Royal Navy is fully deployed on standing tasks, can the Minister explain from where these extra ships will come to form a carrier task force, should HMS "Queen Elizabeth" be deployed?

Earl Howe: We have many of these ships at the moment. We have the Type 45 destroyers and the Type 23 frigates; the Astute class submarines are coming off the production line, so we will have those; and as I say, in the longer term we will have the Type 26 frigates. The plan is to cut steel for the first one this year.

Police National Database: Facial Images

Question

11.21 am

Asked by ***Lord Scriven***

To ask Her Majesty's Government whether the storage of the 19 million facial images uploaded onto the police national database is compliant with data protection legislation.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, legislation gives police the power to take and store facial images from arrested persons. There has been no successful legal challenge to the retention of images on the PND on data protection grounds, but the Government acknowledge that there are privacy issues. The custody images review has now been published and makes recommendations for improvements to the retention regime.

Lord Scriven (LD): I thank the Minister for that Answer. She will know that the review published last week into the 19 million images held on the police national database was in response to a High Court case of 2012 that found that treating the images of convicted and non-convicted individuals the same was unlawful. How do the new rules in the review make it lawful when it states that the images both of convicted and non-convicted individuals can be stored and used on the police national database for 10 years?

Baroness Williams of Trafford: My Lords, there is a presumption of deletion in certain categories—certainly for the under-18s, for those not convicted, as the noble Lord said, and for people who have been convicted of a non-recordable offence. These can all request that their images be deleted, but there are exceptions which I think are reasonable—if there is a substantive reason to believe that someone is linked to terrorism, if they are dangerous or if they are linked to organised crime. Otherwise, there is now an arrangement whereby people can request deletion.

Lord Marlesford (Con): My Lords, I am surprised that there are so few photographic records available to the police. I should have thought that there was a good case for all passport photographs to be available to the police. Does my noble friend agree that given a conflict between fighting serious crime, particularly terrorism, and privacy, the British people would almost certainly regard the former as having priority?

Baroness Williams of Trafford: My noble friend talks about privacy. If everybody was required to put their passport photographs towards a national database there might be a real issue with privacy. What the Government are trying to do, and my noble friend alluded to it, is to have images on record of people previously convicted of a crime. The custody image review is attempting to get rid of the facial images of those who are not convicted—and I include myself in that. If you have a passport but have not been convicted, I am not sure what benefit your photograph could be to the police national database.

Lord Mackenzie of Framwellgate (Non-Afl): Is this not a matter of balance? Does the Minister agree that the keeping of an innocent person's image on a database is of far less consequence than being the innocent victim of a violent crime?

Baroness Williams of Trafford: The noble Lord is absolutely right: it is a question of balance. It is a balance between enabling the police to do their job and to have a good database of criminals and those

[Baroness Williams of Trafford]
who have been convicted but also, as he says, if you are an innocent person, of not having your face on the database.

Lord Paddick (LD): My Lords, can the Minister explain why the police are apparently not going to identify and remove the photographs of innocent people that are currently on the database? If there is a name and a date of birth connected with each photograph, why cannot that be run against the police national computer? If the Government are saying that the police can develop a national identification database, why do they not say so? At least the Labour Party is being honest that that is what it wants. Why cannot the Government?

Baroness Williams of Trafford: I am not sure I entirely get the tenor of the noble Lord's question. If you are not convicted of an offence and your image is on the database you can request that it be—

Lord Paddick: From now on.

Baroness Williams of Trafford: From now on; the noble Lord is absolutely right. However, if your face is currently on the database, you can say, "It has been on there for 10 years and please will you remove it?".

Lord Rosser (Lab): As has been said, the review has just been announced by the Government in a Written Statement of 24 February. Interestingly enough, the Statement managed to make no reference to the fact that the review arose from a judgment against the Government in 2012—which begs the question of why that was not included in the Statement—and we will have to wait to see whether the arrangements now proposed will lead to another legal challenge. Since the recommendation for a review, which is being adopted, is that "unconvicted persons" can,
"apply for deletion of their custody image"—
that is, they have to take the initiative to apply, which is the point that the noble Lord, Lord Paddick, is making, but I do not wish to repeat the question that he asked—what steps will the Government take to ensure that widespread publicity is given to the fact that millions of unconvicted peopled can now apply for deletion of their custody image? What form will the Government's advertising and publicity campaign take, since the 2012 judgment was in a case against the Secretary of State? How much money do the Government intend to spend on their advertising and publicity campaign to advise millions of people of their right in respect of deletion of their record?

Baroness Williams of Trafford: The noble Lord is absolutely right that the Government recognised that the 2012 judgment said it was contrary to Article 8 of the European Convention on Human Rights, and that has now been addressed through the custody images review. I assume that there will be something on GOV.UK about publicity regarding innocent people whose faces are still on the database, but I will get back to the noble Lord on the precise steps that we will take.

Viscount Waverley (CB): Can the Minister say whether, beyond the UK data protection and legislative issues, the Americans, through their Patriot Act, have any form of access to the police national database?

Baroness Williams of Trafford: Generally, the presumption is that anyone concerned with crime, and fighting crime, will have access to the PND. As to which countries will have that access, clearly there are international arrangements for the sharing of data, and I am sure that that includes America.

Baroness Jones of Moulsecoomb (GP): My Lords, I still do not understand how an innocent member of the public will know that their image is on the database. Surely it would be easier for the police just to delete those innocent people without putting them to the trouble of applying. It would be more work for the police that way.

Baroness Williams of Trafford: The noble Baroness has a point, but in fact it is a manual process and would be incredibly resource-intensive. There will be people who do not mind their image being there. If my image were on the PND, although I do not think that it is—[*Interruption.*] If the noble Baroness's is, I would expect her to request deletion immediately.

Turkey: Selahattin Demirtas

Question

11.30 am

Asked by ***Lord Balfe***

To ask Her Majesty's Government what representations they have made to the government of Turkey following the sentence of imprisonment imposed on Selahattin Demirtas, co-leader of the HDP party.

Lord Balfe (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw attention to my membership of the All-Party Parliamentary Group for Turkey.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we expect Turkey to undertake any legal processes against MPs fairly, transparently and with full respect for the rule of law. We follow developments in Turkey closely and underline the importance of the rule of law and the protection of freedom of expression. The Prime Minister raised human rights at the highest level when she visited Turkey in January, as have the Foreign Secretary and the Minister for Europe during their visits there.

Lord Balfe: I thank the Minister for her reply. Many of us of course have deep concern about the coup that occurred last year. In the events that followed, it appears that the Turkish Government have considerably overreacted, with mass dismissals and interference in the judiciary; and now a number of opposition politicians are in prison. Noting the concern of the Parliamentary Assembly of the Council of Europe and of the Venice Commission, will the Government do their best to

work internationally to bring home to the Turkish Government the need to abide by international norms in the way that they treat their opposition?

Baroness Anelay of St Johns: I can indeed give my noble friend that assurance. I welcome the Parliamentary Assembly of the Council of Europe's continued engagement on Turkey. I pay particular tribute to my noble friend's work, both on PACE and on the Venice Commission. I can update noble Lords on something that happened yesterday, when Her Majesty's permanent representative to the Council of Europe had an exchange of views with the Turkish Minister of Justice at the Committee of Ministers and stressed that, although we welcome Turkey's moves to address the Council of Europe's concerns on the state of emergency procedures, including the establishment of its own commission to review dismissals, it is important that that operates on the basis of the European Convention on Human Rights and that Turkey should continue to co-operate with the Venice Commission.

Lord Kinnock (Lab): Does the Minister agree that the accession of Turkey to the European Union has always been decades further away from reality than was claimed, falsely, by Brexit campaigners last year? Will she tell us what the reply was from President Erdogan when the Prime Minister raised the issue of human rights in her conversations with him?

Baroness Anelay of St Johns: I have given answers several times at the Dispatch Box about the accession of Turkey to the European Union and made it clear that, since progress toward accession means abiding by international and European standards of human rights, Turkey has much progress to make. My right honourable friend the Prime Minister indeed raised the matter of human rights with President Erdogan. Given that that was a private conversation I cannot report it, but I assure the noble Lord that the conversation was amicable—and it was a conversation.

Baroness Hussein-Ece (LD): My Lords, Turkey is such an important partner to this country in terms of trade and the relations that we have had for hundreds of years, and is an important member of NATO. Is the Minister aware that, after what happened last year in the Brexit debate—as the noble Lord, Lord Kinnock, just referred to, Turkey as a country was demonised because of its aspirations to join the European Union—the majority of the public there do not now want to join the EU? In fact, any taxi driver one comes across will have a photograph of the poster claiming that 78 million Turks—all criminals—are coming to this country. What we have done, really, has made Turkey drift further away. What possible influence can we have to ensure that Turkey's internal structures and democracies are much sounder and, for example, that Mr Demirtas, the leader of the third-largest political party, should not face 20 years' imprisonment?

Baroness Anelay of St Johns: My Lords, our influence is directly related to our ability to gain access to the highest levels in Turkey, which is exactly what has happened with the visits of my right honourable friends the Prime Minister, the Foreign Secretary and Sir Alan Duncan—he has paid three visits there—as well as to our work through the European Union, where we joined in a joint statement at the end of last year expressing our concerns about the way in which the judicial processes had gone forward against certain Members, such as Mr Demirtas. With regard to the wider issue of accession, it really is a matter for the people of Turkey to determine whether they wish to join. The noble Baroness has pointed out her perceptions of the current state of mind of some of the Turkish people.

Lord Alton of Liverpool (CB): My Lords, given that the HDP is in alliance with the Kurdish Democratic Regions Party and is a pro-minority party, can the noble Baroness reflect for a moment on the implications of this arrest for the position of minorities inside Turkey? Can she also reflect on the way that Turkey deals with minorities in places such as Sinjar and Nineveh in neighbouring Iraq when it comes to determining its policy towards a self-governing area?

Baroness Anelay of St Johns: My Lords, as the noble Baroness just mentioned, we are talking about a country that faced a significant threat to its democracy last year. We have to recognise that this was a violent attempt at a coup. Against that background, one has to have a proportionate response, which is something that we have stressed, and judicial processes may have to be followed. However, the noble Lord is right to point out that, in carrying out responses to violent assaults on the Government, one has to consider very carefully the implications of one's actions on minorities and how they can fester further violence in the future.

Examiners of Petitions for Private Bills

Membership Motion

11.36 am

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

That, in accordance with Private Business Standing Order 69 (Appointment of Examiners of Petitions for Private Bills), Mr James Cooper be appointed an Examiner of Petitions for Private Bills in place of Mr Peter Milledge.

Motion agreed.

Procedure

Motion to Agree

11.37 am

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

That the 2nd Report from the Select Committee (Revision of the Companion to the Standing Orders; Private Business Standing Orders: minor revisions) (HL Paper 100) be agreed to.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, I will also speak to the Motion making amendments to the private business Standing Orders.

The report proposes a number of minor amendments to the Standing Orders relating to private business. These amendments are intended to make improvements to the workability of the private business Standing

[Lord McFall of Alcluith]
Orders following the passage through Parliament of the High Speed Rail (London-West Midlands) Bill, otherwise known as the HS2 Bill.

The reason for each of the minor amendments is set out in the text of the report. If the House agrees to the report, I will then move the consequential Motion to make the necessary changes to the text of the private business Standing Orders, as set out on the Order Paper. It is expected that, once this House has approved these amendments, the House of Commons will be invited to agree the amendments to its private business Standing Orders, which would have a similar effect.

The report also sets out for information the approval given by the committee to a new edition of the *Companion to the Standing Orders*. This will be published in the next few weeks.

Lord Berkeley (Lab): My Lords, perhaps I may come in briefly on this, having been involved in several private and hybrid Bills. I welcome the changes that have been made. They clarify many things and should make it easier for the next stage of HS2 and any other Bill that comes before your Lordships' House. However, I question why the committee has decided to remove information about radii of curvature of tracks, gradients and junctions. It is very easy for a promoter to put that information into the document. When it comes to helping petitioners, as I have done on many occasions, I am aware that it would be much better if they had that information officially in the document, rather than having to work it out for themselves and having a big debate. Perhaps the noble Lord and the committee could consider that when they next look at revising the document.

Lord McFall of Alcluith: Sure. This was done as a result of HS2 and the petitions that we had. In fact, we are engaged in a wider bicameral review. Only the other day the Chairman of Ways and Means in the other place and I were up to our eyeballs in embankments, gradients, rail curves and whatever else. No doubt I will become a real expert on that subject and come back to the noble Lord. Perhaps if he has any questions outwith this Chamber, we could agree those, remembering that this is a wider bicameral review. I beg to move.

Motion agreed.

Standing Orders (Private Business)

Motion to Agree

11.40 am

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

That the standing orders relating to private business be amended as follows:

Standing Order 1A Deposit of documents etc. at offices of government departments and public bodies

Line 3, after "deposited" insert "or delivered"

Line 3, after "with" insert ", or by reference to,"

Line 5, after "deposited" insert "or delivered"

Line 19, leave out paragraph (3) and insert—

"(3) The provisions of these orders which contain such references as are mentioned in paragraph (1) above are—

(a) Standing Order 27(8),

(b) Standing Order 27A(1),

(c) Standing Order 29,

(d) Standing Order 30,

(e) Standing Order 30A(1),

(f) Standing Order 31(1),

(g) Standing Order 32,

(h) Standing Order 33,

(i) Standing Order 34,

(j) Standing Order 37,

(k) Standing Order 39,

(l) Standing Order 42,

(m) Standing Order 43,

(n) Standing Order 45(3), and,

(o) Standing Order 47(2)"

Standing Order 10A Publication of notice relating to works bill

Line 15, at end insert—

"(2) It shall be sufficient compliance with the requirement in paragraph (1) that notices shall be displayed for two consecutive weeks for the promoters to use reasonable endeavours to secure that the notices are so displayed."

Standing Order 12 Posting of notices in case of tramway, etc., bills

Line 13, leave out sub-paragraph (b) and insert—

"(b) not later than 20th November notice of such proposed alteration or disturbance shall be posted in, or where that is not reasonably practicable, in some conspicuous position as close as is reasonably practicable to, every such street or road in the manner directed by the said authority, or—

(i) if no directions have been received from the said authority within seven days after the said application, or

(ii) if the directions received cannot reasonably be complied with,

in some conspicuous position in the street or road, or where that is not reasonably practicable, in some conspicuous position as close as is reasonably practicable to the street or road;"

Standing Order 31 Deposit of copy of plan, etc., in case of bill affecting tidal lands

Line 20, after "shall" insert ", if the plan is not based on an ordnance map,"

Standing Order 32 Deposit of copy of plan, etc., of bill affecting fisheries

Line 11, leave out paragraph (2) and insert—

"(2) A copy of the said portion of the deposited plan and section shall also—

(a) be delivered on or before 20th November, or

(b) be sent by registered post, having been posted on or before 17th November,

to the recipient or recipients specified in Standing Order 1A."

Standing Order 33 Delivery of copy of plan, etc., affecting banks, etc., of river

Line 7, leave out from "affected," to end of line 11 and insert-

"shall—

(a) be delivered on or before 20th November, or

(b) be sent by registered post, having been posted on or before 17th November,

to the recipient or recipients specified in Standing Order 1A.".

Line 15, after "and" insert ", if the plan is not based on an ordnance map,"

Standing Order 38 Deposit of printed copies of bills in Parliament Office

Line 32, at end insert—

"(see also Standing Order 201 (Time for delivering notices and making deposits))"

Standing Order 42 Delivery of copies of bills affecting watercourses to Environment Agency

Line 5, leave out from "thereof" to end of line 11 and insert—

"shall—

(a) be delivered on or before 4th December, or

(b) be sent by registered post, having been posted on or before 1st December,

to the recipient or recipients specified in Standing Order 1A."

Standing Order 43 Delivery of copies of bills affecting rivers or estuaries to Environment Agency.

Line 5, leave out from "river" to end of line 12 and insert—

"shall—

(a) be delivered on or before 4th December, or

(b) be sent by registered post, having been posted on or before 1st December,

to the recipient or recipients specified in Standing Order 1A."

Standing Order 47 Deposit of statement as to houses and persons on land to be acquired

Line 8, leave out from "shall," to "deposit" in line 10 and insert "in relation to any area to which this order applies,"

Standing Order 48 Description of plan

Line 31, leave out paragraph (3) and insert—

"(3) Where a viaduct or tunnelling is intended the same shall be marked on the plan, the latter to be shown by a dotted line."

Standing Order 50 Particulars in case of railways and tramroads

Line 4, leave out from "plan" to end of line 15

Standing Order 51 Particulars in case of diversion of roads, etc.

Line 6, leave out from "plan" to end of line 8 and insert—

"(2) In the case of a bill by which it is proposed to authorise the diversion of any public footpath or bridleway, the course of such diversion shall be marked upon the plan, and where it is the intention of the promoters to apply for powers to make any lateral deviation from the course of the proposed diversion of any public footpath or bridleway, the limits of such deviation shall be defined upon the plan."

Standing Order 55 Section

Line 18, leave out from "tunnelling" to end of line 20 and insert "or a viaduct is intended, the same shall be marked on the deposited section."

Standing Order 57 Section of railway or tramroad

Line 9, leave out from "each" to end of line 12 and insert "end of a section of railway or tramroad with a constant gradient; and that gradient shall also be marked."

Line 26, leave out paragraph (4)

Standing Order 59 Cross sections of roads, etc.

Line 4, after "tramroad" insert "and such works are not works for which a section has been drawn in accordance with Standing Order 55".

Motion agreed.

Business of the House

Timing of Debates

11.40 am

Moved by ***The Lord Privy Seal***

That, in the event of the Supply and Appropriation (Anticipation and Adjustments) Bill being brought from the Commons and read a first time, Standing Order 46 (No two stages of a Bill to be taken on one day) be dispensed with on Thursday 9 March to allow the Bill to be taken through its remaining stages that day.

Motion agreed.

Higher Education and Research Bill

Order of Consideration Motion

11.40 am

Moved by ***Baroness Buscombe***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 and 2, Schedule 1, Clauses 3 to 11, Schedule 2, Clauses 12 to 16, Schedule 3, Clauses 17 to 27, Schedule 4, Clauses 28 to 57, Schedule 5, Clauses 58 to 62, Schedule 6, Clauses 63 to 69, Schedule 7, Clauses 70 to 86, Schedule 8, Clause 87, Schedule 9, Clauses 88 to 111, Schedule 10, Clauses 112 to 118, Schedules 11 and 12, Clauses 119 to 121, Title.

Motion agreed.

Economic Growth (Regulatory Functions) Order 2017

Business Impact Target (Relevant Regulators) Regulations 2017

Growth Duty Statutory Guidance

Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017

National Minimum Wage (Amendment) Regulations 2017

Nuclear Industries Security (Amendment) Regulations 2017

Motions to Approve

11.41 am

Moved by ***Baroness Buscombe***

That the draft Order, draft Regulations and Guidance laid before the House on 6 and 12 December 2016, and 18, 19 and 30 January 2017 be approved. *Considered in Grand Committee on 28 February.*

Motions agreed.

Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017

Motion to Approve

11.41 am

Moved by ***Baroness Williams of Trafford***

That the draft Regulations laid before the House on 18 January be approved. *Considered in Grand Committee on 28 February.*

Motion agreed.

Cambridgeshire and Peterborough Combined Authority Order 2017

Motion to Approve

11.41 am

Moved by ***Lord Bourne of Aberystwyth***

That the draft Order laid before the House on 23 January be approved.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the draft order that we are considering, if approved and made, will establish a combined authority with an elected mayor for the Cambridgeshire and Peterborough area. It will also confer important new powers on both the mayor and the combined authority. The Government have, of course, already made significant progress in delivering their manifesto commitment to devolve far-reaching powers and budgets to combined authorities in England that choose to have directly elected mayors. Since the first devolution deal with Greater Manchester was agreed in November 2014, we have passed the Cities and Local Government Devolution Act 2016, which provides new powers for the Secretary of State by order to devolve to a combined authority a Secretary of State function, and confer on a combined authority any functions of a public authority.

I remind noble Lords that Parliament has approved orders establishing combined authority mayors in Greater Manchester, Liverpool City Region, Sheffield City Region, West Midlands, the Tees Valley and, most recently, the West of England. Parliament has also approved an order conferring additional functions on the Greater Manchester Combined Authority covering planning, transport and skills. Furthermore, orders conferring functions on other combined authorities have been laid before Parliament, to be considered imminently.

This order gives life to the Cambridgeshire and Peterborough devolution deal, agreed between local leaders and the Government. We are taking forward this deal with seven constituent councils, these being: Cambridge City, Cambridgeshire, East Cambridgeshire, Fenland, Huntingdonshire, Peterborough, and South Cambridgeshire. The deal means that the Cambridgeshire and Peterborough area will receive: control over a new £20 million a year funding allocation over 30 years, to be invested in the Cambridgeshire and Peterborough single investment fund to boost growth; control over a £100 million housing and infrastructure fund and an additional £70 million over five years ring-fenced for Greater Cambridge to meet housing needs; powers over strategic planning and the responsibility to create a non-statutory spatial framework for the area; and a devolved transport budget and responsibility for an identified key route network.

11.45 am

Noble Lords will want to know that the statutory origin of this order is in the governance review and scheme prepared by the Cambridgeshire and Peterborough councils in accordance with the requirements of the Local Democracy, Economic Development and Construction Act 2009. The seven councils consulted on the proposals in the scheme. This consultation ran for six weeks from 8 July to 23 August 2016 and involved a demographically equalised Ipsos MORI phone survey and an internet poll. The consultation received more responses than any other comparable consultation. As statute requires, the councils provided the Secretary of State with a summary of the responses to the consultation in September.

Before laying this draft order before Parliament, the Secretary of State has considered the statutory requirements in the 2009 Act. He is satisfied that these requirements are met. The Secretary of State considers that they have been met in relation to proposals to establish a directly elected mayor for Cambridgeshire and Peterborough, to establish a combined authority across the local government area and to confer functions on that combined authority. In short, he considers that establishing the Cambridgeshire and Peterborough mayoral combined authority and conferring the functions on it would be likely to lead to an improvement in the exercise of the statutory functions across the Cambridgeshire and Peterborough area. In this consideration, the Secretary of State has had regard to

the impact on local government and communities. Also as required by statute, the seven constituent councils have consented to the making of this order.

As required by the 2016 Act, we have in parallel with this order laid a report before Parliament which sets out the details of the public authority functions we are conferring on Cambridgeshire and Peterborough. The draft order, if approved by Parliament, will come into effect the day after it is made. It implements many of the proposals in the seven councils' 2016 scheme. If approved and made, it will create a mayor for Cambridgeshire and Peterborough, directly elected by and accountable to the people of Cambridgeshire and Peterborough. The first elections will be carried out on 4 May 2017. The mayor will then take office on 8 May 2017 for a four-year term. Second elections are to be held on 6 May 2021.

The scheme will also: establish a combined authority, chaired by the elected mayor and with members drawn from the seven constituent councils; confer significant new powers and budgets on the mayor and combined authority as set out in the devolution deal; enable the mayor to create a strategic transport plan for the area; confer on the combined authority the function to maintain a key route network, to be exercised by the mayor; confer on the combined authority economic and regeneration functions, as well as functions in relation to the non-statutory spatial plan, with a general power of competence; confer powers in relation to the devolved transport budget, driving development and regeneration and stimulating growth; provide new powers in relation to devolved budgets; provide for the necessary constitutional and funding arrangements to support the mayor and the combined authority; and provide for the seven constituent councils to contribute to the funding of the mayor and combined authority's activities in an arrangement where the councils are in the driving seat of any decision about the level of contributions.

In short, the order devolves new, wide-ranging powers to Cambridgeshire and Peterborough, putting decision-making into the hands of local people and helping the area to fulfil its long-term economic and social ambitions. The draft order we are considering today is a significant milestone, contributing to greater prosperity in Cambridgeshire and Peterborough and paving the way for a more balanced economy, improved housing supply and economic success across the country. I commend the draft order to the House.

Lord Lansley (Con): My Lords, I should draw attention to my registered interest as chair of the Cambridgeshire Development Forum. I am also, of course, a resident of Cambridgeshire.

Cambridge and Peterborough are two of this country's fastest-growing cities. They are complementary in their industrial character, but, together, they offer the potential to be one of the leading locations both for high-technology investment and for related value-added activity. To enable this, the county requires more infrastructure, more sites for investment, more housing and commercial development and more skills. All these can and should be more effectively promoted by means of a combined authority taking hold of significant additional investment for housing and infrastructure from the Government, equipping it with local powers and budgets, and seeking a multiplier effect through partnerships with the private sector. I support devolution—and this order. It can have a significant effect in creating and delivering a driver for growth in our area.

In particular, I supported the Government's initial plan for a three-county devolution deal—that is, Cambridge, Norfolk and Suffolk. Why? In my view, the real potential long-term for East Anglia is to secure Cambridge's structural relationship to its wider economic hinterland. In reality, that extends into Bedfordshire, Essex and Hertfordshire, as well as Suffolk and Norfolk. That is especially so given the focus on life sciences as a global hub south of Cambridge.

Devolution did not, and would not, fit neatly to the economic geography of the Cambridge economic region so the wider scope of devolution and, for now, that more ambitious approach have been dropped. That does not reduce the need for clear and active strategic co-ordination across several counties in the east of England. I urge the mayor and combined authority to look for those strategic relationships with their neighbouring counties—as I know they will. That, as much as anything, should encourage those working towards devolution deals in neighbouring counties—I know Suffolk is considering exactly this—to seek to create further openings in future for ambitious infrastructure plans on a wider footprint. Investment in Cambridge is strong and sustainable in itself but the long-term economic benefit to the United Kingdom will be maximised only by realising scale and opportunities for supply-chain and linked investments related to Cambridge's remarkable high-tech pull.

I support the combined authority as set out in this order, but I must be clear that this order sets up a combined authority. Where I live, as a consequence of this, after May I will be represented by a parish council, a district council, a county council and the combined authority. That is certainly one tier, and arguably two, too many. Locally, there is an unwritten assumption that in time the combined authority and the upper-tier responsibilities of Cambridgeshire and Peterborough should be managed in one organisation. Indeed, there is already a single chief executive for both Cambridgeshire County Council and for Peterborough. That process should be taken forward—and quickly. The cost of the combined authority in itself is not large, but the complexity of four tiers of local government could mean that the vision, delivery and progress we make are nothing like as much as they should be. I also urge Ministers to work with the combined authority and local councils to bring the Cambridge city deal, which is important in the management particularly of transport and congestion issues in Cambridge itself, within the scope of the combined authority.

Further, I draw attention to paragraph 4 of the schedule, as noble Lords may not have had occasion to look at that. It implies that no decision of the combined authority can proceed without the mayor's agreement but also that no budget or transport plan of the combined authority can proceed without a two-thirds majority. In practice, four councils can form a blocking minority, even in relation to a budget or transport plan the mayor supports. Of course, this implies that the combined authority, local authorities and mayor must work collaboratively, and they have shown themselves

[LORD LANSLEY]
capable of doing so in bringing the order and this plan into being. However, legislation is like a contract. It must be robust when things go wrong and define what happens when people do not agree. I am far from happy that this is yet the case for the new combined authority. The mayor will have a mandate. The role is about vision, leadership and delivery. The mayor should not readily be able to be blocked. With that caveat, I support this order and I look for ambition in Cambridgeshire to be realised in the years ahead, not least through the mechanism of this new combined authority.

Lord Beecham (Lab): My Lords, the noble Lord, Lord Lansley, surprised me the other week by making a favourable reference to me in relation to another matter. I reciprocate by thanking him for clarifying an issue that I have mentioned from time to time: it seems we are facing over time a reorganisation of local government on unitary lines without any involvement on the part of local communities. It is a back-door way of reorganising local government. As the noble Lord indicated, there may be a case for doing that, but it sits at odds with the protestations about local democracy and people being involved for it to be conjured up through delegated legislation of this kind.

Moreover, there has been a very interesting exchange of correspondence between the Secondary Legislation Scrutiny Committee—the initial report of which was really quite damning about the process that has been adopted here—and the Minister, Mr Andrew Percy, on its 25th report, which emerged just last week. In particular, there was reference in the initial report to dissatisfaction on the committee's part relating to claims of popular support for the notion of having a combined authority—not a unitary authority. In reply, the Minister referred to the point that had been raised. He said that the committee's Explanatory Memorandum,

"quoted that under the online poll 47% were opposed to the transfer of powers and funding to a Combined Authority. I accept that it did not record that 59%"—

a majority—

"were opposed to a mayor; our intention had been to include this but due to an error whilst the drafting was being refined, this was omitted from the final text",

for which the Minister apologised. I am sure the committee was very grateful for the apology. I wonder what action has been taken against the unfortunate civil servant who apparently just overlooked that issue. The Minister went on to say:

"I believe it is right to refer to the comment made by the councils that the online survey results 'aren't representative of the population as a whole' and represent a 'self-selecting sample'".

Any vote at an election represents a self-selected sample. What is the difference in principle that should apply to a response to the report? It seems an absurd justification.

I find myself deeply suspicious of the Government's approach to this and other mayoral elections. The history is recent: there was a referendum as to whether there should be a Mayor of London. Later, the coalition Government ordained that there should be referendums in a number of authorities. My own authority of Newcastle—I remind the House I am a member of Newcastle City Council and one of several honorary vice-presidents of the LGA—is one of the authorities that was forced to have a referendum. Most of the referendums resulted in a rejection of the notion of an elected mayor. Through this process, the Government are getting round the verdict in so many places without having the courage—that is all it requires—to seek again the opinion of people who made their position very clear some years ago. The Government would be in a position to argue that they are offering more than just a chance of having a mayor. They are offering the chance of a mayor with enhanced powers, a combined authority with enhanced powers and all the rest of it, but they have deliberately chosen not to offer that opportunity to the people on whom they imposed a more limited version of the process a few years ago. I find that inconsistent and, frankly, rather disgraceful.

I wish the citizens of these two authorities well. I hope that the combined authority works out well and that the mayor works well, but we are seeing an erosion of local involvement in these matters and in areas that have expressed clear enough reservations. Bath was the last one we discussed in this Chamber; it was quite clear that Bath did not wish to have an elected mayor as part of the combined authority. The Government really should look again at their processes in connection with this issue.

Noon

The Earl of Sandwich (CB): My Lords, the noble Lord, Lord Beecham, has encouraged me to say a brief word about Huntingdon. The Minister will not know that I spent my early years in Huntingdon, a very important historic town which has always been subsumed within other authorities, especially Cambridgeshire and Peterborough. In view of what the noble Lord, Lord Beecham, has just said, I would just ask the Minister how far the consultation extended to Huntingdon. Is there a record of what the population said and whether it was in favour of this combined authority? To me, it is just another case of some of our traditions being overwhelmed by the convention of creating these combined authorities.

Lord Tebbit (Con): My Lords, my noble friend Lord Lansley characteristically spoke a lot of good sense about the reorganisation of local government in East Anglia but also exposed some of the difficulties there. For example, I share his concern that there should be, going forward now, four tiers of local government. It seems just a little too many. I just wanted to make plain, as a resident of Bury St Edmunds, our determination not to be caught up in this aggrandisement of East Anglian government. We are pretty content with the way we run things locally ourselves and would really like to be left alone to do things in our own way. We have a very effective council with some very effective ways of getting the savings that can come from collaboration without going through the nonsense, if I may use the word, of legislation to combine authorities.

There is no reason why they should not work from the same headquarters or have the same chief officer in more than one authority. There is no reason why you should not be able to go, as I can in Bury St Edmunds, to your local government headquarters and immediately be put in touch with the official who is responsible for

the matter that concerns you and sit down together and sort things out. It also enables them to have, in that headquarters building, people responsible for different parts of the authority's functions: for example education and services for younger people. Those officials have developed the habit of meeting together in the canteen there, and discussing matters and understanding them fully. Sometimes, informal good governance is rather more effective than finding ourselves with four tiers of government through statute.

Baroness Hollis of Heigham (Lab): My Lords, I apologise for coming in slightly late, as the lifts were running slowly. I was inspired to speak because although I seldom agree with the noble Lord, Lord Tebbit, I very much do on this occasion, for which I am sure there is rejoicing around the House. I wanted to challenge, or comment on, the position of the noble Lord, Lord Lansley. I speak as a resident of the city of Norwich, of whose council I was formerly leader, and as someone with strong relationships within that city. I was therefore involved in the discussions—at one remove, obviously and properly—on the inclusion of Norfolk and Suffolk in a greater East Anglia authority. The problem for us, which I regard as a very unfortunate legacy of the noble Lord, Lord Heseltine, is the imposition of the requirement of an elected mayor to be concomitant with a combined authority.

In Norfolk, there were several, rural Conservative authorities—and I am sure it may also be true for many in Suffolk—which were very happy to have a combined authority with an elected mayor who would be Conservative, for ever and a day, representing, to some degree, lower-rate and lower-services authorities. That is their choice. That is not the same for urban authorities such as Norwich, which are effectively regional capitals with the revenues of a rural district council, which have always provided services from leisure to employment—half the jobs in Norfolk are in Norwich—for the whole of the county. We would worry about having an elected mayor over one county, or two counties, of a permanently different, rural complexion—being Conservative would worry me less—running the cities. Those medium-sized cities are the core of economic growth in this country, now and to come.

Secondly, we have a strong sense of place; I believe that some of the alienation that we have seen in politics is because we are losing that sense of identification with place, which the noble Lord, Lord Tebbit, referred to. Norwich was for 800 years a unitary authority and then, at the stroke of a pen in 1974, that was abolished, with no respect for place, history or local opinion. Many of us are still fighting to get a more sensible, coherent, democratic, accountable and effective local government system. I have a plea to the Minister, following what the noble Lord, Lord Tebbit, said. Yes, we are working well in LEPs, which shows that authorities of different persuasions can work together, but we do not want an elected mayor whereby one person, presumably male, will be able to override the views of perhaps 300 elected councillors, at whatever tier of government, who are in touch with their communities in a way that one person cannot be. One person speaking for two counties—which are some 120 miles long—would be absurd and inappropriate.

What we need in Norfolk—it may be true for Suffolk; I cannot speak for Suffolk—is transport connectivity. It is something that the rural authorities want and something that Norwich, King's Lynn and Great Yarmouth also want: to build decent economic infrastructure. We cannot get that if an elected mayor does not necessarily share those ambitions, because they come from a very different local heritage. I respect the rights of those rural district councils to have a different perspective on what they and their communities want from local government. What I fear is that, by insisting on an elected mayor over a county, or even two counties, as the price of a devolution package including transport connectivity, we will not get the focus on economic productivity and growth that, bluntly, only the cities—whether Southampton, Portsmouth, Norwich, Plymouth, Exeter or whatever—can provide.

That is why I beg the Government to disassociate combined authorities from the imposition of the Heseltine elected mayor. We do not want grand leadership; we want collaboration and working together in consensus. That is the best done—in the very words of the noble Lord, Lord Tebbit—by local authorities, councillors and staff working together in a collaborative way. The way that the Government are going is not healthy for local government, for a sense of local place or, ultimately, for democratic politics, which should grow from the bottom up. That bottom-up approach is now being undermined by back-door reorganisation in ways that do not fit the needs, views and wishes of local communities.

Baroness Pinnock (LD): My Lords, I follow the noble Baroness with trepidation—I think that, on the whole, what we are looking at today is a practical outcome of the decisions that have already been made in principle. I ought to declare my interest as a councillor in West Yorkshire and an LGA vice-president. While I obviously support the decision of the local, democratically elected councils in the relevant areas of Cambridgeshire and Peterborough to go forward with this devolution deal, I draw the House's attention to what appears to be a lack of support—or certainly a contradiction over whether there is support—from the residents in those areas. The noble Lord, Lord Beecham, has drawn attention to the report of the Secondary Legislation Scrutiny Committee, which highlights the lack of transparency—I think those were the words in the report—and certainly a seeming discrepancy between the two surveys undertaken at the time.

The Government ought to reflect on the final paragraph of the report from the Secondary Legislation Scrutiny Committee, which says:

> "The picture of local views painted by the Department for Communities and Local Government in the Explanatory Memorandum is incomplete and at times self-serving. We look to Government to present a fuller and more accurate account of such matters".

With that fair comment on what has gone on in the consultation, I will make some remarks about the points made by the noble Lord, Lord Lansley. He drew attention to the fact that a mayor who was elected will have a mandate. However, the whole way in which the combined authorities with elected mayors have been established is to have some sort of stop on the mayoral mandate so that they are not people

[Baroness Pinnock]
making decisions alone, and quite rightly too. There should be an opportunity for local councils to say, "We disagree with what the mayor is doing" and to veto it. That is an appropriate way to work, given that local councils are allowing some of their powers to be drawn upwards to the combined authority and to the mayor.

In many ways, it is wrong to view the mayors of these combined authorities in the same way as the Mayor of London. First of all, there is no assembly to scrutinise, and secondly, the mayor does not have the same functions: hence the need for a veto in the hands of local councils. This ensures that any decisions which will have enormous impact on local people have the support of those democratically elected councils.

I now turn to the discussions that we have had so far in this debate about layers of democratically elected councils. In my area, there is just one layer. Until the Conservative MPs in Yorkshire stop trying to prevent West Yorkshire from having a combined authority, we have only one layer of local government. It is significantly harder work for those who are elected there than if we had district or parish councils to support much of the work done.

I am a great believer in having layers of councils as long as their functions are very well identified. It enables the places to have a view. One of my concerns is that democracy is moved further and further away from the people whom we represent, so having more councils at real local level to hear views and complaints and to do something about them is the safety valve that many parts of this country are lacking. That is one reason why we are having quite a difference of opinion across the country at the moment: those safety valves are disappearing.

Having said that—because I have concerns about elected mayors that your Lordships might have heard—I will raise one or two questions about this set of powers being acquired by the combined local authority in Cambridge and Peterborough. There is going to be a power of general competence for the combined authority and the mayor. I am concerned as to whether this will be at variance with the power of general competence that the constituent local authorities have, and how those separate interests might resolve themselves if there is a difference of opinion there. My second point is about the scrutiny arrangements, which are not described here. I would guess that they are part of an earlier order and I am concerned whether they are the same as for previous combined authorities. The third point is that there is a suggestion somewhere in the report that further powers are yet to come, which rather puzzled me as I thought they would all be laid out in one go. Why are these not yet identified and what possible additional local powers might there be?

12.15 pm

I support the idea of having a democratically elected layer of government which looks at a strategic vision for a broad locality and has some powers and some additional funding, although that is being overstated. Some £30 million a year is not going to change the world, but having a strategic vision and laying out the course of direction for the future is a powerful thing to devolve to local people. With that, I hope that the Minister will be able to respond to some of the questions I have raised.

Lord Kennedy of Southwark (Lab): My Lords, if I may first make a number of declarations, I refer Members to my entry in the *Register of Lords' Interests* and declare that I am a locally elected councillor and a vice-president of the Local Government Association.

The order before us is one of a number that we have considered in this House in recent weeks. As we have heard, it proposes to establish a mayoral combined authority, with that authority having control over a number of areas including transport, economic development, regeneration, housing and planning. It also provides for the governance arrangements to include a directly elected mayor. I am not opposed to the order per se but I have a number of comments and a few questions for the noble Lord, Lord Bourne of Aberystwyth.

I hope that the new arrangements will deliver better joint working between the authorities. Bringing them together in this fashion may foster stronger partnerships in other areas as well and in the wider East Anglia area, to which the noble Lord, Lord Lansley, referred. In general, however, I would be interested to hear from the Minister where the Government are going in respect of devolution. The order seems a little confusing and not very strategic at the moment.

I am not clear in general how the Government see these devolution deals going forward. I would be particularly interested in the response to the point made by the noble Lord, Lord Lansley, in respect of having four tiers of local government. He made a compelling point for the Government to answer there. I am also in full agreement with the noble Lord, Lord Tebbit, on the points he made in that respect, and with my noble friend Lady Hollis of Heigham. She made the point about having to have a directly elected mayor to get the transport powers, which is an issue for a number of local authorities.

When Manchester became the first combined authority it got much wider powers than we see here today, as it has powers in respect of the NHS and the police. Is that sort of deal off the table for the future or is some sort of back-door reorganisation being suggested? It really is not clear. I am not sure whether the sort of patchwork that we are getting all over the country is the right way to operate. Perhaps we could hear a little more about what the Minister thinks could happen after May. There appears to have been some change in attitude in respect of these deals with the change of government.

The report of the Secondary Legislation Scrutiny Committee raises a number of concerns, as my noble friend Lord Beecham and others have said. One or two of them are becoming recurring themes, which is not a good place for the Government to find themselves in. A concern raised before on other orders is the question of consultation done over the July and August holiday period. Whatever it is you want to get back, that is not the best time to consider consultation. Often people, especially those with families, will go on holiday once the children are off school and come back some time before September. If you want a

meaningful response—a good number of responses—that is just not the best time to do it. I do not understand why the department insists on conducting consultations over that period; I suggest that we should never hold consultations then.

Will the Minister respond to the comments in the report about what would appear to be the selective approach to reporting results of the online survey? That is a serious criticism for the committee to raise. What does he say to the other criticism in the report, which compares the views taken by the department of this order and of the West of England Combined Authority Order? It turned that whole question on its head when it suited it in respect of this order. That is also a serious point for the committee to raise, not one the Minister should be happy about and something that he should not allow to happen in future.

It is probably not fair to say that there is a democratic deficit here, but it is fair to say that democracy is getting out of step with the services being delivered. There are four tiers of local government, it is not clear who does what, we have a patchwork around the country and there is the question of locally elected councillors and a mayor elected over a very wide area. That does not give continuity between the elected members and the services delivered.

With those contributions, I will leave it there and look forward to the Minister's response.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on the draft order in relation to Cambridgeshire and Peterborough. I will do my best to cover the points made, and will take the contributions in the order in which they were made.

I turn first to my noble friend Lord Lansley, whom I thank very much for his support. I take his point about broader working outside the combined authority with, in this case, Bedfordshire, Hertfordshire, Essex and so on. That is incumbent on the authority concerned and I am sure it will bear that very much in mind. There was a recurrent theme picked up first by my noble friend about the various tiers of local government. It is certainly something that we need to watch like hawks. The point subsequently made by my noble friend Lord Tebbit about shared offices and shared officers makes a lot of common sense. I know that a lot of local authorities do that and is certainly something encouraged by the department and the Government at large. It makes a lot of sense, and I am sure that this authority and others will bear it in mind.

I turn to my noble friend's point about paragraph 4 of the Schedule and the balance of power in a combined authority between the mayor, officials and elected members, a point subsequently raised by the noble Baroness, Lady Pinnock. I think the balance is right. The mayor does not have an overriding right to say, "We will do this", but the mayor's vote has to be included in the majority. That is carefully crafted: balances on these things are important.

I turn to the contribution of the noble Lord, Lord Beecham, who raised some strategic issues about the operation of combined authorities. Indeed, they operate in a strategic way. They are not in competition with local authorities, they are looking at issues of strategic importance. He will know that the Government are not imposing these authorities on people. That is not borne out by practice or even by the contributions to the debate. He will know from the experience of his authority that it can walk away from this. That is why Northumbria—Newcastle, Tyneside and Durham—does not have a combined authority. Some people did not want an elected mayor; there were differences of opinion between different parts of the area. The point made by the noble Baroness, Lady Hollis, illustrates this: Norfolk walked away because it did not want an elected mayor, for whatever reason.

Baroness Hollis of Heigham: The reason was that we do not want a swagger mayor of the 1970s Heseltine model. We want greater collaboration in the same way as, when Great Yarmouth was under stress, our chief executive in Norwich worked as chief executive for Yarmouth as well. That is the sort of collaboration we want—by consent and bottom-up—that will allow us to build the sort of economy that is to the advantage not just of the region but the country as a whole.

Lord Bourne of Aberystwyth: I appreciate what the noble Baroness is saying, but I am not sure that that was the result of a thoroughgoing consultation—picking up points made by other noble Lords. Whatever the reason, it illustrates the point that the Government are not in a position to impose these deals.

The noble Earl, Lord Sandwich, made points about Huntingdon—a gem of a town; I know Huntingdon and Godmanchester very well. Of course, it had to be a part of this process. If Huntingdonshire, as an authority, had not wanted to go ahead with this, it would not have been a part of it, and I suspect the deal may well have fallen apart. I shall say something later in relation to points made by quite a few noble Lords about the consultation exercise.

My noble friend Lord Tebbit made some telling points about the common sense of having shared officers and shared officials and ensuring that we are getting value for money where we have more than one authority. I am sure that that makes a lot of sense and that his cogent and authoritative voice in Bury St Edmunds will always make sure that that authority's interests are taken account of, as they will be, I am sure, in any devolution deal.

The noble Baroness, Lady Hollis, is obviously in close liaison with my noble friend Lord Tebbit. I shall be watching them for shared coffees on these issues as they go forward. I take the point she makes that an elected mayor is not something that all local authorities want, but it is not something that is imposed. Some authorities have come forward without an elected mayor model, Cornwall being the example to look at. The Government are not saying that there have to be mayors in all situations. Where people do not want mayors, they do not have mayors.

I will write more fully on the Explanatory Memorandum, which has been raised in relation to the consultation and other matters, and I shall write to all noble Lords who have participated in the debate and place a copy in the Library. I shall not go into all the details of the consultation that took place, except to make two points. This has been the best response to

[Lord Bourne of Aberystwyth]
consultation of any that we have had so far. I take the point made by the noble Lord, Lord Kennedy. He knows what I have been saying in relation to the Neighbourhood Planning Bill about best practice when consultations take place. This consultation took place over six weeks, so it was not the normal short planning period of 21 days. It was a more thoroughgoing consultation, and some of it was online. Those are factors which have to be borne in mind, but I will cover the points about the results. There were two polls: an Ipsos MORI general poll—the main poll, as it were—and an internet poll. Without pre-empting what I am going to say in the letter, I think the internet poll would be a little self-selecting, whereas the other poll may not be. I will try to cover that in the letter that will come round.

The noble Baroness, Lady Pinnock, raised an issue about general competence. I think this would mean general competence over the designated functions that they are receiving. She also asked about other issues that may be coming forward. There may well be some others. Housing, for example, is not covered in this order, and that generally finds its way into orders of this type, so that may well be coming forward, but I think the bulk of the transfer of functions is in this order.

I think I have covered the points made by the noble Lord, Lord Kennedy. He always starts off by saying how much he supports something and then comes with a long list of reasons against it, which is like wanting his cake and eating it. I suspect the Labour Party says, "You've got to be in favour", but the noble Lord thinks of all the things he wants to say that indicate concerns about it. I understand them, but overall he seemed to be saying that this is a good thing. It is not imposed. I think it will be successful. No doubt as we go forward there will be lessons that we can learn. With that, and picking up any points that I have missed, particularly on the Explanatory Memorandum, I commend this order to the House.

Motion agreed.

Tees Valley Combined Authority (Functions) Order 2017

Motion to Approve

12.28 pm

Moved by ***Lord Bourne of Aberystwyth***

That the draft Order laid before the House on 23 January be approved.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the draft order which we are considering this afternoon, if approved and made, will confer important new powers on both the Tees Valley mayor and the Tees Valley Combined Authority. We have just had a thoroughgoing debate on the order that brings to life the Cambridgeshire and Peterborough devolution deal, and we now turn to the separate devolution deal for the Tees Valley—this order continues our journey with the Tees Valley Combined Authority.

The draft order follows the devolution deal which the Government agreed with Tees Valley on 23 October 2015, the establishment, by order, of the combined authority in April 2016, and the making of the order last July that will see a mayor for the Tees Valley elected on 4 May this year. This draft order, if approved and made, will enable the establishment of a mayoral development corporation in the South Tees area by summer 2017, if the mayor and the combined authority wish to see this. We are also seeking to confer further powers on the mayor and the combined authority on a slightly slower track, and we laid a further order before this House on 6 February to do this.

Before laying this draft order before Parliament, the Secretary of State has considered the statutory requirements in the 2009 Act. The Secretary of State considers that these requirements have been met in relation to the functions being conferred on the combined authority. In short, he considers that conferring these functions on the Tees Valley Combined Authority would be likely to lead to an improvement in the exercise of the statutory functions across the Tees Valley. In this consideration, the Secretary of State has had regard to the impact on local government and communities. Also as required by statute, the combined authority and the five constituent councils have consented to the making of this order. As required by the 2016 Act, we have in parallel with this order laid a report before Parliament which sets out the details of the public authority functions we are conferring on the Tees Valley through this order.

If approved by Parliament, the order will come into effect the day after it is made. It will confer on the combined authority a power to be exercised by the mayor: the ability to designate a mayoral development area. This is a necessary step in advance of the creation, by order, of a mayoral development corporation. The order also includes transitional arrangements to allow the combined authority to act in place of the mayor before the Tees Valley mayor is elected on 4 May.

The functions being conferred are corresponding functions to those held by the Mayor of London in relation to the Greater London area. The order confers these functions with appropriate modifications to reflect the conditions in the Tees Valley. These functions include: a power to designate mayoral development areas, after which the mayor is required to notify the Secretary of State of the designation, who in turn is then required by order, subject to the negative resolution procedure, to establish the mayoral development corporation; a power to transfer property to mayoral development corporations; a power to decide that the mayoral development corporation has certain functions, in particular whether the mayoral development corporation is to be a local planning authority; and a power to appoint members to any mayoral development corporation.

The modifications reflect the different conditions in the Tees Valley from those of Greater London. These modifications are: substituting the mayor of the combined authority for the Mayor of London and substituting the combined authority for the London Assembly; requiring combined authority members to consent to the designation of a mayoral development

area, if their local authority area contains any part of the area to be designated; requiring combined authority members to consent to the transfer of planning functions, if their local authority area contains any part of the area in which the mayor proposes to exercise the planning functions; and requiring the consent of the North York Moors National Park Authority, if the national park's area contains any part of the area in which the mayor proposes to exercise the planning functions. This condition was added following discussions across government and with the national park and local area. It is intended to maintain the status and powers of the national park, and to ensure it is fully involved in any decisions about growth in its area.

The order also provides for the necessary funding arrangements to support the mayor and the combined authority in delivering the functions. It includes transitional arrangements that will allow the work to continue at pace to create a mayoral development corporation in the Tees Valley. I can provide more on these if noble Lords would like this.

Noble Lords may find it helpful for me to summarise what the process for establishing a mayoral development corporation in the Tees Valley would be as a result of this order. The mayor would designate a mayoral development area if the mayor considers the designation will further the economic development and regeneration functions of the combined authority, the mayor has consulted on a proposal for a mayoral development corporation and has had regard to the consultation, the mayor has published a proposal which the combined authority has not rejected within 21 days and the mayor has received any necessary consents from combined authority members and the North York Moors National Park Authority. Once the mayor has made the designation and notified the Secretary of State, the Secretary of State must make the order to establish the mayoral development corporation. If the mayor has yet to be elected, the chair of the combined authority takes the place of the mayor.

Noble Lords may be aware that the combined authority is currently consulting on what is in many ways the nub of the issue: a proposal for a mayoral development corporation to cover the SSI former steelworks site and the wider 5,000-acre industrial site adjoining it. That consultation began on 23 December 2016 and is running for 11 weeks; it is still running, and closes on 10 March 2017.

In conclusion, this order devolves brand new powers to the Tees Valley Combined Authority, giving effect to a significant devolution deal commitment and putting local people and business leaders in a strong position to drive economic growth and regeneration. I commend the draft order to the House.

Viscount Eccles (Con): My Lords, I have a few points for my noble friend on the Front Bench. The first is that, when the Secondary Legislation Scrutiny Committee reported on this, as it did on the previous Motion, I think a sense of unease comes through its report—a feeling that things have not been done entirely properly and a feeling of business undone. Indeed, again, there was a consultation period of only six weeks, from 11 July to 22 August last year, about these important changes. I draw attention to one comment in particular: among 200 respondents who referred to "wider governance issues", one of the issues they raised was,

"whether Tees Valley was an appropriate geo-political area".

Having worked on Teesside for many years and still living close by, I think that that is a very relevant consideration.

The first point is a small point: the area is not a valley. Certainly, Cleveland has nothing to do with being a valley. It used to be called Teesside. I want to record for the Minister's benefit that, if you live up there and you are an ordinary citizen, you still call it Teesside; you do not call it Tees Valley. In thinking about Teesside, there are three authorities—Darlington, Stockton and Hartlepool—and they are not contiguous. What is in between them is County Durham. If I start thinking about an integrated strategy, connectivity and all the things that are supposed to happen, I find it very difficult to believe that it is right that County Durham has looked north towards Newcastle, an effort which is not proving entirely easy as time goes by, when it is very arguable that its best interests and the interests of everybody in the north-east of England would be much better served if it looked south. Have there been any discussions about whether County Durham should be looking south rather than north?

It is as well to remember, of course, that Darlington, Hartlepool and Stockton-on-Tees were all part of County Durham once, so the history is entirely in favour of County Durham joining this combined authority. Indeed, I shall live on in the hope that it will decide, and the other authorities will accept, that it would be a good addition to this combined authority. These are very long-established cities and towns. Darlington is very long-established because of the railway and the Great North Road. Hartlepool and Stockton are very long-established because of the fishing industry and the wool, way back, and subsequently shipbuilding and, as has been mentioned, steel. Here I should declare a rather sad interest: I was a director of the company that built the Redcar blast furnace. That furnace should be working for another 30 years at least; it certainly had a life that would have gone on for that long.

I welcome the order, but I think it is incomplete. The thinking that has gone into it, and the Government's approach, are not as detailed and thorough as they should be. And I have a final reservation. I cannot help half-thinking that some of these authorities go into these arrangements because there is some money at stake.

Baroness Pinnock (LD): My Lords, the north-east in particular is in desperate need of regeneration, inward investment and higher-skilled jobs to bring prosperity to the local area, and Tees Valley is no exception to that. Given that backdrop, I am very supportive of a proposal that enables the local elected representatives to take account, take charge and have the vision and ambition for their own local area; to respond to the challenges of the loss of the steelworks and glassworks in the north-east and the ensuing large area of industrial dereliction; and to themselves be

[Baroness Pinnock]
responsible for the challenge in bringing in new businesses, new life and new hope to local people. Noble Lords can tell from that that I am supportive of the notion of that happening. However, I have a couple of questions to explore with the Minister.

First, although the planning functions are critical to the whole idea of a development area, the reports do not make clear how much of the planning responsibilities the constituent councils will pass over to the development corporation. For instance, I think it would be appropriate for major site applications to be the responsibility of a planning authority within the combined authority but that the details, particularly of housing design and so on for the smaller applications, should still be the responsibility of the constituent councils. Those are the sorts of things that strategic bodies do not pay enough attention to. Enabling local councils to take on that responsibility would seem to be the right split of functions. I hope that that is part of the thinking behind the proposal, although it is not clear to me that that was the case.

The second big issue for me is the level of scrutiny that will be applied. Will there be a separate scrutiny function for the mayoral development corporation? I think that such a function would be appropriate, given the significant powers that will be in the corporation's hands to reshape a considerable area of the north-east. There ought to be a separate scrutiny function to ensure that decisions are appropriately made. With that, I support the order.

Lord Kennedy of Southwark (Lab): My Lords, I start my remarks by making the usual declarations of interest that I have made in previous debates.

The Tees Valley Combined Authority order brings into force, as we have heard, the agreement reached between the Government and the local authorities in the Tees Valley area. The Minister might be pleased to hear that I support the order, although I have one or two points to raise.

I noted from the report of the Secondary Legislation Scrutiny Committee that there were concerns about the creation of a mayoral development corporation, particularly if it covered part of the North York Moors National Park, but was pleased to learn that an agreement was reached whereby the functions and powers will be transferred only with the agreement of the national park authority. I think it is important for the Government to try generally to get an authority's agreement when it can be brought into the sphere of an area.

I also note the imperative to establish quickly a mayoral development corporation in the South Tees area and that a shadow board has been established. I certainly wish that body well in its important work. Will the Minister say a bit more on what is envisaged and how he sees that body working with business to bring in inward investment? In particular, how will the body relate to the elected Members of Parliament for the area covered by the mayoral development corporation? The area has suffered a serious blow, and everything possible must be done to secure a successful recovery. A close working relationship with local and national government and business and elected representatives at every level is important to ensure that there is a recovery.

12.45 pm

The Secondary Legislation Scrutiny Committee has again raised the question of consultation in its report. I am not convinced that the period between 11 July and 22 August is the optimum time to do a consultation. As a general rule, the Government should use other periods. Would it make much difference to run the consultation between 1 September and 1 October? There would be a much better chance of response. Of course, here the consultation showed that 90% were opposed to having a mayor for the area—so that went down really well. We need to look at the timing of the consultation and, too, what we do with the results, given that in this case 90% were opposed yet we are still going ahead. That is an interesting point.

I certainly support the proposal, and will always say so, which I hope is some comfort to the noble Lord. Equally, when I think that improvements can be made, either in the proposal or the procedures that precede it, it is important that I say so as opposition spokesperson. It is my job to do that and to ask questions accordingly. I look forward to the noble Lord's response.

Lord Beecham (Lab): My Lords, I endorse my noble friend's approach to this matter. He has referred to the very different views of the department in relation to local opinion in this case. When we were discussing the previous order, the Minister in the other place said that the consultation was effectively inadequate, unreliable and unrepresentative. On this occasion, he, or at least his department, have had the grace to acknowledge that the "vast majority"—to use the phrase reported in the Secondary Legislation Scrutiny Committee's report, published yesterday—opposed the mayoral element in the order. Nevertheless, the Government obviously intend to go ahead, given that we are discussing the matter today, with creating a mayoral authority.

The Government are assuming the posture of Henry Ford. Noble Lords will recall that one could have any colour of car as long as it was black; here, people can have any local deal as long as it is mayoral. That is not a choice. Frankly, it is little short of political blackmail. If you do not take this structure, you are not going to get the support. That is not the normal way that Governments of any political colour have operated. It is deplorable that the clear view on that aspect of the deal by the "vast majority" of residents in this area, as the Government acknowledge, is going to be overridden. The Government say, "You have a choice", but that is not a choice. It is putting the authority and its people in a completely unacceptable, invidious position. The Government should be ashamed of requiring that condition to be met, given the scale of need that the noble Baroness, in particular, mentioned in relation to this area.

Clearly, the order will go through; but the Government ought not to be adopting that stance in relation to this issue.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lords who have participated in this debate on the Tees Valley combined authority order. Notwithstanding

the final comments of the noble Lord, Lord Beecham, I thank them for their general support—there was certainly support from the noble Lord, Lord Kennedy, from the Labour Front Bench.

I shall try to address the points that have been raised. First, I had read the comment of my noble friend Lord Eccles that this is not really a valley. I should know that myself because as a child I lived for some time in Hartlepool—indeed, my brother was born there—so I empathise with that. Nevertheless, I am tied by following the title of the document.

It is perfectly true that Darlington, Stockton and Hartlepool are not contiguous. I note what my noble friend Lord Eccles said about whether Durham should look north or south. Of course, we have had the experience of parts of County Durham—certainly South Shields and Gateshead—not wanting to be part of the deal for Newcastle or Tyneside, and that runs contrary to the assertion that this is being imposed by a wicked Government. They had every right to walk away from it, and I keep coming back to that point. The noble Lord, Lord Beecham, shakes his head but it is not mandatory for local authorities to have these arrangements. If they do not want them, they do not have them.

There are presumably advantages in them because we have had a welcome for the order from the noble Lord, Lord Kennedy. In general, he thinks that this is a good thing and he is supporting it—with caveats, which I understand is the role of the Opposition. However, if a local authority does not think it is a good idea, it has every ability to walk away from it. That is what some have done and it is their right to do so. I understand that, but this proposal was in the manifesto and nobody should have been taken by surprise by the Government's support for the elected mayoral system.

I turn to the contribution of the noble Baroness, Lady Pinnock, and thank her very much for her generally supportive approach. I think that this arrangement will operate in Tees Valley a little as it does in London, where it has operated in relation to the Olympic park, for example. It is about the strategy there. In the case of Teesside, presumably it will involve things such as the siting of businesses, help for business and transport links, whereas, as the noble Baroness indicated, more detailed and less strategic matters will be decided elsewhere.

I thank the noble Lord, Lord Kennedy, in all seriousness for his generally supportive comments, particularly in relation to the North York Moors National Park Authority. We have had discussions there and think that those concerned are very content with the arrangements. I agree with the noble Lord about the need to involve all levels of government. That is certainly what happened when the steel task force was set up—I remember going to its meetings. The task force was very productive across parties and different levels of government in seeking to do the best for the Redcar steel plant and, indeed, for steel more widely, where other issues were also involved.

I take the noble Lord's point about the consultation. It is not ideal that it should happen over the summer, although, rather counterintuitively, I think I am right in saying—I will correct it in correspondence if I am wrong—that the best-responded-to consultation was the Cambridgeshire and Peterborough one, which took place at the same time. Nevertheless, I take the point that has been made: it is not an ideal time.

I say in all seriousness to the noble Lord, Lord Beecham, that some valid points were made but very often the Opposition's response is to be against the policy, which I can well understand, and they seem to be against the policy for elected mayors. As I said, I shall be happy to pick up in correspondence any points that I have missed.

Lord Beecham: I make it clear that the difference between us is that, if there is to be a mayoral system, it should have the support of the local electorate. That is the only difference between us.

Lord Bourne of Aberystwyth: I am relieved that it is the only difference, but it is a difference as to how that is expressed. We believe that it is expressed through the support of elected members of the combined authorities. The noble Lord does not agree. I think I am right in saying that certainly a majority of these authorities would be those with a Labour majority. If these authorities did not want that, they would have every right to say so and not to be part of the system.

Lord Beecham: I regret having to say this but the noble Lord seems to overlook the fact that when eight referendums were held several years ago, they were held on the instructions of the Government. The local councils were not invited to say whether they wanted an elected mayor and to have some sort of consultation, as with the process here. They were instructed to have a referendum. That principle was adopted before. Now it has been abandoned because most of those referendums, from the Government's perspective, went the wrong way. It is not the noble Lord's fault because he was not in the Government at the time. The noble Lord, Lord Young, might have to accept some of the responsibility, collectively. But this is a different case.

Lord Bourne of Aberystwyth: This is indeed a different case because they were single authorities. These are combined authorities and the expression of the democratic view is given by combined authorities. It is a policy difference. The noble Lord does not like that policy, but it is the Government's policy.

Lord Kennedy of Southwark: I return to the issue of consultation. If we look at the order before us today and some of the ones we have seen recently, it appears that we have a kind of hokey cokey attitude to consultation, in that the Government go in and out depending on what they want. Actually, largely, they ignore what the consultation says. If they agree then that is great and if they do not they say, "Well we are sorry about that". I am not sure if this is the right thing to do. I suggest that the noble Lord goes back to the department and the department comes back with some consistency in how the Government address consultation. It is all over the place at the moment, and even some noble Lords on the Bench behind the Minister think that it is not the way to operate.

Lord Bourne of Aberystwyth: My Lords, there is a great difference between a consultation and a plebiscite. This is asking not a simple yes/no question but a variety of questions. Of course we look at the consultation, but it is not a plebiscite on whether to go ahead or not. The noble Lord has not raised this point before and has supported such things. I am not sure whether he is now suggesting that the consultation should be regarded as a plebiscite.

Lord Kennedy of Southwark: I am not saying that. The point I am making is that these orders come before us quite frequently and sometimes the Government say, "Oh, isn't it great that we have everyone fully behind us?", and the next time they say, "Oh, sorry about that", and they do not mention it. There seems to be an inconsistency in how the Government address consultation and whether they take it on board. That is my point and I suggest that the noble Lord goes back to the department and has a look at it. The way the Government use consultation seems odd. There is an inconsistency, and the department should look at that.

Viscount Eccles: My Lords, I want to return to the issue of consultation. I am entirely on the same side of the fence as the noble Lord, Lord Kennedy. Two very serious things emerged from the results of the consultation. One is whether this is an appropriate geopolitical area to achieve all the things that it is hoped combined authorities will achieve. The other is the history of local government in the area, which I did not refer to before but I refer to now.

Many changes have come about during the well over 60 years in which I have lived in the north-east. Those changes, in general, have not worked. The area has a very long and different history. In 1820, Middlesbrough was nothing but a hermit's chapel on the banks of the Tees. Areas that are not contiguous and have very different histories will have to be pulled together. That is what mayors are supposed to be for. I urge my noble friend to watch very carefully what happens. I said this regarding the previous order and I say it again: I welcome what is being done, but I am uncertain as to whether it will succeed.

Lord Kennedy of Southwark: I have one further point. I accept entirely that this is not a plebiscite, but I ask the Government, what is the point of consultation? Is the noble Lord saying, "Yes, of course we will consult on these things, but at the end of the day it will not make any difference: we will do what we are going to do"? If not, what is he saying?

Baroness Pinnock: On a separate point entirely, I asked earlier in the debate whether a specific scrutiny system would be established for the development corporation. If it is successful, as I hope it will be, it will make a huge difference to the area. A scrutiny system should be set up to investigate what decisions are made and how.

Lord Bourne of Aberystwyth: My Lords, I will write in full on the issue of the consultation and on the points made by my noble friend Lord Eccles— which are somewhat different from those raised by the noble Lord, Lord Kennedy—about the geopolitical nature and history of the area. I apologise to the noble Baroness: she has indeed raised the question of scrutiny at least twice, and I will write to her on that. A scrutiny system is certainly in place. Whether it operates across the whole combined authority or is specific to the strategic development corporation, I am not sure, but I will write fully to her on the issue.

I commend the order to the House.

Motion agreed.

Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017

Motion to Approve

1 pm

Moved by ***The Earl of Courtown***

That the draft Regulations laid before the House on 20 December 2016 be approved.

The Earl of Courtown (Con): My Lords, these regulations implement key aspects of the EU damages directive. The damages directive aims to make it easier for consumers and businesses to bring private action claims for damages. It applies only where there has been a breach of European competition law, which may or may not be accompanied by a parallel breach of national competition law.

Among other things, the directive covers a range of issues affecting a claimant's ability to have access to compensation, including access to the relevant information to support their claim; the time within which a claim must be brought; and incentives aimed at encouraging businesses to settle a claim early. The directive also offers protections for small business defendants, cartel leniency applicants and defendants' commercially sensitive information, all of which help make the regime robust and fair to both consumers and businesses.

The United Kingdom has long been at the forefront in Europe on providing access to damages for breaches of competition law. The directive recognises the strengths of UK law in this area and is closely based on it. The Consumer Rights Act 2015 introduced changes to the law to help consumers and businesses bring private actions. The Act widens the jurisdiction of the Competition Appeal Tribunal and promotes collective proceedings and settlements.

As this directive is being implemented so soon after the changes implemented by the CRA, we are conscious that we should try to avoid unwelcome confusion and disruption. In our consultation with stakeholders, we initially proposed the usual "copy out" approach to implementation to ensure full compliance. However, respondents highlighted the risk that this carried the potential for undermining important, established UK case law and creating confusion. The Government's approach therefore relies as much on case law and changes to court rules as on the introduction of new regulations.

I now turn to "gold-plating" in respect of the single regime. The damages directive applies only where a business has caused harm following a breach of European competition law or both national and European competition law in parallel. It does not apply to harm resulting from a breach solely of national competition law. However, owing to the close relationship between the United Kingdom and EU competition regimes, the Government intend to apply the provisions to cases following breaches of UK law even when no parallel breach of European competition law exists. This is technically gold-plating, but it will provide for a simpler and more transparent regime and limit the amount of satellite litigation about which regime applies in a particular case. At consultation, stakeholders supported this approach.

I want now to set out the way in which the Government plan to handle the transition from the old regime to the new. The directive states that its substantive provisions should not be applied with retrospective effect, whereas procedural provisions can be backdated. The directive does not designate measures as substantive or procedural. To ensure clarity, the regulations distinguish substantive provisions from procedural.

Substantive new rules will apply only to claims where both the infringement and harm occurred after the coming into force of the implementing legislation. Procedural provisions will apply to proceedings which begin after the commencement of the implementing legislation and may apply to cases where the harm or infringement took place before the coming-into-force date. All provisions of the regulations are substantive save for the provisions on disclosure and use of evidence.

I will now run through the Government's approach to some of the key provisions of the directive. The regulations introduce into UK law for the first time a presumption that cartels cause harm and a ban on the award of exemplary damages. The directive sets out provisions to tackle the passing-on of overcharges by a business which has been a victim of, for example, a cartel. Claimants may be several steps removed from the infringing company which is ultimately responsible for paying damages. If an infringement has caused price increases which have been passed along a distribution chain, those who suffered the harm in the end can claim full compensation.

In addition, the directive provides a defence where the claimants have passed on the whole or part of an overcharge. Well-established principles of tort law establish the right of indirect purchasers and the principle of passing on. The recent judgment of the Competition Appeal Tribunal in the Sainsbury's v Mastercard case explicitly set out both the rights of indirect purchasers and the validity of the passing-on defence. Therefore, we are not legislating for these provisions. We are, however, using the regulations to set out who has the burden of proving that there has been passing-on and what must be established in the different circumstances.

It is important that SMEs are held accountable for their actions as part of a cartel. It is also important that any damages that an SME pays are proportionate to its role in the cartel. The regulations therefore ensure that an SME is liable only for the loss or damage caused to its direct or indirect customers. The protection applies only where the SME held less than a 5% share of the market for the duration of the offence or where paying damages would make the SME economically unviable. If an SME was the ringleader of a cartel, coerced others to join or had previously breached competition law, it would not be protected.

The regulations also limit the liability of successful applicants to a cartel leniency programme. As is the case with SMEs, a cartel leniency applicant is liable only for the loss or damage suffered by its direct or indirect customers, unless claimants cannot gain full compensation from other cartelists. To further protect the UK's important cartel lenience regime, the regulations also ensure that leniency and settlement submission are protected from disclosure.

Part 5 of the regulations deals with the limitation periods, or prescriptive periods in Scotland. These are the periods during which a claimant can make a claim. The Competition Act 1998 already establishes a stand-alone limitation regime for competition private actions in the UK. The Consumer Rights Act 2015 amended this regime to bring it closer to the Limitation Act 1980 and similar legislation in Scotland and Northern Ireland.

Limitation periods already meet the requirements in the directive that they run for "at least five years." They will remain six years in England, Wales and Northern Ireland, and five years in Scotland. The limitation or prescriptive period starts when the competition infringement has ceased and a claimant knows or can reasonably be expected to know the identity of the infringer; that an infringement has occurred; and that harm has occurred arising from the infringement. The regulations ensure that the limitation period is suspended in various circumstances—for example, where a competition authority in the UK or the European Union is investigating the behaviour to which the complaint relates.

The regulations introduce a requirement that a defendant who settles a claim should be protected from contribution claims by co-defendants. This will protect the incentives for defendants to settle early, providing them with confidence that they will not be subject to multiple further claims once they have settled with affected parties.

What I have set out today is what this Government believe is a full implementation of the directive which retains important aspects of the UK's current regime and will work for UK consumers and businesses in the long term. I commend the draft statutory instrument to the House.

Amendment to the Motion

Moved by ***Lord Hodgson of Astley Abbotts***

At end insert "but that this House regrets that the draft Regulations were laid without Her Majesty's Government taking the opportunity to bring forward proposals for a regulatory structure which will maintain public trust and confidence in the provision of funding for third party litigants."

Lord Hodgson of Astley Abbotts (Con): My Lords, I thank my noble friend for his explanation of this legislation. I know that he has been landed with it at the last minute and he has taken on this pretty technical

[Lord Hodgson of Astley Abbotts]
subject with his usual verve and aplomb. Despite being technical, the subject is nevertheless important in that it has at its core the important issue of the protection of consumers.

Turning to the legislation, my noble friend drew attention to the fact that this is a twin-track approach. We have taken the whole EU directive but maintained a good deal of existing UK law and practice alongside it. He referred to it as gold-plating but, as he equally fairly pointed out, the approach was approved of and supported by the practitioners. In those circumstances, who is to complain about that? My concern about these regulations is that the Government have not taken the opportunity to bring forward, or at least signal their intention to bring forward, proposals to make sure that sufficient transparency and accountability exist for a regime by which funding is provided by third parties otherwise completely unconnected with the action to enable competition and other cases to be brought before the court. This process is known as third-party litigation funding.

Before going any further, I must remind the House that in my registered interests I am a non-executive chairman of a company that provides analytical services to companies involved in third-party litigation funding. The company is not party to the actions, it merely provides services and has no direct involvement. That having been said, I shall get back to the background.

The growth of third-party litigation funding has been prompted by two important developments. First, there is the general increase in contingent fee litigation, where any damages awarded do not go exclusively to the injured party but can be shared with others, including those who provided the means to bring the case to court. This increase has arisen in large measure following the passage of the Legal Aid, Sentencing and Punishment of Offenders Act, which in turn implemented the measures recommended by Lord Justice Jackson in his 2010 report on the costs of civil litigation. That is the first big driver of growth.

Secondly, there has been the change brought about by the Consumer Rights Act 2015, referred to by my noble friend in his opening remarks. This made the important change of abandoning the traditional approach of opting in to a case—you had to indicate your wish to be involved in order to participate—in favour of an opt-out approach where unless you say, "I do not want to be part of the case", you are assumed to be in. As a result, huge and potentially hugely profitable cases have become easier to lodge. The numbers are huge. The Mastercard case now before the courts, again referred to by my noble friend, has been brought on behalf of 46 million individual consumers and alleges damages of £14 billion. Importantly, an external funder put up £40 million on terms that are not entirely clear to bring the case to court.

It is important that my remarks today should not be seen as an attack on the concept of third-party litigation funding. It has a useful role to play in intercompany disputes and in helping to bring consumer cases. Many third-party litigation funders are entirely respectable and open their activities to public scrutiny. At least one company is listed on the Stock Exchange. However, we have an iceberg problem. What is going on with that part of the industry operating below the water line? As an industry in the United Kingdom, third-party litigation funding is virtually unregulated. The Association of Litigation Funders, the ALF, is a voluntary, self-governing organisation. I understand that there are currently seven members but anecdotal evidence suggests that there are more than 20 firms operating in this field in the UK, so less than half belong to the association. It has a code of conduct but lacks any real enforcement capability. The maximum fine it can impose is £500—trivial given the nature of the sums we are discussing—and the maximum penalty is expulsion from the association. That would not prevent the particular firm continuing to provide funding for third-party litigation.

Moreover, funders have benefited from a loophole in the law. When the Jackson proposals on contingency litigation were brought in with the LASPO Act, they included various restrictions on insurance companies and legal practices involving themselves in funding third parties. I imagine that Lord Justice Jackson's purpose was to inhibit the growth of a litigation culture. However, no such inhibitions have been placed on the work of third-party litigation funders, who have thrived commensurately.

1.15 pm

In an article in the legal trade press on 7 February, the law firm RPC—formerly known as Reynolds Porter Chamberlain—claimed that litigation funding went up by 26% over the last year from £575 million, or just over half a billion pounds, to £723 million or just over three-quarters of £1 billion. There are further anecdotal suggestions that because legal firms cannot themselves fund these cases directly, some are now packaging up a bundle of cases to pass on to third-party litigation funding firms.

We stand on the threshold of a whole new approach. To date, third-party litigation funders focused mainly on commercial claims and massive consumer ones. Now they are beginning to focus on smaller-value claims. Augusta—not an ALF member—is looking to provide funding down to £50,000 to bring a claim. Burford—an ALF member—launched what it calls a specialist "sprint" product or service for lower-value claims, providing funds between £25,000 and £50,000 per case. This development may well increase the rise of entirely lopsided arrangements between experienced third-party litigation funders and smaller groups of inexperienced plaintiffs. All this means that a number of important issues must be addressed—and the Government need to be aware of them.

First, how are the costs of funding the litigation being dealt with in any distribution? This is what is known in the trade as the waterfall. Who gets the first bit of the money? For example, assume that a third-party litigation funder provided funding on the basis of his receiving 25% of any damages after deducting the costs of the case. A consumer might believe that his receiving 75p in the pound was not an unreasonable percentage. However, if the costs of the case turned out to amount to 30% of the damages awarded, then his share is not 75% any more but 52.5% because he has only 75% of the 70% available after the costs are deducted.

Secondly, should a third-party litigation funder be able to receive 100% reimbursement of all costs before any payment is made to the plaintiff? Should the injured party have some rights to share in at least some way any awards made?

Thirdly, should there be a maximum percentage payable to third-party litigation funders? I went to a seminar on third-party litigation funding and was astonished to hear a funder say proudly, "We would never take on a case where we received more than 50% of the damages". I assume that he would be quite happy to take, say, 45%. There is nothing absolutely wrong with that percentage so long as the person on the other side of this bargain, the plaintiff, is able to judge that what is being sent to him is fair and he has been adequately advised that it is so.

Fourthly, who controls the case and who ensures that continuing or discontinuing any action is done on a basis that is fair to all parties? Third-party funders may well raise a discrete fund—a block of money that will be invested in a particular group of cases. Say there are a dozen, 11 of which have now settled perfectly satisfactorily. There will be a terrible temptation for the funder to bring the twelfth and last case to an immediate conclusion irrespective of the interests of the plaintiff, wind up the fund, show its investors that it has made a lot of money, and no doubt go out and try to raise another, rather larger fund and start all over again.

Finally, if a funded case is lost, does the third party have any exposure to adverse costs on the principle that the loser pays, and is his maximum exposure the amount of money that he has devoted and put into the case? Could there be cases where the funded parties—the plaintiffs—could be exposed to these costs in the event of the third-party funder not providing it?

So far I have focused on the position of the individual but there is also a growing danger for businesses, especially smaller businesses. This arises from the increasing use of what is known in the US as a blackmail settlement. This involves a marginal case where the third-party funder calculates that an award of damages will probably cover its costs but there is a chance of a major payout. To avoid tying up management time and incurring costs—maybe extensive costs: professional fees and so on—for defending a case that may drag on for years, the accused firm may conclude that it is cheaper to settle, even if it believes it has a good case.

I will conclude by pulling the threads of my argument together. I am not arguing that third-party litigation funding should be banned. There is undoubtedly an access to justice argument. But there are reasons to fear that some of the emerging practices that claim to be providing consumer protection or litigation services to business are resulting in good returns to the funders and their legal advisers, while low and negligible returns are being given to the injured parties, at the same time diverting much corporate management time from its central duty of growing successful businesses, on the success of which the future prosperity of the country depends.

I will finish as I began, with Lord Justice Jackson. In his 2010 report he said:

"I accept that third party funding is still nascent in England and Wales and that in the first instance what is required is a satisfactory voluntary code, to which all litigation funders subscribe. At the present time, parties who use third party funding are generally commercial or similar enterprises with access to full legal advice. In the future, however, if the use of third party funding expands, then full statutory regulation may well be required, as envisaged by the Law Society".

I argue that now, five years on, we are at that point. Whether statutory regulation is the right answer I do not know but I argue strongly that the present regulatory regime is inadequate. The Government have a choice. They can stand by and await an inevitable scandal and, I fear, be caught in the backwash, or they can now set in train, with the various regulators, a scheme to bring forward a regulatory system which has the transparency and accountability to maintain public trust and confidence. I urge the Government to choose the latter course now. In particular, I regret that they have not chosen the introduction of this statutory instrument to make that choice. I beg to move.

Lord Faulks (Con): My Lords, I am grateful to the noble Earl for outlining the regulations and to my noble friend Lord Hodgson for his contribution to the debate and for drawing my attention to this opportunity to alert Her Majesty's Government to what I believe is a highly significant development in the funding of litigation in the United Kingdom. He speaks as someone with experience of business and I speak as a practising lawyer.

As a law student I was introduced to the rather mysterious rules concerning barretry, maintenance and champerty. These rules meant, as I understood them, that it was only the parties to litigation who should finance or benefit from it. For a recent and authoritative discussion of the issue, I recommend the lecture delivered by the noble and learned Lord, Lord Neuberger, as President of the Supreme Court at Gray's Inn in May 2013.

At the heart of the problem is that the law is expensive and yet it is important there should be access to justice. Yet there was a historical prohibition on litigation funding by third parties, based in part on the acknowledgment that the law could become an instrument of oppression and injustice. Parliament itself, in setting up the legal aid scheme post war, provided an exception to the principle, one which was broadly welcomed. Similarly, insurance-funded and trade union-funded litigation made significant inroads into that prohibition.

Things moved on with the gradual restriction on what was an extremely expensive legal aid scheme with the development of conditional fee arrangements. After a modest beginning in 1990, they were extended through the Access to Justice Act 1999 but eventually got out of hand. What had once been a scheme intended to help indigent litigants turned out to be a bonanza for lawyers and oppressive to defendants, including government bodies such as the NHS.

Sir Rupert Jackson was invited to investigate the matter and the result was legislation in the form of the LASPO Act, which has done much to rebalance the CFA system. CFAs are not as profitable now and thus less likely to be employed. Damage-based agreements, which are in effect contingency fees as opposed to conditional fees, allow lawyers to a certain extent to share the fruits of litigation with their clients but they have not had very widespread take-up.

[LORD FAULKS]

Although CFAs were primarily funded by insurance companies, there has now developed, as my noble friend Lord Hodgson said, a substantial third-party litigation funding market. There is, as I understand it, very little hard evidence as to the extent of the market and the evidence is anecdotal. But it is becoming increasingly clear that large-scale litigation is now regularly funded by third-party financiers.

The Civil Justice Council has had some engagement with the issue and has helped develop the code referred to by my noble friend but I wonder whether the Government have any idea how extensive this market is. The code is voluntary and the penalties for failing to follow it are derisory so that in effect this is a large and unregulated market. There is a real risk of abuse. Of course, even conventional litigation presents challenges to those involved. A lawyer's interests may not always be entirely congruent with those of his or her client. But where the litigation is an investment, and those running the case are not regulated, as are solicitors and barristers, the risk of a wholly commercial approach to issues of justice is worrying.

Once a party knows that the other side has third-party funding, this can bring about a form of bullying in relation to the non-funded party. The temptation not to be straight with opponents is considerable. Accepting offers early because of external financial pressures nothing to do with the litigation can distort the process. Commercially driven pressures from expert serial litigation funders on lawyers themselves can result in, to put it gently, ethical challenges. These challenges are compounded by the innovation of alternative business structures. The explosion of litigation following the Access to Justice Act 1999 resulted in the evolution of a number of parasitic organisations, not least claims management companies. Although these are increasingly regulated, many lawyers doubt they need to exist at all or that they have much to do with the interests of justice.

What should the Government do? I respectfully suggest that the Government should get a real grip on what the market is doing. I am aware that the Ministry of Justice is reviewing the LASPO Act in terms of whether it has resulted in a loss of access to justice. This will mean considering the availability of legal aid and how the new post-LASPO CFA system is working. This would also provide an opportunity for the Government to consider third-party funding of litigation generally.

I do not expect my noble friend to respond in detail to these points. He may well say that this statutory instrument is concerned with consumer rights and it needs a little time before the Government decide how well matters are working. But experience shows that this is a vigorous market which reacts quickly to economic pressures. America is not a good example of a satisfactory litigation system. For the Government to make any meaningful interventions, they need to know what is going on. Should they not require far more information to be provided by litigants about the source of their funding than is currently the situation? All government departments are, to some extent, affected by litigation and there is room for some cross-departmental work. I hope my noble friend will alert other departments to this troubling phenomenon.

Finally, I remind the House that personal injury litigation has just got a great deal more profitable. This week, the Lord Chancellor altered the discount rate. This will affect the NHS and every motorist in the country. It may help to fan the flames of third-party funding. It is time the Government seized the initiative.

1.30 pm

Lord Stevenson of Balmacara (Lab): My Lords, I am grateful to the noble Earl for introducing the substantive subject of our discussion—the regulations before us—but we have also been treated to a masterclass in other areas. The combined effect of the speeches from the noble Lords, Lord Hodgson and Lord Faulks, has been to raise what might be a very serious issue. The whole House owes them a debt of gratitude for doing so, even if they had to be inventive in trying to work out the main points they wished to make within the constraints of this instrument.

I was going to say very much the same things as the noble Lord, Lord Faulks, but in a much more workmanlike way, since I lack his legal and other experience. I sense in this the beginnings of a scandal that will affect the way statutory measures before us and others will be taken. These speeches gave us the benefit of the business perspective—it is clear that this is an ongoing issue—and the legal dimension, where the ethical issues raised will have to be addressed. The ongoing review of LASPO gives the Government an opportunity to move quickly on this. The noble Lord, Lord Hodgson, said that this needs to be nipped in the bud quickly if it is not going to run out of steam, particularly in the light of the changes announced on personal injury. I back what has been said and hope the Minister will be able to respond positively.

We have no particular objections to the statutory instrument itself, which is a sensible way forward based on existing UK law. The point has been made that the model derived under the Enterprise Acts and various legislation that has gone through this House in recent years has been used to bring forward a model for the whole of Europe.

I will make three or four minor points. It was good to hear during the tail end of today's debate on consultation that consultation does work in certain instances, and that the consultation responses—albeit mainly from the professionals, not consumers—went for a rather more gold-plated result that would simplify the work being done. There is nothing wrong in that. It is good that a loophole has been closed that could have been exploited through different jurisdictions operating in different ways in Europe and in the UK.

The Minister made a good attempt to resolve an issue that might still cause problems further down the line: the rather ill-defined difference between procedural and substantive issues. I do not expect him to deal with that today, but he might reflect on how this will play out in a letter. The Explanatory Memorandum is simply a list: it does not give a sense of how the litigants or those affected will respond in practice. I would be grateful if he explained that.

There is one other point it would be interesting to have more detail on. The approach taken to SMEs is right in principle, but it is surprising to learn that the SMEs caught up in what might be regarded as cartel

issues, and which therefore might be subject to penalty, will be limited to those with a 5% share. The problem is that a 5% share of market limit, presumably on a UK basis, will not deal with what happens in the real world of SMEs' engagement with very local areas. A small business will be small in its reach, as well as in terms of employees and turnover. Therefore, there may be local effects that would not be caught by the 5% share limit. I do not expect a response on this today, but it would be interesting to hear in due course what the Government's response would be.

I have two final points. Any response from this side of the House to a statutory instrument from this department usually asks why common commencement dates have not been followed. The Minister knows that, because I have raised the issue with him before. An account is given of why it is not necessary to wait until 6 April on this occasion, but it does not explain why the delay occurred. I do not want an answer today, but at some point it would be interesting to know what held back this provision. As the Explanatory Memorandum anticipates, people want to use it immediately. It came into effect this time last year, but it has taken since then for the statutory instrument to come forward. That is probably to be regretted.

Finally, the debate that led to the introduction of the amendment from the noble Lord, Lord Hodgson, was prompted by a clause in the Consumer Rights Act, with which the House engaged this time last year, relating to opt-in and opt-out arrangements. He explained that third-party litigation funding has had a chance to thrive and grow. He could have mentioned that when we discussed this, we were also interested in the possibility of an alternative dispute resolution approach to a number of the issues that were raised. If there was an ADR approach we would not be seeing so much of this going into the courts, so there would be less third-party funding. Again, I am not looking for a response to that, but it might be noted by the department.

We have a deficiency here. The proposal in the directive was that every sector of our economy should have adequate ADR systems in place. The Government, for their own reasons—we pressed them hard on this—have not gone down that route, so appropriate ADR solutions do not exist in all sectors. Where they exist they have been encouraged, but where they did not they have not been put in place. In retrospect, that might have been a better solution, although of course one can say that in hindsight of many things.

The Earl of Courtown: My Lords, I thank all noble Lords who have taken part in the debate: my noble friends Lord Faulks and Lord Hodgson, and the noble Lord, Lord Stevenson. I will deal with the points he raised first—in particular, the procedural issue. I will write to him on that; likewise on the SME 5% share point.

The noble Lord is well known to me regarding commencement dates and such like, as he said, but as far as the directive being implemented later is concerned, in our consultation we proposed to follow standard practice and copy out the directive. Respondents to the consultation highlighted the risks this presented to the UK's established case law. We listened to these concerns and changed our approach. The regulations do what they need to do to supplement the court rules and case law in order to implement the directive in full. Drafting these regulations has been complex. We wanted to get them right rather than rush them through.

I understand the concerns of my noble friends Lord Faulks and Lord Hodgson. I welcome their questions on whether the Government could have used the implementation of the directive to bring forward proposals for a regulatory framework. The damages directive does not include measures relating to third-party litigation funding. Taking any action through these regulations would be going beyond the powers we have to regulate. The Government are not persuaded that any changes to the regulation of third-party litigation funding are warranted at this time. However, the Government will keep this matter under review as the market for third-party funding develops, and are ready to investigate further should the need arise.

My noble friend Lord Hodgson mentioned that the introduction of opt-out in private actions has led to the increase in third-party litigation funding. Opt-out collective actions were introduced to encourage more consumers to seek redress. During the introduction of these actions, the Government put in place measures to deter claims at the Competition Appeal Tribunal whose aim was to make money for litigation funders.

My noble friend also mentioned that there are no safeguards in relation to third-party litigation under the CRA. The Competition Appeal Tribunal has powers to ensure that, first and foremost, consumers have access to damages awarded following opt-out competition claims. For example, under CAT controls, the assumption is that residual money that is not claimed by the consumers will be given to charity.

I thank my noble friends Lord Faulks and Lord Hodgson for raising their concerns about the impact of third-party litigation funding. The last Government accepted the recommendation of Lord Justice Jackson that a voluntary code of practice be agreed. This work was undertaken by the Civil Justice Council, and the code came into force in 2011. Although the Government have not done a formal review of the effectiveness of third-party litigation funding, they have said that they will keep this under review, as I mentioned earlier. If noble Lords have particular concerns, I urge them to set these out in writing and I will ensure that they are passed on to the Justice Minister.

The Government are committed to reviewing the operation of the regime covering private actions for competition damages by the end of March 2019. I have heard noble Lords' concerns, but the government position is clear, and it would not have been possible to use the damages directive as a vehicle for this issue. I ask my noble friend to withdraw his amendment to the Motion.

In closing, I stress that, as I mentioned in my opening speech, the statutory instrument contributes further to the recent major reforms to consumer and competition law introduced through the Consumer Rights Act 2015. It will make it easier for consumers and businesses to bring private actions for damages where they have suffered loss as a result of breaches of the competition prohibitions set out in Chapters 1 and 2 of the

[The Earl of Courtown]
Competition Act 1998 and in Articles 101 and 102 of the Treaty on the Functioning of the European Union. I commend the draft statutory instrument to the House.

Lord Hodgson of Astley Abbotts: My Lords, I thank my noble friend Lord Faulks for his expert legal advice and insights into this problem, which align with my experience, and the noble Lord, Lord Stevenson, for his general support regarding the dangers we face. I also thank my noble friend for replying. It is good to know that a review is ongoing and that in March 2019 we may be slamming shut the door of the stable—assuming the horse is still inside. He is perfectly right, of course, that as far as competition cases are concerned, the Competition Appeal Tribunal controls the gate, which may provide some ability to slow things down.

All I had hoped to do today was to warn the House, and through the House the Government, of what I see as some substantial difficulties and dangers that may lie ahead. If nothing is done and difficulties do ensue, I promise my noble friend that I will try to avoid saying, "I told you so". But in the meantime, I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Supply and Appropriation (Anticipation and Adjustments) Bill

First Reading

1.43 pm

The Bill was brought from the Commons, endorsed as a money Bill, and read a first time.

Building More Homes (Economic Affairs Committee Report)

Motion to Take Note

1.44 pm

Moved by ***Lord Hollick***

That this House takes note of the Report from the Economic Affairs Committee, *Building More Homes* (1st Report, HL Paper 20).

Lord Hollick (Lab): My Lords, it is a privilege and a pleasure to introduce the report of the Economic Affairs Committee entitled *Building More Homes*, which was published last July—things move quite slowly in the housing policy market. I thank all members of the committee who participated, our terrific support staff, Ayeesha Waller, Ben McNamee and Oswin Taylor, and our specialist advisers Professor Geoff Meen and Professor Christine Whitehead.

The committee examined this topic in depth over six months. We heard from more than 50 witnesses and received scores of written submissions. What was revealed was a dysfunctional market beset with long-term failures, leading to a chronic shortage of supply and worsening availability and affordability. The committee concluded that the housing market needs bold and radical measures if it is to be reformed. Today's debate affords the House the opportunity to consider the Government's recently published White Paper, *Fixing our Broken Housing Market*, and see how it matches up to our report's challenge to build more homes.

The cost of a broken market in human terms is considerable. The supply of affordable rental accommodation, in particular social housing, is inadequate and the availability of affordable starter homes is severely restricted. This forces many young families to live in insecure private rental accommodation, supported by a rapidly increasing housing benefit bill, which in 2015 amounted to £27 billion. The lack of availability of affordable housing prevents movement of labour to areas—particularly London and the south-east, and other major metropolitan areas—where there are job opportunities. The price people are paying for our failed housing policies is a crushing financial and emotional burden for many families.

The lack of housing supply forces house prices up, with the latest annual increase to December 2016 at 8.2%. Those buying their first homes are now older and wealthier—indeed, they have to be wealthier. Unaffordability has increased the cost of the private rental sector, such that tenants in London spend 60% of their income in rent, as opposed to those owning their own home, who spend 19% of their income.

How many new homes do we need to build each year? The current level of supply is gradually recovering from a sharp decline following the financial crisis but still falls far short of what is required. Our findings were that, if we are to meet the current annual demand and catch up on the hangover of unmet demand from the past, we need to build 300,000 homes each year. This higher rate of construction will need to be sustained over many years to have a moderating effect on prices.

The White Paper acknowledges that between 225,000 and 275,000 homes need to be built each year, but it does not commit to that target. The Government appear to be continuing to stick to their current target—the target of the last Government—of 1 million homes in the lifetime of this Parliament. Would the Minister please confirm in his reply what the Government's current target is?

The last Government chose to prioritise the expansion of home ownership at the expense of homes for social and affordable rent, where demand from low-income households is high and unmet. We were told that opportunities to boost institutional investment in the private rental sector are potentially being undermined by the very policies designed to assist owner occupation.

The committee examined the long-standing and persistent reasons for failing to build enough homes, and proposed solutions to each of them. I will focus on three key failures.

The Government have very much relied on the private sector to build the homes needed, and the private sector has failed to do that. The private market is, we learned, uncompetitive and distinctly oligopolistic in character. The number of SME builders has fallen dramatically following the financial crisis, while the large builders and land agents hold significant land banks. A third of planning permissions are not used, and estimates of the total number of unused planning

permissions vary from 445,000 to more than 600,000. That variance highlights one aspect of this market, which is that the statistics are often rather elusive.

From the builders' economic perspective, they are behaving quite rationally, as they are seeking to maximise profit and minimise exposure to risk; they therefore manage for margin rather than volume. So the economic incentives need to be changed. We recommended that local authorities be given the power to levy council tax on land not developed after an agreed period of time. The Government recognised the problem, but their response is to decrease slightly the length of time before builders have to start work. It is doubtful that this measure is strong enough to tackle the problem.

The second failure is the almost non-existent level of public sector building. A central finding in our report is the conclusion that the UK has only built—and, in our view, can only build—enough new homes when local authorities play a substantial role in housebuilding. In the decade to 1979, local authorities built more than 1 million new homes, but in the decade to 2015, they built just 9,000.

We were impressed by the ambition of local authorities, particularly large metropolitan authorities, wanting to get back into the business of building houses, but they are unable to access the funding required to support their ambitions. The restrictions on the ability of local authorities to borrow to build social housing are both arbitrary and anomalous. The restrictions that, for example, allow them to borrow to build a leisure centre or a swimming pool but not to build houses should be replaced and reformed. They should be allowed to borrow under the prudential borrowing regime to build all types of houses, in particular, social housing.

In London and elsewhere, local authorities have shown an entrepreneurial spirit, entering into partnerships with housing associations, institutions and private sector builders to develop multi-tenancy sites, where the development profits can be used to help the local authority to fund future developments. The success of the partnerships will hopefully encourage local authorities to consider investing some of their sizeable reserves in housebuilding.

The Government have made a welcome pledge of £2.3 billion over the next four years to the housing infrastructure fund, targeted at the areas of greatest housing need. The fund will pay for infrastructure projects, such as transport and utilities, to enable local authorities to unlock new housing projects. This is a good start. The White Paper introduces a further potential source of government funding, through bespoke housing deals with local authorities in high-demand areas to deliver genuinely additional housing. The Government are prepared to use "all the levers" at their disposal to support these bespoke deals, but the White Paper gives no indication of the funds available. Can the Minister please let us know the amount of money available to support this interesting initiative?

The third failure is the low level of homebuilding on public land. The committee heard evidence that over 3 million homes could be built on public land. Public land in total is 900,000 hectares, or 6% of all land. In London, it is estimated to be 20% of all land. Public land presents an opportunity to build the kind of homes the market is not willing to support and also, very importantly, to support the revival of small and medium-sized builders through direct commissioning. This would bring additional, much-needed competition to the marketplace.

The Government must be commended for taking action to release land, but, as the National Audit Office has pointed out, the promised houses have not been built on that land. The Government expect that, by 2020, nearly one-third of their housebuilding target—assuming it is 1 million—will be built on public land. We recommended that the National Infrastructure Commission be charged with overseeing and monitoring the number of homes actually built, so that we know what is going on. The Government acknowledge the problem and commit, somewhat feebly, to "work harder" to make public sector land available, but they are silent about how progress is to be pushed ahead and monitored.

We also recommended that the release of public land could be achieved, in part, by extending the flexibility of local authorities to dispose of land for housing at less than best consideration and not be forced—as is the case now—to sell that land suitable for housing at higher prices to commercial developers. The Government agree with this and acknowledge that the availability of public land is essential if we are to provide the boost to building low-cost homes in areas of high demand.

On planning, we called for local authorities to be able to increase planning fees if the extra revenue is invested in planning departments. Indeed, many developers told us that they were very happy to pay more if the underresourced planning departments that they had to deal with could use the funds only to beef up their staff resources to speed up the planning process. The Government opposed an amendment along these lines to the Housing and Planning Bill, but have now had a change of heart and included this proposal in the White Paper, which is to be welcomed.

Our report also drew attention to the negative effects on the housing market of regular policy and fiscal changes. Intervention in one part of the market can all too easily disrupt another part of the market. For instance, the changes in stamp duty land tax, which have proved to be a bit of a boon for the Treasury, appear to have deterred people from moving to smaller homes, thus creating a barrier to the best use of the current housing stock. This has also slowed the development of the vibrant buy-to-let market.

As he carries out his extensive consultation process on the White Paper, Gavin Barwell, the Housing Minister, is emphasising that he wants government policy to be held steady and settled for a period of years. This will be widely welcomed in the industry, but will the Treasury agree? It is of course the Treasury that sets the rules for local authority borrowing which so constrain the ambitions to build. Unless the Treasury takes the bold step to free local authorities to borrow prudentially to build homes, it is doubtful that the White Paper's commendable ambitions can be delivered. I beg to move.

1.56 pm

Lord Forsyth of Drumlean (Con): My Lords, it is a pleasure to follow the noble Lord, Lord Hollick, and I just take a few moments to pay tribute to the excellent way in which he chairs our committee. The noble Lord, Lord Tyler, in one of these BBC programmes, suggested that this is something of a daycare centre—it feels more like a workhouse under the leadership of the noble Lord: we have produced a report on electricity, we are working on a report on the labour market, we have finished off this housing report, and I believe we are doing something on student loans. We used to meet on Tuesdays; we now meet on Tuesdays and Wednesdays—and Thursdays, sometimes—and, in addition to that, the sub-committee now meets two days a week. So let us have no more talk about how this House is not properly employed.

I found this subject something of a challenge; housing is not an area where I claim any expertise. The last time I thought seriously about housing was when I was on Westminster City Council, which is nearly—gosh, it cannot be that many years ago; it is quite a long time, anyway. I was quite struck when, just after new year, I arrived by train in Glasgow. It was pouring down with what was almost sleet, on a horrible cold night. I went to get a taxi, and sitting in a sleeping bag in the wet was a young girl with a cup wanting money. Around London today we can see more and more examples of people in this desperate situation. Everyone in the taxi queue walked past, pretending not to notice her—if she had been a Labrador, everyone would have patted it, but she was a person and very few people put any money in the cup. It is not just with homelessness that we have a problem; we also have the problem of professional couples earning in good jobs who, in some parts of the country—most notably in London and south-east—cannot afford to get into the housing market. I was very proud to be a member of the Government in which my noble friend Lord Lawson led us with considerable success towards the idea of the home-owning democracy. The fact is, home ownership is falling and our ability to house those on the lowest incomes is non-existent.

If people do not have time to read the report, the only thing they have to look at in it is Figure 1. It shows the housebuilding that has occurred in the various sectors, and outside the private sector—as our chairman, the noble Lord, Lord Hollick, has pointed out—it is failing to meet demand. The demand has increased remarkably. I was quite struck by the numbers reported by the noble Lord, Lord Green. He said that we had to build a house every 15 minutes to meet the demand that was arising simply from immigration. However, it is not just immigration that is increasing demand: it is also rising incomes, the change in the nature of households and the availability of cheap mortgages because of quantitative easing.

Central to this problem, as the noble Lord, Lord Hollick, pointed out, is the supply of land. One of the recommendations in our report is that we should create some incentive. There is no incentive for a health authority or a transport body to make land available for housing if they do not get to keep the proceeds. That would make a difference, but, as we say in our report, there does not seem to be anyone in central government making sure that that land is used effectively.

We had a private session with the Housing Minister, Gavin Barwell, and I found him the most extraordinary Minister. He has been around the country and is absolutely on top of these issues. He understands them and that is very much reflected in the White Paper. That session was, therefore, very cheerful. We were very cross with him at one stage, however, because the Government took a very long time to respond to our report, and produced a response that was, to say the least, derisory. We were cheered, however, to find out that the probable reason for that was that many of our ideas were being incorporated into the White Paper, for which we were extremely grateful. Again, it shows that, in the Housing Minister, we have someone who is listening. I know he spends his time going around the country talking to local authorities. The key thing here is that this is not a singular problem. It varies from region to region: in some parts of the country, it is perfectly affordable for people to buy homes, but in other parts of the country it is not.

Now we come to the bit that I found ideologically challenging. The great thing about this House is that we operate—certainly our committees do—on the basis of the evidence put before us. The evidence was absolutely overwhelming: we cannot rely on the private sector to provide all the housing that we need and the different categories of housing that we need, but it was also reassuring to find that the old kind of statist ideas were also not going to deliver. We need a rented sector, but this term "affordable housing" is like something out of double-think. Affordable housing turns out to be something that you have to be very well-off indeed to be able to afford. There is little in the way of supply for those people who are on very low incomes and do not have very much money. The conclusion that we came to is that we must find a way of enabling local authorities to provide low-cost housing for people who need those facilities.

Where I was cheered, in recognising that there needed to be more reliance on public sector housing, was that this would also enable us to save a great deal of taxpayers' money. The noble Lord, Lord Hollick, pointed out that we were spending £27 billion on housing benefit. If we had more housing at lower rents provided by local authorities or housing associations, or local authorities in partnership with the private sector, we would not have to provide the housing benefit on such a level. It does not seem a very effective use of taxpayers' money to simply use housing benefit in a market where the rents are going up and up and neither the taxpayer's situation nor the availability of housing is improved.

I should, perhaps, declare an interest as chairman of Secure Trust Bank, because one aspect of the Government's policy is clearly to encourage the building of more houses. They have set a target—I think it is a target—of a million houses, which, as the report points out, will be insufficient. The clear conclusion of our report, described by the noble Lord, Lord Hollick, is that the big housebuilders are something of an oligopoly.

Actually, if you look at the business models of the big housebuilders, they are entirely rational in taking up the land, getting planning permission, creating a land bank, and then restricting the supply of housing that is coming on to the market to maintain the price, get best value and plan for the economic cycle. They are being entirely rational and you would not expect them to do anything else, but that is not consistent with what the Government need to do to meet their policy objectives.

Encouraging the small and medium-sized builders, which the Housing Minister says is a priority, means that they need availability of finance and labour. That has implications for our immigration policy when we finally get control of our own borders, but it also has implications for finance; so what on earth is going on when the Bank of England, in setting the capital requirements of the banks for lending, is actually making it cheaper for them to provide mortgages to people who have a low loan-to-value requirement and more expensive for the banks to provide money to developers to build housing? In the last few months, it has increased the capital weighting required for smaller banks, which are the main sources of revenue for small and medium-sized builders, from a 100% risk weighting to 150%. That means that it is 50% more expensive for the banks to provide loans, and it also means that there is less capital available and less ability for the banks to provide that.

On Friday, a report was published by the PRA with a statement from the Treasury Minister, saying that it wanted to increase competition and that it was going to address these issues. However, when you look at the detail, it is making the situation—certainly on my cursory glance—not better, but marginally worse.

I appreciate that we have lost a bit of time this morning, so I will bring my remarks to a close. On housing for rent, we need—as I have already indicated—rental properties available for people on lower incomes. We also have to recognise, however, that we need to have some means of securing rental tenures that are longer and more secure for people with families. We cannot go back to having a regulated housing market—we are certainly not recommending that—because we know where that will end: it will end with even less supply. We can, however, encourage the development and funding of building for rent in the private sector, where the terms of tenure are longer, to meet an obvious demand as we move forward.

Finally, I should like to say what a pleasure it has been to serve on this committee, and how much I appreciate that the White Paper has picked up on some of the ideas. The Housing Minister told us that everyone wanted a silver bullet. The White Paper is not a silver bullet; there is no silver bullet. We will solve this problem with a combination of policies on the capital and other rules that apply to the banks, on housing benefit, on welfare and on immigration. We need government as a whole to put their shoulder to the wheel on this. In our report, we said that there should be a senior Cabinet Minister who is in charge of driving this policy; my recommendation is to make Mr Barwell a senior Cabinet Minister.

2.09 pm

Lord Sharkey (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Forsyth, and I enthusiastically endorse his comments about making a Cabinet Minister of Gavin Barwell. I too am a member of your Lordships' Economic Affairs Committee which, under the exemplary and firm guidance of the noble Lord, Lord Hollick, produced the report we are debating.

The report's conclusions were in fact straightforward: that the housing market is obviously in crisis, and has been for a long time; and that the crisis is getting worse. In many areas of the country, people have no realistic prospect of being able to buy their own home. The UK-wide ratio of house prices to average income stands at 8:1 and prices continue to rise, last year by 7%. This morning, the IFS forecast that average incomes will not in fact increase at all over the next two years. It is not surprising that home ownership levels are in steep decline, especially among young people. As others have pointed out, the key reason for this is the lack of supply. There is not enough private housing, not enough housing association housing and effectively no local authority housing.

The committee's report examined this failure to build and other aspects of the housing market. We concluded that it was vital that local authorities returned to building at scale and across all types of tenure. We made other recommendations to do with the planning system, the use of public land and the use and taxation of existing housing stock. These were all important and, we believed, helpful recommendations but we were clear that:

"Local authorities and housing associations must be incentivised and enabled to make a much greater contribution to the overall supply of new housing".

We then said:

"Without this contribution it will not be possible to build the number of new homes required".

Since the early 1960s, the private sector has on average built around 150,000 new homes annually. We saw no reason for the private sector as currently incentivised to increase its output. The builders made it clear to us in evidence that they are margin maximisers and not volume maximisers, for entirely understandable reasons, as the noble Lords, Lord Hollick and Lord Forsyth, have explained. This means that there is a significant supply gap that must be filled by the public sector. Housing associations can and do build around 50,000 new homes in a good year, which means a gap in supply of around 100,000 homes if we are to reach the recommended target of 300,000 per annum. That gap will have to be filled by the public sector.

The Government's response to our report came in two parts, as the noble Lord, Lord Forsyth, has mentioned. The first was a preliminary and rather sketchy response; the White Paper was the substantive response to our report and it has a promising title, *Fixing our Broken Housing Market*. That blunt title and its acknowledgement that the housing market is broken were encouraging signs and so were the forewords by the PM and the Secretary of State. The Secretary of State said:

"Soaring prices and rising rents caused by a shortage of the right homes in the right places has slammed the door of the housing market in the face of a whole generation".

[LORD SHARKEY]

That is true. The Prime Minister said of the proposals in the White Paper:

"We're giving councils and developers the tools they need to build more swiftly".

That is less obviously true and skirts around the crucial question of volume. Speed and volume are not necessarily the same thing. The White Paper says that:

"The consensus is that we need from 225,000 to 275,000 or more homes per year to keep up with population growth and start to tackle years of under-supply".

If the private sector and housing associations between them manage to build 200,000 homes a year, the Government have a deficit on their own figures of between 25,000 and 75,000 homes a year. Who will build these required homes, and how? It has to be local authorities. The committee took that view.

We also noted the keenness of some local authorities to build and the obstacles in their way, the chief of which was money. We have the very odd situation where borrowing on the general revenue account is limited only by the well-understood prudential principle, but borrowing on the housing revenue account is generally not available or much more restricted. This means, as others have noted, that local authorities can borrow to build swimming pools but not to build houses—a ludicrous situation, given the gravity of our housing problem. We recommended allowing local authorities to borrow to build social housing, as they can for other purposes. We saw this as the surest and simplest way to increase housing volume. I think that the Government have rejected this proposal, chiefly by ignoring it. They agree that local authorities have an important role in delivering new homes but, in the absence of the ability to borrow on the housing revenue account, this relies chiefly on joint ventures financed through the general account. There is nothing wrong with that; in fact, there is a great deal to like about joint ventures through the general account, as we said in our report. Again, the question is one of volume.

These schemes have so far been disparate and sometimes very small-scale. What volume do the Government think will emerge? How have they modelled this number? What confidence can we really have that this kind of venture will produce the required 25,000 to 75,000 new homes each year and what similar schemes can the Government point at to show that this kind of scheme produces volume results in a reasonable time? These are important questions. Without these additional homes from local authorities, the Government's housing plan will fail. I would be grateful if the Minister could address these questions when he replies.

The White Paper contains many other proposals, many of them important improvements on the current housebuilding regime. In particular, it recommends a proper assessment by local authorities of forecasting housing needs and requires a plan to show how these needs may be met. This is a very good idea in principle—at least the first bit is, even if I thought that local authorities were already in fact obliged to do exactly that. The second bit, showing how the need may be met, may prove very difficult given the current budget cuts under way if borrowing requirements are not relaxed and joint ventures are the only significant tool available. I welcome in principle, though, the notion of a new housing delivery test. Speaking of local authorities, the White Paper says that,

"where the number of homes being built is below expectations, the new housing delivery test will ensure that action is taken".

In paragraph 2.49, it goes on to give some detail. The remedy for underperformance seems to be that,

"the presumption in favour of sustainable development in the National Planning Policy Framework would apply automatically".

That really is quite opaque. Can the Minister explain how this would actually work to remedy a shortfall in building homes?

The section of the White Paper entitled "Helping People Now" reprises the problems with the housing market and recites the grim statistics that we have heard already this afternoon. It goes on to offer help and lists a range of demand-side schemes, which it says will help more than 200,000 people to become home owners by the end of this Parliament. We have seen such schemes before; they have been, in one form or another, a prominent feature of government tinkering with the housing market for a long time. All these schemes have two things in common: they do not address the fundamental flaws in the housing market, and typically help people who are already near the threshold of home ownership over that threshold. On what basis do these schemes provide value for the taxpayers' money spent? Does not their narrow focus and inflationary effect mean that the money could be better spent on improving supply rather than increasing demand?

All in all, the White Paper is a bit of a disappointment or at least a curate's egg. It contains some good things but they are all essentially second-order good things. It is not radical; in fact, it is rather timid. We have had a dysfunctional and socially harmful housing market for a long time and it is getting worse. It needs lots of reform, and there is some in the White Paper, but it needs radical reform if we are to bring real and sustainable improvements. What it needs is a lot more building by local authorities. The easiest, most obvious and most reliable way to do this is to relax the restrictions on borrowing on the housing revenue account. It is a pity that the Treasury seems to have prevented that solution going forward. This is a simple measure. It would work and greatly reduce the £9 billion of the housing benefit payment that currently goes to the private rented sector. Without the scale of local authority building that this measure would allow, it will not be possible to build the number of new houses required. That is a missed opportunity and it risks the perpetuation of a huge and socially damaging housing problem.

2.19 pm

Lord Turnbull (CB): My Lords, let us start by giving credit where credit is due. First, the White Paper is candid in acknowledging the multiple failures in the housing market. Secondly, it recognises that the current target of 1 million homes over five years is too low. Although we are told that it remains in force, it has been completely airbrushed from the documents, presumably because it is clear that housing starts have already fallen behind the asking rate.

Thirdly, it adopts much of the thinking of the Economic Affairs Committee—for example, that the problems will be solved only by action by all players and on all types of tenure. It makes a major move away from the almost exclusive focus of recent Governments on promoting home ownership and recognises that there are severe pressures in the rental market. Indeed, in my view, it is the rental market that is the epicentre of the crisis, where hardship is greatest. I agree that much of the credit for this fresh thinking should go to the new Minister for Housing, Gavin Barwell, and I wonder whether he will eventually enter the pantheon of those who have held this portfolio with distinction—notably the then Sir George Young and Nick Raynsford, who between them held it for about 15 years.

Fourthly, it acknowledges that the so-called volume builders will never want or be able to build enough. Thereafter, things go downhill. A new range is suggested, although whether it is a target or just the consensus is unclear—I hope that its status can be clarified. The bottom end of the range, 225,000 homes per annum, may not even be enough to match emerging demand. The top end of the range, 275,000, may not do enough to catch up the underprovision of the past decade. For that reason, our report recommended 300,000 per annum.

The main failing of the White Paper is that, despite an extensive range of measures, there is no assurance that the Government will deliver the numbers required—indeed, no attempt is made to reconcile the two. Finally, there is a serious omission: the tax issues which distort the housing market are simply not addressed. That is the gist, but let me develop some of these points.

I do not need to go over the main failings. Most of the things that the Government want are not happening or, worse, are going in the wrong direction. A major factor in these failings comes from the excessive focus on home ownership to the neglect of the rental sector. Simple economics tells you that if, as the Government claim, they have helped 200,000 people into home ownership but the supply has not increased, house prices will rise to price out a different 200,000.

The recognition that renting needs to be promoted is a huge advance. The share of the private rented sector has doubled from 10% to 20% in the past 15 years, but much of the sector is in poor condition, badly managed and, as has been said, tenancies are insecure, so families cannot even be sure where their children will go to school.

The Prime Minister's foreword itself acknowledges that 2.2 million working households on below-average income spend a third or more of their disposable income on housing. As has been said, that figure is greater in London. Today, it would take a low or middle-income family saving 5% of their wages 24 years to reach an average-sized deposit. This is all massively unfair, as the White Paper reveals that housing costs relative to income are substantially lower for owners than for renters.

As the main housebuilders build almost exclusively for sale, it follows that if rental provision is to increase, new players have to be mobilised. Historically, local authorities and housing associations played that role, and they need to be brought back into play. My estimate is that we need to find an additional 100,000 homes above those provided for sale.

There is a lot in the White Paper about local authorities, but most of it is about their role as planning authorities. The requirement to produce plans which meet local need is very much to be welcomed, as is the fact that they are to be given extra resources to speed the planning process. However, while paragraph 3.27 states:

"They also have an important role in delivering homes themselves",

there is no sign of the relaxation of the housing revenue accounts that we have called for.

This is followed by a masterly euphemism in paragraph 3.32:

"We will work with local authorities to understand all the options for increasing the supply of affordable housing".

This ranks alongside Hirohito's:

"The war … has developed not necessarily to Japan's advantage".

The picture is not much better with housing associations. Paragraph 3.26 raises hopes, stating that the Government will,

"set out, in due course, a rent policy for social housing landlords … for the period beyond 2020 to help them to borrow against future income".

Hopes rise further with:

"Our aim is to ensure that they have the confidence they need about their future income in order to plan ahead",

but then reality comes crashing in:

"The Government also confirms that the 1% rent reduction will remain in place in the period up to 2020",

together with the damaging restrictions imposed by the Housing and Planning Act.

Great hopes have been expressed about the entry of institutional investors, who allegedly have billions of pounds ready to go, but I have heard all that before. Those investors now find themselves constrained by the ill-thought-out Solvency II directive.

So it continues to the end of the document: encouraging aspirations not backed by the resources or the freedoms to develop them. There are lots of bits and pieces of schemes, many of them worthwhile, including one to deal with great crested newts, but nowhere is there a table which draws all the contributions together to demonstrate that the plans for more housebuilding can be achieved.

Then we come to the serious omission: the way that the tax system distorts the housing market. This is dramatically illustrated in the White Paper, which states:

"In 21st century Britain it's no longer unusual for houses to "earn" more than the people living in them".

This is a shameful admission, but nothing is offered to remedy it. While pay is subject to income tax and national insurance contributions, there is no tax whatever on the increase in the value of the house: no income tax, no CGT, no extra council tax, only, eventually, inheritance tax, where the allowances are currently being increased. It is not surprising, with returns on financial assets low and taxed, that investment in bricks and mortar, whether a second home, a buy to let or simply a loft extension, is proving so popular, thereby taking home ownership further out of the reach of many.

[LORD TURNBULL]

In our report, we criticise the working of council tax. We have a situation where the grandest mansions, some no doubt owned by Members of this House, could never pay more than three times the tax of the humblest dwelling. This is a much shallower gradient than the old rates system. The property values are still those of 1991, so those living in the areas where values have risen most have not been asked to contribute more.

In practice, the Government recognise the argument that high-value properties are not paying enough, but their response is to impose very high rates of stamp duty at the top, so those who move pay astronomical sums, while those who stay put, like me, pay nothing. Evidence is beginning to emerge that this is proving counterproductive, causing such a slowdown in turnover that revenues have declined. Far better to return stamp duty to more reasonable levels and then recoup the money by raising council tax, so that all property owners pay a little more every year.

To conclude, the White Paper starts promisingly by introducing some fresh thinking, but it fails to convince that it is capable of making the step change that is required.

2.28 pm

The Lord Bishop of Newcastle: My Lords, I warmly welcome this excellent report from the Economic Affairs Committee. My conversations with local authorities, housing associations and chamber of commerce colleagues in the north-east have endorsed the power of its analysis. The report demonstrates the complexity and long-standing dysfunctionality of the housing market with a terrifying clarity.

Recognising that my six months working in an estate agents in the early 1970s will not quite cut the mustard, I will not attempt to speak to the many technical aspects of the report and the White Paper, which I also welcome. I will leave that to the many noble Lords who are far more qualified than I am to do so. I want to speak about the crucial significance of this issue to human dignity and flourishing, and the kind of society we aspire to build.

One of the greatest social thinkers in recent history was Archbishop William Temple, Archbishop of York for 12 years and then Archbishop of Canterbury during the Second World War. He wrote:

"Every child should find itself a member of a family housed with decency and dignity, so that it may grow up as a member of that basic community in a happy fellowship unspoilt by underfeeding or overcrowding, or by dirty and drab surroundings".

With those words before me, this afternoon I want to focus on the importance of building homes and communities, not just houses. If we are to do this, we need homes that people want to live in in places where they need them. We need communities in which people want to put down roots. The first key factor is the need to have an increase in access to home ownership, particularly for young people, so bringing new people and young families into the community. Communities cannot be built on transient private renters. The Government are to be congratulated on their efforts in this regard—for example, the Help to Buy scheme and the proposals for starter homes—but more needs to be done.

Just how much was brought home to me on a delayed train on the east coast line a couple of weeks ago when I had a chance to have a conversation with a young woman who lives in Stockton. She was excited because the following day she was going to move into a house she was buying. She was a nurse in her mid-20s. She had been able to buy the small house in Stockton, which is a low-price housing market, because she had stayed at home while she was at university and her parents had subsidised her living and she had a small legacy from a grandparent. That it had taken her, a nurse in her mid-20s, that much effort and that long to be able to achieve a modest house in Stockton demonstrates that it is almost impossible for many of our young people to achieve the same thing. For young people who do not have access to the bank of mum and dad, a 10% deposit, even in less expensive housing areas, can be an insurmountable barrier.

There is also some evidence, which surprised me, that many young people are not aware of the possibilities of home ownership and do not know what the options are. Research by the North East England Chamber of Commerce suggested that just one-third of the students and young people questioned knew what a mortgage was. Nine in 10 were unware of starter homes, and only half were aware of the Help to Buy scheme. I wonder whether our higher education institutions and employers can do more in terms of financial education for our young people.

The second key factor in building homes and communities, not just houses, is the key imperative of having genuinely affordable housing to rent for local people, as has already been mentioned. Home ownership and social housing, particularly local authority social housing, are all too often posed as alternatives. People often have an ideological commitment and pose a false dichotomy between the two kinds of provision. We cannot afford that false dichotomy. We need both kinds of provision. We need home ownership and genuinely affordable housing that provides safe and stable accommodation for those on the lowest incomes. Providing this is something we have not got right in recent years. Affordable housing completions are at their lowest level for 24 years.

The recent White Paper's shift in focus towards rented accommodation is welcome and needed. In Newcastle and North Tyneside, there are encouraging signs that our local authorities are doing their best to respond to this need. North Tyneside Council is committing to build 3,000 affordable homes by 2023, and Newcastle City Council delivered 1,000 homes last year. *Building More Homes* and the noble Lord, Lord Sharkey, made the point that initiatives such as this would be encouraged by the lifting of local authority borrowing caps. Will the Minister confirm whether the White Paper commits the Government to looking at this? I did not find this point quite clear when I read the White Paper.

We also need to support the work of our housing associations. In my conversations with some of them, they stressed the need to be able to sustain a commercial business case, and they are particularly concerned about the impact of the 1% rent reduction in social housing. Will the Minister comment on that point?

Finally, building homes and communities, not just houses, also means providing homes for people in every walk of life. We need a strong supported-housing sector so that young people, especially those on the edge of care, can find a safe home. We need supported housing for the elderly and disabled so they and we will benefit from their inclusion in communal life, which will add to the rich diversity of local communities. I shall make one point on that: Newcastle City Council, like the housing associations, is finding that the 1% rent reduction in social housing has had a particularly negative impact on the supported-housing sector.

Back in 1941, it is very likely that the heart of Archbishop William Temple would have been warmed by this excellent report. That is certainly the case for this bishop today.

2.35 pm

Baroness Eaton (Con): My Lords, I start by declaring my interest as a past chairman and current vice-president of the Local Government Association. It is a pleasure to follow the right reverend Prelate and to hear of the implications for families of the shortage of homes, the very subject we are here to address.

We all know the personal security that comes from having a safe and decent home, and that is why I am pleased to be able to participate in today's important debate. Getting more people on to the property ladder and improving social housing are key priorities for this Government, and I welcome the report of the Economic Affairs Committee, which makes a valuable contribution to this debate.

It is clear to us all that our housing shortage cannot be met by one housing sector alone. The private sector, local authorities and housing associations all have a valuable and very necessary part to play. Housing associations offer £6 of private investment for every £1 of public money and they provide flexibility in the way they use their existing resources and a guarantee that all profits are reinvested in homes and communities. The Government recognise the need to incentivise housing associations to build more homes and have allocated an additional £1.4 billion of funding, which will allow housing associations to build more homes of every tenure.

For decades we have not been building enough homes, and that has resulted in house prices growing faster than incomes and rising rents affecting people throughout the country. The availability of land for housing development is clearly a key factor in our housing crisis, and I therefore particularly welcome the proposals in the White Paper relating to the land release fund. As the success of the one public estate programme has already demonstrated, the release of surplus public land can provide a significant opportunity to boost housebuilding. I am pleased that the Government have committed to consultation on relaxing the requirement on public bodies to achieve best value on the sale of land. This could make a big difference, as the availability and affordability of land are some of the biggest constraints on increasing housebuilding.

The National Infrastructure Commission's launch of the housing infrastructure fund at the Autumn Statement, as well as the connection it made between the supply of new homes and the infrastructure needed to support them, are welcome recognition of the link between housing and infrastructure. The Local Government Association has consistently argued that council planning departments need to be sufficiently resourced to fulfil their part in delivering more housing. Specifically, the LGA has highlighted the fact that councils have been forced to spend in excess of £450 million to cover the cost of planning applications over the past three years.

Currently, taxpayers are subsidising 30% of the estimated cost of processing all planning applications in England, because nationally set planning fees do not recover the full cost. The planning fee is usually a tiny proportion of the overall development costs and is not generally seen by either developers or property owners as a tax on growth. This is evidenced by the fact that a number of major developers are currently proactively involved in planning performance agreements with councils which see them voluntarily paying a higher fee in return for a guaranteed standard of service with transparent agreed timescales. I am delighted that the White Paper recognises this issue and is allowing councils to increase planning fees by 20% from July, if they commit to investing the additional fee income in their planning departments. I know that the LGA also welcomes the greater flexibilities in relation to the delivery of starter homes that are outlined in the White Paper.

It goes without saying that communities are most likely to support new development when it is accompanied by necessary infrastructure. We have already seen recognition of this with the introduction by the coalition Government of the new homes bonus to encourage councils to grant planning permissions for the building of new homes in return for additional revenue. Building on this, the introduction of the £2.3 billion housing infrastructure fund is to be strongly welcomed.

As a former council leader, I know that councils through their planning departments are playing their part in addressing the housing crisis, with nine out of 10 planning applications being approved. Despite this, research from the LGA shows that a record 475,647 homes have been given planning permission but are yet to be built. It is for this reason that I welcome proposals in the White Paper to allow councils to make greater use of compulsory purchase powers to unlock stalled development sites, and measures that will require starts within two years of planning permission being granted. I am, as your Lordships would expect, a strong supporter of local government. When faced with challenges, local government can be at its most creative, and today there are many examples of local authorities being creative and innovative with schemes that serve the needs of their communities. Some are very small-scale, but they show the flexibility of thinking and how councils can work within what appear to be constraints.

I give a small example. Ashford Borough Council, in recognising the need to assist older people, has developed a policy to allow exception sites to be used for specialist accommodation. The council made available land in its ownership on a long lease of 125 years for a nominal rent to Housing & Care 21. In July 2016, the doors were opened on 33 flats, 17 for affordable rent and 16 for shared ownership. That may be only small

[BARONESS EATON]
beer, but it shows that the council was prepared to use its own land in that creative way for what the community actually needed.

Supported housing is a vital part of the nation's housing need. I welcome the Government's decision to protect the level of funding for the supported housing sector. However, I am sure my noble friend the Minister is aware of the concern of the housing association movement: for it to continue developing new supported housing schemes, it needs much more certainty of funding.

Increasing the housing supply, getting people on to the property ladder and improving social housing are objectives that we can all surely support. These are the driving principles behind the report of the Economic Affairs Committee and the White Paper. I hope that through this debate we can work constructively with the Government to deliver more and better housing for the people of this country.

2.44 pm

Baroness Young of Old Scone (Lab): My Lords, I declare an interest as chairman of the Woodland Trust and president or vice-president of a range of wildlife and conservation organisations. I very much welcome this report from the Economic Affairs Committee—particularly the focus on enabling local authorities to retake their place as providers of social housing for a range of tenures, including rent. Then there is the proposal that local authorities are given the power to levy council tax on developments that are not completed in a set time period. The report is very much complementary to the report of a year ago by one of the ad hoc Select Committees—the Select Committee on National Policy for the Built Environment, on which I had the privilege to sit. I do not know whether we had slightly longer than the Economic Affairs Committee to wait for a response from government, but it was 10 months during which I reminded the Government pretty well monthly that time was ticking away—but it came.

I want to raise two economic points germane to both these reports. First, I echo the contribution of the right reverend Prelate on the need for houses but not at the expense of quality. The report on the built environment stressed that the quality of our housing and other development is vital in creating places that foster health and well-being that are environmentally sustainable. If we do not achieve that, we could fail to get value for money and we could build ourselves economic and other problems for later years.

There is a lot of evidence to be worried about on quality. First, new homes in the UK are now smaller than anywhere in western Europe. I used to visit friends in the Netherlands and think secretly, when they were showing me great hospitality, "I could not live in these little boxes". In many cases, those are now our little boxes. I suspect when I look around that noble Lords are old enough to remember the Pete Seeger song in the 1960s about,

"Little boxes made of ticky tacky".

According to the RIBA, half of homes built in the UK fall below the Government's space guidelines. That is particularly so the further north you go in England. I welcome the commitment in the housing White Paper to review space standards, but we cannot continue in a situation where they are to all intents and purposes voluntary. Can the Minister comment on the prospect of statutory space standards?

Another example of worries about quality is with design and the process of design review, which is faltering and patchy as local authority resources diminish. Inadequate care has been taken to ensure access to green open space, which the evidence increasingly shows is good for physical and mental health and cheaper than the NHS. The Government's Natural Capital Committee estimates savings of £2.1 billion in reduced health treatment costs if adequate green open space access is provided. That committee has also calculated that if 250,000 additional hectares of woodland were planted in and around towns and cities, it could generate net societal benefits of £500 million per annum. So the evidence is there that the quality of settlement and design is fundamental to value for money. We have heard in the news recently about the quality of build of some developers, which really does reinforce the worry that they are all "made of ticky tacky". I am sure that many of them are not, but we need to make sure that we maintain the quality of build. It was distressing to hear about poor experiences of the NHBC in helping house purchasers who had bought substandard houses.

A common theme in the evidence that we received during the built environment inquiry—I am sure that it was the same with the Economic Affairs Committee—was how under the cosh local authorities feel, faced with the need to deliver plans for ever rising housing allocation targets. This can result in poor location decisions, as local authorities grasp thankfully at large greenfield sites which offer big numbers of houses but raise major questions about transport infrastructure, access to jobs and sustainability, and eat away at formal or informal green belt. I very much welcome the Government's commitment to the green belt in the housing White Paper but open countryside is also at risk. My overall point on quality is that we must not, in the dash for much-needed houses, make the mistake of building small, mean houses of patchy quality which are poorly located and create places which have no quality of place, do not promote well-being, are not sustainable and rapidly become the slums of the future. Will the Minister indicate how the Government can avoid the "stack 'em high and sell 'em cheap" philosophy?

That takes me to my second, linked point, which, again, chimes with the Economic Affairs Committee's conclusions on planning reform. Time and again during the built environment inquiry we heard from planners, local authorities, developers and practically everybody about local authority cuts resulting in the loss of planning resources and expertise. We heard of planning departments struggling with few or no specialist resources such as heritage experts or ecologists. Two-thirds of local authorities now have no ecologist in their planning department. I very much commend the committee's proposal that local authorities should be allowed to set and vary their own planning fees. I welcome the housing White Paper's announcement of a 20% increase in July and the consultation on a

further 20% incentivisation to local authorities which are actually delivering homes. However, we need something beyond this one-off hike and I would be grateful if the Minister would indicate whether there are long-term plans to give further flexibility to local authorities. The strength and expertise of planning departments is vital if we are to see well-thought-through local plans, good support to neighbourhood planning and swift, effective development decisions.

If there was one overriding message throughout the evidence we heard from all sides during the built environment inquiry it was this: although many development proposals start off excellently, proposing quality places with good contributions to mixed housing, infrastructure and open space, there would then be a falling back. Developers would subsequently use the viability test to row back considerably from delivering these collateral benefits to simple housing numbers. Developers would come back wringing their hands and saying that they simply could not make the value proposition stack up to deliver all the promised goodies that secured the planning permission in the first place. Struggling planning departments, we were told time and again, would simply cave in, unable to challenge the viability test arguments of the better resourced developers with sharp suits and shiny consultants. The result was that the initially proposed quality of development simply disappeared. So we need strong, expert planning departments. Encouraging housing development must not be at the expense of quality of place or we will achieve poor value for money and many people in this country will live to regret it.

2.52 pm

Lord Kerslake (CB): My Lords, I am pleased to be able to contribute to this debate on the excellent report of the Economic Affairs Committee. First, I declare my interests as chair of Peabody and president of the Local Government Association. I was also chair of the IPPR commission into housing in London and recently did a peer review of the north Essex garden communities project.

I say that the report *Building More Homes* is excellent because of the clarity of its analysis and the good sense of its conclusions and recommendations. It forensically examines the reasons that this country has failed to build enough homes for a long time and puts forward some bold proposals to address this. I can honestly say—and it is rare that I can say this—that there is nothing in it that I disagree with.

At the heart of this debate is the scale of the challenge we face in delivering new housing supply and our willingness to take the steps necessary to address it. I share the report's view that the goal here is not the number of houses that we manage to build in one Parliament, but achieving a step change in the rate of build and, as the noble Lord, Lord Hollick, said, sustaining it over a long period of time. Housing should be seen as a vital part of the country's infrastructure that is planned for the long term, going well beyond one Parliament. In this respect, I would go further than the report and make it a core part of the responsibilities of the National Infrastructure Commission. It is only by moving away from short-term fixes and taking a holistic, long-term view that we will we have any chance of delivering the homes this country needs.

Since the report was published in July we have, of course, had the Government's White Paper *Fixing Our Broken Housing Market*. I have to say that there is much in this White Paper that I welcome, too. I share the positive view held by the new Housing Minister, Gavin Barwell. The Government have recognised the scale of the problem. They have set out the need—if not a target, as we have just heard—for somewhere between 225,000 and 275,000 properties a year to be built. Crucially, they have recognised that this can be achieved only by building homes of all types and tenures, including affordable rented homes, and have moved away from the previous obsession with home ownership.

If the White Paper had done nothing other than break with the utterly unfair and unworkable policies of before, it would have been worth doing for that reason alone, but it also contains a good number of practical and sensible improvements to the current arrangements. I shall give three of these: the objective assessment of need for local plans; the diversification of the market by growing the SME sector; and the increase in planning fees for local authorities. I also note in passing that paragraph 4.16 of the White Paper effectively adopts the flexible approach to the delivery of starter homes that I and others advocated during the passage of the Bill last year and on which we had such a heated debate. Taken with the dropping of pay to stay, this represents a real change of heart, on which I congratulate the Government.

Notwithstanding the positive features of the White Paper, the key question is whether it will be enough. Here, I fear that the answer is less positive. Much more will be needed if we are to deliver the 300,000 homes proposed in the Select Committee report. We have already heard about many of the areas where changes are needed, including in a very powerful contribution from my noble friend Lord Turnbull about the taxation issues involved, so I would like to finish my contribution by highlighting just five areas where I think gaps still lie.

The first is the role of local authorities and the need for greater devolution. The Select Committee report rightly recommended lifting the borrowing caps on local authority capital spend to enable them to do more direct development. This does not need to be in competition with housing associations: there is plenty of work to go around. In many ways, local authorities working in partnership with housing associations and the private sector is the way forward, as I have seen in the Sheffield Housing Company.

The desire to do more direct development goes across the political spectrum of local authorities. I recently met the cabinet member for housing in Guildford, who is passionate about that council building more social housing. I strongly encourage the Minister to meet him and hear about the barriers they experience in doing this. Local authorities in high-growth areas such as Essex, for which I recently did a peer review, as I mentioned, need more capacity to enable them to develop their plans and secure much-needed infrastructure before major housebuilding starts.

[LORD KERSLAKE]

The importance of the leadership role of local authorities in place making cannot be overestimated. Without the creation of great places, new housing will not get local support. To do this, local authorities need new skills and more capacity. They also need greater powers, which is why I support the proposal that devolution deals should always contain a housing supply element.

My second issue is that the Government need to do more to harness the power of housing associations. I have said in other places that the sector now has the policy alignment that it has been asking for, and it must step up to the plate and deliver. Peabody will play its part, including our very ambitious plans for Thamesmead. We are also proposing to merge with another housing association, Family Mosaic. One important reason for that is that it will enable us to build more homes. The National Housing Federation has set out an ambition for the sector to deliver 120,000 new homes a year by 2033, half of the Government's target. This could be helped enormously if the Government were to consider either rent flexibility or at least very quickly moving to rent stability to address the issues that were raised with the changes in 2015. There are also other proposals, such as that by ResPublica for the creation a £10 billion renewable building fund, that I believe are seriously worth exploring.

My third issue is that the Government should allow a more localist and flexible approach to building on the green belt. The IPPR report on housing in London found that this could play an essential part in securing the 50,000 new homes a year that London needs. In reality, councils up and down the country are already looking at the issue of the green belt. The Government can do more to support them in this. I understand that this issue was the subject of some intense debate between the department and No. 10 Downing Street. I sincerely hope that the department will stick to its guns and keep going on this.

My fourth issue is the need to address the concerns of the private housebuilders on labour shortages and the future of Help to Buy. Ensuring a good supply of skilled labour has moved from being an issue for the private housebuilder to being, in many cases, the issue. Noble Lords will be pleased to hear that I will not rehearse again the issues that we talked about yesterday on Brexit. However, we have to do much more than we are at the moment on growing an indigenous skilled workforce. We have only scratched the surface of this issue. Help to Buy has played a key role in underpinning demand for new housing, but we need quickly to resolve what happens to the scheme after 2020. If we do not, housebuilders, faced with a softening market, will scale back their delivery.

Fifthly and finally, we still have some unfinished business from the Housing and Planning Act, particularly the deeply divisive forced high-value sales policy. I sincerely hope that the Government can find a way of pushing this even further into the long grass. I would welcome the Minister's view on each of those five points when he comes to sum up.

Delivering the new homes that this country so desperately needs should not be regarded as mission impossible. The Select Committee report has pointed the way forward as to what is needed. The Government have responded but need to go further. The sector itself, public and private, must also step up to the plate and deliver its share of the task.

3.03 pm

The Lord Bishop of St Albans: My Lords, my thanks go to the noble Lord, Lord Hollick, for tabling this Motion and giving us the opportunity to discuss the *Building More Homes* report. I am grateful also for the contributions from a number of members of the Economic Affairs Committee, which have been both helpful and enlightening.

My right reverend friend the Bishop of Newcastle has already set out some of the concerns from these Benches but I want to echo her comments, particularly the concerns she raised about the supply of social housing, and the key issue of whether we are building communities or just bricks and mortar. That is a fundamental issue for us and we need to remember some of the hard-learned lessons of the past. Like some others in your Lordships' House, I am particularly keen to see the Government lift the restrictions on local authorities' ability to borrow to invest in new social housing stock. I hope that the Minister will be pursuing this issue with the Government.

The *Building More Homes* report was prescient in a number of ways and, as has already been pointed out by a number of Members of your Lordships' House, including the noble Lord, Lord Forsyth, it is to the Government's credit that many of the points raised by the Economic Affairs Committee have been taken on board in the recent White Paper. I am particularly glad to see that concerns about starter homes, which were expressed in the report and here in this House, have to some extent been calmed. The Government's decision not to implement the requirement for starter homes at this time will help local authorities sustain a mix of affordable housing tenures, while the decision to extend restrictions on the onward sale of starter homes to 15 years will help protect starter home affordability.

I want to say a few things about rural housing. Housing supply is one of the greatest challenges facing rural communities, and here I must declare an interest as president of the Rural Coalition. Rural affordable housing supply is critically low, while much of the existing housing stock tends to be unaffordable to the vast majority of local people. One of the continuing problems is that many new properties built in the countryside are often unsuited to the needs of rural communities. There are simply too many large, expensive houses being built that do not reflect the needs of those local rural communities. We are not good at building three-bedroom family homes at a price that means that people such as teachers, nurses and other skilled workers can stay in rural communities as their families grow up. This is a fundamental issue of rural sustainability: how we can ensure that our rural communities are living communities. Neither are we good at building the small, one or two-bedroom homes that enable local people to downsize when the time is right, as the *Building More Homes* report rightly points out.

I hope that in this regard, the Government's proposed reforms in the White Paper will be beneficial. A more accurate housing needs assessment and more detailed local plan should facilitate the development of housing that is more suitable to local needs. Plans to give local authorities greater powers to encourage developers to build, hence preventing land banking, are also to be warmly welcomed, even if they do not go as far as the committee report proposed in permitting the levy of council tax on uncompleted sites.

For some of the most significant proposals in the White Paper, however, the devil will inevitably be in the detail. I am thinking particularly of the proposed review of Section 106. While simplifying the process by which planning authorities and developers decide on affordable housing contributions is of course desirable, it is vital that this review improve the tools local authorities have to bring forward affordable housing, rather than hindering them. I would hope that in the course of this review, Ministers will pay particular attention to the use of Section 106 in rural communities, where smaller developments yield much smaller Section 106 contributions—that is, if they yield any contributions at all. Recent planning policy changes to exempt smaller developments from Section 106 requirements seriously imperil the already limited supply of affordable rural housing, and I for one am not convinced that the Government have quite appreciated how serious this problem is.

When it comes to rural affordable housing, I am also still not convinced that the Government understand how policies such as starter homes and right to buy could affect the provision of land for real affordable housing. If the affordable housing built on rural exception sites is liable to be eventually lost to the open market, the incentive, for example, for a philanthropic landowner to provide land for homes for the local community will be lost. This is not a theoretical concern. I know a number of landowners who have talked specifically about this problem and I hope that Her Majesty's Government will take steps to address it. Regardless of those outstanding concerns, however, the Government have been bold in accepting many of the recommendations of the Economic Affairs Committee and are rowing back on some of the more contentious proposals included in the Housing and Planning Act. I pay tribute to them for that and hope that we will continue to move rapidly in the same direction.

3.10 pm

Baroness Wheatcroft (Con): My Lords, I am delighted to follow the right reverend Prelate. I sympathise with his compassionate comments, particularly on rural housing. As a member of the Economic Affairs Committee I would like to echo the words of others in thanking the staff for the extraordinarily good work they did and also the chairman, the noble Lord, Lord Hollick, for his skilful chairmanship.

The debate has been wide-ranging already and many of the topics that were in our report have been addressed, so I will restrict myself to just two issues. First, the government White Paper accepts that we need to build more homes, faster. Much has been said about more, but not much about faster. We need to make sure that planning permissions are developed speedily. There is far too long between permission being granted and housing being built—not that it is always built, given that about one-third of planning permissions are never fulfilled. The Government have to look at how to get planning permissions turned into real developed houses in the shortest possible time. That may mean some sort of penalty, which the committee certainly thought was worth investigating.

However, there is another aspect to building houses faster that we should be doing more about: modern methods of construction. Some of those have been going on, but not nearly enough. We need to get momentum going if that is to take off. It could make a huge difference to our housing situation. The Building Societies Association has said that MMC could be a game-changer, but that it will not happen unless the Government really get behind it. There is too much nervousness among consumers and a lack of knowledge among lenders. We need to get enough of those houses built to demonstrate that this is the way forward. The current method of housebuilding, bricks and blocks, has been unchanged for virtually 100 years, and of course it is very vulnerable to the weather. Fabricating large parts of a house in factories and then moving it to site could make huge savings. The steel construction industry reckons that 75% of the labour costs could be taken out if we got MMC working properly. As the Building Societies Association said, we need to see the Government backing this. Major projects such as Northstone, where there are plans for 10,000 houses and the Government are taking the lead, would be the perfect place for MMC techniques to work. The big housebuilders have projects under way and are investing in factories, but much more needs to be done. I would very much like to hear from the Minister his plans for putting government support behind MMC.

My second point concerns spending by local authorities and their ability to borrow to fund public sector housing. In our report we called for the cap to be loosened. Local authorities told us over and over again that they wanted to be able to borrow more. They said they thought it a nonsense that they could borrow to build swimming pools but not the housing that is so badly needed in so many parts of the country. The Minister told us in our private meeting that there is a little more flexibility in that area now, but as the noble Lord, Lord Sharkey, pointed out, it is nowhere near enough. Yet while these local authorities are being restricted in what they can borrow to build housing, they are having a high old time borrowing to buy commercial property. In recent years councils have become really big players in the market, outbidding private sector investors in many cases. They have been buying shopping centres, bingo halls, service stations, hotels, offices—you name it, councils are now the proud owners. The biggest deal so far was Spelthorne Borough Council, which spent £360 million of largely borrowed money buying BP's office complex at Sunbury-on-Thames. It is very pleased with the deal—but just think how many houses it could have built for that much.

The explanation for this hunger for commercial property is that local authorities are trying to bridge the gap between what they have now and what they have lost in the government funding that has been

[Baroness Wheatcroft]
taken away. By buying property at low interest rates and letting it at higher rates, they hope to pocket a sizeable margin that they can use to spend on other things—which is fine for as long as the margin persists. They are able to do so because of the low interest rates at which they borrow. We may wonder how they manage to do that. A recent article by John Plender in the *Financial Times* explains exactly how it works. Councils are borrowing from the Public Works Loans Board, a very low-cost lender with average loans last year of 3.2%. It has plenty of money to keep on lending, too. In March last year it had loans of £65.3 billion outstanding, but its headroom goes up to £95 billion; so councils with an appetite for funding have plenty of it to go for. The Public Works Loans Board is run by the UK Debt Management Office, which is controlled by the Treasury—the very same Treasury that will not allow our local authorities to borrow large amounts of money to build the council housing they need. There seems to be a bit of a contradiction. I can see why local authorities are doing what they think they need to do, even though they would like to borrow to build social housing; they ought to be given more options.

Is it not somewhat strange that, just last year, Portsmouth City Council bought shops in Redditch, a ferry terminal, a Mercedes showroom in Southampton and a warehouse near Gloucester? It may be that Portsmouth has lots of information and knowledge about the commercial property market; we can only hope so. That goes for all the other local authorities that have been building up these vast portfolios. I am prepared to believe that local authorities know a lot about social housing, but I am not convinced of their knowledge about Mercedes showrooms or ferry terminals. Therefore, I would like the Minister to tell me, if he can, whether he is comfortable about the investments—I hope they are investments—these local authorities are making, or whether he can see a way to make more of that money available to invest in the social housing we so badly need.

3.18 pm

Lord Layard (Lab): My Lords, as a member of the committee, I too thank our great leader, sitting in front of me. As has been said, the starting point for our inquiry was a very remarkable estimate that is widely accepted—that, simply to stop real house prices and rents from rising further, we need not 200,000 homes a year but 300,000, just to stop things getting worse. However, surely we want things to get better, so we need more than 300,000 homes a year to make the target of an affordable housing sector a reality. That means a massive housing boom over 15 years, as the noble Lord, Lord Kerslake, has said—that is what we have to generate. We have to ask ourselves what conditions could generate a continuing housing boom—not little tinkerings but the fundamentals for generating such a boom. However, I do not think that we will get the answer to that unless we understand the fundamentals of our present situation, which is really quite remarkable.

Real house prices and rents have trebled over the last 30 years—it has been said that that is completely out of line with the experience in the rest of the world—yet the number of houses built by the private sector is the same as it was 30 years ago, so there is no response. You would have expected those extraordinary prices to generate an extraordinary supply response but that has not happened. If you look for explanations, you can find little ones that might apply in one year or another, but surely the fundamental explanation must be the planning system. The planning system determines the supply of land on which the houses are built and, if the supply is restricted, the real price of land goes up. So what has happened to the price of land? It has more than quadrupled. In fact, in terms of the constituents of the price of housing, the whole increase is due to the increase in the price of land. Therefore, I would like to talk about land and planning.

There is only one way that we can describe the present situation, which is that it involves a major disregard of human need. For example, if a hectare of land is worth £2 million when it is used to provide homes for people and with its existing use it is worth only £20,000, that simply disregards the simple evidence of human need. What is the value of the land to society with one use as compared with another? The only exception to that being an outrage would be if one could show that the amenity value of the land with its existing use was as high as the price of the land if it provided homes. That might be the position sometimes but certainly not in an awful lot of cases at present.

How can we improve the situation and unleash the energy of the housebuilding industry? The key is to make it easier to get planning permission. It is that simple and, unless we face up to that, we will not start from the central analysis of how we have reached where we are. In particular, we have to make things easier for small and medium-sized builders, who have been pushed out of the market mainly by the complexity of the planning system. We have to get them back in to create this boom. Therefore, I want to make two suggestions for liberalising the planning system and generating the boom.

First, there has to be in the system more presumption in favour of development. I think that the Government have used that phrase sometimes but it has to be made real. One possibility is to focus on areas where the price of land is very high and therefore the evidence of human need for houses is very strong. You could say that in areas where the value of land was above £2 million, there would be a presumption in favour of development, and the local authority could refuse it only if it could persuade the inspector that the amenity value of the existing use exceeded the value of the land if it were used to provide houses. I would not suggest that as a universal arrangement, and certainly not in areas of the green belt that were open to public access, for example, but I shall make a few suggestions as to where you could start.

One obvious starting point that has been suggested in some reports is on land near railway stations. I think it has been suggested that if we could build up the areas within two miles of railways stations in commuter reach of big cities, we could have an awful lot more homes. Another suggestion would be parts of the green belt lying inside the M25 but without public access. There is an awful lot of land without public access inside the M25. I do not know whether your

Lordships know this extraordinary fact but if only 10% of the green belt inside the M25 were developed, this would provide 1 million homes. It is important to get these things in perspective.

Baroness Young of Old Scone: I have recently chaired a conference on the green belt for Greater London. It was startling to see just how the proposition that my noble friend is putting forward works in practice. The reality is that, if we are to make London liveable in the face of climate change, we need to maximise the benefits of the existing green belt to deliver heat reduction, water protection, flood risk management and access to open spaces, otherwise we will see the heat impacts on London of increasing temperatures from climate change. As far as I am concerned, the secret is not to build lots of houses on the green belt but to get the green belt to work for its living in all these aspects. Two-thirds of the green belt being inaccessible to the public is something to change, but it does not need to be built over.

Lord Layard: I am grateful for that. I am a bit more hopeful about dealing with climate change by electrifying the economy with clean electricity rather than by failing to give people homes. I think that we can make progress without expecting people to go into ever more expensive properties. I was very encouraged by what the noble Lord, Lord Kerslake, said about the green belt. It is true that attitudes are changing, and that is very helpful.

Of course, we understand that local authorities have political reasons for not wanting to give planning permission. We always remember how Aneurin Bevan got the National Health Service set up by stuffing doctors' mouths with gold. It still seems to me that we ought to allow local authorities to have a higher fraction of the financial uplift that occurs when they give planning permission, and we should then insist that they use that for housing purposes. My colleague Professor Cheshire at the London School of Economics has suggested a levy on the final value of a completed development, combining that with the change in presumption that I referred to earlier. There are many areas in which these ideas can be explored. The committee took no view on these issues but it made a clear recommendation that the Government should examine these proposals. I hope that the Minister can confirm that his admirable colleague Mr Barwell will be doing that.

We should recognise that we are suffering from a self-inflicted wound. We have inflicted it on ourselves mainly through the way in which we have operated the planning laws. Other countries have much less of a problem because they have not done what we have done. It is a case of the triumph of the few over the many. The distributional impact of the planning system is one of the most powerful sources of inequality in our society, and I think that we will satisfy the needs of the many only if we are honest about the origins of our present situation.

3.28 pm

The Earl of Lytton (CB): My Lords, it is a great pleasure to be able to speak in this very important debate. I declare my interests, which in this instance include being a private rented sector landlord and a commercial landlord. Probably more appropriate in this instance, I also declare that I am a practising chartered surveyor with direct involvement in the development process and the employee of a practice dealing with both building cost consultancy and construction management. I am also a vice-president of the LGA and the National Association of Local Councils.

The committee's report is very welcome for its range and depth of analysis and I congratulate the noble Lord, Lord Hollick, and his team on that. It is to the credit of the committee that a lot of its points appeared in the housing White Paper. The basic premise is sound: we need more homes and we are not delivering enough of them. But that masks a complex raft of issues, as we have already heard. I am not sure I subscribe absolutely to the idea of a broken housing market. I think the housing market is probably performing as we might expect, given all the tinkering around that has gone on over many years. But I am not an apologist for those shortcomings, which are fundamentally significant and affect potential home owners. As the noble Lord, Lord Forsyth, said, there is no silver bullet.

The Government have started to try to simplify things. There is no question that the consistently flagged-up point is the sheer complexity of the system in getting from a greenfield site to a completed development—the very high costs and risks involved in that and which confront those engaged with it. The Government have made a start and are trying to address a number of issues. However, in some areas, analysis and policy still appear less coherent. I will therefore deal with a few of the barriers as I see them working in the particular sector that I occupy.

Housing provision is a pipeline that needs constant feeding. The more you try to chop and change things as you go along, the worse things get. The planning system itself has become quite labyrinthine in its complexity. It has become a legalistic, adversarial exercise played for very high stakes. That applies to development sites of any size, large or small; we consistently hear that it takes no more effort to get a large site under way than a small one. That cannot be quite right.

To prove deliverability, it is necessary to jump through a whole series of hoops, regardless of whether there is any objective need. I have no problem with the need to demonstrate ecological compliance, but proving a negative in circumstances where there is no evidence—and there turns out to be no evidence—of the presence of, for instance, great crested newts or whatever it may be is a cost that is built in and then feeds into the eventual cost of housing. It causes substantial delays, and provides a barrier that militates against smaller applicants, who do not have the vast teams of experts that the larger boys have. There are liabilities in terms of legal tripwires of many sorts, and for one person to understand the ramifications is pretty difficult.

Huge inconsistencies are evident within and between local planning authorities. But as the noble Lord, Lord Layard, said, the system is not of their creation. It has been created by the rest of us—by society. I do not impugn the integrity of overworked planning officers, elected local government members or, for that matter,

[The Earl of Lytton]
applicants in general, but I adhere to advice once given to me by my late father's lawyer: where there is uncertainty, muddle and confusion, dishonesty comes close behind. That may range from the overexuberant application of a particular set of rules at one end of the scale and, at the other, some rather sharp practices. I have experience of all of those. Local planning authorities have to deal with some aggressive and bullying tactics in the course of their business.

The lack of adequate staffing at planning authority level is well known. Noble Lords should try finding an authority with any in-house heritage competence, for example, or for that matter willing to pay an outside provider for it. I and colleagues have experience of pre-application advice turning out to be a complete waste of time. It is almost as if the officers dealing with the thing are operating on separate agendas. But I do not think that is a criticism so much as a demonstration of inexperience, diffidence and self-protection. However, it results in inordinate delays, so I support the point made to the committee that much more resource needs to be put into local authority planning, and if fees are to increase they must be hypothecated to the planning administration budget and not be capable of being vired to some other account. I do not treat as entirely apocryphal the account that reached me of a developer being asked by an authority if he would fund the employment of an additional planning officer needed to deal with his own application.

The practice in which I work regularly comes up against significantly drawn-out timeframes, particularly on reserved matters approvals. I know that the Government also have that in focus. Once a resolution to grant is made, it can be many months, stretching into years, before you can get the remaining issues resolved. Some requirements are patently absurd, such as one that a colleague recounted to me where an ecological receptor site was required to accommodate an unlimited—it was specified as unlimited—number of reptiles and to be maintained in perpetuity. Maybe the officer was being overprotective, but, whatever the reasons for that sort of thing, it creates needless delays and adds to costs.

On democracy, local authorities are of course political animals and they seek to reflect the desires of an electorate who often do not want to take on board the wider needs of the nation's requirements in housebuilding—still less those of an adjacent constrained authority, possibly one of a different political colour. I have seen attempts to dump—to use an unparliamentary word—development on the periphery of an authority area or an area where voters' politics differed sharply from those of the controlling party on the council, and so on and so forth. There are potential mismatches between the neighbourhood aspirations and the perceptions of the potential ability to assimilate new development as compared with the obligations placed on principal authorities by a Government and the Homes and Communities Agency requiring them to do better.

Politics mixed with planning creates friction and drag in the system, seemingly in direct proportion to the respective parties' belief in their powers of veto. A word of warning here: to pick up the point made by the noble Baroness, Lady Young, about the quality of what we produce, if we enforce fast-track development, the risk is that we do not get the highest quality that we ought to have. We need to be careful about that.

The bigger issue is that if we want democracy and set out to expand that to communities, which I support, speed and efficiency may well suffer, particularly if participants do not understand the basic policy or principles behind it or do not wish to engage themselves in the financing of neighbourhood plans, for example. Resources need to go into that. The question is often asked, "What does this development do for the people of our municipality or community?". In reality, the question should be the one once suggested to me by a Liberal Democrat aspiring parliamentary candidate which is, "Where is it most convenient and appropriate for people to live, work, have their recreation and travel about sustainably?". Development needs to be looked at in a reworked 21st-century version of how medieval settlements came into being. They were strategic. They had communications and they were defensible positions. There was access to food and materials and all the other things that were needed. We need a reworking of that because that is part of the desire line that will make these communities not just some other shell that takes 40 or 50 years to bed-in socially, but somewhere that is cherished and invested in for the longer term.

I could raise many more issues, but I will foreshorten my comments to just touch on a few myths that seem to be doing the rounds. The Government seem to be blowing hot and cold on the balance between the private rented sector and the home-owner market. They cite that investors and home owners are in direct market competition. But they have not provided any credible evidence that I have seen to back that up. I noticed that the bar chart in figure 5 of the committee report, which is borrowed from another source, on the percentage of household income spent on rent as opposed to mortgage repayments, does not seem to be a comparison of like for like. I am sure that it was not lost on noble Lords that matters of insurance, repairs and maintenance, which are not typically reflected in a mortgage repayment, would skew the results of that, never mind the parallel issue of proving creditworthiness and raising the necessary deposit to obtain a mortgage in the first place. Some of the disadvantages meted out in recent Budgets to the private rented sector that seem hypothecated on that sort of premise are not well targeted and will cause damage. Although the sector could justifiably be expected to perform better—I do not doubt that there could be better landlords about—it is none the less an important sector which needs to be nurtured and cherished, along with all the other things that the Government are doing.

One statistic coming from government was that those now approaching retirement were home owners by the age of 30 in a much greater proportion than pertains at present. I suggest that mortgage finance, lifestyle choices and other relevant matters were quite different in the late 1980s. Certainly, the example of my children has been that, as young adults, they live highly mobile lifestyles, often flitting between jobs or even between different localities within a country or

between countries. The last thing they appear to want is to be geographically fixed and lumbered with a mortgage or indebted to parents for an otherwise unaffordable deposit. To this should be added some very substantial transaction costs that have now been built into the system and particularly affect the London market.

I live in a part of Sussex where there is a lot of demand for short-term lettings— people between houses, on short-term placements and so on—but we have also in the past, and do so currently, let to families with children who have been with us for a decade. The children come along as four and five year-olds and leave as teenagers. If that is not sufficiently long-term, I do not know what is, but it is wrong to try to constrain the market. One problem is that if people feel that they cannot let short-term, they will not do it at all, or they will set up a holiday let or something like that. There has to be removal of some of the impedimenta that mean that people feel threatened and that they do not have a ready exit from a longer-term situation.

There are many issues involved in this area of activity. I commend the committee on an excellent piece of work. I do not agree with absolutely everything that is in there, but it is a very workmanlike approach and I hope the Government are listening.

3.42 pm

Lord Horam (Con): My Lords, I add to the plaudits raining down on the noble Lord, Lord Hollick, and his colleagues on the committee. It was forensic in its analysis and commonsensical in its conclusions, and the report was remarkably well written by the standard of such reports. It also received in this debate today the ultimate accolade: the noble Lord, Lord Kerslake, said that he could not find a single thing to disagree with. Those of us who have listened to the noble Lord on housing over the months will recognise that that is the ultimate compliment. The report also cheered me up, because it came out in July at the tail end of that prolonged period, that endless night, when we discussed the then Housing and Planning Bill. It contained many good things, but it also contained—my noble friend on the Front Bench is now looking at me rather pointedly—some rather dubious things; indeed, in some areas, it seemed to point decisively in the wrong direction.

Since then, much water has flowed under the bridge. We have a new Government with a new Prime Minister, a new Chancellor of the Exchequer—very important in this context—and a new Minister, Gavin Barwell, who is not only an outstandingly able politician, as my noble friend Lord Forsyth alluded to, but happens to be the MP for a Croydon seat next to my old constituency of Orpington and therefore understands the problems of London housing which are at the epicentre of the housing difficulties we face. I am delighted that he is there. We have also had the dafter ideas in the Housing and Planning Bill dropped along the way, or at least not appearing as we go on. We have also had a modest Neighbourhood Planning Bill, which I think has been generally welcomed, an Autumn Statement which led to more financing for housing associations—which I very much welcome—and, finally, a recent White Paper which had many good things in it and got housing policy pointing fundamentally in the right direction. Whereas previously it focused far too much on tenure, it now focuses on supply—which is what the committee thinks it should do; therefore, we are at one on this.

The problem—I am afraid there is a "but" in all this—is that policy is hopelessly underpowered. It is like a Rolls-Royce that has a Mini engine and is therefore unlikely to catch up with the traffic around it and to make progress at the sort of speed we will need if we are to meet the target not only of 200,000 houses a year but the 300,000 houses a year which the committee says is necessary, and may well be so. In that respect, I give two examples. First, as the committee said—my noble friend Lady Wheatcroft also alluded to it graphically—we need to take the cap off local authorities. We need to take the constraints off their ability to use their surplus resources, which I know they have—my noble friend cited Bromley; Portsmouth, I know about. They have a lot of resources which could be used. We should incentivise local authorities to be entrepreneurial in a way they are not allowed to be at the moment. By curious chance, the Government should look across the Channel to France, where local authorities do not have such restraints and build more than 300,000 houses a year, a lot of them social housing. That is precisely because they are encouraged to be entrepreneurial. I remember the famous story of President Bush saying, "The trouble with the French is that they do not have a word for entrepreneur". It is rather amusing that the French should be being entrepreneurial in their council housing and we are being markedly less so. It is also quite astonishing.

The other issue is the one raised by the noble Lord, Lord Layard, who has disappeared from the Chamber momentarily. It was brought home to me at the breakfast meeting this morning organised by Shelter to promote its idea of new civic housing. The noble Lord, Lord Shipley, was there along with others. In a nutshell—as he might agree—Shelter said, "It's the land, stupid". That really is the fundamental problem. If we allow land to be priced out at its maximum value in every possible circumstance, we will not get enough housing. We will get poor-quality housing and poor infrastructure as well. Unless we tackle that problem we are really going nowhere. I am pleased to note that the Government say, rightly, that they wish to consult on this issue and begin to have some ideas about it but we know what to do. It is a question of whether we can do it.

I see that Gavin Barwell is now going round the country talking to people about our housing problems. Apparently, he is meeting very large audiences. Perhaps some people think he is Gary Barlow and not Gavin Barwell; I gather that is a bit of a problem. However he is getting his audiences, he is going to the people in different parts of the country and I welcome that. My noble friend Lord Forsyth said, rightly, that he should be a Cabinet Minister. My noble friend may have been thinking of the famous case of Harold Macmillan, who was a Housing Minister in the Cabinet and therefore able to produce, with his particular authority as a Cabinet Minister, more than 300,000 houses a year—a famous part of Tory history which we all remember.

[LORD HORAM]

If that happens, Gavin Barwell should employ the noble Lord, Lord Hollick—just as the noble Lord, Lord Adonis, is employed by the Government—to help achieve this task. I would diplomatically suggest to the noble Lord, Lord Hollick, that that might be a better use of his time than trying to renovate the Labour Party, which is a rather Herculean task at the moment. Whatever the Government do, they should get together and, given that we all know what needs to be done, get on and do it.

3.49 pm

Baroness Blackstone (Lab): My Lords, I must declare an interest as I chair the board of Orbit, a large housing association. I want to focus on the supply-side issues that the Select Committee identified as being of crucial importance in rectifying our housing crisis but that have been neglected by successive Governments. I was a member of the committee when we undertook this inquiry. It was a great pleasure, not least because the noble Lord, Lord Forsyth, and I agreed on both the nature of the problems and the solutions—surprising as that may seem.

The spiralling rise in house prices was central to the committee's concerns. Following nearly 40 years of stability in these prices, they have risen dramatically since the 1970s and particularly fast in recent years. In London, the average price of a house is nearly £500,000 and in the rest of the country £220,000. As my noble friend Lord Hollick said, rents have also increased vastly. Private renters spend 43% of gross income on rent; in London it is 60%. In the past, many couples could save to put down a deposit and buy a house within a decade. Today, many will never be able to do so. Aspirations are dashed and increasing numbers of families live in poor accommodation and in poverty because of its high cost, greatly affecting the quality of their lives.

We are in this mess because for many years we failed to build anything like as many houses as are needed to meet demand. The starkest of statistics is that between 1955 and 1975 local authorities built 2 million homes, but between 1995 and 2015 they built just over 12,000. As other speakers said, including the noble Lord, Lord Forsyth, the private sector completely failed to replace local authority housing construction. Moreover, the three biggest builders have 200,000 plots in short-term land banks and more than a third of new houses granted planning permission between 2010 and 2015 have not yet been built.

The Select Committee set out these shocking statistics which demonstrate that the housing market is not working. The Government have been too slow to acknowledge this and not so long ago came up with policies that were no solution. Indeed, they stoked up demand resulting in further house price increases and made the problem worse. I congratulate the Government on moving away from those policies and for stating categorically in the White Paper that the housing market is broken. I welcome this change of direction.

However, like many commentators, I am sceptical about whether the Government will meet their target of 250,000 new homes. Moreover, it is doubtful whether this target is large enough to deal with the enormous backlog and continuing population growth. As my noble friend Lord Layard said, the committee estimated that at least 300,000 new homes are needed annually for the foreseeable future to stop things getting worse. Why is the Government's own target quite a lot lower than the committee and independent experts calculate is needed?

As chair of a housing association that is also one of the largest housebuilders in the sector, I am acutely aware of the struggle to find suitable land, which many speakers in the debate referred to. The committee's report advocates a more aggressive approach to the release of public land. Some government departments and their agencies hoard land for which they have no current use. In their response to the committee's report, the Government were vague, saying just that they would work harder to release this land. In the White Paper, they are much more specific, mentioning the 160,000 homes they plan to build on public land. Can the Minister tell the House what mechanism the Government propose for monitoring progress in reaching this target and how the release of public land will be co-ordinated across government? Perhaps the great Mr Barwell, who has received so many accolades today, can be asked to take this on, but he needs support from the top to make this happen.

I welcome the fact that the White Paper proposes consultation on allowing local authorities the flexibility to dispose of land to be used for housing,

"at less than best consideration".

Can the Minister also say what the Government's plans are to deal with the hoarding planned by land traders? I welcome the Government's determination to improve the planning process and their decision to consult on much-needed increases in density in areas where demand is high. We lag behind many of our neighbours in Europe in this respect. The £45 million land release fund to help local authorities identify surplus land for housing is welcome, although given the size of the problem I wonder whether this sum will go far enough. The costs of decontamination alone for many brownfield sites are enormous. Can the Minister say how the Government intend to address this?

The White Paper proposes to allow local authorities to increase planning fees by 20%. This, again, reflects a recommendation of the committee. It is right to stipulate that this should be reinvested in planning departments, which have suffered from reductions in skilled staff as a result of a 46% cut in funding between 2010-11 and 2014-15. Housing associations want well-resourced local teams, and they will be willing to pay a little more to achieve this.

I have already referred to the gap between the number of planning permissions granted and the number of homes built. Measures in the White Paper to speed up the delivery of new houses are welcome, but the Government's failure to accept the Select Committee's recommendation to levy council tax on those developments not completed within a set time is disappointing. Again, perhaps the Minister could comment on this.

The committee recommended that the National Infrastructure Commission should oversee the release of public land for housing. A number of speakers have

referred to this. Perhaps we missed a trick by failing to include a bigger role for the commission in setting the agenda for large-scale housing developments across the country. The £2.3 billion committed in the White Paper to a housing infrastructure fund in areas of greatest social need to help unlock the delivery of new towns and developments of 1,500 homes or more is welcome, but could the Government agree to the commission assessing the infrastructure needs in the interests of speeding up the process and getting more homes built quickly? If these infrastructure issues are not addressed, nothing will happen.

The Government's obsession with home ownership at the expense of other types of tenure concerned the committee greatly. The White Paper's new approach, with social and affordable housing and private renting at last on the agenda, is really refreshing. It is vital to improve the housing of those who cannot afford to buy their own homes and to help them escape from poor-quality accommodation provided by private landlords. But to achieve this it is important to make it much easier for local authorities to provide new homes on a much larger scale, as many speakers have pointed out.

I conclude on what I think has been the main theme of the debate. In his White Paper, the Secretary of State trumpets a "bold, radical vision", but with respect to local authorities' freedom to build, it fails to be either bold or radical. It does not give councils the borrowing powers they need, nor the right to retain right-to-buy receipts to invest in new affordable homes. It also fails to recognise that interfering in the rents that housing associations can charge damages their capacity to build more affordable homes and to reach the 120,000 target mentioned by the noble Lord, Lord Kerslake. Lenders' appraisals of risk are affected, as are housing associations' business plans. Will the Government think again, first, about liberating housing associations in this respect and, secondly, about local authorities' powers and freedoms to build?

A change of heart would diminish the scepticism of many commentators, which I referred to at the beginning of my speech, about the likelihood that the White Paper targets can be achieved. Only then will we reduce the housing benefit bill and make the progress needed to alleviate the misery of so many people who are suffering because of wholly inadequate housing.

3.59 pm

Lord Best (CB): My Lords, I maintain the long tradition of beginning by saying I do not want to repeat anything anyone has already said, then repeating everything that everyone has said. I hope there will be some slight changes of emphasis in my remarks. The Economic Affairs Committee's report is a really impressive analysis. I congratulate the noble Lord, Lord Hollick, the committee members—I used to be one; it is a great committee to serve on—and the very well-chosen special advisers, Professors Christine Whitehead and Geoff Meen.

I hope almost everyone has now accepted the core message of the report: we have to build a lot more new homes. Relying on a handful of large housebuilding companies will not do it, so we must dramatically boost building by all the other providers: councils, housing associations, SME builders, retirement housing providers, Build to Rent developers, self-build and custom housebuilding, and more.

Since publication of the committee's report there have been some radical changes to the position facing us when your Lordships debated the then Housing and Planning Bill last year. In what seemed like an endless tussle over that legislation, with one of the Government's heavy defeats featuring in this week's BBC2 documentary "Meet the Lords", we argued for more affordable homes to rent, not just homes to buy. Now we have the Government's housing White Paper. Although some regard it as insufficiently radical, I recognise that it represents a shift in housing policy in absolutely the right direction. I also congratulate Gavin Barwell, the Housing Minister, on his leadership. Not least, the White Paper fully acknowledges the requirement for affordable rented homes and the new version of starter homes for sale will no longer replace all the homes so badly needed for rent.

On the Economic Affairs Committee's views on excessive dependency on a few very large housebuilders, there is plenty of good stuff in the White Paper on diversifying the housing market. I welcome the encouragement for the fledgling Build to Rent sector, which draws in funds from institutional investors to create new, well-managed additional homes, in contrast to buy-to-let speculative investment, which simply acquires homes already there.

Local authorities are rightly disappointed that the Government are not planning to fully relax opportunities for them to borrow to build new council housing. I doubt whether the Government's stance is really because the Treasury believes local authorities will go wild and borrow excessively, having now seen councils behaving cautiously and prudently where they have had the chance to borrow to build. Rather, it is the continuing reluctance by government to follow international practice and define investment in new housing as being outside the definition of public expenditure. This means housing investment would add so much less to the annual deficit if non-public bodies, such as housing associations, did the spending.

The White Paper helpfully emphasises government intentions to see more publicly owned land released for housing—it's the land, stupid. Other changes beyond the White Paper also give hope for the future. I am keen on the creation of whole new settlements—those garden villages or garden towns that are beginning to come forward. The signs are good that an amendment promoted by the noble Lord, Lord Taylor of Goss Moor, and a number of us from across this House will obtain government approval at Third Reading of the Neighbourhood Planning Bill. This amendment would give councils a greater say in the development of major new settlements, thereby incentivising more local authorities to get behind the creation of these mini new towns, where capturing the land value at the outset enables lots of homes to be developed in high-quality, mixed-income new communities.

On the subject of good news to fulfil the hopes expressed by the Economic Affairs Committee, a new report from the National Housing Federation, *Demise of the NIMBY*, strongly suggests widespread acceptance of the value of building more homes in place of the

[LORD BEST]
endless opposition to any new development which has characterised the debate for years. The biggest housing association concentrating on rural housing, Hastoe Housing Association, similarly reports an increase in the number of parish councils asking it to come to develop homes for locals in their village. Of course there will remain stiff opposition to housebuilders simply adding a lot of "executive housing", with no additional infrastructure for the community, on the edge of the village. But the need for homes for locals is now accepted in many areas, with neighbourhood plans helping determine the location for them, and this means less hassle to build extra affordable homes.

Perhaps it is worth noting that, in terms of getting the extra homes built, it is very often the housing associations that can make things happen: they are well placed to expand the new Build to Rent market, being in a position to borrow on rather more favourable terms than speculative developers; they can partner local authorities in joint venture companies; they can be central to the master plans for new settlements; they are ideal retirement housing providers since they can be trusted, rightly, by older people wishing to downsize; and they can pursue their core role of providing affordable rental homes, and creating communities which include housing for shared ownership and sale, this time often in partnership with the housebuilders.

I am delighted to see that the Government have found an extra £1.4 billion in hard cash to support this work. More of the same would mean more new and affordable homes. The housing association sector really does have the potential to double its output and to generate the very large numbers of extra homes that we know will not be forthcoming otherwise. Their non-profit, social purpose means they add social value by taking in the most disadvantaged, by working with smaller charities locally, by working with health and social care providers, by investing in training and employment, and by generally supporting every kind of community activity.

Sadly, I have to conclude on a sour note. The positive approach of the Department for Communities and Local Government, which I am applauding, is not matched by the actions of the Department for Work and Pensions. The DWP is undermining housing policy by vainly trying to cut the costs of housing benefit before market conditions make this a sensible option. When supply more nearly matches demand, government can exert downward pressure on rent and therefore reduce housing benefit. But that cannot happen yet. The compulsory 1% per annum real reduction in rents for housing associations and councils means an accumulated 12% revenue cut over four years, which of course impacts on their ability to create additional affordable homes.

All the DWP's other new benefit caps and ceilings, and the freezes on local housing allowances, mean tenants on the lowest incomes getting less government help with housing. Time does not permit me to speak about the DWP's latest plans to limit rents charged for specialist supported and sheltered housing, which I fear, if taken forward, will undermine the excellent work of the DCLG in supporting—magnificently—the Homelessness Reduction Bill, which I was honoured to take through its Second Reading last Friday.

However, I must draw attention to the even bigger concern for everyone in the housing world: the reductions in help for tenants in the private rented sector mean fewer and fewer landlords will take in anyone who relies on government help with their housing. Shelter figures show that, by 2020, the local housing allowance will not cover rents for even the cheapest properties in over 80% of local authority areas. Landlords already face the inherent risks of poorer households finding deposits and rent in advance, as well as the DWP's insistence on paying housing support to the tenant not the landlord. The result is not simply that, in seeking to prevent homelessness, councils and charities will find fewer and fewer landlords willing to accept the people they want to assist. The even greater anxiety is that, gradually, more and more of the 800,000 existing private sector tenants who receive housing benefit will find their landlords ending their current shorthold tenancies. Unless the DWP recognises the need to lift the freeze on local housing allowances and returns to paying housing benefit on the cheapest market rents, a major calamity awaits.

So, there are plenty of reasons to be cheerful about the opportunities for building more homes, as the EAC report advocates so powerfully, but also serious difficulties for poorer households needing somewhere to live, because DWP welfare reforms are undermining constructive DCLG housing policies. I end therefore with a plea for the Government, collectively, to reconcile these conflicting trends so that the good intentions of the Housing Minister and of the housing White Paper—echoing so much of the Economic Affairs Committee's thinking—can be fulfilled.

4.10 pm

Viscount Chandos (Lab): My Lords, I warmly congratulate my noble friend Lord Hollick on securing this debate and on the work of the Economic Affairs Committee in producing this important report. The subsequent publication of the Government's White Paper is also to be welcomed, particularly where it has responded positively to recommendations of the committee, even if in other respects it is perhaps longer on hope than on constructive policy.

Housing looms large in British life, whether measured by the value of the housing stock—£6.8 trillion, more than 3.7 times annual GDP and 1.5 times the value of all companies listed on the London Stock Exchange—or by the number of television programmes devoted to the usually more glamorous aspects of the subject. Emotional attachment to a family home cannot and should not be disparaged, and the ambition for ownership should not be discouraged. But, inescapably, the cultural and economic emphasis on home ownership in the UK, in comparison with the perhaps more utilitarian approach in other countries, creates a challenging context within which to pursue a successful housing policy.

The *Economist* wrote, in response to the publication of the White Paper,

"Part of the trouble with Britain's housing market is that politicians like to tinker, rather than reform".

The complex implications of radical reform on intergenerational wealth, and even on financial stability, certainly discourage a politician with any sense of career preservation from pursuing it. The current imbroglio on the revaluation of business rates, for instance, makes even the modest recommendation of the committee's report for council tax revaluation—let alone more fundamental reform of property taxation, as advocated by the noble Lord, Lord Turnbull—seem like an unappetising invitation to an ambitious Minister.

While the Government's timidity in this respect in the White Paper may be understandable, if regrettable, the further exacerbation of residential property's special treatment inherent in the Government's inheritance tax changes in the summer Budget of 2015 was inexcusable. As the Institute for Economic Affairs—hardly a think tank of Marxist hue—said in evidence to the committee, this was,

"a step in the wrong direction … By treating housing wealth preferentially relative to non-housing wealth, these changes will introduce further distortions, and further inflate demand without adding anything to supply".

Sad. Against a background, therefore, of the distortions caused by such special treatment of owner-occupied housing and the unambitious targets adopted to date by the Government—at least until the Minister responds—specific measures to improve the situation risk being overwhelmed by the macro-headwinds.

I none the less take a little time at this late stage in the debate to comment on a couple of issues relating principally to social housing. In a report to 13 London boroughs, published in January with the rather indigestible title *Viability and the Planning System: The Relationship between Economic Viability Testing, Land Values and Affordable Housing in London*, it was disclosed that the delivery of affordable housing in London had fallen 37% since mid-2009. Although the report's analysis identifies many of the factors already discussed this afternoon as contributing to this reduction, one not otherwise mentioned is the question of the planning obligations on new developments to provide affordable housing though Section 106 agreements.

The report concludes that, as these agreements are currently working,

"this has produced a circular situation in which the more a developer pays for a site, the lower the Section 106 contributions can be argued ... Cumulative changes to planning policies since 2012, as operated in practice, have had the effect of shifting the balance of power between developers, landowners and community with the result that landowners have been the primary beneficiaries".

Will the Minister say whether the Government will review the workings of Section 106?

As other noble Lords have said, the supply and utilisation of land from both the private and the public sectors need urgently to be improved. The committee's report recommended that local authorities have the power to levy council tax on developments not completed within a pre-agreed time period. I regret that the White Paper has ignored this. Will the Minister explain why this very reasonable and practicable measure is not being adopted on a basis, I would suggest, whereby the charge ratchets up as time passes?

The White Paper, has, on the other hand, recognised the need set out in the report for flexibility in the application of best value in the sale of public land, as a number of other noble Lords have discussed. However, it only commits to consultation, and giving the public sector bodies greater freedom in relation to best value might not in itself release the land needed without provision for the vendors to at least be partially compensated by central government. Will the Minister say whether a central fund to do this will be considered and vigorously negotiated with the Treasury?

Finally, I strongly support the committee's report and many noble Lords who have spoken today in wishing to see local authorities enjoying greater freedom to borrow to invest in affordable and social housing. We are truly disappearing down a rabbit hole with Alice and attending the Mad Hatter's tea party when local authorities are permitted, as the noble Baroness, Lady Wheatcroft, explained, to indulge in what hedge funds term a "carry trade", buying commercial property from PWLB funds, while being prevented from borrowing to fund social housing.

In advocating this, I should make one caveat. At a time when local authorities are struggling to find the resources to maintain planning departments at fighting strength, we should not underestimate the challenge in building or rebuilding the development teams needed to execute successfully any significant social housing programme to the quality levels advocated by my noble friend Lady Young. Therefore, we need a mixed economy, combining direct building by local authorities with the necessary resources, and partnerships with housing associations and private developers for local authorities without them.

4.18 pm

Lord Shipley (LD): My Lords, I first declare my vice-presidency of the Local Government Association. I strongly welcome the report of the Economic Affairs Select Committee on building more homes. I detect from the contributions this afternoon a broad unity of view about many of the conclusions of the report, which is welcome.

There have been—and reference has been made to this this afternoon—a very large number of reports in recent times on housing supply and the rising cost of housing, both for purchase and for rent. I think that the Government have finally realised that the time for just talking about the housing crisis must come to an end. I think that the White Paper is moving us in the right direction, although it does not itself provide a solution to a number of the problems affecting the housing sector. I will return to this later.

I pay tribute to the committee, of which I used to be a member, for its evidence-based report. It has been several months since it was published, but at least it has enabled the new ministerial team to examine why existing government housing policy has been failing and to adapt some of the committee's conclusions.

We have heard a lot this afternoon about the context of rising homelessness and of homes being called affordable when they are not affordable to very large numbers of people in work. We have very high house prices when compared internationally and very high rents in the private sector. The private sector is building only around 150,000 homes a year. We have low numbers of self and custom-build homes. We have declining space standards and large numbers of planning

[LORD SHIPLEY]
permissions granted but not carried through. The planning system is underresourced. Reductions in social rents may have helped the Government's finances, but they have impacted negatively on the affordability of building new social homes for rent and on supported housing. As has been pointed out, it can be difficult for local authorities to develop brownfield sites without higher levels of remediation grant.

I say to the Minister in particular that reference has been made to the sale of high-value council homes. I had hoped that, by now, the Government might have told us that that proposal had been kicked well into the long grass and would not be proceeded with. The White Paper is not helped in its intentions if the Government are to continue with their proposal to sell high-value council homes. I hope that the Minister may be able to tell us, if not this afternoon then sometime soon, that that damaging policy will cease.

The committee's conclusion in this report is that 300,000 homes a year should be built. Reference has been made to the Government's target of 1 million new homes by 2020, but the word "target" is incorrect. It is not a target but a commitment; it became a commitment in the last Queen's Speech. The difficulty for the Government is that the private sector can build only half of the 300,000 homes that the committee believes are needed. So there will be a requirement on everybody else to build the additional homes that I think we now generally recognise are needed—and, be that in the Government's figure of 225,000 to 275,000 or the 300,000 of the Select Committee, it is significantly higher than what we are building.

The committee rightly pointed out that the Government are helping those on the verge of being able to afford home ownership, whereas those who need secure low-cost rental accommodation have not been helped sufficiently. This is correct; the Government's focus on home ownership, while valuable and important, has been too great in comparison to that on the social rented sector. The Chartered Institute of Housing has said that the Government commit only 4% of their housing budget on below market rent social housing. That 4% is simply not high enough.

The committee said, as many of your Lordships have said this afternoon, that local authorities must be incentivised to do more. They should be able to borrow using the prudential borrowing code; I entirely subscribe to that. There are ways in which local authorities are doing good things. Bristol's new housing company is a good example of what can be done. However, while the Government will impose a new housing delivery test on local authorities, that test is mainly about planning, not building. Local authorities need greater powers over borrowing if they are to build.

Indeed, if local authorities and housing associations build more, that will reduce demand for housing benefit, which now stands at a very high level. In the interests of good public policy, it seems to me that building more homes for social rent would save on the total amount being spent by a different government department.

I was struck by the comments of the noble Baroness, Lady Wheatcroft, about the Public Works Loan Board. Of course, some local government pension funds may be investing in property for perfectly good reasons. For the rest, I would not wish to comment, not knowing the facts. However, the Minister might consider writing to all those who have taken part in this debate about the issue. It is about the future role of the Public Works Loan Board, it is about the powers of local authority pension funds to invest and what they can invest in, and it is about the powers of councils to borrow now against, first, their housing revenue account but, secondly, their general asset base. At the moment, there is not clarity about that in local government. It might help if the Government made a formal statement.

I am taken by the proposal for a senior Cabinet Minister to get more public land released. The figure has been cited that 3 million homes could be built on land that is currently publicly owned. That is a very large number. I subscribe to the view that there should be a Cabinet seat for the Housing Minister and I subscribe to the committee's recommendation that the best-market-value rule when releasing public land should be relaxed. I shall return to that in a moment.

The Government's proposals of an increase of 20% in planning fees will probably suffice for the time being. I have certainly been impressed by the work about new towns that the Government are now undertaking under the Neighbourhood Planning Bill, now approaching Third Reading. Useful comments were made about the National Infrastructure Commission and its role to ensure that housing is considered as part of our infrastructure.

The White Paper has some good things in it. I like the fact that the rule about the 20% starter home requirement in larger new developments has been relaxed. I like the proposals for build to rent. I like the proposals to make the affordable homes programme open to all tenures and to promote custom-build and self-build. These are all helpful, as is the housing infrastructure fund.

The problem remains finance. House prices are running at eight times average earnings, and fewer and fewer young people can afford to buy. Less than 40% of those under the age of 35 can now afford to buy, when just 10 years ago it was two-thirds. In the north-east of England, my home region, more than 70% of working renting families cannot afford to buy a new home, even with Help to Buy. Across England, that figure is 83%.

This takes me, almost finally, to land values. The planning system encourages speculation. Land is sold to the highest bidder, even by the Government. Developers can outbid other developers, then sit on the land to wait for values to rise so that they get their money back and generate profit. Where they build, they regularly succeed in getting the affordability element reduced. Unless this issue is addressed, the White Paper will not increase housebuilding by very much. I draw two conclusions.

First, we should tax undeveloped land. The committee said that powers are needed for councils to levy council tax on developments not completed within a set time. I concur with that. I also support land value taxation. It is time for the Government to review the tax system for undeveloped land. Secondly, I should like to think that public bodies, including government departments,

should be prepared to sell their land at below market value to break the cycle of ever-rising prices. Treasury rules need to be re-examined because they do not work properly for the medium to long-term.

The latest British Social Attitudes survey states that 56% of people would support more building of homes in their area. That figure has doubled in the past decade. The Government have an opportunity. They should grasp the opportunity of that rising public support for home building.

4.30 pm

Lord Beecham (Lab): My Lords, I should perhaps explain why I am speaking at this stage in the debate as opposed to where I was listed. It is not just because I can follow the noble Lord, Lord Shipley, and the right reverend Prelate the Bishop of Newcastle in an example of Newcastle united. It is, sadly, because my noble friend Lord Kennedy has had to return home because his father-in-law has died and he needs, of course, to be with his wife, my noble friend Lady Kennedy of Cradley. I am sure noble Lords will wish to extend to her our sympathy and our condolences on her loss.

The clue is in the title: I refer to the 104-page White Paper with its glossy cover, published this month, a year after the House began its protracted scrutiny of what is now the Housing and Planning Act. The title is *Fixing our Broken Housing Market*. It tells us something about the Government's attitude to housing that they should apparently see what is, at its heart, as the right reverend Prelate the Bishop of Newcastle pointed out, a major issue of social policy primarily in terms of the market. Of course, the market is part of the issue, but it is not the only aspect that has to be addressed fundamentally.

We should not, I suppose, be surprised. Where, to give him his due, Harold Macmillan long ago recognised the need for more and better housing, much of it in the public sector, in the Thatcher era an obsession with tenure developed, more particularly an obsession with home ownership, even where that was at the expense of those who were not able to afford to buy a home. So we had, and have, the right to buy, which has led to 35% of council homes that were sold now being in the private rented sector without adequate replacements and at a greater cost to the Exchequer in welfare benefits.

Moreover, affordability is defined by reference not to the income of tenants or would-be buyers but in percentage terms. "Affordable" is defined as 80% of the rents and prices of privately owned properties, artificially inflated as they are by an excess of demand over supply. The right to buy is being extended to housing association tenants, for the moment, at least, in a voluntary scheme, further decreasing over time the availability of genuinely affordable homes to rent.

I congratulate my noble friend Lord Hollick and the members of the Economic Affairs Committee, six of whom have participated in this debate, on a compelling report, which was published in July. As the noble Lord, Lord Forsyth, pointed out, it took the Government five months to reply with, in effect, three pages of responses to what they describe as the report's recommendations. The response does not, however, reply to comments in the report which do not contain specific recommendations. In fairness, some matters are touched on in the White Paper but, for example, the report comments at paragraph 253:

> "It is wrong to create specific tax rules, as is the case with recent changes to capital gains tax and inheritance tax, around housing".

That matter was raised by, among others, the noble Lord, Lord Turnbull, and my noble friend Lord Chandos. To this, no reply is made.

The report goes on at paragraph 254 to affirm, correctly, that "Council tax is regressive" and to recommend:

> "The bands should be amended so that owners of more expensive properties"—

I declare my interest as the owner of a house which is worth perhaps 12 or more times what some of my constituents' homes are, despite being in only band F—

> "so that owners of more expensive properties contribute proportionately more than owners of less expensive properties. This should be done in a revenue neutral way".

I mentioned that interest. I should also remind noble Lords that I am a member of Newcastle City Council and an honorary vice-president of the Local Government Association. Perhaps I could advise the right reverend Prelate the Bishop of Newcastle that in my ward and others work is being done to provide affordable social housing, although not in the numbers that we would ideally like to see.

The proposal is dismissed on the grounds that,

> "it would require a wholesale council tax revaluation".

Indeed it might, given that it is 25 years or more since any revaluation took place. But surely, given the huge increases in house prices over the years, some additional bands at the top and bottom ends of the scale would not be unreasonable, even if the overall yield was not increased, which should be the objective.

The report recognises the need for a substantial increase in the number of houses to be built. We have heard several of your Lordships point out that the Government's figure is less than is desirable or achievable. But of course we need to build not just houses but communities, of mixed tenures, including social housing, built by councils, housing associations and housing co-operatives, with provision for special needs, such as those of the elderly or disabled, and with the necessary physical and social infrastructure that creates a sense of place. To return to an issue I have frequently had occasion to mention, we must build to higher standards of space and energy efficiency than has been the case for many years. Comparisons with what, for the moment, we can still call our European partners do not show us in a good light.

We need to revive Parker Morris standards, which have been significantly diluted over recent years. Of course, we also need to ensure access to green spaces and educational, recreational and medical facilities. The White Paper devotes only a couple of pages to these issues under the heading of "Sustainable Development and the Environment". The right reverend Prelate the Bishop of St Albans made a strong point about the particular needs of rural communities.

[Lord Beecham]

The committee's report—understandably, given its remit—concentrates on numbers, and rightly refers, in chapter 5, to the benefits of, and the need for, more building by councils and housing associations, having pointed out in chapter 2 that government policies on the right to buy and starter homes conflict with their wish to increase the supply of affordable homes to rent. It points out that enabling councils to build homes for sale can help to finance building and refers to the imposition of cuts in social housing rents for both councils and housing associations, with damaging results for the capacity of both to invest in existing or new stock. I have mentioned the effect in Newcastle, where the 1% cut in rents will over time cost £590 million. The noble Lord, Lord Turnbull, and one of the right reverend Prelates made the same point about the impact of this measure. The report says that one housing association will lose £138 million in four years. The cuts benefit the Exchequer, since they will reduce housing benefit, but they aggravate the housing problem.

Critically, the report supports the right of local authorities to borrow to build social housing, a point strongly endorsed by the noble Lords, Lord Sharkey and Lord Kerslake, but to which the Government made no response. At paragraph 220, it makes a welcome call for the Government to allow councils,

"to borrow under the prudential regime to build all types of housing".

They would, after all, be investing in assets which over time will increase in value.

Interestingly, the committee is critical of recent government policy on the private rented sector. Paragraphs 94 to 98 refer to polices such as restricting tax relief on financing costs of rental property to the standard rate; introducing a higher rate of stamp duty on purchases of additional private rented properties; reducing tax allowances for wear; and exempting gains on residential properties from a reduction in capital gains tax. It refers to the warning of the Council of Mortgage Lenders that the impact of these changes will increase the cost and limit the availability of private rented homes, while the committee itself is concerned that changes, including stamp duty land tax, could inhibit investment in the build-to-rent sector, where apparently there is potentially between £30 billion and £50 billion available from institutional investors.

Crucially, the committee recommends that the target for new build should be 300,000 annually for the foreseeable future and it dismissed, as some noble Lords did, the Government's target of 1 million by 2020 as insufficient. In addition, it proposes that councils should be able to vary planning fees, a matter that has been the subject of comment by the noble Baroness, Lady Eaton, and others, and levy council tax on properties not completed within a set period. The committee's report makes a notable contribution to a debate of the highest importance to millions of people who aspire, perfectly reasonably, to live in modern, affordable housing with a genuine choice of tenure. It deserves a better reception from the Government than is reflected in last year's Housing and Planning Act or this year's White Paper. I hope that the Minister, in his reply, will take the Government's declared position somewhat further than now appears to be the case.

By sheer and timely coincidence, I attended a meeting this morning with the noble Lords, Lord Horam and Lord Shipley, at which Shelter launched its report on civic building, which is available on its website. It has interesting ideas on the very subject we are debating, and a title as telling as that of the White Paper. Two statistics were mentioned which highlight some of the problems we face: 83% of people cannot afford to buy new homes at current prices, and 50% of people who can afford it and do buy encounter problems with the property. The building industry is not just not building enough, it is apparently not building well enough. That is also something that needs to be addressed.

One other issue received particular emphasis. Colleagues who attended will agree that probably the highest amount of attention and concern was given to the cost of land, and the requirement on public authorities to sell to the highest bidder. This is not addressed in the White Paper. Will the Minister indicate whether the Government will at least be reviewing this? I have been critical of the White Paper but it is an improvement on what has gone before—it would be difficult for it not to be an improvement on what has gone before—but much more needs to be done. The Committee's report offers sound advice on how to tackle the range of issues that need to be addressed in the interest of providing decent, affordable homes for all who need them, whatever age they are or whatever status they have in society, as part of a programme involving local communities, local people, local authorities and the building industry to reignite an approach to housing that will lead to substantial numbers of good houses being built and made available. Importantly, we need communities of mixed tenure which strengthen the bonds of our society.

4.43 pm

Lord Young of Cookham (Con): My Lords, the whole House understands why the noble Lord, Lord Kennedy, was unable to wind up the debate. We extend our sympathy to him and to his wife, the noble Baroness, Lady Kennedy, on the recent loss of her father, although no one would know that the noble Lord, Lord Beecham, had not been working on that wind-up speech for several weeks.

If political students wanted a textbook example of how a committee in your Lordship's House could influence and reshape government policy, I would direct them to the report we have been debating this afternoon. As the noble Lords, Lord Horam and Lord Best, explained, its context was the Housing and Planning Bill, introduced by the newly-elected Government in 2015, which contained a number of measures to increase housing supply, particularly for first-time buyers, but was not free from political controversy. It provided the back-drop to this report, which was published a few weeks after Royal Assent.

A few days after publication, there was, in effect, a change of Government. All DCLG Ministers but one were moved and a new team arrived, with the political space to revisit policy and with your Lordships' report in their in-tray to assist that process. I have been genuinely impressed by the fresh approach adopted by Gavin Barwell, as I know have many others, who have admired the way he has shown his commitment to

tackling the challenges of his portfolio and engaged with all the stakeholders. As a former Chief Whip I would caution against praising him too highly, just in case he is headhunted by the Prime Minister and his skills are applied to other challenges that may confront the Government in Whitehall. But it was perhaps a tacit acknowledgement of the influence of your Lordships' report that the title of the subsequent White Paper, *Fixing Our Broken Housing Market*, was lifted from the introduction to this report: "Housing, A Broken Market?".

I cannot think of any Select Committee report in either House that has had so many of its recommendations adopted so quickly, sometimes at the expense of Government reordering earlier priorities, as my noble friend Lord Horam said, and as also mentioned by the noble Lords, Lord Turnbull and Lord Kerslake. Perhaps the right reverend Prelate the Bishop of St Albans would describe it as repentance. We are taking forward measures that fit with over half of the committee's 13 final recommendations as well as a host of other points raised in the report. So I commend the committee on the timing and the targeting of its report, its chairman for his perceptive introduction and all noble Lords who have taken part in this debate. The White Paper was, of course, a consultation document, so everything that has been said in this debate will be taken into account in that process.

I have discovered in my short time in your Lordships' House that Whips are often invited to respond to debates on subjects in which they had, until shortly before, displayed but a fleeting interest. I hope that that is not the case today; like other noble Lords, I have chaired a housing association. Unlike other noble Lords, I was a housing Minister at various levels of seniority from 1981 to 1994, with a discontinuity from 1986 to 1990 when I fell out with Margaret Thatcher over the poll tax. Indeed, as Under-Secretary of State at the Department of the Environment, I first spoke in a housing debate in October 1981 about making the best use of government land to support the housebuilding programme—a subject still topical today, as the committee highlighted in its report.

Let me say how the Government have acted on the committee's recommendations, and try to address the points raised in today's debate, recognising that I may not have time to address all of them, in which case I will of course write to noble Lords.

The report rightly acknowledges that housing has become too unaffordable, whether to rent or to buy—a point strongly made by the noble Lord, Lord Hollick, when he introduced the report; and many others, including the noble Baroness, Lady Blackstone, and the noble Lord, Lord Sharkey have explained the impact this has on the lives of those who are affected. They reminded us that the average house costs almost eight times average earnings—an all-time record. This means it is too difficult for too many people to get on the housing ladder, and the proportion of people living in the private rented sector has doubled since 2000. For the average couple in the private rented sector, rent now takes up roughly half of their gross income, a point mentioned by the noble Lord, Lord Turnbull, who also mentioned the anxiety that many of those in the private rented sector feel because of the absence of security. That figure, of roughly half of their gross income, is even higher in London. Noble Lords may ask themselves, as indeed do many others, how their children and grandchildren will be housed when they grow up and leave the family home. The Government are determined to reform the housing market so that housing is more affordable and people have the security they need to plan for the future. That is the background to the White Paper.

The starting point, as the committee has recognised, is to build many more homes. Since the 1970s we have delivered, on average, 160,000 new homes each year in England, far below what the committee and numerous independent assessments have said we need. The White Paper sets out a comprehensive plan to deliver the step change in housebuilding—as the noble Lord, Lord Kerslake, described it—which capitalises on the substantial additional funding secured in the Autumn Statement. The figure of £1.4 billion was referred to by a number of noble Lords as extra money available for affordable housing. In deciding how that money should be spent, the right reverend Prelates the Bishop of Newcastle and the Bishop of St Albans stressed the importance of stable communities where young people can buy a home and have a stake in the area in which they live. We were invited by the right reverend Prelate the Bishop of St Albans not to overlook the needs of rural housing. That is, indeed, a priority and there is a new community fund to provide £60 million per year to support housing in rural areas. It is interesting that in the Neighbourhood Planning Bill a number of neighbourhood plans came forward with more homes in their village or community than were actually required by the district plan. That addresses the point so well made by the noble Lord, Lord Best, that nimbyism is moving on, although it may not have totally disappeared.

To achieve this goal, the White Paper sets out a four-pronged approach. First, release more land for homes where people want to live. The noble Lord, Lord Forsyth, reminded us that there are regional variations in the equation between supply and demand. Secondly, ensure homes are built more quickly, once they have planning permission; thirdly, open up the housing market to a wider range of providers and methods of provision; and fourthly, help people in the meantime while our reforms take effect. We think that that is a comprehensive and realistic plan to deliver the homes we need, and others agree. David Orr, chief executive of the National Housing Federation, said that the White Paper contained,

"extremely positive steps towards ending the housing crisis".

How have we addressed the committee's recommendations? It raised the importance of ensuring that local authority planning departments are properly resourced—an issue raised by my noble friend Lady Eaton and others. As noble Lords have mentioned, the Government are boosting local authority capacity by raising planning fees, by 20% where local authorities commit to spending the additional income on planning services. The Federation of Master Builders has said that this is,

"one of the biggest game changers",

in the White Paper. I hope that those extra resources might enable planning authorities to recruit the ecologists referred to by the noble Baroness, Lady Young of Old

[LORD YOUNG OF COOKHAM]
Scone, where they are needed and also to deal with some of the sharp practices that we heard about from the noble Earl, Lord Lytton. An additional 20% is available in areas that are delivering on their housing plans.

The Government agree with the committee that we need to act to ensure that homes are built more quickly once planning permission has been granted, which was an issue raised by the noble Baroness, Lady Blackstone. The White Paper includes a package of measures to address slow build-out. The committee highlighted the suggestion that planning consents should be limited to two years. We encourage local authorities to consider shortening the timescales for developers to implement a permission from three to two years, as set out in the White Paper.

The committee recommended that the community infrastructure levy needed to be simpler, more transparent and responsive to the concerns of builders and we are looking at that carefully. That includes the workings of Section 106, which was raised by the noble Viscount, Lord Chandos. We will make an announcement at the conclusion of those considerations in the Autumn Budget this year.

More broadly, we are tackling the barriers that can hold back development on-site, including through the £2.3 billion housing infrastructure fund, by helping to put the right infrastructure in the right places—an initiative welcomed by the noble Lord, Lord Hollick—and by streamlining the licensing system for managing the great crested newt. Too often, lack of infrastructure prevents development, and that substantial sum should unlock up to 100,000 new homes. We will hold the feet of local authorities and developers to the fire to account for the delivery of new homes, including through a new housing delivery test, to ensure that local authorities are on track with their plans.

The committee made several recommendations about making better use of public land to deliver new homes. The Government aim to dispose of surplus government land in England with capacity for at least 160,000 homes by the end of March 2020. This follows our successful programme in the last Parliament, in which land was released for 109,000 homes against a target of 100,000.

Progress with the current programme is good. The programme's annual report, published on 20 February, shows that by the end of September 2016 departments had already sold or identified land with capacity for 145,492 homes—91% of the programme's ambition. I hope that publication of that report, which of course came after the publication of the committee's report, has addressed concerns about when information on monitoring the new programme would be available. We will publish a further report in July, with data about the number of homes built on land released under the programme—an issue raised by the noble Baroness, Lady Blackstone.

Alongside this, the Government's new accelerated construction programme will deliver up to 15,000 housing starts in this Parliament on surplus public sector land and encourage new developers with different models of construction to build new homes at up to double the rate of traditional housebuilders.

We agree with the committee that we need to diversify the market to increase supply. That includes supporting housing associations and local authorities to build more—an ambition recommended by the committee in Chapter 5—alongside supporting smaller developers and new investors.

We want to support housing associations with ambitious plans for growth—for example, L&Q, which has recently merged with East Thames housing association and acquired the strategic land firm Gallagher. I was interested to hear from the noble Lord, Lord Kerslake, about the merger between Peabody and Family Mosaic with the specific aim of enabling the combined association to build more homes. We welcome new investors into different types of housing, such as the joint venture in supported housing between Universities Superannuation Scheme Ltd and Morgan Sindall Investments Ltd—a subject raised by a number of speakers, including the right reverend Prelate. Although we have taken initiatives to sustain supported housing with some ring-fenced funding, I understand that there are residual anxieties, which I will certainly pass on to ministerial colleagues.

We want to see local authorities deliver new council houses, as stressed by the right reverend Prelate the Bishop of Newcastle. Numbers of new council homes have been increasing year on year, and they are an important source of new supply, particularly in areas where there is acute housing need.

We will work with local authorities and key partners to consider the options for increasing housebuilding further. This may include innovative approaches—such as the one in Ashford mentioned by my noble friend Lady Eaton—and the use of local housing companies to deliver new affordable and market housing. In response to the question from the noble Lord, Lord Hollick, I understand that there is no fixed budget for this. The department responds to requests on a case-by-case basis, focusing on areas of high demand.

My noble friend Lady Wheatcroft raised points about diversifying the market and the potential for the greater use of modern methods of construction, such as off-site construction. We will stimulate the growth of the sector through government programmes—for example, partnering with off-site manufacturers through the accelerated construction programme—and we will work with lenders to ensure that homes built off-site can access finance on the same basis as traditionally built homes. Therefore, in direct response to the question from my noble friend, we recognise the imperative of government leadership in this area in getting the initiative off the ground.

The committee called for more homes for rent alongside those for sale. The White Paper includes a package of measures to boost new privately financed build-to-rent developments, as well as additional investment and flexibility for more affordable homes, including those for rent. That was a subject raised by the noble Lord, Lord Best, and perhaps I can focus on it for a moment. I have always been amazed that pension funds and insurance companies in this country have invested in almost every conceivable asset apart from residential accommodation for rent. They have invested in gilts, equities, commercial property, commodities, gold and silver, but, had they invested in homes for rent, they would have achieved both capital

appreciation and income buoyancy unparalleled by almost any other investment. I have nothing against buy-to-let investors, but there would be more stability and professionalism in this sector if there were this long-term institutional investment, as suggested by the noble Lord.

A number of major investors have already invested and are already building schemes—Legal & General, M&G, Grainger, Moorfield, Lone Star, Hermes, Realstar, Essential Living and Delancey, to name but a few. I noted that the property consultancy Knight Frank estimates that investment appetite could grow to £50 billion, representing 250,000 homes.

The committee highlighted barriers to entry for smaller builders. The White Paper includes a package of measures to help smaller firms—an issue raised by the noble Lord, Lord Layard—from making more small sites available through the planning system, to loan funding of £1 billion as part of the home building fund to support small and custom builders. Many noble Lords spoke about those on the waiting list and those threatened by homelessness, which I hope will be assisted by the Bill being taken through your Lordships' House by the noble Lord, Lord Best.

Increasing the supply of social housing for rent will of course help those looking to the sector for a solution to their housing problem. I have always favoured schemes that help social tenants move on to home ownership, such as HomeBuy. Some of these, where tenants move into a new property such as Help to Buy, can help to secure a re-let at a fraction of the cost and time of a new build. That can promote mobility through the sector helping both tenants and those in housing need.

The committee and noble Lords raised a number of questions about the Government's housing target. Our ambition is to deliver 1 million new homes by this Parliament, by March 2020. We have made good progress so far with 189,650 new homes delivered in 2015-16. However, there is clearly more to do, as the noble Lords, Lord Sharkey and Lord Kerslake, reminded us. No one who has listened to this debate could draw any conclusion other than that we need to go a lot further to meet that ambition.

I turn now to some of the points raised in the debate. A recurring theme was the need to raise the borrowing limit for local authorities. In addition to doing a spell as a Housing Minister, I also did a spell in the Treasury so I can see both sides of the argument. On the one hand, the Housing Minister wants the maximum borrowing capacity for local authorities and on the other hand the Treasury sees an imperative to manage public debt. Clearly, there is tension between the two. I would like to write to noble Lords because there is a real danger of getting bogged down in fiscal theology as to what scores and what does not score as a public expenditure. I will set out more clearly what we are doing and what the constraints might be. But in the Autumn Statement 2013, £300 million of additional borrowing was made available to councils in England and £127.2 million was taken up. In 2015-16, local authority borrowing headroom is set to be £3.4 billion on top of almost £2.5 billion of general housing revenue account—the reserves accumulated by local authorities.

The noble Lord, Lord Sharkey, asked what the housing delivery test was. It is about assessing progress in housebuilding against local planning authorities' targets. It compares the number of homes that local planning authorities set out to deliver in their local plans against the net additions in housing supply. It is not just about planning but about how many actual houses are built.

My noble friend Lord Forsyth raised the issue of the PRA. I will raise again with the Treasury and the PRA the issue of the capital weighting of loans to small builders. I have many other answers, but my time is drawing to a close so I will sum up. The Government are committed to fixing the problems with our housing market, many of which the Committee highlighted in its excellent report. By building the homes that Britain needs and giving those renting a fairer deal, we will give those growing up in society today a greater chance of enjoying the same opportunities as their parents and grandparents, as part of our wider ambition to make this a country that works for everyone. I welcome the committee's interest in this area and, in light of the impact of its report, hope that it will consider looking at the issue of housing again, possibly later in this Parliament.

5.03 pm

Lord Hollick: I thank all noble Lords who have spoken today. We have had an interesting debate and there were some kind remarks about the committee's report. There were surprisingly high marks from the noble Lord, Lord Kerslake, and some unusual career advice from the noble Lord, Lord Horam. We may indeed return to this topic later, but we look forward to the Minister's response, particularly on the availability of finance to underpin the ambitions that are widely shared around the Chamber. On the 1 million homes, it is clear that we will have to see quite a large increase at the end of the Parliament—in 2019-20. It might be helpful if I add a further burden to the Housing Minister's already full in-tray, which is to provide a programme of how the Government are going to achieve this objective. What measures will they take? We have neighbourhood plans for local authorities, which indicate the number of housing opportunities available. How will those opportunities be grasped? Who will build those houses? If the Government could set that out, it would do a lot to allay the scepticism that we have heard around the Chamber today about the deliverability of the plans.

Motion agreed.

Brexit: Options for Trade (EUC Report)

Motion to Take Note

5.04 pm

Moved by ***Lord Whitty***

That this House takes note of the Report from the European Union Committee, *Brexit: the options for trade* (5th Report, HL Paper 72).

Lord Whitty (Lab): My Lords, after a week of excitement in this House on Brexit, it is a little galling that it takes us until 5 pm on a Thursday afternoon to

[LORD WHITTY]

get to what is actually the central issue in terms of our future relationship with Europe—namely, the trade relationship. However, I am very grateful to everybody who has stayed, including the Minister, and I am sure that we will have a good and effective debate.

This inquiry was carried out by two committees. I thank all the members of both my committee and that of the noble Baroness, Lady Verma, and the staff who have produced this report. It was a very interesting exercise. The inquiry was conducted in the autumn of last year and reported in December.

There have obviously been one or two developments since then. We have had the Prime Minister's speech in January and the White Paper which followed. In effect, the Government have rejected two of the broad frameworks that we considered as options: the option of remaining within the single market, probably via the EEA—what some call the Norway option—and, to all intents and purposes, the option of staying within the customs union. More recently, actually as recently as yesterday, we had the Government's response to our report, for which I thank them.

These developments have limited the range of formal options and negotiating priorities that the Government have decided to pursue—they have restricted them broadly to what the Prime Minister calls a "bold and ambitious" or an "ambitious and comprehensive" free trade agreement—but they have not altered the concerns, anxieties and requirements that we had put to us from a whole range of sectors at that time, most of which are still valid.

Our collective starting point was that membership of the EU has defined the UK's trade policy for the past 40 years. It obviously defines our terms of trade with other EU states but, equally importantly, the UK's trade with third countries is in effect based on terms negotiated by the EU as a bloc, either through EU free trade agreements or shared schedules of commitments under the World Trade Organization. We considered how this might change after the UK leaves the EU. We looked at the European Economic Area, at the customs union, at trading on the basis of WTO rules and at negotiating, as the Government seem now to be intent on, some form of free trade agreement with the EU.

We did not attempt a detailed economic evaluation of each of those options, nor have the Government ever presented us with such an evaluation—which is a bit strange, given the strategic importance of the decision before us. Nevertheless, we looked at what the requirements would be as expressed to us by a whole range of industrial sectors, academics and others who saw the advantages and disadvantages in each of the options. The fact that we are now focusing on a free trade agreement is important, but equally important is to focus on the other option which the Government say is now open: in effect, reverting to trading under WTO rules if there is a "no deal" situation.

Let us look a little bit more at those options. The first point in our report is that the majority of our industrial, business and academic witnesses favoured one option that is now rejected: membership of the EEA—or at least of the single market but the most obvious way to do that was through the EEA. That option has been closed by the Government, but the reasons industry favour it remain. They want tariff-free access, maximum regulatory equivalence and, in many cases, freedom to recruit skilled labour within the EU. Any free trade agreement with the EU would need to go at least some considerable way towards meeting those requirements.

Of course, it is true that the Government rejected the Norway solution because it offends two of their key political red lines: first, the need post Brexit to gain what they regard as total control of our migration policy and, secondly, the need to escape the jurisdiction of European law and of the ECJ in particular. It is arguable that a further deal could have been done on the issue of free movement, but our report does not go into that. We clearly say that, frankly, any liberal trade agreement—an FTA or even trading under the WTO rules—involves some compromise on your sovereignty. In other words, it is a myth that you can take back total control of your borders if you engage in trade in any degree of mutual arrangement with other countries, including the EU. Taking unilateral control is subject to at least supranational or joint processes for dispute resolution and for testing equivalence of regulatory frameworks. In the world of international trade, there is no entirely free lunch.

Our report describes two of the most comprehensive FTAs the EU already has with third countries: its trade relationship with Switzerland, which is complicated and based on more than 100 bilateral agreements within that framework, and the very recent and not entirely implemented Comprehensive Economic and Trade Agreement with Canada.

Although CETA has been branded the most comprehensive FTA in existence, our witnesses were quite clear that existing FTAs, including CETA, do not provide anything like as comprehensive access to the single market for businesses as membership of the single market as such would entail. In a free trade agreement, UK manufacturers for example may well have to comply with the rules of origin. These imply levies imposed by importing nations on the components of goods that originate outside the country. Exporting such goods would cause complications for most of our manufacturing industry.

We also conclude that an FTA with the EU would have to be of unprecedented depth to provide anything like the level of market access for UK service industries. There are great complications in the services trade, and most FTAs do not in any detail cover trade within the service sector. They more or less talk about equivalence of regulatory frameworks. There is therefore no precedent in any relationship the EU has with other third countries that gives us much guidance as to how an FTA would look in relation to the EU. FTAs provide a great deal of flexibility. Of course, we would not have to accept the principle of free movement or the jurisdiction of the Court of Justice. However, we would have to ensure that there was a high degree of regulatory equivalence and that we had a joint arrangement to settle disputes.

We then also considered how the process of negotiating such an FTA would operate. This is the area where we had greatest reservations about what appears to be the

Government's current position. In the context of the tight two-year deadline imposed by Article 50, we concluded that,

"experience demonstrates that FTA negotiations with the EU are complex and slow moving".

All our witnesses were unclear to downright doubtful about whether the UK would be able to negotiate such an FTA in the same timetable as the UK's withdrawal from the EU. Ministers continue to say that they would hope to do so; almost everybody else told us that, in any case, the EU 27 and the Commission are likely to take the view that these negotiations would have to be undertaken separately and staggered. There would be a divorce agreement, and that divorce agreement covering such contentious issues as the budget and acquired rights would have to be completed before we could move into negotiating a free trade agreement in any detail. Even if we had an outline commitment to a free trade agreement, the complexity I have described would take considerably longer to negotiate. We therefore recognised that the conclusions would be not only complicated but probably part of a wider agreement which the Government would have to reach with the EU.

There are issues other than trade—security, criminal justice, climate change, cultural and foreign policy relationships, and possibly mutual arrangements on migration—and it would be highly desirable if we did have a very comprehensive agreement, but that would be even more complicated and likely to take even longer. Accordingly, we recommended that the Government should urgently consider and be clear to the nation about whether negotiations on a UK-EU FTA could be conducted in parallel with the withdrawal negotiations and if not—and probably even if so—whether they would seek a transitional trading arrangement in order that the full details of the negotiations could be worked out.

On the issue of the transitional arrangement, the Government's response is that we will not seek,

"some form of unlimited transitional status".

Rather, we expect,

"a phased process of implementation".

Nobody was calling for an unlimited transitional phase, but phased implementation clearly relates to an agreed end. In effect, the period of negotiating withdrawal is considerably less than two years. We will not be starting until the mandate has been given by the Council of Ministers to the Commission, which will probably be in June. Even then, heavy discussions will probably have to await the German elections and will have to be completed before the European Parliament elections. We are therefore talking about considerably less than 18 months. In the absence of clarity on the Government's position, I therefore ask the Minister to clarify the Government's view on the relationship between the withdrawal arrangements and the negotiation of a free trade agreement, and on the need for a transitional arrangement.

The other reason why the now discarded EEA option remains relevant is that it illustrates what the EU has sought or found acceptable in the past in the pretty comprehensive trading relationship it has with the EFTA countries. It includes a mechanism to transpose changes in EU laws into domestic legislation on an ongoing basis. We are about to see a great repeal Bill, which will in effect put EU laws into British law. That will mean that, at the point of departure, we will have more or less harmonised or equivalent regulatory structures. It is what happens beyond that that the Government will have to ask about, and the EU is likely to have a starting point that it will require the same of us as it has required of the EFTA nations. Frankly, there is not much reason to suppose that the EU's starting point in negotiations will be to offer the UK significantly more favourable terms than it does to the EFTA countries.

I will mention one other thing before I sit down. The report is about UK-EU relations but those relations are also important for the prospect of deals with the rest of the world, on which the Government are embarked, and for the sequence of events. For all the talk of doing deals with Mr Trump, New Zealand or India, while preliminary discussions can no doubt take place, no deals can be signed until after we leave the EU customs union and the common external tariff. That is not simple. Even if scheduling what are currently EU tariffs as provisional UK tariffs at the WTO may be relatively straightforward, we will then have to unravel from EU arrangements. Until we do that, it is not possible to conclude other deals, because not only is it unclear whether third countries currently party to an FTA with the EU will be prepared to offer the same terms to a market of only 60 million that they offered to a market of 600 million, it is technically difficult in many cases, because many EU tariffs also have tariff quotas attached. This applies in particular to agricultural and commodity trade. Since many third countries, including New Zealand and the USA, are big in agriculture, as are India, Brazil and most of the developing countries, the divvying up of those tariff quotas will be a very complex early stage in negotiation. This has implications for trade with the third world, as well as trade with the EU as such.

The report is not all doom and gloom; we are merely saying it is difficult. The Government have to recognise that it is difficult and gear up to tackle it. We were a bit critical of the Government's capacity when we discussed this back in December. We have been reassured to some extent that the Government are getting their act together across Whitehall now, but it is a colossal task. I would welcome anything the Minister can tell us about how the build-up of Whitehall expertise, capacity and co-ordination is going.

Our report is but a snapshot of the debate. It covers different paths that we are now likely to go down. None the less, it remains instructive not only about the realities of trade in the modern world, but in highlighting the trade-offs and the deals that will need to be done on sovereignty and mechanisms. It also brings the House up to date on the complexity and size of the tasks. I beg to move.

5.21 pm

Baroness Verma (Con): My Lords, I am extremely grateful for the opportunity to debate the report of the External Affairs and Internal Market Sub-Committees of the EU Select Committee. It is a great pleasure to follow the speech of the noble Lord, Lord Whitty. We have worked very closely with him and his sub-committee

[Baroness Verma]
on this joint inquiry. He has laid out with great eloquence a number of key areas that have been provided by witnesses in evidence to the committee and the range of questions that the committee has put to the Government.

I will not repeat many of the areas the noble Lord has alluded to but, as the chairman of the External Affairs Sub-Committee, I start by extending my thanks to its members for their important and considered contributions to this report. I am pleased that many of them are here supporting the debate and contributing to it. I also put on record our thanks and appreciation to the secretariat, to Eva George and the policy analyst, Julia Ewert, for their assistance and diligence throughout the inquiry and in the preparation of the report. It has not been easy. It has been a difficult one to bring together. They have done a sterling job with the clerk and members of the Internal Market Sub-Committee. I also put on record my appreciation and thanks to our specialist adviser, Holger Hestermeyer, for his expertise. It made a valuable contribution to our work, the report and our wider understanding of some of the minute details of the work the Government have to undertake.

As the noble Lord, Lord Whitty, said, future trade with the EU after Brexit is a hugely important issue. The EU is the destination for 44% of our exports and the source of 53% of all our imports. The terms of this relationship will be fundamentally changed by our exit from the EU. We are entering uncharted territories, so in this environment the role of Parliament in investigating the implications of Brexit and in scrutinising the Government is critical. The committees have sought to provide a balanced and thorough overview of the issues that are likely to arise from the four main options for trade. As the noble Lord, Lord Whitty, said, the EU committees will further be publishing detailed reports on trade in goods and trade in services next month. In this debate, I will focus on two options not covered in detail by the noble Lord, Lord Whitty, in his opening remarks, although he did mention them: the implications of leaving the customs union and trade under World Trade Organization rules.

I turn first to the customs union. As we set out in the report, the customs union prohibits customs duties and non-tariff barriers on imports and exports between member states. It forms the single market in goods and has significantly benefited cross-channel trade and facilitated the development of integrated EU supply chains in many industries, for example in, first, the chemical industry and, secondly, the automotive industry.

We have heard that great attention has been given to the Government's stated intention to negotiate their own trade agreements after Brexit, and since we published our report, as the noble Lord, Lord Whitty, said, the Government have confirmed their intention to leave the common external tariff and forge new agreements with third countries. In our report, we concluded that addressing tariff barriers within an FTA could be relatively straightforward, notwithstanding the short timescale to negotiate an agreement. But replicating the prohibition of non-tariff barriers to trade while outside the customs union will be more of a challenge. This includes compliance with rules of origin, regulations and standards. A second issue in leaving the customs union will be costs and delays resulting from customs procedures and any added administrative burdens.

Since we published our report, the Government have, as has been alluded to, ruled out membership of the customs union following the model of Turkey—a non-EU country. They have also stated their intention to achieve "frictionless" trade with the EU. Currently, it is unclear how this can be achieved outside a customs union, but our forthcoming report on trade in goods will consider and probe these matters in greater detail. It will be interesting to understand much more clearly what frictionless trade means.

My second point is about the World Trade Organization option. Establishing the UK's independent schedules at the WTO is a matter of first-order concern. The UK's WTO schedules will be the baseline for the rest of our trade, with the EU and with other trading partners. I am pleased that the Government have confirmed that work is under way to begin this process, and that they will seek to replicate the EU's existing schedules. The Government told us that this process should be a largely technical "rectification" process, and so relatively straightforward. Although I hope that this is the case, as we noted in the report, politics and events can sometimes intrude into such negotiations. Although establishing UK schedules swiftly may be the UK's priority, other members of the WTO may seek to use this process to seek further concessions and clarifications from the UK. Notably, negotiations on tariff rate quotas for agricultural products often prove protracted and complex to resolve.

The Government have said that they recognise the need to increase human resources within government and, as the noble Lord, Lord Whitty, said, we are pleased that the headcount is going up. I am assured that the Government are working to increase not only staff numbers but capacity at the Department for International Trade. However, we concluded in the report that its current staff headcount is relatively modest compared to the ambitions of the Government to begin preliminary discussions on FTAs with a range of third countries. It is crucial that in that light, and looking at what other current partners already have, we see the capacity and resource issues addressed urgently.

I reiterate the view of the committee that establishing the UK's schedules at the WTO, alongside the negotiations with the EU, should be the Government's priority. The UK's WTO schedules will be the foundation of its independent trade policy. Future FTAs with countries such as the US cannot be concluded until the UK has left the EU, and so work by the Department for International Trade should be sequenced accordingly.

If, as we concluded in the report, the UK is unable to agree an FTA with the EU within the two-year Article 50 process, as raised by the noble Lord, Lord Whitty, we will trade on WTO terms. The Government have said that, in their view, no deal is better than a bad deal—but when the Government describe the no-deal scenario, trade under WTO terms is the reality. I will elaborate a little further. Trading with the EU on the basis of WTO schedules would involve a considerable change to the UK's current conditions for trade: tariffs

would be imposed, non-tariff barriers would no longer be prohibited, and there would be no provisions for many important services traded by the UK. This could be extremely damaging. The Government have been clear that this is not the outcome that they seek but, while we must aim for the best possible outcome from the negotiations, rigorous planning is needed to understand the impact of no deal—that is, of trading with the EU on WTO terms—to help businesses prepare for this as a possibility.

This also highlights how important it will be to secure a transitional arrangement, as the noble Lord, Lord Whitty, has said. The Government's position—as stated by the Prime Minister on 17 January at Lancaster House, and in their response to our report—has been somewhat unclear. They have ruled out what they term an "unlimited transitional status" and instead proposed a "phased process of implementation". This may be a case of semantics—at least, I hope it is—but UK businesses need a bridging agreement that begins immediately after our current terms expire. I urge the Government to seriously consider negotiating a transitional arrangement as they begin these vital negotiations with the EU.

I recognise that there is a lot of work being undertaken by the Government, but the Prime Minister has excluded membership of the single market and the EU's customs union, and there remains considerable uncertainty. Can my noble friend the Minister tell the House how they will assist business in managing the transition to a new trading framework, and provide more detail on the content and feasibility of the Prime Minister's approach to the customs arrangement? I look forward to hearing from my noble friend.

5.32 pm

Baroness Armstrong of Hill Top (Lab): My Lords, it is a pleasure to follow the noble Baroness, Lady Verma, and my noble friend Lord Whitty who, as the chairs of the two sub-committees that came together, guided us very carefully to as clear a report as possible. I saw this inquiry as a straightforward attempt to set out the myriad relationships that there are currently between the European Union and other countries and the costs and benefits of each approach, so that wider stakeholders, the public, and the Government could begin to see some of what will need to be negotiated.

As I have said before in this House, I am learning a lot from these committees—I come out of every meeting thinking that this is much more complicated than anybody anticipated, and certainly more than anybody understood before they were able to place their cross on 23 June last year. I approached this inquiry as I approach most things: through the prism of the region that I come from—the north-east. Trade is at the centre of the relationship between the north-east and the European Union. Indeed, a higher proportion of exports from our region go to the EU than from any other region. These exports are almost exclusively manufactured goods, although there are, of course, services that often go alongside them, but we export more manufactured goods per capita than anywhere else in the country. The north-east has a positive balance of trade that is the healthiest in the country and I am sure that the Government will not want to lose or neglect that really important point, because I suspect that the north-east is—by every criterion—one of the areas left behind that the Prime Minister talks about so much.

The Government, in their response to the report, make it clear that they are not actually going for any of the models that are outlined in it. They do accept, however, that they have to prepare for the "no deal" option, which would mean reverting to WTO rules. Even before triggering Article 50, they have already ruled out the option that the majority of manufacturers want—continued membership of the single market and the customs union. That means that the struggle to meet their expectations is going to be even greater, and I hope that the Government accept from this report the challenges that any new deal is going to bring. None of them is cost-free and none of them constitutes "taking back control" continually, as my noble friend Lord Whitty said. The real problem that crawls out of this report is that nothing is for nothing.

The Government have been, to date, incredibly optimistic, but sometimes it seems—and their response to this report reinforces this view—that they are not being wholly realistic. What manufacturers are looking for is as much clarity and certainty as possible. I accept that it is not possible at this stage to provide that fully, but the Government have a responsibility to respond to those ambitions as much as possible. I have met no one in the EU—and the committee has met people from the EU in relation to this report and to many other activities in recent months—who wants to be vindictive towards us. However, their prime ambition seems to be to make sure that the EU survives and, hopefully, prospers. If they think that we are seeking a deal with no difficult consequences for the UK—that it is all going to be wonderful in the way it is often described to us in government speeches—then they are going to look at that with a great deal of caution. They do not want people in any other country to feel that we will get a better deal than they would and that, therefore, it is worth them seeking to leave the EU. We have to remember that in the way that we negotiate and approach this.

I suspect, and the report reinforces this, that the devil will be in the detail, and that the framework for future relations that will have to be spelled out in the leave document, which we normally refer to as the divorce settlement, will simply not be able to explore the detail. In this case, the Government need to address transitional arrangements, but they seem somewhat coy in acknowledging this. They say—again, as the noble Lord, Lord Whitty, said—that they expect a "phased programme of implementation" following the Article 50 process. Frankly, I do not care what the Government want to call it. What we need, and what manufacturing industry in particular needs, is some clarity that there will be a process put in train after the two-year limit, which will deal with the detail in a way that does not put it at the cliff edge. I know that that is the Government's ambition but they are going to have to establish the game plan, as we say in the report.

I am normally an optimist: being a woman in the Labour Party and a Sunderland supporter, you have no option. However, I find this very difficult. I do not accuse the Government of false news, although a lot

[Baroness Armstrong of Hill Top]
of the campaigning for the referendum could be described in that way, but I caution them about being so optimistic that it appears blasé. The worst outcome will be to raise expectations that are then distinctly underachieved. That is not in the interests of the country and, I might say, especially not those of the north-east. I hope the Minister recognises that we need a dose of reality in this debate. It will be a long, tough road ahead. Yes, we want the best outcome but this is a negotiation and while we may be one of the largest countries in the EU now, we are not in sole control of these negotiations. We need to approach them realistically and with humility.

5.41 pm

Lord German (LD): My Lords, I, too, add my thanks to the two chairs of the sub-committees and to the staff of Parliament who assisted us in making this report. In his opening remarks the noble Lord, Lord Whitty, referred to the picture having moved quite rapidly since the report was written. It is rather like having a snapshot taken out of a moving picture. I will therefore concentrate my remarks on the Government's response to this report. We could probe many very pertinent issues very deeply.

It seems that the Government have issued all departments with a lexicon of words that they must use in respect of everything to do with our future relationship with the European Union. I will name a few: ambitious, comprehensive, frictionless, phased implementation, and the one that is definitely not my favourite, facilitations—I even have trouble pronouncing that because it does not appear in any dictionary. I looked up one word that has been used frequently: frictionless. The Oxford dictionary defines it as, "Smooth, achieved with little difficulty, effortless". I wonder therefore whether the Government have given out the wrong book, because they are using these words in their analysis of the huge challenges ahead.

I am somewhat amazed—in fact, absolutely amazed—at the level of ambition, given the timescale in which the Government seek to meet their own objectives. I am also concerned about the way in which the words "return of sovereignty" are used, as an underpinning ambition to be reached. Any free trade agreement involves trading off interests in one area to gain in another. By their very nature, free trade agreements involve losses of sovereignty. The alternative is building barriers. I am reasonably confident that the Government do not wish to build a wall—physical or otherwise—around the UK, not least because that would mean a definite and dangerous return to a hard border between Northern Ireland and the Republic of Ireland.

There is no example in the world of a significant economy that has both market access and absolute sovereignty. So it is appropriate to ask the Minister: how do the Government reconcile their response to the report, which states that they want,

"the freest possible trade in goods and services",

with their desire at the same time to take,

"control of our own laws"?

In their response to the report, the Government state that our future relationship with the European Union will be very complex. I would say that that is very much an understatement on the part of the Government. They say that it will be wide-ranging and will apply to both trade and non-trade issues, citing justice, defence and home affairs as examples. The House of Lords report looks in detail at the wide spectrum of matters that will need to be dealt with in terms of UK-EU trade. All this is to be agreed within the timescale set by Article 50.

The Government hope that they will not only secure the framework for the new relationship with the European Union but will deal with both departure and future arrangements simultaneously. On the assumption that only the framework will be concluded in the timescale available, given that that is what is actually in Article 50, it would be useful if the Minister could outline in her response the Government's understanding of how close a framework comes to a fully worked-out set of arrangements, particularly in the area of our new trading arrangements with the European Union.

The timescale for negotiation will not be two years. Given the requirements to achieve the agreement of individual member states and the European Parliament, many months will need to be sliced off the end of the 24 months to achieve the two-year target. Some have suggested that the negotiations therefore need to be concluded in 18 months. As has just been said in the Chamber, there is likely to be some slicing-off at the front end of the timetable as well, as elections and future politics in France, Italy and Germany take their part. So I would be grateful if the Minister could give your Lordships' House the Government's view of how many months they think they will actually get to conclude an agreement to exit and a framework for this new relationship with the EU—whatever that framework might contain.

This brings me neatly to the issue of transitioning and phased implementation. I recognise that in their lexicon, the Government have found new words for the period that follows the 24-month exit period. They say that they want not unlimited transitional status but a phased process of implementation. The introduction of the word "unlimited" is interesting, and I would like the Minister to explain what is meant by it. For example, does it mean that the UK does not want unlimited time to complete the new relationship; or does it mean that it will be seeking transition only in a limited number of areas; or does it mean that it wants to limit the need for any changes to be made during the implementation phase? I simply do not understand it, and I should be grateful for an explanation. In all other respects, I think the use of "phased implementation" and "transition" are virtually indistinguishable.

This brings me in turn to one aspect of transitioning that will definitely be needed: our trading relationship with third countries. The committee's report makes it perfectly clear that the UK cannot conclude trading agreements until we have ceased to be a European Union member state. The report also makes it clear that the UK would be unlikely to be able to retain access to the European Union's free-trade agreements with third countries. Can the Minister confirm that this is likely to be the case? The question was raised in the report but not answered by the Government in their response.

At the point of exit, we would be facing a cliff edge for our trade with third countries. The Government's response to the committee's recommendation on this matter states that they are "exploring ways to achieve" avoiding a cliff edge, but then fails to give certainty that such routes are available to us. So I ask the Minister directly: what ways are available to the Government to ensure continuity of trade with third countries on the day of departure from the European Union? I am asking the Government not to give us their preference but simply to outline the choices available. There is a very practical issue here for which, as the report points out, certainty is required by UK business.

We recognise the need to invest in greater trade negotiation expertise. Unfortunately, the Government's response to this matter in the report is to provide a set of bald numbers—300, 350—building up in departments. What is needed to understand this properly is what skills the Government now have available to them. By way of example—again, this question was asked in the report—how many new, experienced trade negotiators have recently been taken on by the Government? Where have they come from and what level of skills do the Government now have available?

The Government's responses on this and other trade matters lead to far more questions than answers. It will be necessary for your Lordships' House to continue to throw light on the issues which face us. I commend the report and I look forward to the upcoming reports on trade in goods and trade in services which will give another chance for this House, British industry and our people to examine these critical issues for our future well-being as a country.

5.50 pm

Lord Horam (Con): My Lords, the noble Lord, Lord German, had great fun with the lexicon of the terminology to which Ministers are clinging like a life raft. I think one recognises here all the subtle skills of a Sir Humphrey in collating the incompatible. To be absolutely fair to the Government, they have come up with a clear plan in the shape of the White Paper which we are all familiar with, but I remind the Government and the House of the words of Mike Tyson, the boxer, who said recently, "Everyone has a plan until they get a fist in the face". A fist in the face will come with the shock when we find out exactly what the European Union thinks of all this. We will have some idea—there is talk of a €60 billion bill as a start, before discussions can even take place—but I hope it is not too big a shock. Even as professional an adviser as Sir Ivan Rogers said that we should be prepared for some sort of stand-off after the initial discussions take place, and that may well happen.

The merit of our report—speaking as a member of the committee—is that it lays out for the trade in goods the various options: the single market, the European Economic Area, a UK/EU free trade area, the customs union and World Trade Organization rules. I, too, thank our chairs, the noble Lord, Lord Whitty, and my noble friend Lady Verma, for getting us through all this, and I thank the staff who did a very difficult job in marshalling this extensive material and trying to understand it. I now understand what a diagonal cumulation of rules of origin is—at least, I understood for five minutes this morning, but I am not sure I could repeat the explanation shortly afterwards. We tried to explain to the world at large exactly what is involved in these various options.

We went on to make two recommendations—bits of advice, I may say. The first has already been touched on by the noble Lord, Lord German. We said that this cannot be done in the time available and we need some sort of transition period. To be fair to the Government, they have grasped this point and are using the word "implementation"—we return to the question of language. We explore this further in our second report, which is about to hit the stalls. I shall give it a trailer: it is fascinating reading, just as our first report was. I think the Government have grasped that there is a very short period.

The second recommendation is that we advocated staying in the customs union—not the single market, of course, which is impossible as the Government have ruled that out—at least in the transitional period while this is all sorted out. The White Paper rejects that, saying that the Government want to set up a new customs or free trade arrangement—a bespoke arrangement, a unique arrangement—for the UK. This is not impossible. For example, Wolfgang Schäuble, Germany's Finance Minister, has commented on this and said that the model the UK might look to is the arrangement that Switzerland has with the EU. Of course, we should remind ourselves that Mr Schäuble is a notably good friend of the United Kingdom. It is reported that he shed tears when he heard the referendum result. He is a friend, but there might be others who are rather less friendly and who have rather more influence when we are negotiating these things. He may not, of course, be in post as Finance Minister any longer, so we cannot rely too much on him. None the less, it is certainly possible.

However, if that cannot be negotiated, we have either to go back to the customs union or to rely simply on World Trade Organization rules, which present us with a problem. First, as David Davis apparently said to the Cabinet sub-committee looking at these issues this week, all the bureaucracy of government will have to be re-engineered in a very short time to be ready for that period no less than two years from now. All the companies will have to re-engineer all their arrangements, particularly those with complicated just-in-time supply chains. That will be an absolutely major undertaking. Not only that, but we are looking to replace the certainties of a large free-trade market on our doorstep with only the possibilities of free-trade agreements with other countries, which may take a long time to complete and may not give us as much in total trade as we will lose by not continuing to be members of the customs union. There is no doubt that this is a huge gamble, and we live in perilous times—when you look at it this way.

Some in these circumstances predict disaster, and some say that we will have a bumpy ride for a few years and, after that is out of the way, things will be better. In my experience, in such situations certainty is usually misplaced. I say that particularly as an economist who has quite often found that predictions I have made in good faith and from my expertise have turned out to be wholly wrong. People far more illustrious than I am

[LORD HORAM]
have made even more certain predictions that have been even more certainly proved unfounded in the light of events. Even the greatest of experts—as in Michael Gove's view of experts—have come unstuck in all this. So I confess that I do not know what is going to happen. What I do know is that a great deal will depend on the choices we make in these areas in the trade negotiations we are about to enter into. Success in politics usually comes from a good combination of courage and judgment, so I can only hope that my colleagues in government can show both the courage and the judgment to steer us through these perilous times.

5.57 pm

Baroness Donaghy (Lab): My Lords, I am pleased we have the opportunity to debate this report, and I thank my noble friend Lord Whitty for his skilful steering of the two committees—and, of course, the noble Baroness, Lady Verma—through a complex subject. The secretariat has done a marvellous job in presenting the options for trade with clarity and thoroughness, and I add my thanks to all those who submitted evidence, whether in person or by correspondence, for sharing their knowledge and wisdom.

I want to say something about the timing and context of the report and why its recommendations are still valid, as my noble friend Lord Whitty has said. I also want to explore what precisely is meant by open-mindedness in the context of the Government's approach. It is 75 days since our report was published, and most of our hearings took place in September and October last year. Some would argue that it has been overtaken by events—in particular the Prime Minister's speech on 17 January when she said:

"What I am proposing cannot mean membership of the single market".

It is important to remember that when the sub-committee saw the noble Lords, Lord Bridges and Lord Price, on 13 October, we were told that the Government were,

"looking at all the options",

and "not ruling anything out" for a future trading relationship between the UK and the EU. We took that statement on its merits and looked at four options, and their implications and risks. This is set out in our report. It is my contention that, although the politics may have changed, it does not invalidate our report or its analysis.

The risks and uncertainties are still there. Following the Prime Minister's January speech, the White Paper was published on 2 February. It says:

"We have an open mind on how we implement new customs arrangements with the EU".

It is not my intention to put the Minister on the spot. I appreciate that the open mind of 13 October is very different from the Government's open mind of 2 February, and she has her instructions from her boss, but in our report we say:

"We therefore had to adopt an open mind and following chapters consider all four potential frameworks".

Our mind was genuinely open and we carried out that remit. From a personal point of view, I regret that two of the four potential options have been ruled out by the Government.

Two key recommendations in the report are about business confidence and the need, as the noble Lord, Lord German, said, for a clear game plan for a future transitional agreement. We referred to the fact that businesses are operating in conditions of considerable uncertainty, which is a significant threat to the UK economy. Our report is clear that business confidence is of the utmost importance. In these days when international compliance on quality, standards, country of origin agreements and dispute resolutions are the norm, it makes nonsense of the kind of free-trade buccaneering of Mr Patrick Minford's world, for instance. Will the Minister give us an assurance that industry will be fully consulted and involved in the negotiations and that that will be a government priority?

Secondly, we recommended the need for a clear game plan. It could be argued that the Prime Minister's 12 principles are as clear a game plan as could be had, but they are not principles but objectives, many of which depend entirely on the agreement of others, and I think the Government accept this. When I was chair of ACAS, I would see many so-called principles presented by both sides of industry. The trouble was that they were never the same. That is why language is going to be extremely important.

Looking through the Government's belated response to our report, much of which is a reiteration of the White Paper, I welcome the emphasis on dispute resolution and I am duly impressed by the volume of contacts with interested parties listed in the annex to the letter. I particularly welcome the statement that,

"we do not want to undermine the Single Market, and we do not want to undermine the European Union. We want the EU to be a success and we want its remaining member states to prosper",

politically and economically. There are some Europhobes who would delight in seeing the dismantling of the EU, so this statement by the Government is important.

Finally, there is an intriguing answer by the Government to recommendation 3 of our report, on the World Trade Organization. It says:

"As we leave the EU we will be the more able to play a full role in underpinning and strengthening the multilateral system".

So we are leaving the EU to take over the world. Now that really is open-minded.

6.03 pm

Lord Gadhia (Non-Afl): My Lords, having made my maiden speech last October during the debate on championing free trade it feels appropriate to speak again today to welcome the excellent report produced jointly by the EU sub-committees chaired by my noble friend Lady Verma and the noble Lord, Lord Whitty. Having missed the opportunity to be the 180th speaker at Second Reading of the Article 50 Bill last week, I am provided another opportunity to share some broader reflections on Brexit. In particular, I shall focus on the central issue of how the dynamics of the trade negotiations might unfold once Article 50 is finally triggered.

With all due respect to your Lordships' House I believe that we have spent far too much time on the process issues, at times generating more heat than light, and today's debate allows us to get into the substantive and tricky issues which lie ahead. We should ultimately be comfortable in granting the Prime

Minister maximum flexibility to negotiate unencumbered. We can do so in the full knowledge that the success or failure of this negotiation will make or break her premiership, as signalled by her rare appearance on the steps of the Throne last week. Put simply, the Prime Minister will have the clearest of political incentives to carry Parliament and people with her ahead of the 2020 general election—which will serve as a de facto referendum on the outcome, or define the negotiating parameters for the remaining process should the timetable extend beyond two years, which seems highly likely, as noted in the report.

Much of the debate during Committee on the Article 50 Bill this week has boiled down to different views on the art of the possible once negotiations commence. So instead of speculating, I say: let us get on with it. I have spent 25 years negotiating large and complex corporate and financial transactions, but those pale into insignificance compared with the heroic and daunting task ahead. It is now clear that we are seeking to conclude an unprecedented free trade agreement with deeper preferential access to the EU single market across both goods and, importantly, services than is currently enjoyed by any third country. Indeed, it is likely to form part of a wider association agreement encompassing other, non-economic areas of co-operation. So all the apparent hyperbole is more than justified. This will be the most ambitious and complex trade treaty of all time—particularly if it is going to deal effectively with alternatives to a customs union, not least in Northern Ireland, and the equivalence and/or mutual recognition issues for services.

Let us drill into how we might persuade our counterparts to conclude such an unprecedented FTA, and consider if we are overestimating the strength of our cards. We must certainly be ambitious, but at the same time make an honest assessment of whether our starting positions are realistic.

The UK Government's position is built on four pillars of logic. First, the Article 50 process and the FTA should be undertaken in parallel since the withdrawal process is intended to take account of the framework for the UK's future relationship with the EU. The other obvious reason for linking the two processes is that we can then maximise negotiating leverage from any divorce settlement.

Secondly, we start from a position where all the rules and regulations are identical on day 1, with zero tariffs and so, unlike most trade negotiations, we are not seeking convergence. The great repeal Bill underpins this position from a legal perspective. What is therefore important is to protect against divergence, so the dispute resolution mechanism will be key—which is why the Government's White Paper includes a whole annexe of such examples.

Thirdly, we can achieve all this in two years and therefore any transitional arrangements are designed not to extend the negotiating period but simply to provide an implementation buffer. The actual negotiating period, as mentioned, would in fact be shorter—something like 18 months, or even shorter than that if we include the process for approval by both the European and UK Parliaments. Fourthly, if we cannot get the deal that we want then we fall back to WTO terms, and this represents what expert negotiation theorists call the BATNA, or best alternative to a negotiated agreement.

In contrast, the EU position is clearly at odds with our own starting position. On the first pillar, Michel Barnier has made it clear—repeatedly—that the EU proposes a sequential process: Article 50 first followed by the new trading arrangements. I believe the current stand-off can be unblocked only by the European Council in its negotiating mandate to the European Commission in response to the formal triggering of Article 50. Without this course correction the negotiations will get off to an acrimonious start and it will remove the leverage inherent in our monetary settlement.

On the second plank of our argument, about starting from a unique position of trading conformity and offering zero-for-zero tariffs, we are placing huge faith in Homo economicus that rational decision-making will prevail. Having had dinner in Brussels with senior European leaders earlier this week I am not sure that they see it entirely this way. Brexit was a political choice and it will receive a political response. The EU is determined that Britain pays a price for leaving the club—not out of vindictiveness but because it fears that a favourable deal for Britain would create a bad precedent and potentially encourage other member states down the same path. It clearly want us to pay a price, while we naturally want to minimise the economic impact. Put crudely, can we get away with a slap on the wrists or will it be a slap on the face? I believe that we will not really know until much later in the process, when all the big contentious items are on the table and we progress to 11th-hour horse-trading.

There is a significant risk that the arrival of Macron in France and Schulz in Germany could embolden European hawks to play hardball. There is also a big bear-trap waiting for us: clasping at what might appear a relatively attractive deal on goods—where the EU runs a trade surplus—but a relatively poor compromise on services, where we enjoy our biggest competitive advantage. I am afraid that standing up for City interests is clearly unfashionable, but I hope that protecting the £66 billion tax base that pays for essential public services is something we will not trade away lightly. To secure a preferential deal on services we will inevitably be asked for some form of preferential access to the UK's new immigration policy; so we must define that, as a matter of priority.

On the third area, relating to the timetable and transition, a big expectations gap is opening up. Understandably, the Government are targeting two years to conclude the whole process. It would certainly be in our national interest to minimise the period of uncertainty. However, all the empirical evidence and expert opinion is stacked up against us and I fear that Ministers are creating a rod for their own backs. It seems more likely that within a two-year timeframe we can conclude Article 50—including our new WTO schedules—alongside a substantive framework for the future trading relationship and how to reduce customs friction; but more time will be required to complete and ratify the FTA. In those circumstances, a strictly time-bound transitional phase would be extremely valuable. That would be about not just implementation.

[Lord Gadhia]

I note that my noble friend Lord Bridges has side-stepped the question of temporarily remaining in the EEA but this option, or something more bespoke, could provide a bridging phase from one regime to another. We will also need this phase to replicate all 53 third-country FTAs.

I can assume only that the Government's logic is driven by the desire to keep maximum pressure on timing, and that a transition period which elongates the timetable is a fallback and any such proposal is tactically better off coming from the EU. I believe that there is significant risk that the Government ultimately will be forced to retreat on both timing and transition, so perhaps it might be preferable to hedge their bets.

Fourthly, I come to our fallback position that,

"no deal for Britain is better than a bad deal".

The EU is likely to view that in a diametrically opposite way, namely, "Any deal is better than no deal". Why? Because the cost of abrupt exit is significant. From where we stand today it would be the Grand Canyon of cliff edges and therefore falling back to the WTO will be seen as an empty threat. As Sir Ivan Rogers pointed out in his evidence to the House of Commons Brexit Committee last week, no other major country trades on pure WTO terms with the EU. Since the WTO does not cover services in any depth it is doubly disadvantageous for a country like the UK. We would be walking into a legal vacuum in many areas.

On all four pillars of our negotiating strategy, therefore, we have serious work cut out to win over hearts and minds. The honest assessment is that we do not hold many cards and face a negotiating asymmetry of 27 versus one, set against a ticking two-year clock without an easily palatable fallback. Put starkly, we will need to buy our way or charm our way out of this situation. Fortunately, our surprisingly resilient economic position since the referendum provides us with some room for manoeuvre on the financial settlement, particularly if the amounts can be stretched out over time. It is also crucial to galvanise the good will among our European partners. In the words of Sir Simon Fraser, speaking at the Worshipful Company of World Traders last week, we will need to avoid "gratuitous political friction". This is a time not for gifted amateurs but for serious and professional negotiators.

We might also need to draw upon the mediation skills of leaders and countries that enjoy the trust and respect of both the UK and the EU and can see the benefits of enduring non-economic co-operation across Europe. The voice of European businesses will also be important in focusing the minds of national Governments back on to the economics and not just politics. I suggest to the Government that this wider advocacy mission is not just for Ministers and that we should actively draw upon the expertise and Rolodex of the House of Lords in reaching out to parliamentarians and key influencers across Europe.

In conclusion, to achieve a successful, smooth and smart Brexit and secure the most advantageous trade agreement going forward, we will need to have our cheque book ready and, above all, make efforts to win friends and influence people as never before.

6.15 pm

Lord Jay of Ewelme (CB): My Lords, it is a great pleasure to follow the noble Lord, Lord Gadhia, with all his experience of the City and his extremely wise words. As a public sector Cross-Bencher, I feel rather uncomfortable being sandwiched between the noble Lords, Lord Gadhia and Lord Green—but I will do my best.

I very much welcome the report and offer my congratulations to the noble Lord, Lord Whitty, the noble Baroness, Lady Verma, and their committees for producing it. It is good to have the discussion now about the future relationship between the UK and the EU because, rather like the noble Lord, Lord Horam, I have some suspicion that when Article 50 is triggered, the attention will switch, at least for a while, towards the rather more exciting prospect of the short-term withdrawal negotiations and, in particular, will focus on the much-heralded figure of €60 billion that may or may not come forward from the Commission. None the less, I hope that those negotiations will progress and that attention will turn again, both in public and during the negotiations, to the longer-term relationship between the UK and the EU.

Like others who have spoken this evening, it seems clear to me—and it is quite clear from what the Government have said—that remaining in the single market is not an option that will be open to us. The Government's commitment to having at least some control over the levels of migration from the EU and their concern to avoid ECJ jurisdiction will rule that out. I regret that but it is a fact. I had hoped that they would keep open the option of staying in the customs union. That would have guaranteed tariff-free movement of goods, if not of services, and also would have eased the difficulty of managing the border between Northern Ireland and the Republic of Ireland. Although I am very glad that the latter issue is mentioned in the Government's response to the report, I still feel that it is not given anything like enough attention. I hope that it will get more attention in future. However, the Government have not kept the customs union option open—or at least they seem not to have done so.

I am not quite sure what the Government are now hoping to achieve in their trading relationships with the EU and the rest of the world. In her speech on 17 January the Prime Minister said:

"We want to get out into the wider world, to trade and do business all around the globe".

That is an aspiration but I do not think it is a policy. It was slightly more fleshed out in the recent White Paper, but I hope that in her response to the debate the Minister will say a little more about the Government's intentions as regards their relationship both with the EU and the rest of the world.

I will make three points in what time remains. First, if the Government do not succeed in reaching agreement on their negotiating objectives, they risk getting pushed back, as others have said, on to WTO terms. I have heard it argued that this would be no bad thing, and that it would provide business with certainty. Perhaps—but that is not the kind of certainty that business, and in particular the jobs that depend on business, needs. So I hope that the Minister can also tell us more about

whether resort to WTO terms really is envisaged as a desirable or even plausible fallback if—as I hope is not the case—the negotiations do not succeed.

My second point concerns dispute resolution. The Government clearly do not like the ECJ and in particular its direct effect on UK law. But dislike of the ECJ does not mean that you can do away with dispute resolution. The key point is that virtually any international agreement, and certainly any trade agreement—again, as has been said in this debate—has to have some form of dispute resolution. The WTO has its own dispute resolution mechanism. The EU and the US, the US and China and the EU and China have resorted to it when necessary in the past. So will the UK, if and when it has trade agreements that lead to disagreement—as, inevitably, will happen.

I deliberately used the past tense when I said that the US had recourse to WTO dispute resolutions in the past, because I have seen, as I am sure have other noble Lords, reports in today's press that the US may be thinking of not accepting WTO dispute resolutions in the future. That is a profoundly worrying development that would make our position outside the EU, if there were no effective dispute resolution within the WTO, even lonelier than I fear it will be when we leave the EU.

My final point is perhaps the most important. There sometimes seems to be an assumption behind the Government's rhetoric that with one bound we will be free from the constraints of the EU and the single market—which, incidentally, as others have said, takes more than 40% of our exports—and shall be able to trade easily through new bilateral trade agreements with China, the US, India, Australia, Brazil and others. But those are all tough potential partners, with a clear sense of what is in their interests. They and other countries will negotiate what they want out of negotiations and not what we want. Such negotiations will be tough, protracted, complex and at times ugly—and it is no use pretending otherwise.

I do not favour another referendum on the EU. I would have wished the result of the last one to have been different, but I accept it. But I echo what the noble Baroness, Lady Armstrong, and others have said in this debate: that the road ahead, particularly for trade, will be hard and long and gritty.

6.23 pm

Lord Green of Hurstpierpoint (Con): My Lords, as has already been recognised, since the report was published, events have moved on. The Government have set their course, aiming for a deep and comprehensive free trade agreement, a customs agreement with the EU and a range of FTAs with other markets. More generally, the Government have proclaimed an aspiration for Britain to become the standard bearer for open trade policy. This is to be the new global Britain.

There is much to be saluted in those aspirations, even by one such as myself who believes that we should have remained in the EU. Apart from anything else, there is a fundamental difference between this approach—the approach of the new Brexit Britain—and that of Trump's protectionist version of America. We did not hear at any stage in the referendum campaign rhetoric about cheap Chinese imports, for example.

I want to make a few points, all briefly—not least because some of what I was going to say has already been covered. First, the deep and comprehensive free trade agreement and the customs agreement with the EU will now be critical as the centrepiece of the Government's strategy. As has already been underscored, this is unprecedented. It will be more ambitious than the ambitious Canadian agreement, the South Korean agreement and the Ukraine agreement—which we looked at in our deliberations. It will be different, too, from the Turkish association agreement. In a sense, "more than all of these put together" is the mantra. At the end of the day, it will be something sui generis.

Of course, unprecedented does not mean impossible. In fact, it has often been argued—there is clearly an element of truth in this—that the starting conditions make an agreement easier to achieve than was the case with any of the others that I referred to. We start, after all, from a position of considerable harmonisation, certainly in the goods markets and increasingly in the services markets, too. So, technically, the achievement not of convergence, which already exists, but of the avoidance of divergence should be easier.

Politically, however, it will not be straightforward. As has already been mentioned, from the EU perspective this deal cannot be as good for the UK as the status quo. If it were, others might be tempted to say, as Philip Snowden is reported to have said in 1931 when Britain dropped off the gold standard, "I didn't know you could do that". It will also be difficult for Her Majesty's Government because the dispute resolution process will almost certainly have to involve in some way the ECJ—certainly on the EU side, there is no way to avoid that.

My second point has been made by a number of other noble Lords: there is close to no chance of accomplishing all this in two years. The Canadian deal took somewhere between seven and 10 years; the Japanese discussion with the EU is going surprisingly well but it is already into its third or fourth year and clearly will not be completed any time soon.

The complexities are enormous. They are not just about the short-term distractions of the EU elections and the high priority that will undoubtedly be attached by the EU to the budgetary questions and by all of us to the acquired rights questions. All these mean that that the process will take some time. On top of that, the trade discussions with the EU are inevitably related to other trade discussions—this is true on both the UK side and the EU side. The existing EU FTAs may be questioned by their counterparts. The South Koreans and the Canadians, after all, both signed deals with a market that included Britain. Will they want to review those agreements in the event of their no longer getting access to the British market?

Then there is the question of new agreements that are in process of negotiation now—I have referred already to the Japanese agreement, which is the most important case. The noble Baroness, Lady Armstrong, mentioned the north-east and its high export propensity per head. Those exports are very largely of cars to the EU market. Therefore, I am sure that the noble Baroness would want to join me in asking the Minister whether the Department for

[Lord Green of Hurstpierpoint]
International Trade has given careful thought to the impact of a successful conclusion of the EU-Japan deal on the UK-EU discussions.

Thirdly, there is the all-important question of Ireland. We debated this at great length earlier this week, but, unlike everything else in the Brexit discussions on trade and investment, this is not just about commerce and could not be treated as one item in a shopping basket for a negotiation where, inevitably, trade-offs and compromises get made. It is of course about the peace settlement, and if it went wrong a human tragedy could result. Ministers have confirmed on a number of occasions that they attach a very high priority to the maintenance of a seamless, open, frictionless border on the island of Ireland. In responding to this debate, could the Minister confirm that this means that there are no circumstances in which we would sacrifice that question on the altar of a very good free trade arrangement in other respects?

Fourthly, the phased period of implementation in which the UK, EU and member states prepare for the new arrangements—to quote from the Government's response to our report—has been commented on by a number of speakers. What is in a name? We might well ask. A rose is just as prickly by any other name. The fact is that this will take a considerable number of years beyond the two years of the Article 50 discussions. I wonder, in the company of a number of other speakers, whether the Government would not be better to say this outright and set a period—not an unlimited period but one, for example, of five years—during which there will be a transitional agreement and, knowing the direction of travel towards an eventual deep and comprehensive free trade agreement, discussions can take place in the orderly manner and over the timeframe they will need and necessarily take.

Finally, I will raise a broader and deeper issue. Global Britain will want to think of itself as a nation of traders. Indeed, we have heard that expression. We want to think of ourselves as outward looking and entrepreneurial, ready to take on the wider world. But, as of now, we are more what Napoleon said we were: a nation of shopkeepers. We have too few companies engaged in exports. We have market shares in some of the fastest-growing markets in the world that are behind those not only of Germany but of France and Italy. The growth statistics this week produced by the Office for National Statistics show how unbalanced the current growth pattern is in this country. We have a yawning trade and current account deficit, which has a long history. We have an import penetration problem such that the devaluation of sterling is blunted and tends to translate all too quickly into higher rates of inflation. Rhetoric will not change this and neither will monetary policy and fiscal rectitude alone.

We need to face up to one of the most basic lessons of the Brexit vote. Britain has lived for half a century with not only an increasingly unbalanced economy but an increasingly unequal society. These two trends are related. We have failed over decades to invest properly in the country's societal future, above all through the education and training needed to enhance life chances and social mobility. Changes in the nature and structure of the economy in the latter decades of the last century played their part in this, and the radical change in technology that is likely to transform the economy over the next few decades will exacerbate the challenge.

The last generation saw the British economy become more dominated by services than that of any other major European country. Of course, others have seen manufacturing decline as a percentage of national output in the face of newly globalised competition—but none as steeply as Britain. As the share of manufacturing shrank from the 1970s onwards, apprenticeship training—the principal route into the good, intermediate-skilled jobs that are the backbone of any effective manufacturing industry—was allowed to wither on the vine.

The so-called hourglass economy has not done away with the need for intermediate skills. In fact, we are gradually building up a significant skills mismatch. An unbalanced and unfair system of preparation for adult working life has produced plenty of low-skilled workers and not enough intermediate-skilled ones, such that by 2022 on present trends, 9 million low-skilled workers could be chasing 4 million jobs while there will be a shortage of 3 million workers needed to fill some 15 million higher-skilled roles. In an underinvested economy that has seen no material growth in labour productivity, economic growth overall has failed to increase average prosperity and has been possible at all only because skills gaps have been plugged through immigration.

This is not sustainable and the social implications of these imbalances are certainly unacceptable. This is a complex problem with deep roots, both societal and economic. The Social Mobility Commission's *State of the Nation 2016* report documents in sobering detail how a disadvantaged start in life feeds through to weaker average educational performance from the earliest years onwards; less access to tertiary education; and less support for vocational development routes into adult working life and into a labour market where the supply/demand equation is increasingly weighted against the low-skilled.

Does this all seem irrelevant to the question of trade? I hope not, because it is actually fundamental to our long-term ability to succeed in trade. In other words, there is a lot more to the strategy for the successful development of the new global Britain in its trade position vis-à-vis the rest of the world than trade deals. Surely a major priority has to be a long-term, properly resourced skills education strategy. It is not easy. We have failed over several decades to do this well. We need—dare I say it?—to be prepared to learn from some of our European friends who do this so much better than we have done.

6.35 pm

Lord Lea of Crondall (Lab): My Lords, I very much welcome the report and the debate that we are having. Indeed, I very much welcome the thrust of the remarks just made by the noble Lord, Lord Green of Hurstpierpoint. When we are compared with the Germans, the area of training, educational standards and so on is one excellent feature of the closer European integration. The concept of benchmarking best practice in Europe, our nearest neighbours, is a huge factor in what has

been the relative success story—let us say it—of our membership of the European Union since 1973, when we joined the EEC.

My noble friend Lord Whitty said at the start that he was a little sorry that the report had not been debated before the two days of Committee this week. The plus side is that we who sat through most of those two days—Monday and yesterday—can add some reflections arising from that debate, which are germane to where we are today. I moved the first amendment on Monday, to do with retaining our membership of the European Economic Area, at least to get it on to the map so that everyone understands we are a member of the European Economic Area by virtue of our membership of the EU, and that membership would be retained if we were a member of the other pillar of the EEA—EFTA—despite leaving the EU, as was required by the result of the referendum last June.

One thing I am looking for—perhaps in vain—in the next few months is for the public debate to become much more ruthlessly realistic about the options. I hope my noble friend Lord Whitty does not mind me describing him as ruthlessly realistic in chairing the committee but it is what we need. We still have too much "have your cake and eat it", Alice in Wonderland stuff. When we go back to the referendum question, what people voted for was totally obscure. As all we all know, there was a melange of things in people's minds. But the idea came up yesterday: "We voted for maximum access to the European single market, not membership of it". "Oh, so that was on the ballot paper, was it?"—et cetera. This ruthless realism is absolutely vital to avoid what Field Marshal Montgomery would have called a dog's breakfast at the end of it. I do not know whether breakfast rhymes with Brexit but it will have to do for the moment.

It is also rather irresponsible to have an imbalance in the debate, which the Government somehow have to answer for. On the one hand, things are ruled out in this speech or that: you see a bridge and you blow it up; it is ruled out. But nothing is ruled in. The number of things that are still there to be looked at seem to get less and less until you are left with only one. That one will be the same as all the others: it will have down sides as well as up sides. In the spirit of ruthless realism, let us acknowledge that all the options have down sides as well as up sides. We have to evaluate them all against the background of that recognition.

Let us take account, for example, of some excellent points made by my noble friend Lord Mandelson. We shall hear from my noble friend Lord Mendelsohn in a minute; I always pause to make sure I have not got the two pronunciations mixed up. My noble friend Lord Mandelson made an interesting speech on Monday, saying that the sort of agreement the Government now think they can get would give us far less economic bang for our buck than the arrangements we have at the moment. Let us reduce all this to one slogan. We are in the business of maximising our world market share. The central question is: what, in the short, medium and long term, maximises our world market share? That is certainly how the Germans and Japanese see it. One cannot quite summarise how the Americans see it at the moment because it is very hard to make the thing add up.

There is, in the way the debate is becoming rather abstract, a denial of what my noble friend also said in an interesting phrase: in Europe, we are talking about not just a vast trading area but a vast factory floor. As a former trade union official, in designing the framework of agreements for multinational companies on a whole string of things, which is the way much of the world now operates—there are not as many strong trade union agreements as we would like—conceptually it is clear that you do not want a race to the bottom. You want some minimum standards and even long-term training investment. You cannot just have people poaching each other's labour. This is what happens if you do not have any rules.

Talking about rules, I mention the metaphor of a level playing field. There seems to be a belief that we want a level playing field, while at the same time we do not want a referee. I thought the metaphor of a level playing field referred to football, where the levelness of the playing field was so that, even though you have half-time and you move from one end to another, generally speaking you are kicking the ball along an even, horizontal patch, and you have a referee. As we know, there are offside rules and some disputed decisions, but you do not normally shoot the referee—much as Everton supporters think you ought to be able to. We have decided that there is a world where we can have free trade and it will all be hunky-dory, but no referee—unless the implication is that we are happy to have a referee as long as he or she is not a foreigner, certainly as long as he is not a European foreigner, or as long as he is not specifically called the European Court of Justice. EFTA has a European court of arbitration, so is it just about the name, or are people still irrational when it comes to how you have rules about trade and investment in Europe? I would be very glad if the Government could give a lead in making sure that their succession of Green Papers, White Papers or whatever are ruthlessly realistic in having a totally objective view and transparently evaluate and publish how the national interest, in terms of trade and investment and our world market share, would be met by the different options on the table.

In yesterday's debate on all the Brits living in Spain and all the Spanish et cetera living here, we heard a very interesting vignette about reciprocity which bears on all of this. It began with an acknowledgment that this was inherently a relationship of reciprocity, but that we could give a lead by saying that we would make the first move ourselves. But that notion assumes that we can have everything that suits us and ignores the fact that there are 27 member states over there against our interests. All of them simply want to recognise that the Brits want this interest to be reflected. But there has to be reciprocity; we of course need reciprocal rules. I do not think you can simply say that this was not what people voted for. Retrospectively, we can deliver only something which is deliverable, whatever people thought they were voting for, and I repeat that I do not believe that they were voting, in any conscious sense, to say, for example, "We would like to have access to the single market but not be members of it".

I hope the committee will go on and do further work, ruthlessly identifying the options and holding the Government's feet to the fire to make sure they

[Lord Lea of Crondall]
give us a running commentary. I do not buy this idea that there should be "no running commentary". We are parliamentarians, and it is our job not only to have a running commentary ourselves but to demand that the Government engage with us in so doing.

6.48 pm

Lord Aberdare (CB): My Lords, it is a privilege and a pleasure to serve on the European Union Internal Market Sub-Committee under the able and affable chairmanship of the noble Lord, Lord Whitty. The report we are debating today gave us the welcome opportunity to work in tandem with the EU External Affairs Sub-Committee, chaired by the noble Baroness, Lady Verma. This proved both enlightening and somewhat daunting, and I am grateful to both chairs as well as to the clerks and other staff—and of course to my committee colleagues and other noble Lords speaking in this debate—for their contribution, at least to the enlightenment part.

The report provides an essentially factual analysis of available options, and its findings have already been outlined very clearly and succinctly by other noble Lords, so I will try just to highlight some issues that strike me as significant. The Government have made clear that their aim is to achieve an ambitious, comprehensive and bespoke free trade agreement with the EU, together with a new customs agreement. The Prime Minister has stated that no deal is better than a bad deal. So what would a good deal look like? What criteria will the Government use to determine whether the outcome of the negotiations is good enough for the UK to sign up to it?

I recently received a helpful document entitled *A Successful Brexit: Four Economic Tests* from a body called The UK in a Changing Europe, based at King's College London. This sets out a series of tests under four headings. Will Brexit make us better off economically? Will Brexit make Britain fairer? Will Brexit make the UK a more or less open economy and society? Will Brexit increase the democratic control of the British people over their own destiny? These tests make a lot of sense to me but it is of course down to the Government to determine the actual criteria to be used. So I ask the Minister, first, how do the Government plan to define the criteria against which the merits of a deal will be assessed? Secondly, how will these criteria be tested to determine their acceptability to business and other affected interests, Parliament, the devolved nations and, of course, the electorate? Thirdly, what sort of process will the Government conduct to evaluate the terms of a deal against the criteria and to explain the conclusions that they reach? Finally, what are the options being considered if a deal is found not to be acceptable against those criteria?

My next point relates to the negotiating process and the engagement in it of business and other parties affected by the outcome. When I worked on trade issues for IBM in Washington in the early 1980s, in the lead-up to the GATT Uruguay round, I was struck by the wide range of mechanisms used by the US Administration to involve business and other groups in establishing negotiating objectives and priorities, and indeed to encourage such groups to do their own horse-trading among themselves, so as to present an agreed common position—often involving a considerable degree of compromise—to the US Government. IBM had its own trade team and was an active member of organisations such as the American Electronics Association, the National Association of Manufacturers, the US Chamber of Commerce, and other bodies concerned with specific trade-related issues, such as services, intellectual property or overseas investment. Its chairman and chief executive was one of a number of chief execs on a business round-table task force, which provided direct support to the US trade representative.

To me, this points to a responsibility for both government and business in the UK to set up appropriate mechanisms to enable agreed common messages and objectives to be developed and fed into government and the negotiations. What can the Minister tell us about plans to ensure that the Government have access to clear, reliable, broadly agreed input and advice from business, available at short notice, if required? We have been encouraged that most of the businesses that the committee has heard from have been positive about the level of engagement that they have so far had with the Government and Ministers. At the moment, of course, the Government are mainly in listening mode, seeking to understand the range of issues raised by Brexit and how they affect businesses across the 50-plus sectors they are analysing. The real test will come when they need to make trade-offs between different sectors and interests or to determine priorities between competing options.

My third point is about planning for situations that may arise in the negotiating process. I will address this by posing some "what if" questions. What if, even with good will on both sides, a deal takes longer than two years to finalise? Given the challenge of reaching an ambitious and comprehensive bespoke FTA—and indeed in the light of the time needed to agree existing EU FTAs, such as that with Canada—the committee felt that it would not be possible to complete a deal within two years, even though it may be easier to do so as an existing member, already fully complying with EU rules and regulations, than for a country outside the Union. It is surely essential to have a plan B in place. Article 50 allows the possibility of extending the negotiating period beyond two years, but only if all 27 other member states agree. Can the Minister indicate what thought the Government are giving to whether and how this might be achieved?

What if a deal is in prospect but needs time to be brought fully into effect? Our report argues that:

"A transitional agreement will almost certainly be necessary".

What thinking are the Government doing about how such a transitional arrangement might work and what it might involve—such as a temporary continuation of the UK's membership of the EU customs union, which is indeed mentioned as a possibility in the Government's response to the report? Other noble Lords have raised the question of what the difference is between a transitional arrangement and a phased process of implementation.

What if, at the end of the day, no deal proves possible because the various demands and interests of the other 27 countries prove irreconcilable with the

goals of the UK? Do we just fall back on WTO rules—which in itself may not be wholly straightforward and is widely seen as highly undesirable?

My final question is: what can the Minister say about possible parameters for dispute resolution mechanisms? Enforcement is one of the strengths of the EU single market. Legal action can be taken both by companies—even relatively small ones—and by individuals in their own national courts. There are also less costly mechanisms for resolving disputes, such as SOLVIT.

None of the example dispute resolution mechanisms in the annexe to the Brexit White Paper comes close to matching the EU arrangements. One possibility that is not mentioned at all, perhaps for obvious reasons, is whether the EU Court of Justice might have a role to play in a new bespoke dispute resolution system, without, of course, having primacy over the counterpart UK court or panel.

In conclusion, this report raises some crucial issues for the conduct of the Brexit strategy and negotiations. I do not for a moment expect all the answers from the Minister today, but I believe that the Government will need to share considerably more of their thinking on such issues than they have been willing to do to date if they are to end up with an outcome that is clearly recognised as a good deal. That means a deal that reflects the needs of business and other interests in a balanced way and that is achievable in the time available, even if that time has to be extended beyond two years. I hope the Minister can give some reassurance about how the Government plan to tackle this challenge and how optimism—as another noble Lord suggested—can be matched by realism.

6.56 pm

Lord Mawson (CB): My Lords, the findings of this excellent report are in the document before the House. Having listened to evidence of companies on the cutting edge of our economy, I wanted to take this opportunity to talk about what our future as a country might need to look like if we are to trade, post the decision of 23 June last year, in a changing world and to truly optimise the development of products and services that we can sell not just to Europe but across the world.

Sitting on House committees sometimes feels for me a little schizophrenic, because I am conscious that as a working Peer, I live my life nowadays in two very different worlds which gloriously collide in this place. This, of course, is one of the reasons why the House of Lords is such a treasure and needs to be preserved at all costs in a modern economy, but it can also be a little painful when you find yourself riding two horses at the same time.

I have spent most of my working life growing and developing modern entrepreneurial environments that generate innovation both in public services and in wider products and services, that do not sit neatly in traditional government silos. I am an innovator by nature and know that new ideas and ways of working do not come out of the clouds, but develop when very different skills and experiences collide. New products and services in the modern world will now come from between the siloed worlds of government and business, and not from within them. In this internet age this is increasingly so.

We have heard in the evidence that sits behind this report that modern digital entrepreneurial environments generating these new products and services that we must now sell across the world come about through networks of individuals engaging together across different disciplines, from clusters where different skills and businesses sit cheek by jowl. The modern entrepreneurial environment is not about policies, strategies and reports so favoured by civil servants; it is all about people and relationships and learning through hands-on experience. The traditional governmental environment is increasingly no longer fit for purpose in a very fast-moving business environment, within which SMEs certainly now live, and are a rapidly expanding sector of our economy. This is as true here as it is for our partners across Europe.

I am responsible today for the development of 10 entrepreneurial campuses in 10 towns and cities in the north of England, based on 33 years of work in east London, and I declare my interests. My 10 clusters in the north are bringing together very entrepreneurial business people, leaders in the public sector, local residents and emerging business and social entrepreneurs. They are generating lateral, out-of-the-box relationships, and it is fascinating to watch the speed with which these organisms are growing if the conditions are right. In time, I can see already lots of opportunities for new, cross-cutting products and services that we could export across the world if these young flowers are watered and given time to blossom.

Brexit is a real opportunity for new thinking about the opportunities now presenting themselves in a digitised world that exists outside traditional silos. To grasp it, we all need a real change of mindset, both in Europe and in this country, if we are to trade with the world. I suspect we have more in common than we realise. The clues in this new world are in the micro and not the macro. They are not necessarily in large corporate businesses and institutions. Small is beautiful in this new world.

Last week, a former finance director of one of our most established banks came to see me—a young man who had decided to resign from the security of his position. Why? Because he was fed up with the outdated politics that went with the job, with the endless treacle and bureaucracy he had to drown in. He wanted a more fulfilling life: to innovate in financial services and use his many skills and knowledge to rethink the industry. He now has a £50 million fund and within one hour, with no forms or papers, we were agreeing practical work that we could start to do together on the back of a handshake.

Another of our very large government-controlled banks that I have been dealing with recently, which will remain nameless, has forced me into endless meetings in silos and red tape, with no joined-up thinking. The middle management and those at the front edge of this bank were great; they wanted freeing up to engage with me and my colleagues. Those sitting in the boardroom were apparently unaware of and uninterested in all this entrepreneurial behaviour below them, which did

[LORD MAWSON]
not fit in with their policies. I worry that that bank will be out of business in 20 years' time if it does not focus more on this entrepreneurial activity at the leading edge of the business. This bank felt more siloed and bureaucratic then anything I have experienced in our universities or the NHS, and that is saying something.

Two weeks ago, I attended an NHS awards ceremony in Liverpool to celebrate the new health products and services being generated by some of our finest minds. We saw great examples of products and innovations generated out of the real-life experience of our northern hospitals. But when you dug below the surface, you could hear the frustration of a young generation of entrepreneurs and innovators in our health world who were swimming through treacle with their hands tied behind their backs. We are asking them to dance with lead weights on their shoulders. There was also a sense of despair and resignation about the NHS culture from the senior managers present, who were looking forward to retirement.

I read recently in the *Financial Times* that in the City, a lot of business analysts are losing their jobs because it has finally dawned on people that no one was actually reading the reports they produced. The emperor has no clothes. Instead, businesses are developing real-time dashboards to give them information about what is happening to their businesses right now, not three or 12 months ago. I found myself wondering whether central government, local authorities or NHS trusts might take this approach. We might develop some world-beating technology to sell around the world. I am not exactly holding out hope because it is rare to find examples of real learning organisations in the statutory sector. Sadly, I feel that may be true for some large businesses and some charities; it may also be true in a lot of Europe. But unless we can make this sort of change, what will our world standing be in the post-Brexit world?

One assumption that I find fascinating in the Brexit debate is the idea that British bureaucracy, and rule from Westminster rather than Brussels, will inherently or automatically be more imaginative—more responsive, more forward-looking—as suggested by these examples. If we do not manage this, I fear that future generations will scratch their heads as to why people thought Brexit would lead to real and positive change.

I am sorry that sometimes at our meetings, I sound a little crusty and difficult. I am only trying to ensure that the voices and experiences of this next generation of entrepreneurs and innovators I have described is heard and experienced. Our future economy and trade, post-Brexit, depends upon them. The noble Lord, Lord Howell, reminded us that the great repeal Bill is a real opportunity to help them get hold of our regulatory and bureaucratic world and bend it in favour of that new generation, for the reasons that the noble Lord, Lord Green, has just articulated to us.

I think that the noble Lord, Lord Howell, is right: there is an opportunity to remove lots of treacle and create more flexibility to boost our trade, products and services. But has anyone seen this important opportunity marching up this new road? I say to the noble Lord, Lord Whitty, that perhaps our committee should look at that. Perhaps we should try to get into a different kind of conversation about this emerging entrepreneurial world, focused on innovation, that affects both us and our partners in Europe. It affects all of our trading, and will do into the future.

I suspect that we have more in common in this new trading world than we may think as we negotiate a new trade treaty. It may be that all of us, in this country and Europe, need to start to think a little more outside the box.

7.05 pm

Lord Lansley (Con): My Lords, I am delighted to have the opportunity to contribute. I will attempt to be as brief as I possibly can. I am helped not least by the fact that our two chairs introduced the debate and distilled the report with such clarity. I am further helped not least by my noble friends Lord Gadhia and Lord Green of Hurstpierpoint, who respectively, in brilliant forensic fashion, talked about both the substance of the negotiations and some of the broader challenges for the United Kingdom in achieving success in global free trade. It is not enough simply to open markets; one has to win in markets.

I follow up on one issue to which my noble friend Lady Verma referred, and that is the question of the future customs arrangement. We talked about the customs union in our report, and I remember that when we were preparing it, we said that we knew that one of the first issues that the Government will have to decide is whether they are in or out of the customs union. Indeed, they have decided to be out of the customs union. When the Prime Minister made her speech on 17 January and said that we are out of the customs union because we cannot agree with the common commercial policy or a common external tariff, I may not have been alone in wondering what our customs arrangement will look like in future.

My noble friend Lord Bridges touched on this on Monday evening and talked about how the US and Canada are able to achieve sophisticated supply-chain activity across borders where they do not have a customs union. He also reminded us, as other Ministers have rightly done, that digitalisation of documentation for customs purposes has proceeded apace, not least in the past decade. The United Kingdom is probably best in class for customs documentation by digital means. My noble friend said that,

"99% of customs declarations are received electronically and 96% are cleared in seconds".—[*Official Report*, 27/2/17; col. 669.]

He also, interestingly, referred to "authorised economic operator" status, and said that 60% of UK imports and 74% of UK exports are accounted for by UK companies with AEO status. We are starting to see a bit, therefore, what the Government might have in mind and what frictionless trade across borders may look like.

The central, prior issue is achieving a zero-tariff relationship with the European Union, but let me for the moment say that that is clearly part of the negotiations. Let us assume that that can be achieved—it may not be and, if it is not, serious inherent problems emerge. Leaving that on one side, the customs and border relationship none the less involves some pretty serious issues. There is reconciling all this transfer of data

electronically with the physical transfer of goods. There is the business of understanding how rules of origin will apply in the supply chain and certification to comply with them.

There is the business of dealing with anti-dumping. I remember nearly 40 years ago being responsible for the generalised scheme of preferences for chemicals in the Department of Trade and Industry, as then was. If we are to align ourselves with the European Union long-term, it will be looking for us to have a generalised scheme of preferences. In general, it will not want any external aspect of its tariff—be it anti-dumping, tariff impositions or quantitative restrictions—to be circumvented by those who are able to bring their goods into the United Kingdom and re-export them to the rest of the EU. We can see this whole string of potential difficulties which could, of course, lead to cost, delay, relative lack of competitiveness and bottlenecks at borders.

At the same time, I want to ask Ministers whether they will do one thing for me. Will they tell us more about the possibilities for dealing with this, and involve us directly in thinking about this? It is not part of the negotiations. I do not think it would prejudice the negotiations in any respect for us to be working hard now to try to put in place the practical mechanisms for facilitating trade and reducing the cost and delay involved in trade across borders for the longer term. We are going to have a customs Bill, a piece of customs legislation. We should have an opportunity to have the Government come forward with their proposals at an early and draft stage to follow up the External Affairs Committee's report with pre-legislative scrutiny in order to get the Bill right and have a better chance of having our legal framework, as well as our administrative framework, in place before the two years, or a further transitional period, are completed.

What does it look like? We know that the current customs declaration system—the so-called CHIEF, or Customs Handling of Import and Export Freight, system—has about 90 million transactions. After Brexit, the number could rise fourfold. As it happens, there is going to be a new customs declaration system in 2019. It has to be a project that is configured for, and capable of, handling that dramatic increase in the potential complexity and number of those customs declarations.

I think there are only a few hundred authorised economic operators in this country because to get to be an AEO is costly and difficult. We need some additional mechanism by which small and medium-sized enterprises can acquire some of the trusted status which goes along with AEO status for security and customs simplification purposes so that they can access the same kind of cross-border mechanisms. There is technology which allows us to track vehicles, goods and shipments in ways that mean that we do not necessarily have to stop people at borders, and in so far as they are stopped at borders, it will be on a risk-based assessment, rather than having long queues with everybody having to be checked through.

As a former—some 30 years ago—deputy director-general of the British Chambers of Commerce, I know that all over the world chambers of commerce help to make trade work. In this country, we have chambers which have a long history of certification of origin and trade facilitation. We have hundreds of trade facilitation experts—they are not international trade negotiators—in chambers of commerce. In future, we need to have new customs arrangements and, through designing a UK customs code to replace the EU customs code, an opportunity to improve the circumstances for businesses in this country, reduce the cost of compliance and make trade easier for small businesses in particular. I urge Ministers to work with us in the way I have described and to work with my friends in the chambers of commerce movement to try to put that kind of trade facilitation in place for small businesses for the future.

7.13 pm

Lord Liddle (Lab): My Lords, I rise somewhat hesitantly and, I hope, briefly, to add to a remarkable cross-party consensus of gloom and apprehension about the prospects for a successful outcome of the Government's wish to conclude an ambitious and comprehensive trade agreement with what we are no longer allowed to call our "partners". I noticed that the noble Lord, Lord Bridges, yesterday was calling them "counterparts", which is an interesting shift. Our chances of concluding the agreement successfully are not very good.

It has been a privilege to serve on the committee that produced the report, which provides a very balanced assessment. I have personally learned a lot. I trade on the fact that I know a bit about Europe, but I certainly learned an awful lot in the process of these hearings. It is an excellent report, for which we owe an awful lot to the clerks, officers and witnesses, very ably chaired by the noble Lord, Lord Whitty, on the Internal Market Sub-Committee, to which I am very grateful.

What is true of the report is that its balanced assessment contrasts with the kind of bluster and assertion of the Government's position, which I find worrying. Where are the Government getting it wrong? The starting point is the self-deluding proposition that we are in a very strong and good position in these negotiations. I do not think that we are. One of the comments to justify this confidence is made in the response to recommendation 18 in our report, where they say that we are starting from a very different position to other countries looking to agree free trade agreements with the EU because, unlike most negotiations, these talks will not be about bringing two divergent systems together—they will be about managing the continued co-operation of the UK and the EU. They say that they are confident that it is in everyone's interests to arrive at a mutually beneficial deal. That is false optimism. If you think about it, maybe the rules are at present both the same, because we are all members of the EU as it is, but will they automatically in future stay the same and will we commit to keep our rules in line with European rules to have access to those markets?

Elsewhere the Government say in response to our report that equivalence will of course be an important part of any discussion on our future trading relationship, but we are committed to taking control of our own laws as the people of the United Kingdom have demanded that we must. So will the Government seek to maintain

[Lord Liddle]
equivalence in future or are they going to exercise sovereignty in determining their own rules affecting our trading position? A very obvious example of this is coming up right now, with the key sector of automobiles—very important in terms of our manufactured exports. We are clearly going to have to devise a lot of rules to deal with the coming of autonomous vehicles; that is happening in the next 10 years. Will we follow the Brussels rules to guarantee access for our manufacturers, or will we have a completely independent approach and say, "We have a right to determine our own rules on safety and everything else"—in which case we will create tremendous trade problems for ourselves? I do not think that the Government are giving a clear answer on that at all.

Another problem is that I do not think that the negotiating position that we are in is very strong. We have much more to lose from a breakdown of these talks than do the EU 27. Our trade with the EU is a much bigger proportion of our GDP than it is of the GDP of the EU 27 and the Government do not seem to understand that point. The timetable that the Government have set themselves, without willingness to contemplate a proper transition phase, is truly frightening, because we are not actually talking about two years. As I see it, in practice, we are talking about the period between the end of the negotiations for the new German coalition, which is when we will see a German Government who are able to make political compromises and will probably be in November or December this year, and the autumn of the following year, when the draft agreements would have to start being put to the European Parliament if they are going to be agreed by March 2019. This is a frighteningly short timetable for issues of huge complexity. If the talks break down, the cost to us will be enormous. There are some sectors where we do not even have the WTO to fall back on.

We heard yesterday in the Article 50 debate about Euratom. The nuclear industry is one of the strategic ambitions in our industrial strategy White Paper yet, if we do not reach agreement with the EU, Euratom comes to an end and there can be no transport of nuclear fuels or nuclear materials with other countries because there is no regulatory regime to cover them. The same is true of aviation and broadcasting. There is a terrible cliff edge for a lot of key sectors of the British economy. If it was not so tragic I would laugh. It is a bit like someone who has been a member of the golf club for 44 years and decides, "Oh, no, I am not going to be a member any more, but I still want to play on the course every day. However, I am not prepared to pay a membership fee for this privilege, I want to determine rules of my own as to who works on this course, because I am not having your free movement rule, and I also claim the right to rewrite the rules to suit myself because I insist that I have the national sovereignty to do so". This is ludicrous. This is not a sensible way of behaving.

If you are going to leave a club but you want to stay in it, you have to make lots of adjustments to make that possible. I hope that this whole experience does not turn out badly, but I fear that it will and I fear for the country.

7.23 pm

Lord Risby (Con): My Lords, it is always worthwhile listening to the noble Lord: he asked one or two very pertinent questions about the future situation of our mutual relationship. It gives me great pleasure to thank the noble Lord, Lord Whitty, for introducing this debate so well and for chairing the proceedings of his committee, but most particularly I want to thank my noble friend Lady Verma, who also made such a good contribution and chaired our proceedings so well. I add my appreciation for the staff who did such a brilliant job in pulling all this together; they really are the unsung heroes of the situation.

Since the report's publication, as has been indicated, we now have a much clearer view of the Government's intent, but the details of our pursuit of a free trade agreement are certainly not yet at hand. This is our dilemma in the discussion this evening. The possibility also exists, as we have discussed, of our just having to deal with the WTO, if the whole process fails. Indeed, we do not know very much more than that at this point. I should therefore like to focus on some elements of the topography of trade post our formal departure, including, of course, non-tariff barriers. While we will initially be incorporating EU legislation into our own legislation, the challenge thereafter is how we manage the inevitable regulatory and other changes as the EU itself evolves.

As we have often heard, supply chains are uppermost in business's mind. We could, in theory, see tariffs levied at different production levels across borders several times, with all the difficulties that that brings. While there appears to be a template offered by NAFTA, particularly between the USA and Canada, with simplified customs procedures, the issue of a pan-European supply chain is a hugely significant factor to manufacturers, most notably in the successful automotive sector. Both the supply chain and regulations on quality assurance are fundamentally important as we seek a new trade agreement with both the EU and others. We naturally would favour preferential rules of origin, and such rules apply currently, but I wonder whether my noble friend the Minister could expand further on how possible preferential rates of origin might apply as we leave the currently structured customs union, as presumably there would still be an issue of more burdensome administrative checks to be undertaken.

Regrettably, the UK traditionally suffers a considerable trade deficit. What is left of our manufacturing industry is modern, productive and in many instances a great success story, for example in our car industry, although it is mostly foreign-owned. So what every Government have had to do, for decades, is continuously try to attract foreign direct investment to fill the trade balance void. Successive UK Governments have sought to minimise any disincentives to the purchase of British assets, and this has broadly been a success. Traditionally, we have remained the single most favoured European investment destination. But of course, as we have heard, access to the single market is at least a substantial part of the reason why this investment comes in in the first place, to avoid not only tariff disincentives but potential non-tariff barriers as well. Concluding an FTA is therefore—for all the reasons so perfectly and

thoughtfully put by your Lordships this evening—crucial for our continuing survival.

Our report relates to the EU, of course, but we need to address the impact on other markets as well. For example, in two key markets, Japan and China, the demand for high standards is increasingly marked. We are currently signed up to the EU, and that is one thing, but a common EU-wide regulatory system is also both efficacious and avoids higher administration costs. Consider the case of the pharmaceutical industry. The quality of our pharmaceutical companies is bound to be put under a spotlight during these negotiations. The quality of these companies—often ultimately owned by non-British enterprises—as well as food and beverage suppliers, is bound to be tested. While we may start with the assurance that common regulation and standards provides, our export destination countries need to understand how our regulatory and therefore quality system will prevail post Brexit. While we know that the EU-Korea and EU-Switzerland agreements provide useful templates for mutual recognition and certification, this is going to be an increasing challenge as living standards improve in our key export markets, and as we seek to create new business agreements with those countries which enjoy a trade agreement with the EU at present.

In a recent speech my noble friend Lord Hill reminded us that there are 27 other countries now directly or indirectly engaged in our negotiation process—with all the potential pitfalls, as we saw in the Wallonia problem in the EU-Canada agreement. But it is interesting to note, on a rather more optimistic note, that the European Commission has just published a working paper on equivalence in financial services which at least accepts the need for compliance in international standards in tax and money laundering, as well as potential reciprocal trading rights with third countries. This is incredibly important for our financial services industry, and I hope that this sort of realism will prevail during our direct negotiations with the European Commission over the broad range of goods and services, rather than what my noble friend Lord Horam described as a fist to the face. Therefore it goes without saying—I emphasise this—in the language we deploy, a prosperous EU is completely in our own national interest, and we have to go on saying that.

My noble friend Lady Verma mentioned the complexities of the agricultural sector, for example, in any negotiations. I ask noble Lords for forbearance in mentioning one rather personal instance of how deeply our current agreements reach within the EU. I declare an interest as a government-appointed director of the Horserace Betting Levy Board and as the former Member of Parliament for Newmarket. Freedom of movement usually implies human beings, but I want to bring an equine dimension to this discussion. A tripartite agreement between the UK, France and Ireland currently allows thoroughbred horses to travel freely between the three countries for race meetings. Under an EU directive, horses need only a simple passport arrangement, with no customs documentation or veterinary export health certificate. I can only hope that a frictionless trade agreement will be extended to this valued part of British life, but it simply illustrates how far we are embedded in the totality of EU architecture. Therefore, I hope that the next two years will bear fruit; but it will be a challenge. I make a plea to the Minister to communicate this as appropriate.

It is certainly gratifying, as we have heard, that skilled individuals are now being deployed in our negotiations to forge new trade relationships with the EU. However, may I highlight how, with some notable exceptions, our embassies are underresourced and insufficiently manned, compared with our soon-to-be rival neighbours? As one of the Prime Minister's trade envoys, I see how actively EU countries—particularly currently, because they sense an opportunity—are hard at work in a number of promising export destinations. It is a matter of the utmost concern to me and others that, while some embassies have liberal funds specifically for social or political projects, their ability to promote trade is wholly inadequate. If our embassies are to be part of developing our post-Brexit strategy, as promised, the ludicrous resources available to them need to be dealt with with the utmost speed. Any other trade envoy would tell your Lordships exactly the same thing. We can only hope that a free trade agreement can be secured to avoid the additional burden that WTO tariffs imply. How necessary it could well be to secure transitional arrangements we all accept, to give assurance to those foreign investors and businesses that are so important to our national economic life, survival and prosperity.

7.32 pm

Baroness Randerson (LD): My Lords, let me thank the chairs of both committees, the staff who have produced this excellent report with us and, indeed, the witnesses who prepared so carefully for evidence sessions. This has been an excellent debate. I have found myself in agreement with almost everything that has been said so eloquently on all sides of the House. This whole process of preparing for Brexit I find infinitely depressing. Thursday mornings are a very depressing part of the week, despite the excellent company of my fellow committee members, because one witness after another—experts, practitioners, trade bodies and so on—parade before us the complexities of the situation we are in. Such warnings are all around us. Last night the president of the CBI talked about his fears for the whole process, calling it a rollercoaster, and warning that no deal with the EU would hit 90% of our exports to the EU, either in tariffs or non-tariff barriers.

It is a great pity that none of the strongest opponents of the EU is here this evening to hear the variety and depth of the debate. The Government's very late response to our report also makes a depressing read. Either the Government have very few words in their lexicon, as envisaged by my noble friend, or they have very few ideas, because the same banal, generalised, high-level statements are repeated over and over again: "ambitious and comprehensive", "frictionless", "no cliff edge" and so on. The endless repetition was so intense that at the end of reading the response I felt that I was being brainwashed.

As with the White Paper, I was also distressed by the Government's apparent smug self-confidence. I have referred to this before as hubris. I believe that the use of the terms "world class" and "world leading" show that overconfidence. However, there is a new line

[Baroness Randerson]
that appears in the Government's response to the report, which is that it will be all right because we are already well integrated with the EU and currently have no trade barriers, so apparently we are unlikely to have any in the future. If the Government seriously believe that, they have been deaf to the statements coming from our current EU partners, who have said, in terms, that if you leave the club, cease to pay the membership fee and no longer agree to play by the rules, you can no longer enjoy the benefits of membership. We have already announced not just that we want to leave the club but that we do not even want associate membership.

I think that in reality, like ducks on a lake, the Government are paddling furiously just below the waterline. Indeed, the impressive list of meetings that they have held with business organisations, set out in the government response, and the hundreds of additional civil servants they have recruited are signs of the effort and work going on. I just reflect that it is a pity that those extra civil servants are needed in order for us to fight just to stay still. I would have preferred them to do something rather more creative.

What I looked for in the government response was some acknowledgement of the sheer complexity of the situation. The committee report that we are discussing today makes that complexity plain—albeit this is only an introductory taster to the true difficulties. This morning our committee discussed its next report, which looks behind and beyond the level of detail in the report we are discussing here to a further level of complexity. I believe it should be compulsory for everyone who tells us that it is all quite straightforward to read not just the summary but the body of this report. Only by doing so can you understand the complexity. It does not need to be this report; it can be any one of the excellent reports produced by our EU committees. They are authoritative and comprehensive but, as I have said before, they are also depressing.

In my inbox and on Twitter there are two categories of pro-Brexit campaigners. Just to clarify matters, I do not put everyone who is pro-Brexit in these two categories, but I want to refer to two types of correspondents. One is what I call Brexit bullies, who feel that, by shouting loudly and heaping sometimes personal insults on those who oppose Brexit, they will drown out the arguments being put before them. Then there are the lemmings—those who blindly follow their leaders towards the Government's famous cliff edge. This report and others in the series should be read by all lemmings. It sets in context, in factual, precise detail, the enormous complex task that the Government face. I will briefly refer to a couple of detailed issues.

Our report refers to potential costs and delays associated with more complex border and customs processes. The Government's response that that is all done electronically now has been put forward in the Northern Ireland and Republic of Ireland context. I very much hope that it could be a contribution, although that should not be overestimated in its potential. But in general terms, the value of electronic processes needs to be considered. I draw noble Lords' attention to an article in this week's *Times* about the considerable delays at the Turkish/Bulgarian border—up to 30 hours. Reference was made to bulky sheets of documents. Turkey is in the customs union with the EU. The point made in the article is that EU states can and do impose significant transit fees and permits based on a quota system. Each EU country sets its own fees. That is despite the customs union.

The Road Haulage Association has warned of the need for significant investment in infrastructure of ports and customs. We have very little such infrastructure because we have not needed it for 40 years. It warns of the total lack of experience and knowledge in the road haulage industry on these matters. Can the Minister tell us precisely what the Government are doing to prepare for this?

On dispute resolution procedures, our report refers to the advantages of the EU system and the disadvantages of the WTO system. We need to ask ourselves, why would the EU agree, as the Government suggest in their response, to a separate and new system that the Government hope to set up with the EU when one already exists from their perspective? Any new system that is established has to be accessible to small businesses and just as accessible as the current system.

The Government's response, beyond the Prime Minister's statement that we would not remain within the single market or the EEA, does not have much detail. In debate earlier this week, one noble Lord, when referring to negotiating and revealing our hand, compared our negotiations to those with the IRA and the DUP in Northern Ireland. I want to examine that. Negotiations in Northern Ireland were between groups who had been seeking to kill each other. We are talking about negotiating with our EU partners and friends who have sat on the same side of the table with us for 40 years. The Government place too much emphasis on keeping their powder dry and keeping their cards close to their chest. Those other countries which have been our friends for 40 years know every nook and cranny of what we are trying to negotiate and what we want to do.

These days, there is global interdependence. If we want to trade we effectively have to pool sovereignty with others. The irony is that because the EU is the world's biggest customs union, it dictates many of the terms and standards of world trade and we will have to accept that, whatever the Government lead us to in terms of negotiations on Brexit.

7.44 pm

Lord Mendelsohn (Lab): My Lords, there is an abbreviation that expresses the sense that someone feels that they were not in the right place at the right time when something else rather remarkable went on. It is called FOMO—the fear of missing out—and I fear that I have a case of FOMO when it comes to looking at this committee's report. This has been an excellent and extraordinary debate, with eloquence, relevance and expertise in every contribution. We owe a great debt to the EU Internal Market Sub-Committee and the EU External Affairs Sub-Committee, and in particular to the noble Baroness, Lady Verma, and my noble friend Lord Whitty for the excellent way in which they have brought the committee together and its conclusions to life. I note that that there is a further

report on what a good deal on trade and services will look like, and I hope that we will get an early opportunity to debate that in the House.

While events have moved on, the report stands the test of time. In short, the report and this debate demonstrate that while an approach of pursuing a free trade agreement has been chosen, many other elements are in play which cause uncertainty and complexity. Official trade statistics show that the European Union is the destination for about half of all British goods and exports, but the trading links are bigger if we include the countries we trade freely with because they have a free trade agreement with the European Union. Those agreements mean that 63% of Britain's exports in goods are linked to EU membership. What is at stake here is about more than just the single market; it is about how entwined and impactful have been the past decades of economic connections and their evolution. Those elements will rest heavily on the construction of an even more complex series of future arrangements.

This report is full of sound advice and it should be re-read constantly throughout the process of negotiations and as people consider our options. I want to touch on three themes from the report and from this debate. The first is that of synchronicity. The task of withdrawing from the EU, of establishing what the free trade agreement will look like, of preparing trade agreements with other countries, with all the problems of whether we can have those in sequential or concurrent mechanisms, and the question of how interrelated those elements are and whether they are determined by economics or a bit more politics: all of that will shape a very difficult series of considerations. The Government will need to consider what is fundamental and what anchors we need. There is a big question around what assumptions they make about how to integrate into any discussions a whole variety of other elements which fall from the side and some of which we have not touched on in detail during the debate but have been touched on in the report. They include questions around the UK's position in the WTO schedules and our share of EU quotas.

In tandem with these discussions, we need to design and agree future trade relations with the least developed countries and other developing countries which are currently covered by the EU's generalised system of preferences. In practical terms, how and when this is done will be crucial for our export position in developing markets, and our EU competitors will take advantage of any interregnum that we create as a result.

To ease negotiations with third countries, joining existing or intended large regional or mega-regional agreements could be advantageous. However, doing so may also result in a loss of sovereignty and raise other issues relating to migration and financial contribution. Is this something that the Government will consider in a tapestry of new trade relationships?

Secondly, we have also the large question of capacity. The report raises the issue of capacity, and I have heard others say that they are reassured that we are at least starting to make some progress on this. I am less reassured. My own experience of the Government's dealings with other sectors is that we have created for presentational purposes—which is not always a bad thing—layers which do not inherently indicate that we are going to take account of some of these considerations of companies and businesses, and the long list covered in the Government's reply, in the mechanism that will add to the capacity of our country to deal with the huge challenge.

We are faced with the task of negotiating more than 100 new trade agreements if we leave the EU customs union. In addition, trade partners in regional and bilateral agreements may want to change the terms of their existing agreements. The most immediate challenge the UK faces arises from our reduced negotiating powers as sole actor, time pressures and concerns about the character of how negotiations will be conducted. In view of the narrow base of domestic expertise in conducting trade negotiations, we will need to recruit and train a large body of new specialist staff. We will also need—this is an important point—to re-engineer how we do negotiations and trade, and how we re-create the Whitehall machine to deal adequately with how policy is addressed across a variety of departments.

Crucially, as raised by other noble Lords, there are questions about what support and advice has been given to British businesses. If the UK is to expose its markets to greater competition, we also need to make sure that we are ready to help potentially disadvantaged groups at home to adjust. We must get these elements right. It is about our capacity not just to negotiate but to deal with the consequences of the negotiations and the pattern of them.

Thirdly, there is the question of data. As my noble friend Lord Whitty said, no comprehensive economic evaluations have been made. These are absolutely crucial. Making a correct estimate of our trade interests, as well as properly informing the slowly developing industrial strategy, requires us to have a very sophisticated view of the dynamics in our economy and in the existing trade situation, as well as a correct estimate of the trade opportunities and context of other markets. This is no small challenge.

To illustrate the point, let us look at services. A large volume of services are traded across borders directly—for instance, a legal opinion or a form of insurance. This area is relatively easy to quantify, but a large amount of our services are wrapped up in other activities. Some services trade is camouflaged as merchandise trade, as it encompasses services inputs—for example, elements that are value added in the context of design or about some forms of advice, research and development.

Data that trace how value is added in both goods and services along the supply chain have only started to emerge and are not particularly meaningful at this stage. The strength of the services available and the quantity, quality, availability and geography play an ever more important role in making manufacturing competitive. Understanding how these impact and how we can design the right sort of policies and the future architecture of what our trade relationship should be with Europe and all the other countries we are looking at will require a much better set of data than we have at the moment. In relation to that question about comprehensive economic analysis, I am keen to know what sort of work the Government plan to do here.

[LORD MENDELSOHN]

This also touches on the issue of capacity. Many officials whom we are now training to look at some of the aspects of trade have great expertise in a variety of areas, and we now need that knowledge to enhance the ability of those areas to be adequately covered in the negotiations but they are now focusing on different elements. That shows a sense in which the breadth of the people, experience and expertise required will play an ever-increasing part during these negotiations and discussions.

This debate has shown the complexities of negotiations on our position. The path we are on is not the one that I wanted, but our task is to make the best of the situation. As someone from a business background, I am hotwired to think about what is the best we can do. The Government's challenge is to face up to the need for a realistic approach and to prepare for the ripples and waves caused by the negotiations that will wash over all sorts of different areas of our economy and country. Without addressing that adequately, there are too many questions and uncertainties. Uncertainty is the main destroyer of GDP and our greatest economic risk in the short and medium term.

While the Government need to provide leadership and have the responsibility to conduct the withdrawal from the EU, the political need to look in control and to ignore building a broader capacity for our country to succeed in the face of this challenge is self-defeating. This report and the EU committees demonstrate that others can make a valuable contribution. The Government would do well to reach out more to them.

7.54 pm

Baroness Mobarik (Con): My Lords, I am very grateful to the noble Lord, Lord Whitty, for tabling this debate and for his excellent speech. I also thank the EU Internal Market Sub-Committee and the EU External Affairs Sub-Committee for their report, *Brexit: The Options for Trade*, which provides a rigorous analysis of how the Government might approach a new trading relationship with the European Union. The committees will now have received the Government's response to their report.

As your Lordships will know, my noble friend Lord Price appeared with my noble friend Lord Bridges before the committees in October last year, and again last month to discuss the upcoming publications, *Brexit: Future Trade Between the UK and EU in Services* and *Brexit: Future Trade Between the UK and EU in Goods*. I am looking forward to the contents of these two reports, which have been informed by evidence from key sectors as diverse as pharmaceuticals, food and automotive.

As a businesswoman and former chairman of CBI Scotland, I know that trading continuity is vital during times of change. That is why the Government have held thousands of visits, meetings and events with businesses since the referendum. My noble friend Lord Price alone has met more than 50 Ministers from foreign Governments since the referendum, 18 of whom are in the EU. The reason he is unable to attend this debate is that he is on his way to attend the informal Foreign Affairs Council on trade in Malta. I take this opportunity to pay tribute to him for the work that he is undertaking, and to wish him a happy birthday. In addition, Ministers from the Department for Exiting the European Union have met more than 150 businesses through round-table meetings with key sectors.

I am very pleased to be able to wind up for the Government in this debate, and will now address the points raised. I will also set out the Government's plans. Since the publication of this report, the Prime Minister has set out *Our Plan for Britain*, including the 12 principles which will guide the Government during negotiations on the UK's withdrawal from the European Union. The Government have also published a White Paper on the UK's exit from and new partnership with the EU. In response to the points raised by some noble Lords on the Government's narrative on these issues, our strength is speaking with one voice. Speaking with one consistent voice is a negotiating strength.

As the Prime Minister has said, we will not seek membership of the single market but will pursue instead a new strategic partnership with the EU, including an ambitious and comprehensive free trade agreement. We want the UK to be able to negotiate its own trade agreements. We want our new relationship with the EU to aim for the freest possible trade in goods and services, and for cross-border trade to be as frictionless as possible. I thank my noble friend Lady Verma for her question on a customs agreement with the EU. We are seeking a new customs agreement with the EU. There are a number of options for any new customs arrangement, including a completely new agreement or for the UK to retain some elements of the existing arrangements. The precise form of this new agreement will be subject to negotiation.

I remind noble Lords that we start from a unique position. On day 1, we will have exactly the same regulations and standards as our negotiating partners. This provides an unprecedented starting point for our negotiations with the EU. We will aim to have reached an agreement about our future partnership by the time the two-year Article 50 process has concluded. Article 50 states that the process of withdrawal will take account of the framework of the leaving member state's future relationship with the EU, and there is a clear connection between the terms of our withdrawal and the future relationship we want to establish.

As we have said before, it is in no one's interest for there to be a cliff edge for business as we change from our existing relationship to a new partnership with the European Union. That is why the Government have announced that we will establish the UK's independent position at the WTO, of which the UK is a full and founding member. We are currently represented by the EU at the WTO, but as a post-EU member we will need to separate our schedules of commitments, which are currently integrated into the schedule for the EU as a whole. We will do this in a way that causes the least disruption possible to our trading partners. To address the concern raised by my noble friend Lady Verma about the UK's technical rectification of WTO schedules, I tell the House that the WTO director-general, Roberto Azevêdo, stated in support of the UK's position:

"The UK is a member of the WTO today, it will continue to be a member tomorrow. There will be no discontinuity in membership".

Our ambition is clear: we want Britain to become a champion of free trade, working with our partners across the world to remove barriers. As the Prime Minister has said, we want to build a truly global Britain that is one of the foremost advocates for free trade anywhere in the world. We cannot negotiate and conclude trade agreements while a member of the EU, but we can have discussions on our future trading relationships. We have announced a series of working groups with key partners and are seeking to ensure that we deploy the right trading tools with each market to take best advantage of the opportunities available to us, both now and as we leave the EU. With some of our partners an FTA might be the right solution. In other cases, other trading arrangements may be more appropriate.

I am keen to address the concerns of the business sector. I hope I am able to answer the very important question raised by my noble friend Lady Verma. The noble Lord, Lord Aberdare, asked a very sensible question: what criteria will the Government use in assessing when they have achieved a good deal? The key is engagement. The Department for International Trade and the Department for Exiting the European Union have been engaging widely with businesses at all levels since the referendum, as have other departments, such as the Foreign and Commonwealth Office, the Department for Environment, Food and Rural Affairs, the Department for Culture, Media and Sport and HM Revenue & Customs.

I thank the noble Baroness, Lady Donaghy, for her point on ensuring engagement with industry. I can assure her that, as we prepare for the negotiations over the UK's future relationship with the EU, the Government will continue to have open and honest conversations with businesses and trade associations to understand issues, limit uncertainty and ensure that our new relationship with the EU works for business.

The insight we are gaining from our engagement will play a vital role in informing the development of trade policy that works for the whole of the UK. I confirm the intention raised by my noble friend Lord Green. The Government are determined not to allow any part or nation of the United Kingdom—Scotland, Wales, Northern Ireland or England—to lose out in this process. The Department for International Trade is dedicated to serving the whole of the UK, now and when we leave the EU. Officials from DIT have been engaging with counterparts in each of the devolved Administrations.

This engagement is stepping up. Last week, DIT hosted officials from the Governments of Scotland, Wales and Northern Ireland for an in-depth discussion of our WTO membership, the rights and obligations that come with membership, and the impact that Brexit will have on our relationship with the WTO. The Department for International Trade will be engaging further on a wide variety of trade-related topics over the coming weeks and months, and the Government are of course taking into account the specific circumstances faced by businesses in Northern Ireland. The Prime Minister has been clear that there will be no return to the borders of the past and that retaining trade will be important. She agreed with the Taoiseach that we will work to ensure as seamless a border as possible with Ireland and to continue the common travel area.

We are clear that we want Britain to have the greatest possible tariff and barrier-free trade in goods and services with our European neighbours, and to be able to negotiate our own trade agreements. As the Prime Minister said, we want to have reached an agreement about our future partnership by the time the two-year Article 50 process has concluded. We approach these negotiations not expecting failure but anticipating success. As we have always said, of course there will have to be give and take, as in any negotiation, but a punitive approach by the EU that punishes Britain would be an act of self-harm for the countries of Europe. Britain would not and could not accept such an approach.

My noble friend Lady Verma and other noble Lords were concerned, I think, about the costs of leaving and trading on WTO terms alone. In the event that it is not possible to reach a positive agreement—a scenario the Government are confident need never arise—the Government are clear that no deal for Britain is better than a bad deal for Britain, because we would still be able to trade within Europe and free to strike trade deals across the world.

Ahead of and throughout the negotiations, we will provide certainty wherever we can, and as much information as we can without undermining the national interest. Noble Lords will recall that the publication of impact assessments was discussed in detail in Committee on the European Union (Notification of Withdrawal) Bill earlier this week. The challenge we face is to get the balance right between enabling scrutiny and ensuring that our negotiating position is not revealed. A cardinal rule of negotiation is not to tell those on the other side how much certain scenarios and outcomes would cost or benefit you, but that is what publication of an impact assessment would do.

A number of noble Lords have asked whether the Government are able to deliver Brexit. Do we have the right staff? Will our customs arrangements be sufficient? The Civil Service is well equipped to deliver the UK's exit from the EU and has substantial experience of negotiations with it. Alongside the increase in staff and resourcing in my department, the Department for International Trade, and the Department for Exiting the European Union, as part of the Autumn Statement, we also secured funding for additional staff in key posts overseas. Our diplomatic network will be absolutely key in delivering the best for the UK. As I said, DIT is working closely with the Department for Exiting the European Union and other departments to contribute to the Government's preparations for Brexit, advising on the implications and operational aspects of EU exit for our trading relationships.

At the end of 2016, DIT's trade policy team consisted of around 150 staff. This team of trade policy officials has now increased to 185 and is continuing to grow. This includes policy and country specialists as well as expert economic analysts and lawyers. We will continue to develop our existing expertise as well as hire the brightest and best talent from within and outside the UK Civil Service to deliver the best outcomes for

[Baroness Mobarik]
the UK. The Department for Exiting the European Union now has more than 300 staff, and is growing fast. It is also supported by 120 UKRep staff based in Brussels, who report to Ministers in the Foreign and Commonwealth Office and the Department for Exiting the European Union.

Parliament will of course be involved in helping to shape the UK's future as we leave the European Union. There have already been 70 parliamentary debates on Brexit, as well as 36 Select Committee inquiries. The House of Commons voted overwhelmingly for the Article 50 Bill to pass Third Reading unamended. As noble Lords know, the Bill passed the House of Lords Committee stage with an amendment last night. It will now pass back to the House of Commons and approval of the Bill will provide a key step towards a smooth and orderly exit from the EU.

The Government will bring forward legislation in the next Session that, when enacted, will repeal the European Communities Act 1972 on the day we leave the EU. We will bring forward a White Paper on this great repeal Bill, which will set out our approach to giving effect to withdrawal on the domestic statute book. We will ensure that it is published in time to allow Parliament to digest its contents in advance of the introduction of the Bill in the next Session. Many noble Lords, including the noble Lord, Lord Liddle, and my noble friend Lord Risby, asked whether the Government would seek equivalence of EU regulations and standards. Equivalence will be an important part of any discussion on our future trading relationship and the great repeal Bill will convert current EU law into domestic law while allowing for amendment in future. How we go about ensuring the fewest possible barriers to trade between the UK and EU is a matter of negotiation. We will inform the House about the detail and timing of the repeal Bill legislation in due course. We have always been clear that Parliament will have every opportunity to scrutinise the great repeal Bill and we are considering the best way to enable that. Of course, Parliament must be consulted before ratification of any future trade agreements that we negotiate.

We recognise the importance of access to EU markets. As my noble friend Lord Gadhia and others have raised, financial services contribute more than 7% of UK GDP and its exports account for over 12% of the UK total. Around half of the world's largest financial firms have their European headquarters in the UK. We are listening to what the financial services industry has to say on the key issues it faces and we will be looking for a sensible discussion in negotiations.

On the UK being outside the jurisdiction of the ECJ, we are preparing a UK trade remedies framework for when we leave the EU, which will enable the UK to be a leading proponent for free trade while providing a safety net for its industries if dumped, subsidised or surges of imports cause injury to UK producers, as set out by WTO agreements. The UK remains committed to pursuing free trade, and this includes seeking to achieve continuity in our trade and investment relationships with third countries, including those covered by EU FTAs or other EU preferential arrangements. We are actively exploring what may be possible with our trading partners to achieve this.

I want to respond to some of the points raised by my noble friend Lord Green with regard to UK trade statistics. In 2016, UK exports were £544.8 billion—up by 22.6% from 2010. While there was a trade deficit in goods last year, there was a £98.1 billion surplus in trade in services. This is a positive picture, but the Government wish to build on it and ensure that the benefits of trade reach as many across the UK as possible.

Many have commented on the complexity of the task ahead; I assure noble Lords that the Government do not underestimate this—the Government will not, and must not, do this alone. We must take a "whole of the UK" approach, drawing on the skills and expertise of the Members of this House and the other place and the key learnings that we can draw from business and civil society. I am confident that if we seek to work together we can get the very best outcomes for the UK.

I conclude by thanking noble Lords for their contributions over the course of this debate. I am sure that this House will continue to play a valuable role and will work pragmatically towards building our future.

8.14 pm

Lord Whitty: My Lords, I thank the Minister for that contribution to the debate. I join her in sending birthday greetings to the noble Lord, Lord Price. I gently say to her, though, that there was not much new in her speech. I had hoped that there would be a little more engagement with some of the points made by noble Lords. One of the difficulties as we go forward in this House, and in Parliament generally, is that if the Government continually repeat the same phrases it will increasingly sound like whistling in the dark. It might be whistling in the dark to keep their own spirits up, or it might be to make sure that we do not quite know what is going on. Either way, we need a little more than that. It was a good run-through, but it was only a run-through of things that we had heard before, generally speaking.

There was one little bit that might be new, although I am not sure whether the noble Lord, Lord Lansley, would agree with me with his interest in customs, I thought the phraseology on the customs union was slightly different, and I will look at the precise text on that and see if there is a new measure there.

I am not going to make a great speech tonight; I thank everybody who has participated in the debate, particularly the noble Lord, Lord Gadhia, my noble friend Lord Mendelsohn, and others who had not participated in the debate; everybody else who spoke had participated in committees. I thank them very much for their work, as I thank again the staff. I just wanted to mention one thing in relation to staff: the clerk to our committee, Alicia Cunningham, has actually left for separate duties in this House this very week. I would like to put on record in this debate the work that she has done for us.

Of all the experts that were going to be quoted in this debate, I had not expected Mike Tyson to be one of them. However, knowing how the EU negotiators react is an important missing part of the jigsaw in most of this debate. There was a point in one of our

debates, and the noble Baroness, Lady Verma, and I are probably the only ones who remember it, when one of our colleagues—he was a noble and gallant Member of the House—said, "In these situations, I like to see it through the eyes of the enemy". That might be going a bit far—I prefer the term "counterpart"—but nevertheless, we did not get much of an inkling during the course of our discussions with the Government that they were really getting enough intelligence on where the EU is coming from.

One of the things my noble friend Lord Lea and my noble friend Lady Donaghy will remember is our irritation, in trade union discussions, when the press always said that the trade unions made a demand and the employers made an offer. The reality of this is that that is how Europe sees this: we are the demander and it has to deign to make an offer to us. It has interests to preserve, but those are not necessarily the same as ours. We want to maintain a good relationship and so does it, but it sees us as the people who are walking away and, to some extent, stopping paying the rent at the same time. We start from that psychological disadvantage. If we do not try to understand and cultivate a better understanding of our position among our EU partners—I will still call them that for the moment—then this negotiation will fail. I hope the Government are up to this.

We need proper engagement in this Parliament. We are going to discuss parliamentary scrutiny again on the Bill, but whatever the results, there has to be a greater degree of candour between the Government and Parliament as we go through this process. We do not expect the Government to give their total negotiating hand to the world at large. I think my noble friend Lord Lea said of our report that it was ruthless and realistic.

Lord Lea of Crondall: Ruthlessly realistic.

Lord Whitty: I thought for a moment that he was talking about me; it would have been the nicest thing he has ever said about me.

We need to be realistic and some of the statements by the Government are self-evidently not realistic at this point. If this House is to be taken along with the Government during this very difficult process, we need to have an honest and realistic discussion of what the options are and how we are to deal with them. We need that to be on a systematic basis and I hope that the Government have taken that lesson from this debate. Certainly, we in our committees will be both honest and realistic. We will also recognise the limitations. But the Government will not get through this if they do not get parliamentary support in both Houses. I hope they recognise that and that we can therefore have a perhaps slightly greater engagement than we have had so far with Ministers and government. That way, maybe we can get through this difficult process. In the meantime, I thank everybody who has participated in the debate.

Motion agreed.

House adjourned at 8.21 pm.