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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
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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

House of Lords

Monday 24 June 2019

2.30 pm

Prayers—read by the Lord Bishop of Chichester.

Death of a Former Member: Lord Tordoff

Announcement

2.37 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble Lord, Lord Tordoff, on 22 June. On behalf of the House, I extend our sincere condolences to the noble Lord's family and friends.

Arrangement of Business: Clocks

Announcement

2.37 pm

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, in May the House agreed the sixth report of the Procedure Committee, which included the recommendation that the clocks in the Chamber and Grand Committee should display seconds and that, when a time limit has been reached, the display should change colour and flash. Today the new clocks will be used for the first time.

Education: Music A-level

Question

2.38 pm

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

To ask Her Majesty's Government what steps they are taking to address the decline in the number of students taking music A-level.

Lord Black of Brentwood (Con): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I declare my interest as chairman of the Royal College of Music.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, music is a vital subject. That is why we are allocating more funding to music education programmes—over £400 million between 2016 and 2020—than to any other subject except PE. These programmes include our network of 120 music hubs, which works with 89% of state schools. They also include opportunities for young people to study at the country's elite musical institutions through our music and dance scheme and to perform at the highest level through national youth music organisations.

Lord Black of Brentwood: I thank my noble friend for that Answer. A-level music is a crucial gateway to a professional career in music. If it dies out, the future of music in the UK will be threatened. Is my noble friend therefore alarmed at the shocking decline in the number of pupils taking it—down almost 40% in eight years—earning it the unenviable record of being the fastest-disappearing A-level subject? More disturbing still, is he aware of research by Birmingham City University which has painted a devastating picture of provision, with 20% of entries clustered around fewer than 50 schools and four local authorities in the most deprived parts of the country not having any A-level music centres and therefore no A-level entries at all last year? Is he therefore as angry as I am at such indefensible inequality, with access to A-level music—and therefore the chance of a music career—rapidly becoming the sole preserve of the wealthy and of independent schools and disappearing completely from poorer areas?

Lord Agnew of Oulton: My Lords, it is of course correct to say that A-level entries in music have declined in recent years. However, we want all students to have the opportunity to study arts subjects at A-level if they wish to, whatever their background and wherever they live. It is up to individual schools and colleges to decide which A-level courses to offer; they may wish to work together with other schools and colleges to maximise choice. I also point out to my noble friend that there are other routes into music. For example, on Friday evening I was in Norwich Cathedral with the choir; in the organ loft they are teaching children to sing in English, German, Italian and even Russian. All of this can lay the foundations for a future career in music.

Lord Storey (LD): My Lords, the Minister will be aware, because he kindly wrote a reply to a written request, that over the past five years the number of pupils doing GCSE music has declined, the number of pupils doing A-level music has declined, the number of students going to university to do a music degree has declined, and the number of music teachers has declined. There is one beacon of success in the independent sector, where music still flourishes. Does the Minister not think that the 98% of pupils in state schools should have the same opportunities as those in the independent sector? Does he not think that it is time to have a proper strategy to make sure that music is rescued in our schools so that it can flourish?

Lord Agnew of Oulton: My Lords, I accept that there have been declines in the area that the noble Lord pointed out. However, as I mentioned in my earlier reply, music can be taught in various different ways, and the number of hours spent on music education have remained pretty stable over the last nine years.

Lord Winston (Lab): My Lords, research clearly shows that teaching music improves cognitive ability, memory, manual dexterity and emotional development. The noble Lord, Lord Black, is absolutely right to ask this important Question. If we do not have enough teachers—perhaps the Minister can tell me how many music teachers are currently practising in state schools—how can we manage the decreasing verbal ability of so many British pupils in the state sector?

Lord Agnew of Oulton: My Lords, I do not have the specific number of music teachers in the system but I know that the vacancy rate is only 0.5%, so I do not see that as a crisis. We have seen pressure on some schools crowding out subjects—for example, in key

[Lord Agnew of Oulton]
stage 2 by elongating key stage 4—but the new framework for Ofsted inspections starting from September will put more emphasis on a broad and balanced curriculum, of which music is a part.

The Earl of Clancarty (CB): My Lords, will the Minister accept that now the Russell group has now dropped its list of facilitating subjects, there is no justification for the Government to continue with the EBacc either?

Lord Agnew of Oulton: My Lords, it is correct that some universities have withdrawn the list of facilitating subjects, but they have replaced it with a website which gives children pointers to the sorts of subjects they need to study if they are to go on and do challenging degrees; for example, if you want to read medicine, you cannot do that by dropping science subjects at either GCSE or A-level.

The Lord Bishop of Chichester: My Lords, does the Minister agree that the decline in music A-level is part of a broader problem of social inequality in access to music itself and music education? Is it not time for the Government to reassess the persistent and growing evidence of the damaging effect of EBacc and the contribution of music through other routes such as BTEC in broadening access to our leading conservatoires, and to adjust the disproportionate bursary funding that allows £9,000 to music graduates but up to £32,000 to graduates in other subjects, in spite of recognition that music is vital to sustaining the creative industries in our country?

Lord Agnew of Oulton: The right reverend Prelate shares the concern of many Peers in this Chamber today. As I have said in Answers to earlier Questions, music has been extremely important in my own life; as I mentioned a year ago when this was raised by my noble friend Lord Black, my own father was cured of a debilitating stammer through the discovery of singing when he was a teenager. However, as I said earlier, children can discover music not only through the specific routes of GCSE and A-level. We have set up the music education hubs, which have been an outstanding success. In 2013-14, some 600,000 children had access to them, and last year, according to Birmingham City University, 89% of schools and some 700,000 pupils benefited from them.

Lord Watson of Invergowrie (Lab): My Lords, despite what the Minister said, the Government's commitment to music education is very much in question, not just because of the falloff in A-level entry that we have heard about. When I met the Secretary of State two weeks ago to discuss music education, he was unable even to give me a commitment that the national plan for music education, which finishes next year and to which the Minister alluded in his initial response, would continue. That is a disaster for the many young children who are studying music just now but have no guarantee beyond 2020. Will the Minister undertake to investigate the possibility of transitional funding to ensure that those young people can continue with their studies?

Lord Agnew of Oulton: My Lords, as the noble Lord will know, these matters are all subject to the spending review, which is under discussion at the moment, but he should rest assured, as I said in my opening Answer, that music remains a high priority for the department.

Working-Age Disabled Adults

Question

2.45 pm

Asked by ***Baroness Campbell of Surbiton***

To ask Her Majesty's Government what crisis prevention measures are in place to address the difficulties of those working-age disabled adults who have lost the support needed to live independently in the community.

Baroness Barran (Con): My Lords, it is critical to the vision of the Care Act 2014 that the care and support system promotes well-being and independence rather than waiting until people reach crisis point to respond. Local authorities must provide or arrange services, resources and facilities that maximise independence for those who have or are developing care needs.

Baroness Campbell of Surbiton (CB): I thank the Minister for her reply, but according to research findings, her words simply do not match the experience of disabled people on the ground. For example, the London Borough of Barnet has recently adopted without consultation a policy that it will no longer prioritise offering community-based care and will instead adopt "an assumption" that disabled people are placed in "cheaper accommodation settings"? Do the Government believe that such a policy is compatible with the Care Act's well-being principle and the requirement that assessments,

"must consider how to meet each person's specific needs rather than simply considering what service they will fit into"?

Baroness Barran: The noble Baroness gives a troubling example and correctly quotes the basic principle of the Care Act: to assess the needs of and have a duty to promote the well-being of the individual. Without more detail, I cannot comment on the specific case, but I am more than happy to take it up with the department if she is happy to share that information.

Baroness Thornton (Lab): Does the Minister agree that the savings that the Government have sought to make in their austerity programme through income support and local government cuts have resulted in a false economy and an increase in the number of disabled people in crisis—one in four needing expensive hospital treatment; one in eight getting stuck in hospital? Have the Department of Health and Social Care, the DWP and the DCLG considered how, together, they can best support working-age adults who seem to have lost the support they need to live independently in the community?

Baroness Barran: If the noble Baroness will permit me, I point out the increases in funding that the Government have committed to: up to an additional

£3.9 billion for adult social care in the current year, and a major commitment in the long-term plan for the NHS for access to community-based health services. Furthermore, the forthcoming Green Paper will look at all those issues in detail. We hope that it will be with us before long.

Baroness Chisholm of Owlpen (Con): My Lords, of course we want everyone who is disabled to be able to live in the community, but it is also important that they should be able to work where they can. Some businesses make a terrific effort to employ those with disabilities—Morgan Stanley and the DVLA are two. Would it be a good idea for the Department of Health and BEIS to get together to see how they could better promote other businesses that take the same view as those I mentioned?

Baroness Barran: My noble friend is right: all in this House welcome employers who have made a real effort to be inclusive in employing those with disabilities. I welcome her suggestions for joined-up work across government. Obviously, work addresses not only financial isolation but, crucially, social isolation.

Baroness Thomas of Winchester (LD): My Lords, my question follows on from that of the noble Baroness, Lady Thornton. What happened to the cross-government strategy we were promised to address the issues of independent living for disabled people, which spanned several government departments, including housing, care, transport and so on?

Baroness Barran: The noble Baroness is right that that strategy has not been produced. However, a huge amount of work is going on across key government departments—housing, health and social care and DWP—to try to address many of the issues to which she refers.

The Lord Bishop of London: My Lords, the UN Committee on the Rights of Persons with Disabilities has recently stated that the UK was going backwards in terms of independent living and went on to say that it was a human catastrophe. In the Minister's view, are we are doing enough to involve disabled people in producing, designing and providing better solutions for independent living?

Baroness Barran: The co-creation of services to which the right reverend Prelate refers is a crucial part of our work going forward and that taking place in relation to the Green Paper.

Baroness Watkins of Tavistock (CB): My Lords, we have all been shocked by the appalling abuse suffered by people with a learning disability and autism in the recent scandal at Whorlton Hall, exposed by BBC's "Panorama". Can the Minister explain why NHS England has failed to achieve the promised 35% to 50% reduction in in-patient beds as set out in *Building the right support* strategy? What strategy are the Government and NHS England now working to in order to achieve their goal of supporting people with learning disabilities to live in the community?

Baroness Barran: I echo the noble Baroness's shock at the Whorlton Hall documentary. I confess I was unable to watch it all—I kept turning the television on and off. We have seen a 22% rather than a 35% reduction in the number of people with learning disabilities and autism in in-patient care, and we continue to work towards the 35%. I think it fair to say that some of the issues, particularly concerning the care of those with autism, were more complex than we originally appreciated but the CQC has recommended assessing a new model of care for those people. There will be a summit this summer and a further international review in the autumn.

Railways: Newcastle and Edinburgh

Question

2.53 pm

Asked by ***Lord Beith***

To ask Her Majesty's Government what discussions they have had with train operators about additional train services between Newcastle and Edinburgh.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, there are three possible sources of additional train services between these two stations. LNER is extending two Newcastle services to Edinburgh in September and plans one further extension in December; TransPennine Express plans to extend its Liverpool to Newcastle service to Edinburgh from December 2019, adding a further 13 services Monday to Saturday and 10 services on Sunday; and by December 2021 FirstGroup will start its open access trains, which will provide five trains per day in each direction between Edinburgh and London.

Lord Beith (LD): Bearing in mind that the local stations along the line deserve a better service, will these trains be able to stop at intermediate stations or will capacity constraints mean that they have to run express from Newcastle to Edinburgh? For example, late-evening services are needed because 9 pm is a bit early to say that you have to leave an event in Edinburgh in the evening.

Baroness Vere of Norbiton: Determining whether there is enough capacity for new or extended services on this or indeed any other route is a matter for Network Rail and for the Office of Rail and Road through the sale-of-access rights process. If a route is congested and needs extra investment, it would be initiated and considered through the new Rail Network Enhancements Pipeline process. The industry is developing the timetable for the east coast main line and it will look at all the bids for timetable slots, whether they are for stopping or direct services.

Lord Trefgarne (Con): Before my noble friend authorises the additional services requested by the noble Lord, Lord Beith, and no doubt well justified, can she do anything about the existing services on South Western Railway, whose services were again seriously disrupted last week?

Baroness Vere of Norbiton: I thank my noble friend for his intervention. I too am a traveller using South Western Railway and I was disappointed that services were interrupted last week. Obviously, we are encouraging discussions to continue. It is not good that strikes are taking place and that there are poor industrial relations on that particular line. We are doing what we can to make sure that the conversations continue.

Lord Faulkner of Worcester (Lab): My Lords, remaining in the north of England for a moment, the Minister will know that I have tabled a Question about the provision of services between Middlesbrough and Whitby. Despite support from the community rail partnership, Northern railway is declining to put on any extra services. Could I have an Answer to that Question quickly? Perhaps the Minister will write to me if there is a problem with it.

Baroness Vere of Norbiton: I will have to write to the noble Lord about services between Middlesbrough and Whitby, but I can say that LNER plans to introduce direct services between Middlesbrough and London in due course. However, I do not know about the services to Whitby.

Baroness Brinton (LD): My Lords, in addition to the congestion experienced by passengers on some fast trains from Edinburgh to Newcastle, there is a problem of congestion with luggage that impedes wheelchair users. I had to take that journey around six weeks ago and I could not get off the train at Newcastle without the help of two members of staff moving around eight suitcases. Some of the staff at LNER are brilliant at providing support, but it is intermittent. On Friday, one passenger said that another passenger had declared that the space reserved for wheelchairs was for their luggage, and no one was available to help her. Will the Government ask LNER to ensure that alternative space is available for luggage?

Baroness Vere of Norbiton: I am aware of the issue raised by the noble Baroness, and of course it is quite wrong if wheelchair spaces are used for luggage. I will ask LNER to ensure that its staff are fully aware of that. On a more positive side, the Azuma trains which have now come into service are 15% larger than the previous trains. They have more space and proper turning circles for wheelchairs. Six Azuma trains are already in service and in total there will be 65 in use.

Baroness Browning (Con): Can my noble friend confirm what the Government's attitude is because many of us were inconvenienced last week by the strikes on South Western Railway? Is it their policy that guards should be present on all trains, particularly for long-distance journeys? I have known a train to break down on a dark evening and the guard had to go and inspect the track. What will happen if there is no guard on board?

Baroness Vere of Norbiton: It is the Government's policy that trains should operate as safely as possible, and certainly it will be necessary to have a guard on board some services. However, on shorter routes it is not necessary to have a guard. Having a train driver who is also responsible for opening and closing the doors is perfectly acceptable.

Lord Rosser (Lab): My Lords, I think that the noble Baroness referred to more open access services coming up. I think she said that they would be operated by FirstGroup, but if I misheard her, I am sure that she will correct me. Does that mean that the Government already know that the Williams review, which is currently looking at the structure of the industry, will advocate the increased or continuing use of open access, which suggests that the noble Baroness already knows what the response of the Williams review on that point is going to be?

Baroness Vere of Norbiton: We do not know what the Williams review is going to say on that or indeed any other point, but it will be a root-and-branch review of the entire system so that we can create a railway system fit for the 21st century and build up a blueprint of how our future on the railway will look. The review will look at reforms to the structure of the industry as well as to the commercial model within which it operates. Some 600 responses have been made to the call for evidence, so noble Lords will understand that it will take quite a while to go through them all. As regards the new services on the east coast main line, that was an open process conducted between 2014 and 2015. The operator has been granted track access rights from 2021 to operate those services.

Lord Forsyth of Drumlean (Con): My Lords, my noble friend has answered a series of Written Questions from me about services from Edinburgh to London by air. Does she think it is reasonable for British Airways to charge economy-class fares of more than £600 for a return journey to Edinburgh on planes that are absolutely full—so full, in fact, that the Convenor was not able to get here today?

Baroness Vere of Norbiton: I thank my noble friend for his Questions on this issue. As I have said to him previously, air travel in this country is subject to a competitive market and certain services will necessarily cost more than others. Where there is not a sufficient service, the Government will step in and provide support, but that is obviously not the case on the Edinburgh route.

Education: Industrial Strategy

Question

3 pm

Asked by ***Baroness Bull***

To ask Her Majesty's Government what assessment they have made of the role for further education colleges in the delivery of the Industrial Strategy.

Baroness Bull (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare my interests as set out in the register.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, as we place a much greater emphasis on skills and

professional technical education, further education colleges have an increasingly key role to play in delivering the skills needed to support our industrial strategy. They form part of our skills infrastructure, delivering the full range from basic skills to high-level technical training. They are key to delivering existing professional technical and apprenticeship training, and will be important to the delivery of T-levels and the national retraining scheme.

Baroness Bull: My Lords, industrial strategy investment in skills is welcome but the sums are tiny alongside the £7.4 billion set aside for research and development. Innovation is vital, but so is a skilled and adaptable workforce. Is the Minister concerned by Augar's report of shrinking numbers enrolling in colleges at technician level, declines in adult learning and a 45% fall in spending on adult skills over the last decade? Does he agree that investment in further education would not just address skills shortages across the economy but support social mobility by tackling stubborn inequalities of income and opportunity?

Lord Agnew of Oulton: My Lords, I recognise the pressures that FE funding is under and we are looking at this carefully ahead of the spending review. Further education is a driver of social mobility, providing a wide range of education and training for both young people and adults. For example, we know that a level 2 apprenticeship boosts earnings by 11% and a level 3 apprenticeship by 16%. They can provide a second chance by engaging adults who are furthest from learning and the labour market, providing the skills and training that they need to equip them for work.

Lord Watts (Lab): My Lords, the skills gap between ourselves and, say, Germany is massive. Despite that, the Government have made cuts every year. Why are they cutting something that we need to catch up on?

Lord Agnew of Oulton: My Lords, we have protected the base rate of 16 to 19 funding to 2020 and we are putting in money in slightly different ways. For example, we are providing some £500 million this year for disadvantage funding—uplifts in addition to the base rate—and we have provided additional funding to support institutions to grow participation in level 3 in maths and additional funding for T-levels, which will come on stream in the next year or so.

Baroness Blackstone (Ind Lab): My Lords, can the Minister explain why the cuts that the Government have already made were instigated in the first place?

Lord Agnew of Oulton: I am afraid that I did not hear the noble Baroness because of some interruptions. My apologies.

Baroness Blackstone: I am sorry; I shall quickly repeat it. Will the Minister explain why the cuts were instigated in the first place? I do not think that he answered my noble friend's question about the various changes that will be made from now on. Why did the Government make them in the past?

Lord Agnew of Oulton: The noble Baroness will know that we have put a floor under funding for young people from 16 to 19. I cannot speak for what happened in 2010 or earlier, but if she would like me to write to her on that, I will be very happy to do so. However, we are absolutely committed to further education, and in an earlier answer I gave examples of some of the areas that we have put resources into.

Baroness Wolf of Dulwich (CB): My Lords, the noble Baroness, Lady Bull, pointed out the chronic underfunding of further education and referred to the Augar review; I declare an interest as a member of the panel that produced that review. I will follow up on this by asking the Minister how the Government can possibly deliver on some of the specific commitments of the industrial strategy without rethinking in major form the way in which they fund further education. More than 60% of all private sector jobs are in small and medium-sized enterprises, which operate in a way that means they cannot work easily with universities and depend directly on the further education sector. The industrial strategy, among other things, commits itself to putting the UK at the forefront of high-efficiency agriculture and transforming construction techniques. I cannot see—I would like the Minister to tell us—how this can be delivered without changing the funding system.

Lord Agnew of Oulton: My Lords, we welcome the Augar review. It was the most far-reaching review of further and higher education since—amazingly—1963. It makes a number of recommendations that we are considering. The industrial strategy has aimed to support education and skills with a package of some £400 million. That includes a four-year programme to improve teaching and participation in computer science, an additional £50 million to improve the quality of post-16 maths teaching, £100 million of new government funding for the national retraining scheme, and £20 million to support providers to prepare for T-levels. We are doing a great deal to support the industrial strategy and it remains a key focus.

Baroness McIntosh of Pickering (Con): My Lords, will the Minister confirm not only that this Government are putting more money into apprenticeships but that more apprenticeships are being completed, and more full-time jobs are being offered to those who have completed their apprenticeships?

Lord Agnew of Oulton: The noble Baroness is right. The number of starts for the first quarter of 2018-19 is some 76,000, compared with 41,000 this time last year. We know that the quality of the new apprenticeships is of a much higher order than under the old system, and this shows that employers are getting behind the scheme.

Lord Storey (LD): My Lords, the creative industries are an important part of the industrial strategy. They are worth £101 billion per year to the British economy and grow at double our overall rate of economic growth. The difficulty is finding people to go into the creative industries. We are seeing, as we heard in the first Oral Question, that the number of students following

[Lord Storey]
creative subjects is declining in our schools. How can we ensure that we have the young people to go into these important creative industries?

Lord Agnew of Oulton: My Lords, for that to happen, we need to make sure that we have apprenticeship standards for the creative industries. A great deal of work is going on there and the number of apprenticeships in creative subjects is increasing as we speak.

Lord Brooke of Alverthorpe (Lab): My Lords, will the Minister say whether—notwithstanding all the money that he describes the Government pumping into further education—he is really content with the present funding arrangement, as posed in the question from the noble Baroness on the Back Benches?

Lord Agnew of Oulton: My Lords, I am concerned about funding for further education. I believe that it needs to be a priority in the spending review; I have said that publicly, as recently as last week at the Wellington Festival of Education. We need to put more emphasis on that and to ensure that we are developing the skills base we need for the next generation.

Lord West of Spithead (Lab): My Lords, does the Minister not think that when the youngsters at these colleges look at our shipbuilding strategy—which is part of the industrial strategy—they will be surprised that the shipbuilding strategy does not involve any ships being ordered?

Lord Agnew of Oulton: My Lords, shipbuilding is a long-standing and noble industry in this country, and we will continue to encourage it. However, we are in a globalised world, and it is a priority that we encourage skills in the areas that are growing most rapidly.

Courts and Tribunals (Online Procedure) Bill [HL]

Report

3.08 pm

Clause 1: Rules for an online procedure in courts and tribunals

Amendment 1

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

1: Clause 1, page 2, line 2, at end insert—

"(3A) For the purposes of subsection (3)(a), regard must be had to the needs of those who require technical support in order to initiate, conduct, progress or participate in proceedings by electronic means."

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I begin by thanking noble Lords for attending this debate. I extend my thanks to those noble Lords who have engaged with me on the Bill through its last stages,

The amendments in this first group are all about access to justice under the new online procedure, an important topic that I know we all wish to get right. I shall open with the government Amendments 1, 4 and 18, which appear in my name. I believe that we are united in seeking to ensure that we get this right, particularly in our steps to ensure that unrepresented litigants have the right levels of support for this procedure.

On Amendments 1 and 18, as I indicated, we are committed to accessibility and to providing support to help many people to use the online services where otherwise they would find it difficult. Amendments 1 and 18 provide that, when making rules, the Online Procedure Rule Committee must try to ensure that the procedures are accessible and fair. They also require the committee to have regard to the needs of those who require technical support to engage with the online procedure.

I am, however, aware that the responsibility for making rules does not reside only with the committee. The Lord Chancellor must also allow the rules for them to come into force. Therefore, as an additional safeguard, Amendment 18 provides that, when allowing or disallowing the rules, the appropriate Minister must have regard,

"to the needs of those who require technical support in order to initiate, conduct, progress or participate in proceedings by electronic means".

The amendments effectively cover support for those people who cannot easily access our digital services due to a lack of digital skills, a lack of confidence, perhaps, or a lack of tools.

I think it is clear from this that, throughout the rule-making process, our focus is firmly on the needs of litigants, from when the Online Procedure Rule Committee develops rules to the end of the process when the appropriate Minister decides whether to allow them. I consider that these amendments are comprehensive and wide-ranging enough to ensure that the system will be accessible and fit for purpose. In developing the amendments, we have listened to, and sought to address, the concerns expressed by noble Lords about the provision of support to unrepresented litigants. It is in these circumstances that I shall press Amendments 1 and 18.

The House has heard commitments from us, in Committee and at Second Reading, to the fact that paper channels will remain available for all litigants in person. We understand the importance of access to justice and recognise that, no matter how user-friendly our IT services are, some people will not have the ability or the confidence to use them. In the Committee debate, there was a strong feeling that, despite our reassurances, the Bill was not clear enough on the matter of a paper route. We have considered the points raised in that debate and, although it has always been our intention to provide a paper channel for users, I recognise that noble Lords wanted that commitment to be reflected in the Bill. Accordingly, the Government's Amendment 4 clarifies that litigants can submit their online applications by non-electronic means, which of course includes the use of paper. It is in these circumstances that I will be moving government Amendment 4. I beg to move.

Amendment 2 (to Amendment 1)

Moved by ***Lord Marks of Henley-on-Thames***

2: Clause 1, after first "to" insert "providing for"

Lord Marks of Henley-on-Thames (LD): My Lords, I will speak to all the amendments in this group that I have anything to do with. I welcome the Government's Amendment 1 requiring that, in the context of making the rules accessible and fair,

"regard must be had to the needs of those who require technical support in order to initiate, conduct, progress or participate in proceedings by electronic means".

I am grateful to the noble and learned Lord for the time that he and his Bill team have spent and the trouble that they have taken to incorporate provisions in the Bill to assist those who may find it difficult to access online proceedings, and to discuss with me and others the amendments that we proposed. Our original amendments, proposed in Committee, went further than the provisions now agreed by the Government, but we are satisfied that the needs of the so-called digitally excluded will be protected by the new provisions, with the benefit of the amendments tabled in this group, which are, as I understand it, largely agreed by the Government.

3.15 pm

The Government's amendment proposes that,

"regard must be had to the needs of those who require technical support".

We have offered two improvements in Amendments 2 and 3, in my name and the names of my noble friend Lord Beith and the noble Lord, Lord Pannick. They require, first, that regard must be had to "providing for" those needs, which we say strengthens the requirement, and, secondly, that the support should not be limited to "technical" support, which could give the impression that the only support available would be with the operation of the computer system. This might be understood to be considerably less support than that which has been made available by HM Courts & Tribunals Service under the present pilot schemes, which we applaud and wish to see replicated across the board in the implementation of the online procedure. We are grateful to the noble and learned Lord for agreeing to accept these amendments.

Amendment 4 is designed to enable parties to initiate proceedings by non-electronic means. This is intended to enable parties who want to start proceedings with paper documents to do so, as the noble and learned Lord explained. The paper documents will then be scanned into the online system, and will be made available online to all, as the noble and learned Lord explained in Committee. However, this amendment needs the addition of Amendment 5, in the names of my noble friend Lord Beith, the noble and learned Lord, Lord Judge, and the noble Lords, Lord Pannick and Lord Beecham, which I support, to ensure that all documents, not only the initial claim, can be submitted in paper form and scanned for use with the simplified online procedure. It also ensures that a litigant who wishes to use a paper procedure can receive paper documents at his or her choosing—that is, receive as well as transmit them. My understanding is that, while the Government's position is that they do not accept the precise terms of Amendment 5, the noble and learned Lord intends to bring back an amendment of like effect at Third Reading. That is very welcome news.

I turn now to Amendment 9, in my name and that of my noble friend Lord Beith, and my manuscript amendment, Amendment 9A. From our point of view, these are extremely important. The new clause would impose a duty on the Lord Chancellor, who is responsible for HM Courts & Tribunals Service, to arrange for the provision of support for digitally excluded people. It aims to meet a concern powerfully expressed by Lord Justice Briggs in his review, and by a number of noble Lords at Second Reading and in Committee. Our original amendment, as in the Marshalled List, includes subsections (2) to (4), which would give the Lord Chancellor a regulation-making power in relation to such support. However, the Government have effectively taken the position that the Lord Chancellor needs no regulations to tell him how to fulfil his statutory duties. That was their first point. Their second was that the concurrence requirement in the subsections offends against the principle in the concordat between the Executive and the judiciary that matters involving the expenditure of resources, as this does, are for the Government rather than the Lord Chief Justice. On reflection, we have accepted those points, so I have tabled Amendment 9A, which maintains the terms of subsection (1) of Amendment 9 but omits the other subsections.

I am very grateful to the Public Bill Office for its procedural help this morning, which has enabled us to put down an amendment on which we and the Government are agreed. I also thank the noble and learned Lord and his Bill team, particularly Emma Cotterill, for the assistance they and parliamentary counsel gave us in the wording of this clause last week and for agreeing to accept the amendment.

To summarise the amendment, we felt it extremely important that the Lord Chancellor be under a statutory duty to make support available, to add teeth to the requirement that the rules should have regard to the needs of the digitally excluded. This amendment achieves that.

We also welcome government Amendment 18, which provides that, in allowing or disallowing rules, the appropriate Minister must have regard to the needs of those requiring support.

On Amendment 7 from the noble Lord, Lord Beecham, which potentially gives claimants a choice of applicable rules, we fully support his concern to protect the right to a fair and public hearing, to which Article 6 of the European Convention on Human Rights is directed. However, for the reasons explained by the noble and learned Lord, Lord Thomas, in Committee, we do not see it as sensible to have two systems operating in parallel in proceedings to which the Online Procedure Rules would normally apply. The Bill itself does not exclude oral hearings in proceedings under the Online Procedure Rules. We would expect the rules to make provision for oral hearings where appropriate. I beg to move.

Lord Beith (LD): My Lords, I tabled the amendment to which my noble friend referred, Amendment 5 to government Amendment 4, because I did not believe that the government Amendment, helpful though it is, fully satisfied the clear intention set out by the noble and learned Lord, Lord Keen, that somebody who feels that they can only engage with this process on

[LORD BEITH]
paper should be able to do so without the creation of a parallel procedure or there being two different processes. What we have is one simplified procedure in which documentation is held online but to which people can make submissions by paper, not only initially but at any necessary subsequent stages. For that to be a reality, they must also be able to receive the relevant documentation on paper through the work and assistance of the Courts Service. I think that some ambiguity has been created.

I note that the Minister wrote to us about the requirement to initiate proceedings by electronic means, which requires rules to be made to enable documents submitted in paper to be treated as if they were initiated by electronic means. The wording of government Amendment 4 appears to refer to the initiation of the proceedings, rather than the initiation of subsequent documents, and is silent on the entitlement to receive documents on paper. The simple issue, which some of us may have faced in dealing with other organisations, is that you cannot have a situation in which you make a submission on paper and have no clue what will happen afterwards because you are relying on the paper process. The Government's intention was clear in everything the noble and learned Lord said, but it is not clear in the amendment. My addition to the Government's wording would make it clear, although I fully accept that this could be dealt with in words in a different way or at a different point in the parent amendment. My noble friend is confident that the Government have got the point and are going to do something about it, but I would like the noble and learned Lord to make that clear.

Lord Pannick (CB): My Lords, I thank the Minister and the Bill team for their very positive response to the concerns expressed around the House in Committee. I agree with all the points made by the noble Lords, Lord Marks and Lord Beith, and I support their amendments. I am particularly concerned about government Amendment 4 for the reasons that the noble Lord, Lord Beith, indicated. It is expressly confined to the initiation of proceedings and does not in terms cover, as it must, the right to submit further paper documents and to receive paper documents if the litigant so elects. I very much look forward to the Minister confirming what the noble Lord, Lord Marks, indicated—that the Minister intends to address this point at Third Reading.

I much prefer the solutions offered in the various amendments to which the Minister and the noble Lords, Lord Marks and Lord Beith, have spoken, to Amendment 7 tabled by the noble Lord, Lord Beecham, with all due respect to him. As I understand it, his amendment would allow for regulations, under which the party bringing proceedings could choose whether proceedings are under the Online Procedure Rules or the standard rules. I can see no justification, particularly if the other amendments are agreed, for allowing people to choose which rules apply, especially if paper documents can be fed in and received under the Online Procedure Rules. Such an amendment would, I fear, damage the whole purpose of the Bill. It would give litigants an option as to which rules apply and benefit no one other than those who wish to make a simple claim subject to a more complex and more expensive procedure as, for example, a negotiating tactic.

Lord Judge (CB): My Lords, I shall say just a word or two in support of these amendments. Amendment 2, by adding the two words "providing for", and Amendment 3, by removing the one word "technical", would rather improve the clause. Amendment 5 improves government Amendment 4, which itself was an improvement. If I may, I will paraphrase how I understand Amendment 5 would work: if you are not digitally educated and you would prefer to use paper you may do so, and if you do your papers will be incorporated into the electronic system. The amendment would provide that you are entitled to continue to use your own paper and your own paper system because the electronic system would be perfectly well able to provide you with all the paper you need. There should be no difficulty about it at all.

Amendment 5 is consistent with Amendment 18 to Clause 7, which has the interest of those who require technical support to be protected. It also, for the reasons given by the noble Lord, Lord Pannick, effectively makes Amendment 7 in the name of the noble Lord, Lord Beecham, to Clause 3 redundant because the paper user would then not be at any disadvantage. For the reasons he has given, the idea of having two systems running side by side would, among other things, be a recipe for those who do not want justice to be done and who want to confuse and to avoid getting the system to court for a hearing.

Baroness Drake (Lab): My Lords, I too will speak to Amendments 3, 5 and 9A. In their Amendment 1, the Government accept that to secure accessible and fair court online practice and procedures, regard must be had for the needs of those who require support to initiate, conduct, progress or participate in electronic proceedings. Their Amendment 4 would allow a person to initiate proceedings by non-electronic means—that is, in paper form—but they are silent on allowing people the same facility at other stages, even though they recognise that regard must be had to those who will need support throughout all stages of the proceedings. That non sequitur is addressed by Amendment 5, which allows for further documents in all stages of proceedings to be submitted in paper form.

In Committee, noble Lords debated at great length the potential impact on access to justice for court users with limited digital means, digital literacy, or capacity to engage digitally. The Minister has accepted that some people find it difficult to engage with such digital procedure, but the Bill contains no general duty on the provision of such support, which Amendment 9A would provide. It is therefore a welcome amendment.

3.30 pm

It is important to understand the effect of court modernisation on disadvantaged groups, not only when initiating proceedings but in their experiences of digital justice at all stages. I went back to the Government's stated objectives; they include devising rules that will focus on users being able to solve grievances and resolve their issues online at the earliest opportunity, and that the online procedure will encourage more

people to resolve disputes before they reach the hearing stage. This includes the online facilitation through mediation/conciliation with a streamlined resolution stage. However, if, during this mediation/conciliation phase, documents cannot be submitted or received by a litigant in paper form, those who are, for whatever reason, digitally disadvantaged, could be denied the benefits of early resolution or, even worse, feel they have to abandon their claims.

The desirability of Amendments 5 and 9A also needs to be seen in their wider context. The economic rationale for the Bill, which is persuasive—improving the cost and efficiency of our courts—cannot simply trump equity and fairness. It is important to ensure that online proceedings do not result in an accumulation of additional inhibiting obstacles placed in the way of access to justice. The Equality and Human Rights Commission, in its recent publications, raised real concerns about the impact of the narrowed scope of legal aid. It also released the report on its inquiry into legal aid for discrimination cases, which similarly describes the deleterious effect on access to justice for individuals who raise a complaint of discrimination in England and Wales. The findings paint a troubling picture, with difficulties in accessing face-to-face advice, barriers to accessing telephone services and a lack of funding for representation in the court. I appreciate that the Bill is not addressing the issue of legal aid. However, the implementation of online procedures in courts, which do not explicitly make provision for submitting or receiving documents in written form, nor place a duty on the Lord Chancellor to make support available to digitally disadvantaged people, have the potential to place additional inhibiting obstacles in the way of access to justice. The legitimate drive for greater efficiency in the court has to be balanced against the need for equity and fairness in accessing justice.

Finally, in support of Amendment 3, the word "technical" in government Amendment 1, when referring to the support to be provided to disadvantaged court users, implies that support is restricted to those who have no access to broadband, laptops or similar. However, the support is also needed for those who cannot digitally engage. This is a wider concept. Even if someone places a laptop in front of them, it does not mean that they can digitally engage. As the Constitution Committee describes,

"those with limited digital skills, for whom basic browsing and messaging may be within their capabilities but the complexity of online legal forms may not".

Lord Beecham (Lab): My Lords, I declare my interest, as in the register, as an unpaid consultant with my former legal firm.

It is unusual for me to extend congratulations to the Minister, with whom it is usually an enjoyable conflict of arms over the Dispatch Box, but he has made it very clear in his approach to the Bill that the Government are seeking to secure improvements to the legislation. He has tabled nearly half the amendments that we are discussing on Report, which is an unusually high proportion. That says a great deal for his interest in securing support for and improvement of the legislation, and for that he is to be highly commended. I welcome Amendments 1 and 18, and the acknowledgement of the need to have regard to those involved in the justice system who will require support to engage in an unfamiliar process.

Amendment 7, in my name, does not appear to have attracted a great deal of support around the House. It is designed to ensure that either party may choose whether proceedings will be online or offline rather than restricting the choice to the claimant, which is the present position under the Bill. It would allow the relevant judicial officeholder to decide which rules are to be followed where the parties are not in agreement. I am frankly puzzled by the criticism on this occasion from noble and learned Lords with a rather higher status in the legal profession than I ever aspired to or achieved. But since the Bill itself provides under Clause 3(1) that the Minister may,

"by regulations, provide for circumstances in which the person initiating proceedings, or an aspect of proceedings, may … choose",

one side of the case can choose. However, there seems to be an objection to the other party being able to make a choice with the ultimate decision made, if necessary—if there is conflict on that—by a judicial officeholder.

I understand that the suggestion I have made would make both sides able to opt for a decision—I remind noble Lords that they cannot concur on the decision to be made—by an officer of the court. This is consistent with the European Convention on Human Rights and is strongly supported by the Law Society. I hope that it may be looked at again, in either this Chamber or another place. It seems only equitable for both sides, if any is to have a choice in proceedings, to give an indication and provide for a system where an independent party could, if necessary and by way of being a judicial officeholder, decide which rules would apply.

Lord Keen of Elie: My Lords, I thank all noble Lords for their contributions to this debate. I propose to address Amendment 5, which touches upon government Amendment 4, and then go on to look at manuscript Amendment 9A and thereafter Amendment 7. I will also touch upon the two technical amendments, as they were termed by the noble Lord, Lord Marks.

On Amendment 5, the use of the word "initiate" was intended to capture all engagement with online services throughout the proceedings, as I indicated on a previous occasion—in other words, "initiate" was taken as a synonym for "engagement", not "commence"—but I appreciate the uncertainty that is in the minds of some noble Lords with regard to that matter. The noble Baroness, Lady Drake, made the point about comparing the terms of an earlier clause with this clause, where it refers only to "initiate". I intend to look further at that matter before Third Reading so that we can arrive at a conclusion as to the appropriate wording, because I believe we are as one on the appropriate outcome on that point. In these circumstances, I hope that the noble Lord may see fit not to press his amendment at this stage so that we can proceed with Amendment 4 and address that point further in due course.

Lord Beith: I thank the Minister for that indication. I will not seek to move the amendment at this stage.

Lord Keen of Elie: I am most obliged to the noble Lord for that.

Perhaps I may turn to manuscript Amendment 9A, as distinct from Amendment 9, in the name of the noble Lord, Lord Marks. Again, I thank him for his extensive engagement with me and the Bill team over the last few days to address these matters. As I have sought to underline, we are committed to providing support to those people who cannot easily access online services. We share the observations made by the noble Lord, Lord Marks, and others about the importance of this issue. In these circumstances, we are prepared to accept manuscript Amendment 9A, as tabled by the noble Lord. However, it has an impact on the two other amendments that were tabled; first, in the use of the words "providing for". If we accept manuscript Amendment 9A, it appears we are making explicit provision—indeed, we will have an explicit duty to provide—for these services. It therefore appears unnecessary to move that further amendment in these circumstances.

I have discussed the removal of the word "technical" with the noble Lord, Lord Marks. At this stage, I am not in a position to accept that amendment. Again, I would like an opportunity to discuss further what to do with the precise wording, in the light of our accepting manuscript Amendment 9A. It is in that context that I would like to resolve the matter, because we are concerned about the width of the obligation in those circumstances. I hope the noble Lord, Lord Marks, appreciates that and understands that, in accepting manuscript Amendment 9A, it is necessary for me to give further consideration to the two minor amendments he referred to. I understand where he is coming from and am content to address with him how we can ensure that the width of that provision is appropriate and sufficient as we go forward to Third Reading.

I am also content to commit on the Floor of the House that the Government will lay in Parliament a report on the provision of support, every two years. That report will be on the levels of assisted digital support being provided, and will give noble Lords the opportunity to request a debate on the topic and test the availability of support. Again, I had the opportunity to discuss that matter with the noble Lord, Lord Marks. I hope he accepts that that commitment meets the further concerns he had about the implementation of these provisions.

I turn to Amendment 7, in the name of the noble Lord, Lord Beecham. I am obliged to him for his remarks and observations. We do not feel able to accept the amendment. I notice the reference to Article 6 of the European Convention on Human Rights but, as the noble Lord is well aware—as is the Law Society, no doubt—there is an established common-law right of access to the courts and to a fair public hearing. More recently, that was included in Article 6 of the convention, which is part of our domestic law by virtue of the Human Rights Act. The effect is that these matters are already available and in train. We do not see that it is necessary to make explicit reference in the Bill to those established and fundamental rights. To make a specific reference to Article 6 of the convention without making reference to, for example, the common-law right of access to justice could simply sow the seeds of uncertainty or confusion.

The second part of Amendment 7 would remove, from the appropriate Minister, the power to determine the circumstances in which proceedings should not be governed by the Online Procedure Rules. It would instead leave the matter to be determined by a court or tribunal in cases where the parties to the proceedings disagree. We consider that not to be appropriate at present. The present balance, as indicated in Committee by the noble and learned Lord, Lord Thomas, is the appropriate way forward in these circumstances. I therefore invite the noble Lord to not move Amendment 7.

Lord Marks of Henley-on-Thames: My Lords, I will briefly address the Minister's comments on my amendments. I had understood that Amendments 2 and 3 were accepted, but that discussion was before my Amendment 9A was drafted or accepted. I can see the point that having "providing for" in Amendment 1 may be rendered otiose by the acceptance of Amendment 9A. However, I will discuss it between now and Third Reading with the noble and learned Lord, as he suggests. However, I take the view that the word "technical" is important, for precisely the reason given by the noble Baroness, Lady Drake, so I will be urging that on him in our discussions.

I should also say, which I did not mention in opening, that the agreement to have a biennial review and have that report laid in the way the noble and learned Lord said is very welcome and, I suggest, important for ensuring that digitally excluded people are always receiving the assistance to which they are entitled. As I said, I intend not to move Amendment 9 and to move Amendment 9A when the time comes. I beg leave to withdraw Amendment 2.

Amendment 2 (as an amendment to Amendment 1) withdrawn.

Amendment 3 (as an amendment to Amendment 1) not moved.

Amendment 1 agreed.

Amendment 4

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

4: Clause 1, page 2, line 4, at end insert—

"(4A) The provision made under subsection (1)(a) must include provision for proceedings initiated at a court or tribunal by non-electronic means to be treated as initiated by electronic means, where the proceedings are processed by the court or tribunal by electronic means."

Amendment 5 (as an amendment to Amendment 4) not moved.

Amendment 4 agreed.

3.45 pm

Clause 2: "Specified kinds" of proceedings

Amendment 6

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

6: Clause 2, page 3, line 20, leave out "consultation" and insert "concurrence"

Lord Keen of Elie: My Lords, the amendments in this group deal with the issue of concurrence. Again, I thank noble Lords for their contributions on this topic

at Second Reading and in Committee, and for their continued engagement on the matter outside the Chamber. We listened to the points made in these discussions and sought to address some of the concerns raised. I have tabled a range of amendments which I hope will provide suitable assurances for noble Lords. The amendments in this group deal specifically with the matter of concurrence in Clauses 2, 3 and 12. That is because I am now persuaded that the question of which proceedings fall under the auspices of the new Online Procedure Rule Committee should be a matter for agreement between the Lord Chancellor and the Lord Chief Justice. Therefore, these amendments make the necessary changes to Clauses 2, 3 and 12 to provide for this.

The amendment to Clause 12 also allows the Lord Chief Justice to delegate agreement to other members of the senior judiciary, which is purely a matter of practicality. I hope the amendments will be welcomed by noble Lords. They provide an important safeguard for the operation of the new committee. In particular, they address the concerns expressed by noble Lords at previous stages that the future expansion of the role of the committee should be subject to appropriate scrutiny and that in such matters the right relationship with the Lord Chief Justice and Senior President of Tribunals is one of concurrence. On reflection, this is a position which the Government now accept, and in these circumstances, I beg to move.

Lord Judge: My Lords, the Government have come a long way and I am now addressing not only the amendments put forward by the Government but Amendments 22 and 23. I begin by thanking the noble and learned Lord, Lord Keen, for kindly listening to what we had to say and for acting on it, and the Bill team for helping him get the wording right. It means that the Government have come a long way towards understanding the implications of the constitutional changes in 2005, which changed the relationship between the Lord Chancellor and the Lord Chief Justice and placed on the Lord Chief Justice responsibilities that once attached to the Lord Chancellor. The Lord Chief Justice now has personal responsibility for the arrangements by which litigation is conducted. To the extent that this relates to tribunals, the Senior President of Tribunals has the same responsibility. I welcome Amendment 12 and government Amendments 6, 8, 25, 26, 27 and 28, and shall welcome government Amendments 10 and 15 in the next group.

The difference between being consulted and requiring concurrence needs no emphasis. If you are consulted, what you say can be totally disregarded; concurrence means what it says. Despite all that I have said, I am sad to say that although the noble and learned Lord, Lord Keen, has taken his car a long way down the road of logic and constitutional sense, his vehicle has run out of fuel and failed to reach its logical conclusion.

The position can be summarised very briefly. Amendments 22 and 23 to Clauses 8 and 9, respectively, concern two clauses which, as drafted, give exceptionally wide powers to a Minister. Indeed, Clauses 8 and 9, I am afraid, are in the sadly standard form of donating, handing over or retaining power to the Executive which we now find in just about every Bill that comes before us.

The first six clauses, whatever other comments may be made about them, recognise that the government amendments in group three address the constitutional responsibilities. That is fine. Clause 7(3) gives the Minister an unconditional power to,

"allow or disallow Online Procedure Rules made by the Committee",

provided that written reasons are given for doing so. In other words, he does not have to consult the Lord Chief Justice if he thinks that the rules put forward are not sensible or appropriate, or that they would cost too much money. That prevents the committee going off on a frolic of its own—or, indeed, putting forward rules with the concurrence of the Lord Chief Justice which, for example, involve unreasonable expenditure. That is very sensible. I do not cavil at the idea incorporated in Clause 7(3) and the individual responsibility of the Lord Chancellor in that regard.

However, taken together, Clauses 8 and 9 unbalance the relationship. The Lord Chief Justice falls out of Clause 8 altogether—he does not get a mention. He is reduced or left to the consultation process in Clause 9, which is entirely inconsistent with the provisions in the Bill that the Government amended to allow for concurrence rather than consultation. Under Clause 8, the Minister has power to direct that the rule committee shall include provisions to achieve the Minister's purposes and that, when such a direction is given, the committee has no option but to comply within a reasonable time. It is that stark; the power is vested directly in the Minister.

It is one thing—and perfectly sensible—to protect the Lord Chancellor from some wild or absurd rule committee proposal. It is, with great respect, quite another for him to have an unconstrained power to give it directions: in effect, to tell it what to do. The Minister may, by Clause 9(2), also don the tarnished crown of King Henry VIII, who is not, of course, King Henry VIII to the noble and learned Lord, Lord Keen; I am not sure what he is to Scottish history—probably nothing. Would it not be wonderful to have a history in which Henry VIII counted for nothing? It would certainly be a convenience to this House if he did not count for very much.

So, if he wishes, the Minister may don this tarnished crown if he considers it necessary or desirable to facilitate the making of the rules. On closer examination, if you put these two clauses together, this arguably means that the Minister may overrule the very rules which were made with the concurrence of the Lord Chief Justice or his predecessor.

The Bill should be logical. The Lord Chief Justice's concurrence to the exercise of these powers is elementary. The Bill and the government amendments now recognise it; the Minister has his safeguards in Clause 7(3); Amendments 22 and 23 make similar safeguards available to the Lord Chief Justice. I invite the Minister to refuel his car and keep right on to the end of the road.

Lord Pannick: My Lords, I declare my interest as a practising barrister. I too thank the noble and learned Lord, Lord Keen, for the important amendments which he has tabled, which will ensure that the concurrence of the Lord Chief Justice is required under Clauses 2 and 3. However, I have added my name to the amendments tabled by the noble and learned Lord, Lord Judge—in

[LORD PANNICK]
particular, Amendments 22 and 23—similarly to require the concurrence of the Lord Chief Justice for the exercise of the powers being conferred on the Minister under Clauses 8 and 9.

Clause 8 is an extraordinary clause. It would confer power on the Minister to require the committee to include a specified provision if the Minister thinks it is "expedient" to do so, and if the committee were to be so required, it would have a legal duty to comply. "Expedient" is the broadest possible word to define the scope of such a power. If Clause 8 is enacted as drafted, the requirement for the concurrence of the Lord Chief Justice under Clauses 2 and 3, which we all agree is necessary, would be rendered pointless. The Minister could simply override the views of the Lord Chief Justice in relation to any relevant matter under Clauses 2 and 3. I know that the noble and learned Lord, Lord Keen, does not share that view, and I look forward to him explaining why there is a limitation on what appears to be, and indeed is, the broadest possible drafting in the language of Clause 8. It contains no express limitation, and it seems very difficult to argue that there is an implied limitation that would prevent the Minister rendering pointless what is in Clauses 2 and 3 when the very purpose of Clause 8 is to give the broadest possible discretion to the Minister to give directions to the committee with which it must comply. Since the Minister has rightly accepted that, in the context of provisions about access to justice—which is what we are talking about—it is necessary for the provisions to require the concurrence of both the Minister and the Lord Chief Justice, there can nevertheless be no justification for conferring on the Minister by Clause 8 a power to override the views of the Lord Chief Justice on these important matters.

Clause 9 confers, as the noble and learned Lord, Lord Judge, said, a broad Henry VIII power on the Lord Chancellor to amend, repeal and revoke other legislative provisions whenever the Lord Chancellor considers it "necessary or desirable" in consequence of the Online Procedure Rules or to facilitate the making of Online Procedure Rules. Again, these are exceptionally broad powers, touching centrally on access to justice. For the same reasons that require the concurrence of the Lord Chief Justice for the exercise of powers under Clauses 2 and 3, it is necessary to require the concurrence of the Lord Chief Justice for the exercise of powers under Clause 9.

Lord Beith: My Lords, I do not know what answer the Minister will give to the pertinent question asked by the noble Lord, Lord Pannick, about the Clause 8 powers. The Lord Chief Justice might in some cases exercise the Clauses 2 and 3 powers to defy what the Lord Chancellor had asked the rule committee to do—which it had gone on to do at waste of time and expense and which he would not then agree to. However, that would apply to only some of the powers that the Minister would have in these circumstances; for example, extending into an area which the Lord Chief Justice did not think appropriate for the use of online procedure. But there are other things that the Lord Chancellor might direct the committee to do, such as shortening the notice period for various stages in the process or reducing in one way or another the rights of people engaged in the process, which could then be an obligation on the committee. If its members did not then resign, they would be required to produce rules which the Lord Chief Justice did not have a protective power to veto. The Clause 8 powers are worrying, and I do not recall at any stage in our amicable discussion any explanation why they are necessary and why, if any power is needed in this area, it cannot be much more narrowly defined.

One can make a similar point about Clause 9 in relation to Henry VIII powers, but it is a point that we have made so often that we risk becoming tired of making it. Thank goodness that the noble and learned Lord, Lord Judge, never ceases to make it in every circumstance in which it is appropriate.

4 pm

I remain particularly worried about the absence of concurrence in relation to Clause 8. The concurrence issue turns on what was done when the position of Lord Chancellor was so radically changed. It is entirely appropriate that we should seek to police the line between the powers that the Lord Chief Justice now exercises over the management of the judiciary and the responsibility for issues such as resources and genuinely political questions, which rests with the Lord Chancellor. That is a very important line and we could stray over it from either point of view—by giving inappropriate powers to the Lord Chief Justice or unnecessary powers to the Lord Chancellor. Care is needed in this area. Here, retaining the purpose of all the amendments we made to those reforms to secure the independence of the judiciary calls for a fresh look at the Clause 8 powers.

I have a more technical point to put to the Minister, which is about the position of the Senior President of Tribunals. There are one or two places where he or she is specified as requiring concurrence but others where there is no reference. Is it the assumption that in all cases the Lord Chief Justice will—as I am sure they will—have proper regard to the position of the Senior President of Tribunals in relation to a tribunal matter, or have I failed to spot that in some instances that position is not relevant? He or she carries responsibility for the fair administration of justice in the tribunal sector and we may have to look to that sector to address any problems that arise if we have not got the definitions right.

Lord Mackay of Clashfern (Con): My Lords, I took some part in previous discussions of these matters in relation to the powers of the Lord Chief Justice and the fact that he—or she, if it happens to be so—is now the head of the judiciary and the Lord Chancellor is not. I am inclined to remember—I may be wrong, and I hope that my noble and learned friend will correct me if I am—that a provision of exactly this type was made in relation to the other procedural committees that currently exist. It is a considerable time since that provision was made, and as far as I know, no trouble has emerged. That is because I would expect the Minister to exercise great care in this matter. I think I am right in saying that that was not altered in the Constitutional Reform Act, as it is called, which changed the responsibility of head of the judiciary.

I am therefore inclined to want to hear a bit more about this before we come to a decision. When so much agreement has been reached, it is a pity if we fall from agreement at the last minute, particularly if to do so would produce a very strange anomaly between the existing law relating to either of the other procedural committees and this rather more technical committee.

I do not think Clause 9 has to do with the procedure rules. It has to do with the possible obstruction to those rules which may exist in legislation already passed as part of our law. The Lord Chancellor is entitled to make regulations to amend the Acts of Parliament which interfere with the proposals being accepted as Online Procedure Rules. The rules may well have an impact on old statutory provisions—for example, those which have an impact on whether or not you can have online procedures—most of which, I imagine, did not envisage that. It may be that they can be interpreted to include considerations of that kind, but that is the nature of the problem in relation to Clause 9.

After thinking this through as best I can, I would not care for the Lord Chief Justice to have to be involved in the regulation-making aspect of this business. If regulations are required, they should be made by the person with the appropriate political responsibility. I therefore have doubts about the relevance of the rules in relation to Clause 9.

As to Clause 8, as far as I know, existing law was left unchanged by the Constitutional Reform Act. As to Clause 9, I wonder whether it is appropriate for the Lord Chief Justice to get himself involved in the nitty-gritty of political regulation.

Lord Pannick: The noble and learned Lord says that it is not appropriate for the Lord Chief Justice to be involved in Clause 9 matters—that he is not relevant to that—but the clause makes him involved. It gives him a role because he has to be consulted, so he is not irrelevant at all.

Lord Mackay of Clashfern: Exactly. He is doing exactly what I think is required. If the person who has the responsibility finds out that it is okay with the Lord Chief Justice—at least that is what I hope would happen—that person then goes on and does it. Therefore, consultation is probably the right balance at that stage. I am rather against the idea of involving the Lord Chief Justice in any form of political work. I thought the Constitutional Reform Act sought to achieve separation between the judiciary and the legislature, so that the acting judiciary were no longer part of the legislature.

Lord Garnier (Con): My Lords, I do not want to spread dissension where none is required or even helpful, but I am persuaded by the first three noble—and noble and learned—Lords who have spoken in this debate. I am always persuaded by what my noble and learned friend Lord Mackay says, and we need clarification. Although I fully accept what my noble and learned friend has just said in relation to the political angle, there are provisions in Clause 9 which, although they refer to amending, revoking or repealing an Act, or a provision made under an Act, at heart deal with the mechanics of the procedure to be operated under the Online Procedure Rule.

We need to think more carefully before rushing into this. I take my noble and learned friend's point about the possible inconsistency between this legislation, if it is to be amended, and earlier provisions. However, sometimes consistency runs in the wrong way. If the current amendment points out something that would then become inconsistent, it may be that the earlier provision also needs to be amended. In any event, I am utterly convinced that my noble and learned friend on the Front Bench will be able to persuade me that what the noble and learned Lord, Lord Judge, has said, supported as he is by the noble Lords, Lord Pannick and Lord Beith, will enable us to move forward in a spirit of complete concurrence.

Lord Faulks (Con): My Lords, I repeat the declaration I made at Second Reading that I am a practising barrister. The balance of powers between the Executive and the Lord Chief Justice is a delicate matter, and I too will listen with care to what my noble and learned friend says about it. However, I wonder whether the powers are quite as wide as the noble Lord, Lord Pannick, says they are. Clause 8 admittedly gives a power to the appropriate Minister to do what they think is expedient for the Online Procedure Rules, and the committee must make Online Procedure Rules. But that throws the matter back to the committee to make the rules and, in doing so, once again the committee has to go through the procedure that itself involves getting the agreement of the Lord Chief Justice—so there is a safeguard at that level.

As far as Clause 9 is concerned, there is consultation in relation to the Lord Chief Justice, as my noble and learned friend Lord Mackay said, and the powers are limited to making such changes by getting rid of impediments and tidying up, as is necessary or desirable, as a consequence of Online Procedural Rules. I wonder whether we are not putting up a rather alarming prospect of a Minister, as it were, riding roughshod when in reality these are necessary provisions for the Executive to use—subject of course to the actual making of the relevant rules which do themselves provide safeguards.

I of course endorse what has already been said: if these additional amendments are incorporated into the Bill, it would make it more restrictive to make these rules in relation to online procedure than is the case under the current Civil Procedure Rules. That would be odd, although I take the point made by my noble and learned friend Lord Garnier that if there is something wrong with it, there is no reason simply to rely on precedent. None the less, this has not been criticised so far and I wonder whether we are wise to do it now.

Lord Garnier: My noble friend has reminded me that I should have declared an interest as a practising barrister, given that that may not always be clear.

Lord Marks of Henley-on-Thames: My Lords, the noble and learned Lord, Lord Garnier, has reminded me that perhaps I should make the same declaration—so I do so now.

We support Amendments 22 to 24, not only for the reasons given by my noble friend Lord Beith but for those given earlier in the debate, in particular by the

[Lord Marks of Henley-on-Thames]
noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick. We regard it as very important that these rules should ensure a proper balance between the Lord Chancellor and the Lord Chief Justice: between the Executive and the legislature. I also take the two points made by the noble and learned Lord, Lord Mackay. First, there are of course equivalent provisions in the existing rules, but I agree entirely with the noble and learned Lord, Lord Garnier, who pointed out that that should not be treated as a precedent, and that if there is anything wrong with the earlier rules, perhaps they should be changed. If the 2005 Act overlooked those changes, perhaps it should not have done so, because that was the point at which the changes should have been made; that is, when the balance between the Lord Chancellor and the administration of justice changed.

I also suggest that what the noble and learned Lord, Lord Mackay, said was telling. He said that the difference between consultation and concurrence is that where you have consultation, the Lord Chancellor will go to the Lord Chief Justice and check that the change in the rules is okay with him—or that is what he hopes he would do—and then he would go back to make the rule. However, it seems to me that the need for concurrence in these rules is dependent on the Lord Chancellor finding out that the rules are okay with the Lord Chief Justice and the requirement for concurrence is to determine the position where they are not okay with the Lord Chief Justice, and that is why we have the concurrence requirement. I will give way to the noble and learned Lord.

Lord Mackay of Clashfern: We are talking about Clause 9, which is to do with regulations, not the making of the rules. It is the effect of existing law in relation to the rules that has to be dealt with.

4.15 pm

Lord Marks of Henley-on-Thames: Again, I am not sure about that. I do not accept what I understand to be the Government's argument against the amendments.

Clause 8 includes a rule-requiring power, and Clause 9 allows for the amendment or revocation of provisions made under an Act, which include the rules. Overall, it seems that Clauses 8 and 9 give the Government a rule-making or rule-requiring power. As I understand it, the Government's argument is that Amendment 6 to Clause 2 and Amendment 8 to Clause 3 remove the need for a concurrence requirement in respect of Clauses 8 and 9; they also argue that, through those amendments, the concurrence requirement will govern the designation of proceedings of a specified kind and, similarly, will govern whether the Online Procedure Rules or conventional rules will govern proceedings which are of a specified kind. They go on to argue that, therefore, Clauses 8 and 9 will operate within that framework, and the concurrence requirement is therefore unnecessary in relation to the powers requiring rules to be made or requiring amendments to the rules. I disagree; I simply do not see the nexus.

Under Clauses 8 and 9, any number of rules—or changes or amendments to existing rules—might be made or required within the framework of the Online Procedure Rules. Such rules or amendments might well offend against the principles that the Lord Chief Justice would wish to impose on them. That could occur even in the context of existing designated specified proceedings. It follows that the concurrence requirement should be applicable to the rule-requiring, rule-amending or rule-repealing powers under Clauses 8 and 9—perhaps only as a safeguard and possibly in the hope that they will not be needed—and that the consultation preceding the concurrence requirement should be effective but, against the danger that it is not, I suggest that the amendments are required. We support them.

Baroness Drake: My Lords, I support Amendment 22 to Clause 8. I will steer clear of debate on Clause 9, being neither a judge nor a barrister or solicitor.

In Committee, deep concerns were expressed about the extent of the ministerial powers in the Bill, which could result in rules that set digital engagement and participation in online courts as compulsory conditions for access to justice in civil proceedings. In effect, the ministerial powers in the Bill have the potential to require people to choose between online proceedings or not pursuing legal claims. The Constitution Committee shared those concerns. The Minister sought to mitigate those concerns by giving assurances as to the Government's intentions. In Committee, in response to my noble friend Lady Corston, the Minister commented:

"We intend to appoint a committee of experts to formulate these rules, including judicial members. They will have regard to the need for access to justice. Certainly, we have confidence in the ability of such a committee to formulate rules that reflect the need for all members of the community to have access, not only those who are perhaps more digitally alert and astute than the minority. We lay our confidence in the fact that there will be such a committee, that it will make regulations and that it will do it under the aegis of not only the Executive but the judiciary, and the Lord Chief Justice in particular".

However, Clause 8 explicitly allows Ministers to both instruct and overrule that committee of experts.

On a further occasion, the Minister gave an assurance that,

"judicial discretion … ultimately, is paramount, and nothing in the Bill or that we would anticipate in the regulations to be made pursuant to the powers under the Bill would undermine that judicial discretion, which ultimately has be exercised in the interests of justice".

However, as the noble and learned Lord, Lord Mackay, so acutely observed in Committee:

"It is not judicial discretion but rules that may require the parties to participate in the hearing by means of electronic devices. Therefore, it is not a question of the judge in charge of the case making that decision; the preliminary rules will require it, and the judge will be bound by that".—[*Official Report*, 10/6/19; cols. 287-89.]

In summary, notwithstanding ministerial assurances, Clause 8 confers powers on Ministers to require specific provisions to be included in the Online Procedure Rules which the Online Procedure Rule Committee must comply with. Clause 8 also requires that the rules that the committee is required to make must be in accordance with Clause 7, but that clause gives the Minister explicit powers to disallow rules made by the Online Procedure Rule Committee of experts. Clause 8 gives Ministers considerable scope but fails to frame those powers in a way that ensures access to justice and does not give rise to the potential of a person having to choose between online court proceedings or not pursuing their case.

There are real concerns across the House about the potential of the powers given to Ministers in Clause 7, and I will not replay them here, but the case for Amendment 22, which introduces a degree of control over the exercise of those powers by requiring the Minister to secure the concurrence of the Lord Chief Justice, who is the head of the judiciary and is ultimately responsible for the delivery of justice, is, I believe, compelling.

Lord Beecham: My Lords, I welcome the Minister's acceptance of the need for the Lord Chief Justice to concur with the creation of rules rather than merely to be consulted. However, Amendments 16 and 19 look to enhance parliamentary scrutiny by requiring the affirmative process. The increasing reliance on the negative procedure has already roused concern in your Lordships' House, and many Members are further concerned about its application to this sensitive area. The Law Society strongly endorses the amendments prescribing the affirmative procedure on the basis that it would secure further parliamentary scrutiny of the regulations.

Amendments 20 and 21, which are in my name, would empower the committee to decline a government request—in effect, an instruction—to create certain rules, which is really the issue that my noble friend Lady Drake has just referred to. If there is to be a really meaningful role for that committee, to my mind we need an amendment along the lines of Amendments 20 and 21.

Finally, we will certainly support the noble and learned Lord, Lord Judge, if he seeks to take the opinion of the House on the two amendments in his name.

Lord Keen of Elie: My Lords, I begin with two general observations. First, I am not conscious of having run out of fuel, but I leave that to others to judge. Secondly, it occurs to me that the Henrician view of executive power does not differ in any practical respect from the Stuart view of the divine right of kings.

Perhaps I should begin by making this point. Under the structure of the Bill, it will be necessary, pursuant to Clauses 2 and 3, to identify proceedings of a specified kind that may be subject to the Online Procedure Rules. In the light of the Government's amendments, that can be done only with the concurrence of the Lord Chief Justice, as indicated, and subject to the affirmative procedure.

It is not open to the Online Procedure Rule Committee to make Online Procedure Rules in respect of procedures that are not of a specified kind—that would simply be ultra vires. There is scope the other way, for the Online Procedure Rule Committee to provide that certain proceedings that are of a specified kind are not to be governed by the rules; that is pursuant to Clause 1(6). So the point I seek to emphasise at the outset is that the definition of specified procedures—the specified kind of procedures—sets out the framework within which the Online Procedure Rule Committee can operate. If the Minister were at any time to direct the Online Procedure Rule Committee, pursuant to Clause 8, to make rules in respect of proceedings that were not of a specified kind, that would be ultra vires; that is quite clear. He can direct them to make rules only in respect of proceedings of a specified kind pursuant to Clauses 2 and 3.

It is not possible to utilise the Clause 8 power in order to run roughshod over the provisions in Clauses 2 and 3, which clearly set out the need for the Lord Chief Justice to give concurrence to the proceedings that will be subject to the rules. Perhaps I am stating the obvious, but it occurred to me that one or two observations made in the course of this debate were inclined to suggest otherwise. I do not accept that. One has to look at the entire structure of the Bill and have proper regard to the way in which Clauses 2 and 3 will operate in that respect.

Lord Pannick: I am grateful to the Minister for giving way. It may be obvious to him, but not necessarily to others, that there is this implied limitation in what appears a very broad power being conferred on Clause 8. I suggest to him that a possible way forward would be for him to introduce at Third Reading an amendment to Clause 8 that makes it clear in the Bill that it has the limitation that he tells the House it has.

Lord Keen of Elie: With great respect to the noble Lord, I do not consider that I am dealing with an implied limitation. If one construes the Bill as a whole, one begins with Clauses 2 and 3, which set out the framework within which the Online Procedure Rule Committee will be able to operate. That framework is subject to the concurrence of the Lord Chief Justice; that is quite clear. To read Clause 8 as though it stands entirely alone and independently of the rest of the Bill is not, I submit, at all appropriate. The circumstances in which Clause 8 directions may be given clearly apply to the rule-making power of the committee. The committee has no rule-making power except in respect of proceedings of a specified kind as provided for by Clauses 2 and 3. I do not suggest that an implication is necessary there; it is simply a matter of statutory construction. I hear what the noble Lord says and will give further consideration to the point he makes in light of it, but that is my position at present.

Lord Marks of Henley-on-Thames: Accepting what the Minister says about the framework, there is nothing in Clause 8 as I read it—he will no doubt correct me if I am wrong—that prevents the Lord Chancellor giving a Clause 8 direction in the context of rules already within specified proceedings, where the rules required to be made by the Lord Chancellor's direction are offensive to the Lord Chief Justice.

Lord Keen of Elie: If they were offensive to the Lord Chief Justice, that would emerge in the course of consultation. I am glad that the noble Lord accepts my point about the proper construction of the statutory provisions as between Clauses 2 and 3 and Clause 8. What he is concerned about is an entirely distinct issue: that the Minister gives a direction for the making of rules in respect of proceedings of a specified kind, pursuant to Clauses 2 and 3, which the Lord Chief Justice might not like. If he does not like it, he can express that view during the consultation. If he is deeply disturbed by what is proposed, he can have

[Lord Keen of Elie]
recourse to Section 5(2) of the Constitutional Reform Act 2005 to make a report to Parliament, but that will not arise. One has to see these powers in their proper context.

I would add that, in the course of looking at the proposed amendments to the Bill, we have engaged with the Judicial Office to try to ensure that the Bill reflects constitutional arrangements consistent with those of the existing civil committees. That is precisely what Clauses 8 and 9 do and I am not aware of any objection from that source to the way in which those committees already operate, and in which it is intended that this committee should operate in respect of the same matter. I will come on to explain why, constitutionally as well as with reference to precedent, we consider that appropriate. I underline the point that the existing proposal in Clause 8 in no way takes away from or abrogates the provisions in Clauses 2 and 3, which establish quite clearly those proceedings, and only those proceedings, in respect of which the committee itself can make rules. It cannot make rules for something else entirely.

4.30 pm

As I mentioned, that reflects a long-standing arrangement with the existing civil rule committees that has operated for many years. It is consistent with the notion that where, for example, the Executive have a policy about particular matters that is approved by Parliament and they wish to direct that rules should be made pursuant to it, that should of course be subject to consultation with the Lord Chief Justice but should not be subject to any form of veto from the Lord Chief Justice as that would not be appropriate. Indeed, it would be to draw the Lord Chief Justice into the political arena in circumstances where I am sure he would not wish that to happen. That is why we have the existing provisions relating to this matter in the existing civil rules, and why we seek to reflect that. My understanding is that this arrangement reflects the agreement between the Lord Chancellor and the Lord Chief Justice under the 2004 concordat given effect to under the Constitutional Reform Act 2005.

The effect of this amendment, if implemented, would be to change the relationship between Ministers and the judiciary—an arrangement that appears to have worked well for the last 20 years. Indeed, I would add that the powers we are dealing with are rarely, if ever, used. As I understand it, the Civil Procedure Rule Committee provision has been used only once in the past 20 years. However, as I indicated, it reflects an important constitutional balance, which is why we consider it appropriate that we should have Clause 8 in its present form. It is a matter of precedent and of constitutional propriety, and it is appropriate because it does not take away in any sense from the protections provided for in Clauses 2 and 3.

Amendments 23 and 24 deal with Clause 9, seeking to add a concurrent requirement before the Minister can amend legislation in consequence of or to facilitate the making of online rules. Again, this power as currently expressed in Clause 9 expresses very similar provisions governing the civil, family and tribunal procedure rules. It allows the Lord Chancellor to make consequential amendments to other legislation, or to amend other legislation, to facilitate the making of Online Procedure Rules. Its intended use is primarily to correct minor issues in legislation—for example, to update references to things in legislation to match and be consistent with references to those matters in the online rules. That power in the equivalent Civil Procedure Rules has, I understand, been used on only seven occasions over the past 20 years, the last time about 14 years ago. Various examples can be given of where it has been necessary to make such regulations to correct inconsistencies in primary legislation, but I have no hesitation in saying for the purposes of *Hansard* that it is employed for that purpose and that it is intended under the Bill for such a purpose. I hope that helps to clarify why Clauses 8 and 9 are expressed in their present form.

I will touch on a point raised by the noble Lord, Lord Beith, regarding the reference to the Senior President of Tribunals. It is because there is a division of responsibility between the senior president, in respect of matters concerning tribunals, and the Lord Chief Justice, in respect of matters regarding the courts. There is a similar division between the Lord Chancellor and the Secretary of State for BEIS, who has responsibility for employment tribunals. The Bill is intended to reflect those divisions of responsibility and not to amalgamate this. In these circumstances, I invite noble Lords to reconsider and not to move Amendments 22, 23 and 24 at this stage, as not required.

I will touch on Amendments 16 and 19, tabled by the noble Lord, Lord Beecham, which require that regulations made under Clause 6 be subject to the affirmative rather than the negative procedure. This clause is where the Minister may make changes to the composition of the rule committee. As I explained, we envisage that the new committee will be agile, focused and flexible in how it conducts its business. Over time, as the scope of the online procedure widens, the Lord Chancellor may wish to make changes to both the number and expertise of committee members.

We consider that moving this to the affirmative procedure would hamper the committee's ability to adapt quickly and effectively to new developments. If the committee was asked to draft rules in a new area, following consultation with the Lord Chief Justice, it may decide that additional expertise is needed on the committee. These amendments would mean that a debate in both Houses of Parliament would be needed before any such appointment could take place. We consider that that would be an inappropriate use of parliamentary time and would certainly reduce the efficiency of the committee, which is counter to one of the underlying purposes of the Bill. With respect, it appears to us that the negative resolution procedure strikes the right balance between the extent of parliamentary scrutiny and ensuring that the Lord Chancellor will be able to implement the rules effectively and efficiently.

Amendment 19, tabled by the noble Lord, Lord Beecham, changes the negative procedure to the affirmative for the making of rules of court. We certainly do not consider that appropriate; it is not the position for the other civil rules committees. It would place a burden on the committees and on Parliament

if the procedure was slowed down by such a measure. The existing committees often make rules at least twice a year and the cumulative impact on parliamentary time of a move towards affirmative debates on statutory instruments of this kind would be entirely disproportionate. In these circumstances, I invite the noble Lord not to move Amendments 16 and 19.

Amendments 20 and 21, tabled by the noble Lord, Lord Beecham, seek to remove the requirement for the Online Procedure Rule Committee to make rules at the direction of the Lord Chancellor and the requirement that the committee make such rules within a reasonable period. As I sought to underline in my response to Amendment 22, there are very strong arguments for retaining a power of direction consistent with the other civil rule committees. I will not repeat those here, but it appears that the amendment proposed by the noble Lord would also diminish the effectiveness of the committee and would be inappropriate in the circumstances. Therefore, I also invite him not to move Amendment 20. I beg to move Amendment 6.

Amendment 6 agreed.

Clause 3: Provision supplementing section 1

Amendment 7 not moved.

Amendment 8

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

8: Clause 3, page 4, line 3, leave out "consultation" and insert "concurrence"

Amendment 8 agreed.

Amendment 9 not moved.

Amendment 9A

Moved by ***Lord Marks of Henley-on-Thames***

9A: After Clause 3, insert the following new Clause—

"Duty to make support available for digitally excluded people

The Lord Chancellor must arrange for the provision of such support as the Lord Chancellor considers to be appropriate and proportionate, for the purpose of assisting persons to initiate, conduct, progress or participate in proceedings by electronic means, in accordance with Online Procedure Rules."

Amendment 9A agreed.

Clause 4: The Online Procedure Rule Committee

Amendment 10

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

10: Clause 4, page 4, line 11, leave out "one person who is either" and insert "two persons, each of whom is either"

Lord Keen of Elie: My Lords, this group of amendments, beginning with Amendment 10, concerns the composition of the committee. I will therefore address Amendments 10, 15 and 17. The purpose of the amendments is fourfold: first, to increase the number of judicial members of the Online Procedure Rule Committee; secondly, to enable the Lord Chief Justice to appoint one judicial member as chair of the committee; thirdly, to provide that, when making rules, the majority of the committee must sign the rules, rather than the current requirement that they be signed by three members; and fourthly, to ensure that, where the committee is tied on the making of one or more rules, the chair's signature will act as a casting vote.

These amendments, alongside our proposed amendment on concurrence in Clause 2, seek to ensure sufficient safeguards in the Bill to balance the role of Ministers on the one hand and the judiciary on the other in the making of online rules. The amendments aim to achieve a balance of nominees of the Lord Chief Justice and of the Lord Chancellor, such that each would have three nominees to the committee. In addition, one of these judicial nominees will now be designated by the Lord Chief Justice as the chair of the committee and will have the casting vote should the committee be tied on the making of any rule.

On the issue of committee members signing rules, the previous iteration of the Bill simply stated "three" as that would have been a majority of the five committee members. However, having considered the observations of noble Lords, and having made a small change to ensure that in future the committee increases in size, a simple majority of members will always be required to make rules. In this instance, where there are six members, should the committee be tied, the chair, as I said, would have the deciding vote. The consequence would be that the judicially appointed members of the committee would in such circumstances always have the majority on the committee. It is in these circumstances that I commend Amendments 10, 15 and 17 to your noble Lordships.

Lord Beecham: My Lords, I rise to speak to the amendments in my name, Amendments 11, 12, 13 and 14.

Amendment 11 seeks to enlarge the Online Procedure Rule Committee to include members covering the legal profession and the magistracy, all of whom should be familiar with the difficulties experienced by people unused to the digital process. Importantly, Amendments 12 and 13 amend the provision of Clause 4(2)(d), under which two persons are added to the list of the committee members, one of whom must have experience in the advice sector, and the other two of whom must have IT experience and knowledge of end-users' experience of internet portals. The amendment would add a third member with experience in representing the views of people who are digitally excluded. We regard this as imperative, not least in the light of the appalling experience of universal credit, which the organisation Mind cites as an example of "digital by default", whereby 25% of people with long-term health conditions could not make claims online. Mind also cites a case, LH Bishop Electrical Co Ltd v Commissioners for Her Majesty's Revenue and Customs, in which the First-tier Tribunal ruled that requirements to file VAT returns online discriminated against disabled people, older people and people living too remotely for digital access.

Mind, while supporting increasing the choice for core users and making the system easier to navigate, rightly avers that it is essential to make sure that there are safeguards to ensure that people who are digitally excluded are not locked out of the justice system. It goes on to suggest that the Online Procedure Rule Committee's powers should be limited so that it cannot

[Lord Beecham]
require that proceedings be initiated online without providing an alternative that is clearly advertised and provides for each stage of the proceedings. This reinforces the case with an approach that does not leave the decision as to whether proceedings should be online with one party. This is consistent with the view expressed in Lord Briggs's report, which sought to include non-lawyers with the requisite skills. These amendments are supported by the Law Society.

Finally, Amendment 14 seeks to promote and ensure gender balance in the membership of the committee and invites further work by the Government to achieve that.

4.45 pm

Lord Keen of Elie: My Lords, regarding Amendments 11 and 12, let me restate the point I sought to outline in Committee. In his final review of the civil justice system in 2016, Lord Briggs—or Lord Justice Briggs as he then was—anticipated a committee of experts from across various disciplines that would reflect the needs of users. Amendments 11 and 12 seek to increase the size of the committee to include respectively four more legal members and one additional other member. Combined with Amendment 13, which has the effect of adding a further member who must have experience of representing the views of people who are digitally excluded, this would add four members to the committee.

We have been clear all along that we want an Online Procedure Rule Committee that is small and agile. This will mean that it has the flexibility to make and adapt rules quickly to meet circumstances that might change rapidly. As Clause 7 makes clear, before making or amending rules the committee must consult such persons as they consider appropriate. The committee will therefore be able to benefit from the contributions of people with expertise relevant to specific matters, rules and proceedings as referred to by the noble Lord, Lord Beecham. This would include people with specific legal experience in a particular area, such as that of the disabled.

One consequence of adopting these amendments would be creating not only a much larger committee, but a much greater imbalance in the number of members appointed by the Lord Chancellor in comparison to the number appointed by the Lord Chief Justice. It would therefore defeat the very purpose of the amendments we have sought to move. At present, we have a committee of six on which there are three judicial appointees made by the Lord Chief Justice, one of whom is the chair. In the event of a rule being signed off by a majority, with three judicial appointees wishing to sign off the rule, the chair would have what is in effect a casting vote. These amendments would therefore take away entirely from the very force of the amendments the Government are moving.

Amendment 13 would add a member of the rule committee capable of representing the views of people who are digitally excluded. As I have already sought to explain, we consider that there are significant advantages in a small committee. Where it requires expert input, it has the power to seek that. Since we have brought forward amendments to ensure that all members of the committee always consider the needs of those who struggle to engage digitally—the amendments we dealt with earlier—and while I fully agree that digital support for those who want to access online services is absolutely paramount to the effectiveness of this system, we do not consider it necessary to achieve those objectives to have this addition to the committee. It is also important to remember that Clause 6 provides a power to vary the membership of the committee as and when required.

Finally, on Amendment 14 and the matter of gender balance, as I sought to emphasise in Committee, the Government of course support the wider aim of ensuring diversity among senior appointees to public bodies. When appointing members to the committee, the Lord Chancellor and the Lord Chief Justice are already bound by guidelines and statute relating to matters of diversity. Appointments to various procedure rule committees are governed by the Governance Code on Public Appointments, which sets out the principles that underpin public appointments, including openness, ministerial responsibility and integrity. It also includes a commitment to diversity:

> "Public appointments should reflect the diversity of the society in which we live, and appointments should be made taking account of the need to appoint boards which include a balance of skills and backgrounds".

Additionally, public appointments are regulated by the Commissioner for Public Appointments. He or she, in turn, may make audits of departments to see that they are complying with the principles.

Furthermore, Ministers are subject to the public sector equality duty set out in the Equality Act 2010. We therefore consider the matter of diversity to be well dealt with. It does not have to be brought within the four walls of this Bill; it is already addressed in statute and by other means. Also, as I have mentioned before, applying this specific statutory duty to this committee would differentiate it from the other civil committees—the Tribunal Procedure Committee, the Family Procedure Committee and the Civil Procedure Committee—and there is no compelling reason to do so. In these circumstances, I invite the noble Lord to withdraw the amendments.

Lord Marks of Henley-on-Thames: Can the Minister clarify a point he made in relation to Amendments 11 to 13? Having regard to the amendments which have already been accepted, the balance of the committee at the moment is three judicial appointments and three appointed by the Lord Chancellor, with the Lord Chief Justice having the power to appoint the chairman from the judicial appointments, and that chairman having a casting vote. The Minister commented on the effect of the proposed Amendments 11 to 13 on that balance. Is that right?

Lord Keen of Elie: The noble Lord is entirely correct in his summary of the position if we apply the government amendments that have been moved. The result is that, in light of the government amendments, we will have a committee constituted as he indicated. That balance would be removed by the amendments proposed by the noble Lord, Lord Beecham.

Amendment 10 agreed.

Amendment 11 not moved.

Amendment 12

Moved by ***Lord Beecham***

12: Clause 4, page 4, line 21, leave out "two" and insert "three"

Lord Beecham: My Lords, I wish to test the opinion of the House.

4.52 pm

Division on Amendment 12

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Wilson of Tillyorn, L.
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Wyld, B.
Young of Cookham, L.
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5.06 pm

Amendments 13 and 14 not moved.

Amendment 15

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

15: Clause 4, page 4, line 43, at end insert—

"(6A) The Lord Chief Justice may appoint one of the persons appointed under subsection (2)(a) or (b) to be the chair of the Online Procedure Rule Committee."

Amendment 15 agreed.

Clause 6: Power to change certain requirements relating to the Committee

Amendment 16 not moved.

Clause 7: Making Online Procedure Rules

Amendment 17

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

17: Clause 7, page 7, line 32, leave out "at least three members of the Committee, and" and insert "—

(i) at least half of the members of the Committee, where one of the signatories is the chair, or

(ii) a majority of the members of the Committee, in any other case, and"

Amendment 17 agreed.

Amendment 18

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

18: Clause 7, page 7, line 35, at end insert—

"(3A) In deciding whether to allow or disallow rules, the appropriate Minister must have regard to the needs of those who require technical support in order to initiate, conduct, progress or participate in proceedings by electronic means."

Amendment 18 agreed.

Amendment 19 not moved.

Clause 8: Power to require rules to be made

Amendments 20 and 21 not moved.

Amendment 22

Moved by ***Lord Judge***

22: Clause 8, page 8, line 13, at end insert—

"( ) The appropriate Minister may only give written notice under this section with the concurrence of the Lord Chief Justice."

Lord Judge: My Lords, I understand the difficulty raised in our earlier debate by the noble and learned Lord, Lord Mackay: that other committees work on a different basis. However, all those committees were created before the constitutional change. What is more, the committee we are envisaging in the Bill will actually have power to decide how the other committees will operate—at any rate, in relation to the digital world. That makes it different, but the fact is that we have had a change to the constitution and the Bill should recognise it.

I have looked at Clause 8 and I would love a debate with the noble and learned Lord, Lord Keen, about what,

"achieve a purpose specified in the notice",

might mean, and about the provision that the committee must do what is,

"necessary to achieve the specified purpose".

It would be a wonderful debate. The difference between us is that he says that means the same thing as what it says in Clause 2. However, that is not what it says in Clause 2. Clause 2 relates to "specified kinds", which is a completely different consideration. What in the end we have here is the ability under Clauses 8 and 9, taken together, of the Executive to decide how litigation shall be conducted. That is what is objectionable about it and I seek the views of the House.

5.09 pm

Division on Amendment 22

Contents 226; Not-Contents 182.

Amendment 22 agreed.

Division No. 2

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Naseby, L.
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Stroud, B.
Sugg, B.
Suri, L.
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Taylor of Warwick, L.
Trefgarne, L.
Trenchard, V.
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True, L.
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5.25 pm

Clause 9: Power to make amendments in relation to Online Procedure Rules

Amendment 23

Moved by ***Lord Judge***

23: Clause 9, page 8, line 25, at end insert—

"( ) Regulations may only be made under this section with the concurrence of the Lord Chief Justice."

Lord Judge: I am afraid I must ask for the opinion of the House on this amendment as well.

Division to Amendment 23 called. Tellers for the Not-Contents were not appointed, so the Division could not proceed.

Amendment 23 agreed.

Amendment 24

Moved by ***Lord Judge***

24: Clause 9, page 8, line 26, leave out "the Lord Chief Justice and

Lord Keen of Elie: Amendment 24 is consequential on Amendment 23 and therefore we accept it.

Amendment 24 agreed.

Clause 12: Regulations

Amendments 25 to 28

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

25: Clause 12, page 9, line 12, leave out "consultation" and insert "concurrence"

26: Clause 12, page 9, line 14, leave out "consult" and insert "obtain the concurrence of"

27: Clause 12, page 9, line 18, leave out "consult" and insert "obtain the concurrence of"

28: Clause 12, page 9, line 23, at end insert—

"(3A) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any function of the Lord Chief Justice under this section."

Amendments 25 to 28 agreed.

European Council

Statement

5.30 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made in another place by my right honourable friend the Prime Minister. The Statement is as follows:

"Mr Speaker, before I turn to the European Council, I am sure that the whole House will join me in sending our very best wishes to the former Deputy Prime Minister, John Prescott. All our thoughts are with him and his family at this time and we wish him a speedy and full recovery.

Last week's European Council focused on climate change, disinformation and hybrid threats, external relations and what are known as the EU's "top jobs". The UK has always been clear that we will participate

fully and constructively in all EU discussions for as long as we are a member state and that we will seek to continue our co-operation on issues of mutual interest through our future relationship after we have left. That was the spirit in which I approached this Council.

Earlier this month, the UK became the first major economy in the world to commit to ending its contribution to global warming by 2050. I am pleased that the regulations to amend the Climate Change Act 2008, which are being debated in this Chamber later today, have received widespread support across this House. But ultimately we will protect our planet only if we are able to forge the widest possible global agreements. That means other countries need to follow our lead and increase their ambitions as well.

At this Council, the UK helped to lead the way in advocating for our European partners to follow suit in committing to a net zero target by 2050. While a full EU-wide consensus was not reached, a large majority of member states did agree that 'climate neutrality must be achieved by 2050'. I hope that we can build on this in the months ahead. In the margins of the Council, I also met Prime Minister Conte and discussed the UK's bid to host next year's UN climate summit, COP26, in partnership with Italy. This will continue to put the UK at the heart of driving global efforts to tackle the climate emergency and leave a better world for our children.

Turning to disinformation and hybrid threats, we agreed to continue working together to raise awareness, increase our preparedness and strengthen the resilience of our democracies. I welcome the development of a new framework for targeted sanctions to respond to hybrid threats. This sends a clear message that the UK and its EU partners are willing and able to impose a cost for irresponsible behaviour in cyberspace.

We must also make more progress in helping to ensure that the internet is a safe place for all our citizens. That is why we are legislating in the UK to create a legal duty of care on internet companies to keep users safe from harm. This will be backed up by an independent regulator with the power to enforce its decisions. We are the first country to put forward such a comprehensive approach, but it is not enough to act alone. Building on the Christchurch Call to Action summit, the UK will continue to help drive the broadest possible global action against online harms, including at the G20 in Japan later this week.

In the discussion on external relations, the Council expressed its concern over Russia's issuing of passports in Ukraine's Donetsk and Luhansk regions and reiterated its call for Russia to release the Ukrainian sailors and vessels captured in the Kerch Strait in November last year. Russia has consistently failed to deliver its commitments under the Minsk agreements and continues its destabilising activity. So, with the UK's full support, the Council agreed a six-month rollover of tier 3 sanctions, which include restrictions on Russia's access to EU capital markets, an arms embargo and restrictions on co-operation with Russia's energy sector.

In marking the fifth anniversary of the downing of flight MH17, we also welcomed the announcement from the Netherlands that criminal charges are being brought against four individuals, and offered our continued support in bringing those responsible to justice.

The Council also expressed serious concerns over Turkey's drilling activities in the eastern Mediterranean. The UK has made it clear to Turkey that drilling in this area must stop, and our priority must be to see the situation de-escalated.

In the margins of the Council, I also raised the issue of Iran. We are calling on Iran to urgently de-escalate tensions. Finding a diplomatic solution to the current situation in the region remains our priority.

A substantial part of the Council focused on what are known as the EU's "top jobs"—namely, the appointments of the next Presidents of the EU's institutions and the EU's high representative. Of course, this is primarily a matter for the 27 remaining EU member states, so I have been clear that the UK will engage constructively and not stand in the way of a consensus among the other member states. However, it is also in our national interest that those appointed are constructive partners for the UK as well as successful leaders of the EU's institutions. The UK supports President Tusk's approach to create across the top jobs a package of candidates that reflect the diversity of the European Union. As there was no consensus on candidates at this meeting, the Council agreed to meet again after the G20 this coming Sunday and to hold further discussions with the European Parliament. So, while I originally anticipated that this would be my final European Council as Prime Minister, I will in fact have one more.

Finally, President Tusk and President Juncker updated the remaining 27 member states on Brexit. This scheduled update was part of the agreement I reached in April to extend the Article 50 deadline for our departure from the EU to 31 October. The Council repeated its desire to avoid a disorderly Brexit and committed to work constructively with my successor as Prime Minister. I commend this Statement to the House".

My Lords, that concludes the Statement.

5.36 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the Leader of the House for her comments about my noble friend Lord Prescott. I am sure that the whole House concurs. We wish him a full and speedy recovery.

It has been some time since we have had a European Council or Brexit-related Statement, but now we hear that we will have two in a very short space of time. I am sure that the Prime Minister is delighted. It is an extraordinary position, given the urgency of the issue. Perhaps it is a reflection on the state of the Government on Brexit. Back in March, the Government's request to extend the Article 50 period was agreed by the EU 27. Despite the previous commitment, as we were told, that the UK would not, under any circumstances, participate in the European Parliament elections, the Government were forced to do just that to secure the further extension. The results of those elections were unsurprising, and the issue of Europe has now forced the resignation of a second Conservative Prime Minister in a little over three years.

However, any hope that the Conservative leadership race, including a refreshingly honest campaign by Rory Stewart, would inject a bit of realism into the Brexit saga was short-lived. The man most likely to

[Baroness Smith of Basildon]
become the next Prime Minister continues to display a wilful ignorance, asserting that we can leave with no deal in October but still benefit from a transition period and the continuation of tariff-free trade. Either he does not understand the importance of ratifying a withdrawal agreement in order to secure a transition period or he is willing to mislead the country in his quest to enter No. 10. Neither of those possibilities reflect well on him; nor do they suggest that, as Prime Minister, he would be able to negotiate a close and mutually beneficial ongoing relationship with the EU 27. Jeremy Hunt initially pledged that he was willing to take the country out of the EU with no deal and that it was his firm intention that our exit would take place on 31 October, but that, as the slightly more sensible candidate, his preference is for a deal, even if it takes a little extra time. With clarity like that, it is not hard to understand why our European neighbours find British politics so confusing and frustrating.

A no-deal Brexit—the worst possible outcome—is, as the clock ticks down, a real and frightening possibility. I had hoped to hear from the noble Baroness today that Mrs May had emphasised that the UK would do everything possible to avoid that scenario, but we did not. That is why I have tabled a Motion for debate next Wednesday, 3 July—your Lordships can see it in the green sheets of *House of Lords Business*—to establish a Joint Committee of both Houses to explore the costs and implications of a no-deal exit. Our aim is to be helpful to Parliament in investigating and reporting back with hard facts, not just views or opinions.

To return to the matter at hand, this summit provided Mrs May with the opportunity to bid farewell to her fellow leaders and pave the way for the new Prime Minister. However, with Mr Johnson currently most likely to win the keys to Downing Street, perhaps this was the moment of realisation. There were some warm words for Mrs May, including from an unlikely source in the form of President Macron. Perhaps he was recalling a song from Joni Mitchell in which she sang,

"you don't know what you've got
Till it's gone".

This summit highlighted that, while Theresa May is still in office, she is not in power. That is not entirely her fault. The UK lost considerable influence under David Cameron, and Mrs May's authority has been undermined both by members of her Cabinet and by her Back-Benchers. Nevertheless, last week's meeting made it clear that, although Mrs May had a seat at the table, the UK had lost its voice. In years gone by, the UK has been a decisive player in allocating the EU's top jobs, including gaining the office of High Representative for Foreign Affairs and Security Policy in 2009—a position held by the former Leader of this House, the noble Baroness, Lady Ashton of Upholland. Under the last Labour Government, we were instrumental in advancing collective international action, both within the EU and beyond, to prevent a climate catastrophe.

The outcomes of this summit matched expectations in the run-up to it. There was no agreement on appointments, meaning, as we have heard, further discussions and another summit in the days and weeks to come. Despite the UK Government having been pushed, via an Opposition day Motion in the Commons, into acknowledging the urgency of dealing with the climate emergency and setting a target of zero emissions by 2050, the EU's commitment is disappointing. I understand that the position was watered down by member states, including Poland, one of Mrs May's strongest allies. Given the urgency of the issue, I hope that the Prime Minister pressed Poland and others to accept a stronger position. Perhaps the noble Baroness can tell us whether the Prime Minister made any attempt to gain support from Poland and whether she had any bilateral discussions with the head of that country.

Whatever happens next with Brexit, the next Prime Minister must recognise the importance of the UK and the EU working together to protect the environment. All the issues raised by this summit—disinformation and hybrid threats, climate change and external relations regarding Russia—are ones on which EU co-operation is absolutely vital and in which the role of the UK could and should have been positive. What could have been an optimistic and ambitious start to a new institutional cycle was instead a sign of a Europe in flux. Populist rhetoric and climate change scepticism are on the rise, and not just in the Conservative Party.

Mrs May obviously wants to secure a more positive legacy, both at home and abroad, than that of her predecessor. She could have tried to use this summit to that end. Sadly, it echoed her premiership: an exercise in mismanagement and missed opportunities, and that, sadly, will be her legacy.

Lord Newby (LD): My Lords, I thank the noble Baroness the Leader of the House for repeating the Statement and join her in wishing the noble Lord, Lord Prescott, a speedy recovery and all our good wishes.

I do not know whether noble Lords saw the interview given by the Prime Minister as she arrived at last week's Council meeting. It made me wince because she was asked, in effect, what she was hoping to get out of the meeting for the UK. The answer was, in effect, "Nothing". She went with no authority at home and no locus for intervening substantially on any of the real discussions. I have been trying to decide when the UK last had such little influence in the affairs of Europe as a whole, but I cannot think of such a time. No doubt other Members of the House, particularly the historians, will be able to help me, but I suspect they too will be struggling.

The Council discussed some of the most crucial issues facing us: climate change, the disinformation threat to our democracies and external relations with our neighbours including Russia and Turkey. On all the conclusions reached, as the Statement makes clear, the UK was in agreement. On climate change, for example, the fact that a large majority of member states have signed up to reaching carbon neutrality by 2050 is in no small measure as a result of UK leadership on this issue over a number of years.

But the Council also adopted a new strategic agenda for the next five years, a decision about which the Statement makes no mention at all. Normally, when I see the words, "strategic agenda", my eyes glaze over, but I have read this document; I wonder whether the Leader of the House has done so too. It is extremely wide-ranging and covers,

"protecting citizens and freedoms",

economic development,

"building a climate-neutral, green, fair and social Europe … promoting Europe's interests and values in the world",

and "how to deliver" on its policy priorities. Everything in this strategy chimes in with the kind of Europe and world which we on these Benches have spent our political lives trying to promote.

Will the Leader of the House tell us whether there is anything in this strategy with which the Government disagree? If not, how do they think the UK can help achieve its aims while outside the EU, outside the negotiating chamber and outside the institutions which will be absolutely key if the strategy is to be made to work? The truth is that the EU's agenda is our agenda. It is not Trump's agenda, nor Putin's, nor Modi's, nor Xi's, nor that of any other significant player on the world stage; yet these are the people whom the Brexiteers are asking us to embrace. To be unable to participate in implementing this strategy when we leave the EU would reduce the EU's effectiveness in all the crucial areas it covers, as well as our own. Both of us would be losers.

The other thing that the Council covered was who should occupy the top posts in the EU for the period ahead. There were—indeed are—some excellent Liberal candidates, such as Margrethe Vestager for Commission President and Mark Rutte for President of the Council. It was one of the most oft-repeated arguments during the referendum that we had such people foisted on us, with no say; of course, as full participating members, we did have a major say. The irony is that, if and when we vote to remain in the EU at some point over the next 12 months, we will, for the first time ever, be a member state that will have had no say on who occupies these top posts.

This, however, is the least of the challenges we now face as a country. We have a Government with no effective majority, a potential Prime Minister who is the laughing stock of the world, and a Commons which cannot agree on any form of Brexit. The only way out of this shambles is a referendum on whether to remain in the EU followed by a general election to sweep out this Government. Only when we have done so will a British Prime Minister again be able to hold their head up at a future EU Council meeting, and in the world more generally.

Baroness Evans of Bowes Park: I thank the noble Lord and the noble Baroness for their comments. I am happy to be here discussing an EU Council meeting, and I look forward to doing so again once—or, who knows, maybe more than that; let us hope it will be just once more.

The noble Lord and the noble Baroness asked about climate change. I can certainly reassure the noble Baroness that we led the way at this Council for our European partners to follow suit in committing to a net zero target by 2050. The Prime Minister was indeed disappointed that there was not unanimity on this. However, we are pleased that progress has been made and that the large majority of member states agreed that,

"climate neutrality must be achieved by 2050".

Further work on this will be happening, and the EU will seek to agree the target as part of its submission to the UN on how it will meet its commitments under the Paris agreement by 2020. There will of course be other opportunities to discuss this extremely important issue, not least at the G20 meeting later this week which I mentioned and again at the UN Secretary-General's climate change summit in September, so will we continue to take the global lead that we have done.

The noble Lord, Lord Newby, suggested that we might not have intervened strongly on a number of issues at the Council. As I have just highlighted, we most certainly did on climate change. As ever, we supported the regular six-month rollover of the tier 3 sanctions against Russia, another issue that we have been very vocal on and led the way on in terms of our European partners.

I am happy to let the noble Lord know that I did indeed read the strategic agenda, as he did—we may be the only two who did so, but it was a very interesting read. We supported the adoption of that agenda at the Council. As he rightly pointed out, we have a strong interest in continuing to collaborate on the challenges that we face collectively, which is why we want a strong and successful relationship with the EU once we leave.

5.50 pm

Lord Cormack (Con): My Lords, as my noble friend will know, if certain members of the ERG had taken a different line, we would not be here this evening as we would have left at the end of March. Three or four times over the last three years, perhaps even more than that, I have asked that we have a Joint Committee of both Houses. I am delighted that the Leader of the Opposition has now put that into a Motion for debate next week. Can my noble friend assure me that that will receive a positive response? We want the best talent in both Houses from all parties and from the Cross Benches in this House looking at this, the greatest crisis that our country has faced in peacetime, perhaps ever.

Baroness Evans of Bowes Park: I thank my noble friend for his question. I am afraid I must disappoint him: while the EU Council gets into a lot of detail, it did not discuss the merits or otherwise of the noble Baroness's Motion. In fact the EU Council did not discuss Brexit, no-deal planning or the views of the Conservative leadership, but I very much look forward to our debate next week relating to the noble Baroness's Motion. We look forward to that discussion.

Viscount Waverley (CB): My Lords, do the Government recognise that it is essential that the UK conducts itself at governmental and parliamentary levels with courtesy and respect, is not disruptive for disruption's sake, and that, more than ever, we need to work on our bilateral and multilateral relationships?

Baroness Evans of Bowes Park: I entirely agree with the noble Lord. That is most certainly the approach that the Prime Minister took at this Council and which we will continue to take in future.

Lord Campbell of Pittenweem (LD): My Lords, one matter that leaps out of this Statement is that Iran was discussed only in the margins. How can it possibly be that a matter of such pressing urgency should have been discussed only in the margins of the meeting?

[Lord Campbell of Pittenweem]
What response did the Prime Minister get to the discussions that she had? Indeed, with whom did she have them?

On these occasions it has become almost trite to say that nothing has changed, but one thing that has certainly not changed—I hope the noble Baroness the Leader of the House will agree—is that the 27 remaining members of the EU refuse to consider any renegotiation of the withdrawal agreement. Will she pass that message on to the two candidates for the leadership of the Conservative Party?

Baroness Evans of Bowes Park: The noble Lord is absolutely right that, as I said, there was no substantive discussion of Iran at the Council but it was indeed raised in discussions at the margins. However, I am sure he is aware that over the weekend my right honourable friend the Minister for the Middle East went to Tehran and met senior Iranian government representatives there. That visit was an opportunity for further engagement about our long-standing concerns over Iran's destabilising activity. In those conversations he reiterated our assessment that Iran almost certainly bears responsibility for the recent attack on tankers in the Gulf of Oman and stressed that such activity needs to stop to allow for an immediate de-escalation of rising tensions. He also discussed the nuclear deal and reiterated our support for that, as well as raising our concerns over the continued imprisonment of Nazanin Zaghari-Ratcliffe. So while discussions did not happen at the Council, as the noble Lord points out, I assure him that we took the lead in having discussions in Tehran over the weekend.

The noble Lord is absolutely right that without a withdrawal agreement, as the EU has said, there can be no implementation period.

Lord Lea of Crondall (Lab): My Lords, the Leader's remarkable agreement with the support expressed by the noble Lord, Lord Newby, for the EU five-year strategy document sounds to me like the sort of thing people on this side used to say. Could she send a copy of this to both candidates to make sure that sensible questions can be asked at the hustings about the future of the European Union and our relationship with it, based on this document?

Baroness Evans of Bowes Park: The noble Lord will know that the Council's conclusions are available for all to read. I am sure everyone interested will do so.

Lord Wallace of Saltaire (LD): My Lords, in view of the very positive remarks in the Council's report about foreign policy co-operation and its usefulness to Britain, is it not time that the Government said something positive about how they intend to continue that co-operation after we leave—if we leave? Very little has been said about that. The current Foreign Secretary and his predecessor, who are now the two candidates for the Conservative Party leadership, have made hostile remarks about European co-operation on occasion when in office. What we need to educate our public is a clear statement from the Government about the sort of institutionalised foreign policy co-operation which they hope to continue after we leave.

Baroness Evans of Bowes Park: I am afraid I disagree with the noble Lord. I think we have been quite clear about our desire to continue international co-operation. Of course, the EU represents one set of partners, but we are involved in a whole array of global and multilateral organisations. We will continue to play a leading part in those and are very proud to do so. That has been a hallmark of what we have been talking about and what we want to continue to do.

Baroness Quin (Lab): My Lords, as on many occasions when we have had Statements on the European Council, the story behind the Statement is one of sensible co-operation in so many important areas. In view of some of the wilder anti-European statements made by both Conservative Party leadership candidates in recent months, can the Leader assure us that co-operation on these very important areas will continue in future, with us as participants?

Baroness Evans of Bowes Park: As I have said, and as the Statement made clear, the Prime Minister approached this Council as she always does—in an extremely co-operative manner. We have been very clear that we want a strong partnership with the European Union going forward, but it will be up to her successor to take that forward. The Prime Minister has always been constructive in her discussions with the European Union and our international partners.

Baroness McIntosh of Hudnall (Lab): My Lords, I realise that the noble Baroness cannot be held responsible for the views or words of the Tory party leadership candidates. However, unless I misheard her, she said very clearly in answer to the noble Lord, Lord Campbell, that, without a withdrawal agreement, there can be no implementation period. If I did not mishear her, would she care to speculate on why that apparent truth is not clear to at least one of the candidates?

Baroness Evans of Bowes Park: I am afraid I will not be drawn into speculation, but I am happy to say that the noble Baroness did not mishear me. The EU has said, and I believe a number of Council members said so again over the weekend, that without a withdrawal agreement, there is no implementation period. That is why I, the Cabinet and the Prime Minister have been working hard to get a deal. I have always been clear that, in my view and the Prime Minister's, that was the best way to leave and begin a prosperous and successful relationship with the EU.

Lord Cormack: My Lords, may I press my noble friend? I am well aware that the Council did not discuss the Motion tabled by the noble Baroness, Lady Smith of Basildon, at its recent meeting. However, with the Motion now tabled, I asked her whether the Government will welcome it. I very much hope they will.

Baroness Evans of Bowes Park: I am afraid I have said all I can on that matter at this point. As I said, we look forward to the debate next week.

Baroness Smith of Newnham (LD): My Lords, in answer to an earlier question, the noble Baroness said that the UK had taken the lead on Iran by going to Tehran. One of the key aspects of European co-operation

in the past, and of the moves towards a JCPOA, was precisely the démarche of the EU3—the UK working with France and Germany. Can the UK realistically take a lead on foreign policy on its own? What work is the UK doing with its French and German partners, and ideally with the Dutch and other like-minded partners, to ensure that we have co-operation and leverage going forward, regardless of any EU-UK security treaty?

Baroness Evans of Bowes Park: I did not say that the UK was taking the lead; I merely said that the noble Lord was right that there was no discussion of the matter at the Council. I wanted to point out, however, that we were involved and engaged and I highlighted the visit to Tehran as an example of that. I did not mean to mislead the noble Baroness or to say that we were in the lead, but we are playing an important part. We continue to talk to our partners, including France and Germany, about how to help to de-escalate this situation, which is in the best interests of not only the region but the world.

Lord Campbell-Savours (Lab): On the matter just raised, may we have an assurance that we will not buckle under pressure from the United States of America?

Baroness Evans of Bowes Park: The Prime Minister has been very clear on this point. We have continued to support the nuclear deal, for instance, even though the United States have not, and we will continue to work with our European partners because we believe that this has helped stability. We will continue to talk to Iran on that basis.

Viscount Waverley: Since there is a moment in hand—I apologise to the Leader—it might be worthy of note that the whole question of Iran and Russia, and therefore China, geopolitically, is a moving target that we need to understand fully. Iran is now a potential member of the Eurasian Economic Union so there is a whole new dynamic in world affairs that we need to understand. We in this country need to be on the right side of the future.

Baroness Evans of Bowes Park: I agree with the noble Viscount. There will be a further opportunity at the G20 later this week for us to talk to our global allies about some of these extremely difficult and dangerous issues.

Baroness Smith of Basildon: My Lords, as we have a few minutes to spare, may I press the noble Baroness on my point about Poland? Did the Prime Minister take the opportunity to discuss climate change with Poland and put pressure on it to take a better position than that taken by other EU countries?

Baroness Evans of Bowes Park: I am afraid I cannot talk about private conversations. What I can say is that the Prime Minister led the advocacy for countries to adopt the target and was disappointed when that did not happen. We will continue through all our forums and in all our discussions to advocate that task because it is the right thing to do. I believe that a number of countries wanted further information and that the EU is doing further work to allay some of the concerns raised by countries that did not feel able to support the target. I reassure the noble Baroness that we will continue to put forward our view that the EU needs to make this move. To achieve what we want in tackling climate change, there must be a global effort.

Boards of Public Bodies: Representation

Question for Short Debate

6.02 pm

Asked by ***Lord Holmes of Richmond***

To ask Her Majesty's Government what action they are taking to ensure that boards of public bodies are fully representative of, and reflect, the society they are set up to serve.

Lord Holmes of Richmond (Con): My Lords, it is a privilege and a pleasure to have secured this debate on how public bodies can more represent and reflect the societies they were set up to serve. I thank all noble Lords who have signed up to speak. Perhaps there is a fair degree of knowledge in this House of public bodies and public appointments. Part of the reason for securing this debate is that there is, I suspect, probably less knowledge out there in the country of public bodies and what they do. I will set out the ground as it currently is, run through some of the review I did for Government last year and then set out some recommendations for my noble friend the Minister to consider. I know that they have been under consideration in the Cabinet Office since I published the report in December.

Perhaps a useful start point is to consider what a public appointment is. It is a question that I asked some 17 years ago when somebody suggested that I apply for such a role. In those intervening 17 years, I have been fortunate enough to serve on public bodies on equalities and sport, looking at such issues as access to transport, funding for our Olympic and Paralympic athletes through to 2012 and beyond, bringing major sporting events to the United Kingdom and looking at diversity in UK television. That is just me—a microcosm of what public bodies do. Pick almost any area of society and there is likely to be a public body doing important work there: horticulture, defence, health, culture, media, sport, to name just a few. They are arm's-length bodies doing incredibly significant work, but how many people in the country know about them, know what they do and, crucially, know how they could potentially play a part and be a member of the board of one of these organisations? Yet, there are 6,000 public appointees in the United Kingdom, with well over 500 public bodies responsible for over £200 billion of public spending. That is a quite significant governance role.

Perhaps the most important point in recent history for diversity and inclusion was in 2017, when my honourable friend Chris Skidmore published the diversity action plan. This was the first time we got to see the data. What was going on with these boards? Who were the people serving on them? What was their gender, ethnicity or disability? It was a key point to really drive home the sense that diversity is not about a leg

[Lord Holmes of Richmond]
up or an unfair hand, but about enabling boards to make better decisions to benefit from that diversity, not just of protected characteristics but of creativity that comes from it.

Probably the most important statistic that came out was an ambition for 50% of public appointees to be female and 14% to come from BAME backgrounds. No other targets were set. So how have public bodies performed in the intervening years? There is a tremendously positive story on gender, which demonstrates how change is possible and how we do not have to just accept that it is too difficult and that things cannot be other than what they are. In 2017-18, 47.7% of appointments went to females and in the preceding year it was 45.5%, whereas only four years previously the figure was 40%—a significant change not just by chance but because of real commitment from departments and Ministers engaging across women's networks and society to see what would make a difference and connect gender to potential public appointments. When we consider the stats, the target of 50% by 2022 looks pretty achievable.

The story is perhaps a little more complicated with BAME, with the number last year falling to 8.4% from 9.1% the year before, with fewer BAME candidates and applications coming through to shortlisting. If the Government were to achieve the 14% target by 2022, it seems that there are many learnings to apply from the approach taken with gender to BAME groups.

My interest in diversity and inclusion has been since I began, really, which is why, when I was asked last year by the Minister for Implementation at the Cabinet Office, Oliver Dowden, to conduct a review into opening up public appointments for disabled people, not only was I delighted but I realised that this was an opportunity not just to see how we could potentially increase the number of disabled people on public bodies but actually to make recommendations that would benefit all people. I wanted the review to be absolutely rooted in the golden thread of talent. We are talking not about giving somebody a guaranteed interview as a favour, or having a more open or accessible application process, because that will give someone an unfair advantage. It might be the difference between enabling somebody to apply in any event.

I bracketed the work into four areas, which I will go through briefly: data and transparency, attracting talent, applications and interviews, and beyond. Data is obviously essential to this, and a key point is to consider whether we should have a central application portal, so that we can take a real grip on the data. We found patchy data that was different across departments and being collected in different ways, with different uses of the monitoring form—a form that definitely needs changes for consistent and inclusive language. I thank the Business Disability Forum for all the work that it did on that.

When we went to Scotland, where they have a central application portal—admittedly on a smaller number of public appointments—we found that they knew the disability status of 96% of their applicants. Currently, we know the status of only 65%, which is a huge difference. Coming back to those targets—50% on gender and 14% BAME—currently only 3% of people on the boards of public bodies are disabled, as far as we know. So data is absolutely critical, not only to ask the questions at application but to have an annual review, because obviously people's circumstances change.

In terms of attracting talent, role models are incredibly important. When we launched the review in December, we had three excellent examples of disabled people doing great work on very diverse public boards. We advised the Government to have a mentoring scheme, having seen the difference that can make in other areas of diversity, and also, critically, to look at people who may be near misses at each beat of the application and interview on-boarding journey, to keep them in the loop and see how they can be assisted to the next potential application.

We looked at multipliers, conduits and connectors. Which outlets should we be looking at to raise the awareness of these opportunities? We looked at a huge use of social media, connecting with people in different ways, rather than the more traditional approaches to advertising public appointments. Also, critically, we need to look at executive search and its important role, and the need for guidance along Business Disability Forum lines, to ensure that it plays such a positive role for people who may seek to be involved in these roles.

When it comes to applications, perhaps the most important point is to consider disability confidence. There is such a range of views on this. Probably; as one person said, it is not great but it is better than what we had before. Having a sense of all public bodies being disability confident—as indeed their parent departments are—makes such a difference and shows that some thought has gone into how we enable disabled people to come on board and be part of this.

Finally, on interviews, if we want different results we need to look at different approaches—and maybe not just with the panel but with shadowing and mock boards, to put real innovation into that approach. Ultimately, it is about change. If we want different results, if we want public bodies to fully represent and reflect the society that they were set up to serve, we need to look at doing things differently. The gender case shows that it is entirely possible. I look forward to boards that fully represent and reflect the society they were set up to serve. I look forward to the contributions of noble Lords this afternoon, and to the Minister's comments.

6.13 pm

Lord Judd (Lab): My Lords, I invariably enjoy the speeches from the noble Lord, Lord Holmes. He makes his points well and they are always important. I find myself endorsing much of what he said; he speaks with great expertise and I hope the Government listen.

I want to raise a couple of wider points. First, we must look at the wider cultural dimension. Of course, what the noble Lord said about diversity is crucial. If we are a multi-ethnic, multicultural society, that should be represented on public boards.

In my formative years, as a youngster post the Second World War, public service was regarded with high esteem. It was a great thing to be involved in public service; you were respected across society and expected to deliver in the context of that respect and trust. But the motivation for being on a board would

be, hopefully—there were of course exceptions—because you wanted to make a contribution in the public sector. I am afraid that the balance in our society has tilted far too far towards a complete reverence and esteem for the private sector, and a neglect of the public sector. I suspect that this undermines the self-confidence of those who operate in the public sector, on boards or whatever. It is not a very clever thing to be doing; if you are a clever thing, you are making a great success in financial or commercial circles.

We have to get a great deal of leadership put back into our society, stressing the vital importance of the public sector so that we begin to build up again an atmosphere in which it is an esteemed and deeply respected form of activity in which to be involved. That of course goes into the priorities of the management of public bodies and boards. Of course, we want efficiency and cost-effectiveness. Those are crucial in dealing with public money but it is not just about cost-effectiveness, or measuring the economic efficiency of the board with the terminology and priorities of the private sector. The priority of the public sector is to deliver the service for which it is there, doing so at the same time as ensuring value for money, efficiency and effectiveness—I underline "of course" again. But it is not the same as just saying at the end of the year, "We can produce results showing that we are operating more financially effectively than ever before". That is not an end; the end is the public service, and we have to re-establish that sense of social priority.

I would like to take a specific example because one of the issues which is very important—the health service is a crucial example of what I have been talking about—is the national parks movement, where I have been very involved for many years. I often reflect on just who the people on the boards of the national parks are supposed to be serving. Are they serving the local community or society as a whole in the United Kingdom, for which the parks should be a deeply valued asset? What are they supposed to be providing? They provide a quality or dimension of life which is not available in the hurly-burly of normal existence. They are there to provide space for physical development and fulfilment, but also space for qualitative mental activity and reflection—if you like, the spiritual dimension of the parks. I sometimes detect park authorities being tempted away from this precious and special role into demonstrating their financial effectiveness—of course, I want that anyway—but at the same time, they might say, "If we became more of a theme park, we would be more effective public organisations". That would be calamitous. It would be a tragedy, because the point of the parks is to provide a totally different dimension—space and pace—in our society.

At this point, I always tell the same story—colleagues will have heard it before and I do not apologise for that. It is the story of a youngster from an inner-city area in Britain, who was at a training centre near Windermere. She was looking terribly excited and animated one day, so was asked by one of her instructors, "What have you done today?". This girl, who was not yet 10, looked at her with wide eyes and said, "I've seen far". A few days later, the same instructor asked the same girl, who was looking even more excited, "What have you done today?". She said, "I've seen very far".

That is a precious and special calling for the members of park authorities. Of course they have to take fully into account the economic, social and political lives of the people who live and work in the parks. That is a given, but their job is about something bigger and greater than that. That same approach and analysis applies to many other dimensions of British life. While I therefore applaud all the practical propositions that the noble Lord, Lord Holmes, put forward, we need again the realisation that we have to promote the whole standing of public service and its special dimensions to far higher esteem in public life.

6.22 pm

Lord Inglewood (Non-Afl): My Lords, it is a great pleasure to follow my Cumbrian neighbour, the noble Lord, Lord Judd. I must preface my remarks by saying that, according to analysis I carried out—on the basis of what might be described as the tabloid newspapers' view of suitability for almost anything in the contemporary world—I have failed completely, totally and dismally.

However, I have chaired two public boards, and they are very different. The first was the Reviewing Committee on the Export of Works of Art, which I chaired for just over 10 years. The second was the Cumbria local enterprise partnership, which I currently have the privilege and pleasure of chairing. In each case, I was involved in the selection of members, which involves a considerable amount of time, thought and care. In doing that, three things struck me. The first is that you need to know what the board is for. Secondly, you need to be clear how the existing slate of people who are working with you relate to and work with each other. Finally, and obviously, you need to know the qualities and attributes of any applicants you are looking at.

The fundamental purpose and approach of the two organisations that I chaired were entirely different. The Reviewing Committee on the Export of Works of Art, or so-called Waverley committee, was a quasi-judicial body of experts that gave recommendations to the Secretary of State in the DCMS about whether a "cultural object" more than 50 years old should be subject to an export stop, as well as, on occasion, making slightly wider comment about the workings of the art market in this country. The latter's purpose is to promote the socioeconomic prosperity of the county of Cumbria within the framework of the northern powerhouse, under the umbrella of the national industrial strategy and in conjunction with local stakeholders. The former—the Reviewing Committee on the Export of Works of Art—is based exclusively on scholarship and expertise. A failure to base decisions on that leads you to judicial review.

The effectiveness of the system of export control ultimately depends on its acceptance by the art market, both in this country and in the rest of the world. I should declare an interest as president of the British Art Market Federation. If this respect and acceptance is lost, or is perceived to be lost, the system will, in consequence, fail. Obviously, here there is no place at all for extraneous considerations. Some years ago, in my period of chairmanship, there was a real argument within government about the gender of one of the slots within the committee. This became quite animated

[Lord Inglewood]
in certain corridors in Whitehall. In my view, this was completely absurd, because both male and female members of our committee were strong and each played a strong part in the work we did. By any measure, it seems to me that the suitability, scholarship, expertise and integrity of any member is the crucial factor in this body's working. In my view, the Government's priority should be, without equivocation, that the guest candidate should have the job on their merits.

It is probably true to say that in the case of the local enterprise partnership, things are a bit different. There is a very big need not only for technical competence and the ability to deliver, but for the board's work to gain acceptance in the locality. It builds up confidence in all who live and work in the county of Cumbria. In this context, the general as opposed to the specific technical attributes and characteristics of members is of very real importance. It is to do with the locality, sectoral expertise, ethnicity and so on. As an aside, when we are talking about this topic it always strikes me as interesting and perhaps a little surprising that youth and age are rarely bracketed together. An awful lot of the work that public boards do relates to young people, who normally do not sit on them or have much of an input. Equally, in the case of something such as the Cumbria local enterprise partnership, Cumbria is a county with a very high proportion of older people. Once you have gone past the age I am getting to shortly, you just do not find people of that generation playing a role.

It is not a matter of having X person on the board. In my view, what matters is having a board that collectively understand X and what they can do to improve whatever the circumstance of that category of person might be, and to be able to work with people whose own personal experiences may be quite different from their own. I think there is a real risk of reducing good practice in this area in order to a tick a box, when in fact selection should be a matter not of pure merit but merit coupled with an ability to understand and empathise with people, places and things with which one is perhaps not quite so familiar oneself. The paradox is that in an attempt to open up membership of public bodies, which is something I support and think is good—I heard what my noble friend Lord Holmes said and concur with much of it—nevertheless there is a risk, if you are not careful, that the effectiveness of the organisation can be degraded, and thus those whom it is intended to help may be served less well. In the context of such activities, there is occasionally a risk of tension between diversity and effectiveness. We are not doing anybody any favours by attempting to disguise that fact.

It is not a matter of finding an X to be a member of a board to widen diversity. It is a matter of finding an X who can contribute to the wider project of the board. After all, the underlying rationale of all boards is to do something.

6.29 pm

Lord Scriven (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Inglewood, and to listen to his experience. I also thank the noble Lord, Lord Holmes of Richmond, for raising this very important issue.

We need to start with a basic question: why do we do this? Why is this important? It is because there is a business and service reason. Gaining a board with diverse life experiences, ideas and knowledge brings a collective team approach to what is best for serving the public and what is best for the organisation and the staff who work in it. We need to be clear: there is talent in every single community, whether it is one of identity—such as age, gender, sexuality or disability—or of the regions and nations of the UK.

We have to make sure that we do not make it harder—or nearly impossible—for someone's talent to be brought forward and help the public sector improve what it does through barriers or the way the recruitment and selection to the boards is carried out. I welcome targets—some call them quotas—as a useful tool in helping that, but let us be clear: they cannot and must not be seen as the only tool; if they are, they become a tokenistic tick-box exercise that does not really bring about inclusivity in boards. The basis for having diverse boards that function well and serve organisations that serve people well is to ensure that there is good governance, that the culture of the organisation makes it normal and natural to reach out to everybody they serve and that the people who wish to serve on the board know that it is for them.

What is needed is a multi-layered approach to culture and governance and not a myopic focus on just recruitment and selection. For example, you could have all these tick-box exercises and all the data, but a board has a macho culture that has not changed, when somebody joins it who is not used to a macho culture—perhaps someone female or transsexual—they instantly become alienated. It is about much more than just numbers. We have to think about culture and governance.

I know of an LGBT person who was selected for a public board; there was an away event and the invite went out for partners of the opposite sex. Again, here we have to think about culture and governance. I have heard about disabled members with a sight problem where the board's whole approach is about reading and paper, not thinking through its own effectiveness. It goes much deeper than just a percentage of people recruited and selected, even though that is important and must continue. It is about how we get sustainable and effective boards based on good governance and good culture as well as selection.

My first important question to the Government is this: why can we not have, as the noble Lord, Lord Holmes of Richmond, said, centralised recording and monitoring which shows not just who is selected but how well people are integrated and functioning in public sector boards? That would put a focus to do something back on the board, if it knows it is being monitored not just on whether it has females and people from BAME backgrounds but on whether it is actually thinking about how to integrate and function properly.

The total breadth of diversity is also still not statistically recorded. I looked through the action plan and a number of documents, but could not find anything on LGBT individuals, for example. It is important that we understand the diversity of where people come from.

A big and unspoken issue here is the economic make-up of public boards. Looking around this Chamber, we are probably ideal candidates to be part of those boards; the majority of us are from a professional background. But many people from non-traditional economic backgrounds would make superb members of public boards, bringing their knowledge. How do we reach out to such communities? I see lots of adverts for places on public boards in the *Sunday Times*, for example. I have never seen one in the *Pink Paper* or in local daily newspapers that local people read. We have to think carefully about this. Even though we have quotas and targets, do they represent the totality of women or of BAME communities? Those communities and gender-based communities are not monolithic cultures; there are people of difference and diversity within them. How are we making sure that we are reaching out and getting to many people? As a noble Lord said, how are we using social media and digital technology to reach out and bring people to the boards?

I also looked at which recruitment agencies are being used by boards, and it tends to be the normal, big, public sector recruitment agencies and the City types. The whole process tends to be based on a corporate approach to bringing people in. Again, if you do not know that world and you are not used to it, it is very hard to break through. It goes much deeper than just numbers; we have to look at the whole culture and process to make sure that this happens. This afternoon I decided, because I am a sad person, to look at all the public recruitment vacancies around. The interview panels are nearly all of a certain make-up: they include Permanent Secretaries and the great and the good. It would be good if we could have more diverse interview panels, with people from different backgrounds, as they ensure that the views of people who have a different approach and view can be considered equally. It is therefore important that we look at the inclusiveness of the boards, the process and the interview panels, but we must also make sure that we look at the culture and the governance structures of those boards once people are on there, and at how they are working.

I will give the Government a couple of suggestions about how the process could be carried out better—not just recruitment and selection but working out how the boards work and how systems and structures could be put in place by government. When do entry and exit interviews take place? How well are people from different backgrounds being integrated? What are their reasons for leaving or not reapplying? We need to ask where that rich data has gone, then it needs to be fed back, not just to that particular board but so that it can be used much more widely. Why are standards for inclusive governance and culture not set for public sector boards? These should be used not just as part of the recruitment of all public boards and chairs but should become standards that public boards have to think about, looking at how they work and reach out and what their inclusive governance structure should be.

Do chairs of boards get deep, centralised and systematic development in diversity and its use within boards and organisations? If not, could we look at that? In particular, how will we bring about more diverse recruitment and selection panels, which can help to make sure that the talent in front of them is understood properly at interview and then perhaps recruited?

Will the Government commit to a real action plan with targets to improve diversity in public appointments, not focusing solely on recruitment and retention? Will they start to keep data on the whole spectrum of diversity, including social class? Will they work with organisations such as Inclusive Boards to work up standards for inclusive governance and culture within boards? That way, big steps will be made and the prize of better organisations and better services from public bodies to the diverse communities that they are meant to represent and serve will be achieved.

6.40 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I start by thanking the noble Lord, Lord Holmes of Richmond, for his report and this debate. His report includes some notable quotes, including about his public "dis-appointments"—which I thought was particularly apposite when, although 13% of the economically active population are disabled, they make up just 3% of public appointments. There is also the absence of the Government's response to the report, but I hope that we will hear from them shortly, together with their refreshed *Public Appointments Diversity Action Plan*, which the Minister promised us this month when he spoke in this House on 9 May.

I have been on a journey over the past 50 years. Initially, I saw this issue as an equal opportunities matter: why could not we—women, working-class, BAME, or disabled people—get on to the top boards? When I started work, it was mitigated to some extent, particularly on the class basis, because trade unions were able to nominate to various public sector boards and, in doing so, were able to sweep up those of great ability who had learned via the experiential route about people management, responsibility, representation and some listening and decision-making skills—those who had made their way in life, as my noble friend Lord Brookman, put it recently or, as the noble Lord, Lord Holmes, said, had valuable lived experience. As the noble Lord pointed out, when selection criteria favour sector experience or seniority and put less emphasis on skills, output and lived experience, those with more interesting, non-standard CVs tend to lose out.

That is why I started thinking about the issue of representation. Then I noticed something more fundamental: the loss of talent through those groups being unrepresented. We all miss out when people of ability are denied a rule in important decision-making in public bodies. Thirdly, I realised that organisations simply could not be effective if they did not reflect the groups that they were set up to serve. The most obvious example was the lack of disabled representatives in organisations that existed solely to meet their needs. Without their voices, such bodies were almost bound to fail.

It took longer for society to recognise the role that patients should play in the health service, parents in education or users in other sorts of service provision, and to realise that unless boards reflected the variety

[Baroness Hayter of Kentish Town]
of the relevant user group, the most important voices would never be heard when decisions were taken. On NHS boards, where the whole of society needs to be represented and where, although I am guessing, more than 50% of patients are female, although the representation of women on boards has made progress, as the noble Lord, Lord Holmes, said, it peaked on NHS boards in 2002 and has since fallen from 47% to 38% in 2018.

Much worse, and almost unbelievably, just under half of NHS trusts have no BAME board members. The appointment of BAME candidates as non-execs has actually fallen over the past eight years. That is nothing short of shocking.

In the report of the noble Lord, Lord Holmes, the first recommendation stands out. It states:

"Government should adopt an interim target of … 11.3% disabled public appointees by 2022".

Similar figures could be chosen for women, BAME people or indeed those from a working-class background. But what is key is that the Government must first set a target and then take responsibility for achieving it.

The earlier Grimstone report's first recommendation similarly spelled out:

"Public appointments are the responsibility of ministers and they are accountable for the decisions that they take and the processes that are followed".

They cannot shy away from that, and the lack of concrete progress must be laid at their door. Any other worthy proposals, from selection criteria, procedures, improved outreach, mentoring or role models, would then follow, were the Government to take responsibility and with it the required action—not just talk—to make change happen.

However, in all this, as Sir Gerry Grimstone writes:

"Good people won't come forward … if the appointment system appears irrational",

or,

"blatantly biased".

I fear that his other recommendations made the system worse rather than better by giving a "much fuller role" to Ministers at the cost of potentially overriding the attempts of others to create a fairer and encouraging system. The 2017 code on public appointments required that:

"Ministers when making appointments should act solely in terms of the public interest"—

which seems to fly in the face of some highly political nominations that we have witnessed. That is not about equal opportunities.

We all agree that, as Sir Gerry wrote:

"Public appointments should be representative of our society".

Of course they should—but that is not the reality. These bodies cannot speak for or on behalf of, nor serve, the needs of the relevant community if their boards come from a parallel universe.

As the noble Lord, Lord Holmes, said, my gender has seen some progress—especially in Scotland, where the 50% target for non-execs has been met—but for the disabled and black and ethnic minorities there is still a very long way to go. We are wasting their talent. They are denied the opportunity to serve and our public bodies are less effective.

In December 2017 the Government set an "ambition"—so much woollier than a target, with much less a promise—of 50% female and 14% BAME public appointments. It remains, sadly, a distant hope. So I look forward to some real commitment from the Minister so that we do not have to keep returning to this year after year. I trust that he will not disappoint.

6.48 pm

Lord Young of Cookham (Con): My Lords, I congratulate my noble friend Lord Holmes on securing this debate on an issue he has championed both before and after the publication of his report last year on opening up public appointments to disabled people. I commend the speech he made today, and those of all noble Lords who have spoken—who had to cope for the first time with flashing lights to limit the times of our speeches.

Recommendation 2.1 of my noble friend's report states that the Government should,

"showcase role models on a rolling basis".

He has done exactly that for many years. As my noble friend reminded us, he is chair of the Global Disability Innovation Hub, diversity adviser to the Civil Service and co-chair of the All-Party Parliamentary Group for Assistive Technology, as well as sitting on the All-Party Parliamentary Group on FinTech, the All-Party Parliamentary Group on Blockchain and the All-Party Parliamentary Group on the Fourth Industrial Revolution. He is deputy chairman of Channel 4; he is chair of Ignite, an innovation and change consultancy; and he sits on the future talent steering group. So, it is not just this House that benefits from my noble friend's wide range of skills, experience and energy.

The question that has run through our debate this evening is basically this: are there more people like him out there, whose energy and talents we can harness? To answer that question, as noble Lords will recall, we asked my noble friend, alongside his already significant responsibilities, to review how we can open up public appointments to disabled people.

Public bodies sit at the heart of our society. They deliver vital and essential services to our communities, such as the NHS, policing, justice and educational services, to name a few. It is vital that these public bodies have strong leadership at their core to help them to make the right decisions to deliver the services that the public need and expect.

The Government make more than 1,000 appointments a year to the boards of around 550 public bodies, spending more than £200 billion between them. It is these appointees who provide direction and leadership in public bodies. By holding senior staff to account, they also provide expert and independent advice. As other noble Lords have done, I thank the many hard-working individuals in public bodies, both within the executive and non-executive teams, who make these public services a reality—many of them also serve in your Lordships' House.

The Government are committed to improving diversity in public appointments. Given the diverse communities that these bodies serve, it is important that the public appointments we make are as representative as possible of those communities. Indeed, the Prime Minister herself has made it clear that public services like these

must represent the people they serve. Not only is this morally the right thing to do, but it also brings genuine value to decision-making. Public bodies regularly face challenging decisions so we need the best minds from our communities to help guide them. As my noble friend said in his report,

"talent is everywhere, but opportunity is not".

We have made good progress in increasing diversity in appointments. New appointments made of women, candidates from BAME backgrounds and those with a declared disability have all increased since 2013-14. However, I am sure that noble Lords will agree—I know that the noble Baroness, Lady Hayter, will—that there is still more to do to meet the Government's ambitions of 50% of public appointments being held by women and 14% of appointments being made from ethnic minority backgrounds by 2022. In the words of the noble Lord, Lord Scriven, we want to "unlock" talent. Both he and the noble Baroness, Lady Hayter, made a valid point about having a broader cultural base and broadening a board's outlook so that it has the breadth of vision that is needed.

So what are we doing? In 2017, we published our *Public Appointments Diversity Action Plan*, which makes the moral and business case for more diverse public appointments. It sets out our goals and a 10-point action plan to help meet the Government's ambition of achieving 50% of all public appointees being female and 14% of all public appointments being from ethnic minorities by 2022. My noble friend Lord Holmes's review of the barriers preventing disabled people taking up public appointments was part of delivering this plan. My noble friend reported back in December 2018; again, I thank him for his excellent review, with its moving case studies. The Government remain committed to improving diversity in public appointments and have carefully considered the recommendations put forward in my noble friend's review.

The review sets out a range of recommendations covering data collection and transparency, attracting and nurturing talent, application packs and job descriptions, interviews and the other issues that were mentioned in the debate; for example, the noble Lord, Lord Scriven, mentioned retention and both he and my noble friend Lord Holmes mentioned having a central application portal. The noble Lord, Lord Scriven, also mentioned making the interview panel more diverse, which is another recommendation in the report. Many of my noble friend's recommendations will benefit all those from underrepresented communities wishing to apply for public appointments. I read my noble friend's report last night. He said:

"I believe that they"—

the recommendations—

"could have general applicability and benefits in many situations, across public appointments and to all talent acquisition and recruitment practices".

Therefore, it makes sense that, in parallel to responding to my noble friend, we refresh the 2017 *Public Appointments Diversity Action Plan*.

As I recently set out in my response to my noble friend's Question in May, we will respond to the review imminently—around the end of this month—and at the same time we will publish a refreshed public appointments diversity action plan. I am only sorry that those were not available in time for our debate this evening. Appointments are made individually by departments, so officials in the Cabinet Office have been working across those departments and thoroughly considering how to take forward the review's aims on a broad front.

In response to a question raised by the noble Lord, Lord Scriven, I can say that our revised diversity action plan will set out measures that will help to open up public appointments not only to disabled people but to diverse groups in the broadest sense. That includes women, those from ethnic minorities, those of different faith perspectives and those who identify as LGBT+, as well as individuals from different social backgrounds and indeed from all regions across the UK.

I know that officials from the Cabinet Office have been keeping my noble friend Lord Holmes informed of the progress of the Government's response to his review and the refreshed diversity action plan, and I hope that he has found these updates helpful. I would welcome his views on them when they are published, as would the House as a whole. He will be pleased to know that, in the meantime, we have continued to take forward actions in the *Public Appointments Diversity Action Plan* published in 2017. We have been working to increase the visibility of appointees from underrepresented groups and have encouraged applications from people with diverse skills and experiences through a series of events.

Since last summer, my honourable friend the Minister for Implementation has been hosting and has spoken at events, including one held in Downing Street with the kind permission of the Prime Minister, to encourage talented individuals from ethnic minority backgrounds to consider public appointments. Events have also been held to encourage the brightest and best in business and those with faith perspectives to consider these opportunities. The Minister went to Birmingham and Newcastle to encourage talented individuals from outside London to apply for public appointments—we want more talented individuals from outside London and the south-east to consider these opportunities—and we will continue to hold further events throughout 2019. We have involved networks in these outreach events to help raise awareness of public appointments and have encouraged them to distribute communications about public appointment opportunities to their members. We have also improved how we collect and monitor data on the diversity of appointments and reappointments made each year through the launch of a new data collection tool.

I shall try to address some of the specific issues raised during our debate. My noble friend Lord Inglewood asked what we were doing to encourage more younger people to take up public appointments. Our public appointees have been getting younger. In 2017-18, 20% of new appointments were of people under 45, compared with 18% in the previous year, and some bodies have created specific roles—

Lord Inglewood: Does the Minister think that people under 45 are young people?

Lord Young of Cookham: Certainly as far as I am concerned, anyone under 45 is young. I will see whether we can collect statistics on a more granular basis than simply "under 45".

I was asked what other tools the Government use to achieve inclusivity. Public appointees go through a fair, open and transparent selection process, set out in the Government's code and regulated by the independent Commissioner for Public Appointments.

What are we doing to attract talent in public appointments? That question was posed by the noble Lord, Lord Judd. The measures that we will set out in our refreshed public appointments diversity action plan arrive at precisely the objective referred to by the noble Lord.

My noble friend Lord Inglewood made the point that we should not make the best the enemy of the good. On his point about building a team, that is a matter for the chair, but what is happening at the moment is that the specific methods of choosing people preclude people from applying who may indeed be the best—those who may have the best qualities and unusual life stories. At the moment those people may be excluded.

I do not want to run into injury time. I will write to noble Lords on those points that I have not replied to.

In conclusion, I believe that many of my noble friend's considered and practical recommendations will help to increase diversity in public appointments from all underrepresented groups and drive up the quality of public services. We are both determined to put that right; I know that he and the House will ensure that we deliver real, positive improvements in the diversity of public appointments in the future.

House adjourned at 7 pm.