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GENERAL COMMITTEES

Public Bill Committee

INFRASTRUCTURE BILL [*LORDS*]

Fourth Sitting

Tuesday 6 January 2015

(Morning)

CONTENTS

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Saturday 10 January 2015

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Jim Hood, †Sir Roger Gale

† Blackman-Woods, Roberta *(City of Durham)* (Lab)
† Browne, Mr Jeremy *(Taunton Deane)* (LD)
† Burden, Richard *(Birmingham, Northfield)* (Lab)
† Burt, Alistair *(North East Bedfordshire)* (Con)
† Coffey, Dr Thérèse *(Suffolk Coastal)* (Con)
† Greatrex, Tom *(Rutherglen and Hamilton West)* (Lab/Co-op)
† Hayes, Mr John *(Minister of State, Department for Transport)*
† Heaton-Harris, Chris *(Daventry)* (Con)
† Jenrick, Robert *(Newark)* (Con)
† Jones, Graham *(Hyndburn)* (Lab)
† Kwarteng, Kwasi *(Spelthorne)* (Con)
† Miller, Andrew *(Ellesmere Port and Neston)* (Lab)
† Newmark, Mr Brooks *(Braintree)* (Con)
† Parish, Neil *(Tiverton and Honiton)* (Con)
† Raynsford, Mr Nick *(Greenwich and Woolwich)* (Lab)
† Ruane, Chris *(Vale of Clwyd)* (Lab)
† Rudd, Amber *(Parliamentary Under-Secretary of State for Energy and Climate Change)*
† Shannon, Jim *(Strangford)* (DUP)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)
† Williams, Stephen *(Parliamentary Under-Secretary of State for Communities and Local Government)*
† Zahawi, Nadhim *(Stratford-on-Avon)* (Con)

David Slater, Marek Kubala, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 6 January 2015

(Morning)

[Sir Roger Gale *in the Chair*]

Infrastructure Bill [*Lords*]

9.25 am

The Chair: Good morning. May I take this opportunity to wish you all a productive and interesting new year?

Richard Burden (Birmingham, Northfield) (Lab): On a point of order, Sir Roger. I would appreciate your guidance on something before we move on to today's selection of amendments. The Minister may want to say a few words on issues arising from the point of order.

On Thursday 18 December, the Minister tabled a number of additional amendments to the Bill, and on 19 December we received notice of a letter from the Minister to you, Sir Roger, and your co-Chairs, setting out a proposal that the Government wish to reform the electronic communications code, and some other areas. In fairness to the Minister, he has been at pains, until this point, to keep us informed of changes to the Bill and on the proposed reforms to the electronic communications code prior to sending that letter. The amendments covered areas that went a lot further than that, and I would appreciate guidance, Sir Roger, about how they could be handled procedurally without sacrificing the scrutiny that the Committee is charged with exercising.

One matter is the issue of mayoral development in Greater London, which is a completely new area. If that was the first that we knew about it, how will the Committee have time to see what the authorities in Greater London and elsewhere think about it? It may be non-controversial but with just three days in Committee left after today, we do not see how we are going to manage that time-wise.

New clause 10, relating to the abolition of the Public Works Loan Board, raises even more issues. It brings yet another Department to the Bill, covering a board that has an important role for local authorities. We do not know how we are going to have the time to consult stakeholders, let alone talk about things in Committee.

The reason that I raise the issue with you, Sir Roger, is that to exercise scrutiny, at the start of Committee we agreed a timetable motion based on a range of things being in the Bill, but the amendments add completely new areas. Indeed, one of them even involves changing the long title of the Bill. I understand from Clerks that it is in order to change the long title of the Bill once it has been through the Lords, has come to the Commons and Committee sittings are under way, but I have never come across that before. It seems a strange thing to do. I would appreciate your guidance, Sir Roger, because if we are going to do that, when in the course of our discussions do we do it? Do we change the summary of what the Bill is about and talk about that when we have discussed the Bill? It seems to raise significant procedural issues.

Andrew Miller (Ellesmere Port and Neston) (Lab) *rose—*

The Chair: Before the hon. Member for Ellesmere Port and Neston comes in with a supplementary to that point of order, as I have a feeling that he is poised to do, let me try to respond. I am grateful to the shadow Minister for his courtesy in informing me of his point of order, because it has given me the opportunity to look into the background to the issue. Matters of courtesy, of course, are not the business of the Chair, although it is fair to say that the Minister has, in so far as is possible, been as courteous as possible in trying to give information, as the shadow Minister indicated, in timely fashion.

The amendments were tabled before Christmas, in the main; there are some starred amendments, which have been tabled since and will not be called today even if they are reached. If they are reached on Thursday, that is a different matter as they will no longer be starred. As far as the amendments tabled before Christmas are concerned, adequate notice has been given. I appreciate that there has been a holiday period in between, and that hon. Members on both sides of the Committee wish to have time to look at the issues properly. The timetabling of the Bill is a matter for the usual channels, within the bounds of the agreement reached on the Floor of the House of Commons. That will have to be discussed between the usual channels, and it is matter for the Committee how much or how little progress is made. It is highly unlikely—in fact, I think it is impossible—that we will reach the amendments tabled before Christmas today. That effectively means that there will be adequate time for all members to apprise themselves of the amendments and to ask any necessary questions.

Finally, concerning the long title of the Bill, there is plenty of precedent for the long title of a Bill introduced in the House of Lords to be revised in the House of Commons, as I understand there is plenty of precedent for the long title of a Bill that is introduced in the House of Commons to be changed in the House of Lords. I have to say that I was unaware of that, but that is the case.

That is where we are and I cannot see that there is any issue that the Chair can properly address arising from that as it stands. There may be matters that members wish to discuss personally and in private, or through the usual channels, but that is a matter for hon. Gentlemen and hon. Ladies and not for the Chair. Unless the Minister has a burning desire to intervene further, we will get straight on to the business.

The Minister of State, Department for Transport (Mr John Hayes): Further to that point of order, Sir Roger. To be very clear and very brief, three things relate directly to what you and the shadow Minister have said. First, there is no desire on this side of the Committee not to have proper scrutiny. We will endeavour to ensure that the matters that the shadow Minister raises are properly scrutinised in Committee. As you said, Chairman, that is a matter for the usual channels to discuss in terms of timing.

Secondly, I will ensure that on these three additional matters that were tabled before Christmas, a briefing is made available both in writing and at a meeting for all

members of this Committee—Government and Opposition—before they come to this Committee, in other words, this week.

Thirdly, I am happy to meet Opposition spokesmen on both these matters, and on electronic communication code amendments, which we aim to take this week. I commit to tabling those measures this week so that there is adequate time to consider them in Committee. However, I will organise an additional special meeting before then with shadow Ministers.

The Chair: That does not raise any further issues for the Chair. I think the Minister has made his position clear and has done so in good faith, and I suggest that we now move forward.

Clause 20

Environment control of animal and plant species

Richard Burden: I beg to move amendment 30, in clause 20, page 12, line 33, at end insert—

> "(iii) which is not a species of Community Interest as defined under the Habitats Directive (92/43/EEC of 21 May 1992)"

We move on to the question of invasive non-native species—an appropriate part of the Bill, given that we have been discussing the insertion of matters into the Bill that were never there when it was first introduced.

As we made clear on Second Reading, Labour supports a proper control regime to control invasive non-native species. They are one of the main causes—or at least a very significant cause—of global biodiversity loss. They compete for resources; they destroy habitats and result in the extinction of native plants and animals. They can pose a significant threat to health and can introduce new diseases and parasites. They are estimated to cost the economy £1.7 billion a year, including £1 billion to the agriculture and horticulture sectors and more than £200 million to the construction, development and infrastructure sectors. Early eradication is therefore crucial, and the species control orders created in the Bill will help to ensure that effective action can be taken.

We have tabled the amendment because we do not believe that the scope of the provisions and the definitions in the Bill are fit for purpose. As originally drafted, the Bill defined a species as being subject to control orders if they were listed in part 1 or part 2 of schedule 9 of the Wildlife and Countryside Act 1981 or were "not ordinarily resident" in Britain. That included a number of species which had been native but had become extinct, or were considered native, including six native species that had been established in Britain. These include the capercaillie—I think I have the pronunciation right. It is amazing the things I have found out in prepping for this part of the Bill; I did not originally think they would be the responsibility of a shadow roads Minister, but there you go. As well as the capercaillie, those species include the common crane, the red kite, the goshawk, the white-tailed eagle and the wild boar.

Chris Ruane (Vale of Clwyd) (Lab): Who is the wild bore?

Richard Burden: I should not have left myself open to that. I am absolutely not going to take any interventions on it.

Two species are beginning to return; the night heron and the eagle-owl. Four have been here all along; the barn owl, the corncrake, the chough and the barnacle goose. The Bill as initially drafted would have meant that all those species could be subject to eradication or control, so we are pleased to press the Government to amend these species lists. There is now a new category of "not normally present" in the Bill, but, like Wildlife and Countryside Link and Friends of the Earth, we still have significant concerns about the Government's definitions, which my colleagues in the team shadowing Ministers in the Department for Environment, Food and Rural Affairs have raised with me. As drafted, the legislation could classify absent native species, recently reintroduced native species and those naturally spreading in range as a result of climate change as non-native. They would therefore be subject to the new control orders.

This is not about abstract parliamentary provisions. The Government's definitions could have real and damaging consequences for Britain's wildlife. I want to talk specifically about the example of the European beaver. Although it has been absent for some time, it is undoubtedly native and is living wild in the UK today. While beavers largely died out in Britain about 500 years ago, there are several known populations of beavers in Britain today: there is one population in Devon and two in Scotland: the one in Argyll is an official trial reintroduction which is due to conclude this year, I understand, and has been widely described as successful. The other populations are made up of beavers that are likely to have escaped from wildlife centres and have begun to breed in the wild. The Government propose to make a native, established and growing British species subject to powers and techniques aimed at controlling invasive species. Is this something that the Minister really wants to do?

To date, there have been 157 beaver reintroductions throughout Europe, and there are free-living populations in around 30 European countries, including the Netherlands, Belgium and France. In 2009, a Natural England report outlined the clear benefits of the reintroduction of beavers in the UK. That report explained how beavers can improve fish stocks; how, by slowing water naturally, beaver dams can reduce the risk of flooding; and how beavers have the potential to deliver wider benefits such as tourism. In areas where wild populations are present, the public are strongly against the control of beavers as an invasive species.

I am sure that the Minister is aware of the situation on the River Otter in Devon, but for the benefit of other hon. Members I shall set it out. There have been rumours of wild beavers on the River Otter for the best part of a decade and there have been confirmed sightings within the past year. The Devon Wildlife Trust has applied for a licence to release beavers into the wild, and almost 8,000 people have signed a petition against DEFRA controlling the free beavers living on the River Otter in Devon. Local people do not seem to want the Government to control those beavers. They want to monitor their existence, ensuring that they are healthy and cause no problems to other riverbank users. Friends of the Earth has launched a legal challenge against the Government's position, stating that because beavers were native in

[Richard Burden]

Britain before they were hunted to extinction they must be protected under European law. DEFRA now appears to have made some concessions, and we understand that the Department plans to test the beavers for disease closer to Devon rather than in York, as previously proposed. This part of the Bill does not only pose a threat to the beaver. Concerns have been raised that the wild boar, which was also re-established as a significant species in the UK, will now be subject to control orders.

The amendment is about getting definitions right. Along with non-governmental organisations such as Friends of the Earth, we propose that the EU habitats directive is given due regard within these definitions. The directive, which was adopted in 1992, aims to protect the 220 habitats and 1,000 species listed in its annexes. Those have to meet certain criteria and are species and habitats considered to be of European interest. Article 12 of the directive states that all species listed in its fourth annex require

"strict protection…in their natural range".

The species listed in the annex include the European beaver, providing it with clear legal protection.

On Second Reading, the hon. Member for Bristol West said that our duties under the directive

"extend only to protecting those European-protected species whose natural range includes Great Britain."—[*Official Report*, 8 December 2014; Vol. 589, c. 740.]

Given what I have set out about established wild populations in this country and the fact that they were formerly native before being hunted, we suggest that there is a very good argument for the beaver's natural range including the UK. The hon. Gentleman set out the fact that exemptions in the directive can also apply in certain circumstances, such as for public health or environmental protection. That is a reasonable point, and I know of the concern that some beavers carry a potentially deadly disease called EM.

It is important to monitor and test these populations. However, they do not appear to pose a significant "public health threat" at the moment. Our amendment would ensure that these protected species, which are considered to need strict protection in their natural range, would not be subject to species control orders. If the Government go ahead with this, there is a strong risk that they will not be compliant with the obligations in the habitats directive, as shown by the Friends of the Earth's legal challenge regarding the situation in Devon, which I mentioned earlier. First the badger, now the beaver and the wild boar—the Government's track record on this issue is really not very good.

The Minister has been fond of quoting literature in our discussions so far, both on Second Reading and in Committee.

Chris Ruane: "The Wind in the Willows".

Richard Burden: Well, I was not going to talk about "The Wind in the Willows", as I was thinking about "The Chronicles of Narnia" by C. S. Lewis. Hon. Members will remember that Mr and Mrs Beaver occupied quite an important role in that book and were certainly not a species that anyone thought should be subject to control orders or even TPIMs, if that was the Government's next idea.

However, quite seriously, we can see what the Government are getting at with this provision. Whether an infrastructure Bill is the right place to do it is another matter, but we can see what they are getting at. It needs to be changed, however, because I cannot believe that the Government really want to put the kind of species that I have been talking about at risk in this country. I hope that the Minister listens to the extensive concerns about the provisions in the Bill expressed by stakeholders outside the House. Incidentally, I think that that shows the importance of giving such stakeholders the time to comment on and scrutinise the Bill. I hope that we can improve the definition of non-native invasive species so that we can get the control regime right from the start. A firmer line in relation to the habitats directive is the way to do that, and that is what the amendment is all about.

Dr Alan Whitehead (Southampton, Test) (Lab): I wish to address the schedule introduced by this clause and I trust I will be able to do that now. I seek your guidance, Sir Roger, on whether we will have a stand part debate on the clause, in which case it might be better for me to address my remarks at that point.

9.45 am

The Chair: It is unlikely, but certainly not impossible, that we will have a stand part debate, so if the hon. Gentleman wants to touch on issues relating to this clause then he is entitled to do so and I will allow that. The schedule is not grouped with the clause so there is no ordinary provision for discussion of matters contained in the schedule at this time. That will occur later. Why don't we give it a go? If the hon. Gentleman is out of order, I will tell him.

Dr Whitehead: Thank you, Sir Roger. That is very kind of you and I will listen carefully to any guidance that you issue as I proceed.

Clause 20, interestingly, amends the Wildlife and Countryside Act 1981 by introducing new schedule 9A. The clause therefore contains an entire schedule, and the new schedule contains—we hope—all the detail of what will happen in species control agreements and orders. I have a few queries about the new schedule. I am sure the Minister will be pleased to hear that during my recent appearance on Jeremy Vine's show on Radio 2, I assiduously defended species control orders—not, I hasten to add, on behalf of the Government, but as a member of the Environmental Audit Committee. The Select Committee was keen to see such orders introduced and produced a report a while ago on invasive species and how they might best be controlled. I therefore found myself in a position on that radio show of defending these proposals very positively and encouraging their being made law very much on the basis that the Environmental Audit Committee felt that such provision—whether in this Bill or on another occasion—was highly desirable.

The researchers on the show had been assiduous and presented the case of a person who owned a property that was covered in Japanese knotweed. That individual's

mother had lived there and they had inherited the house, to find that they were faced with potentially a very large bill to eradicate the Japanese knotweed before the property could be sold. A number of estate agents and other bodies are increasingly looking at whether a property has Japanese knotweed within its curtilage as part of the sales process. These days, if there is a large amount of Japanese knotweed in the curtilage of a property, it is likely that, on sale, some arrangement will have to be made to eradicate it. Of course, the control orders will not just be about Japanese knotweed, but that is the most well known of the invasive species that we are talking about.

The question of the costs and the process of clearing invasive species applies in a number of other situations. Killer shrimps from the USA, for example, are established. Perhaps my hon. Friend the Member for Birmingham, Northfield did not come across killer shrimps in his prep.

Richard Burden: They passed me by.

Dr Whitehead: Nevertheless, the march of killer shrimps is of concern to a number of people.

Mr Jeremy Browne (Taunton Deane) (LD:) Will the hon. Gentleman give way?

Dr Whitehead: I am happy to give way, as long as it is on killer shrimps.

Mr Browne: There is speculation among Government Members about who the killer shrimps are killing. Is the hon. Gentleman able to tell us, or has he not done his research as thoroughly as he suggests?

Dr Whitehead: I am grateful to the hon. Gentleman for raising that question. I am sure the Committee generally would like to know who or what are killed by killer shrimps. They kill other shrimps—native shrimps. They have been introduced from abroad, and in the areas where they have been introduced, they have decimated native shrimps and established their own colonies.

Jim Shannon (Strangford) (DUP): To reinforce the hon. Gentleman's comments, producer organisations in Northern Ireland are aware of the advance of the so-called killer shrimps in the seas off Northern Ireland, Scotland and Wales, because they have an impact on local fishing communities. Joking aside, there are issues to be addressed, one of which is the prawn quota. The December Council in Brussels gave fishermen in Northern Ireland a 3% increase in the quota, but if the prawns are not there because of the advance of an invasive species such as the so-called killer shrimp, that will have an impact on the fishing industry and communities across the whole of Scotland and Northern Ireland.

Dr Whitehead: I agree that these issues have considerable ramifications, depending on the species, way beyond the familiar story of not being able to get rid of plants from the back garden. It is about invertebrates, plants and a number of other species.

Another invasive species in fresh water is the signal crayfish, which obliterates native crayfish. Where signal crayfish are established in ponds, a key part of control is to prevent their transfer from one area to another, so a species control order could be placed on landowners in such circumstances. Although the issue is essentially perceived to be about species such as Japanese knotweed, there are other ramifications.

I was slightly diverted down the route of other species but I shall return to the particular case I was presented with. The lady having difficulty selling her property without spending a large amount of money on species eradication provides an example of circumstances in which new schedule 9A might apply. I was asked whether that would be a case of using a sledgehammer to crack a nut. Will householders who have the misfortune to find that a garden that has never been tended contains, unknown to them, a large amount of Japanese knotweed, be bankrupted by the process of eradication?

Looking at new schedule 9A, it is not entirely clear to me how that sort of question can be completely addressed. My answer on that occasion was that the species control order would be applied only in very exceptional circumstances, as would be the power to enter a property and undertake species control on behalf of the environmental authority—in that case, the local authority. Those exceptional circumstances would be where the person who owns the property or the land refuses to do anything about the invasive species, but it is possible that, as a result of them doing nothing, the invasive species will spread to other properties and other areas. Not only would that be detrimental to the general wildlife in the area, but it could cause problems with property values in the surrounding neighbourhood.

In my own area, just a little way up the valley from my house, a number of people got together to form a small club to eradicate Japanese knotweed on their properties. They all put in a small amount of money to make sure that the business was concluded in the whole valley and the Japanese knotweed was eradicated. If one of those people decided they wanted nothing to do with that programme of eradication, the collective work of everybody else in the valley would be undermined. There would be a pool of knotweed or other invasive species on that person's property that could spread back into the properties of everybody else.

It is clearly very sensible to make an arrangement enabling entry and eradication to take place, even when—in extremis—this is against the wishes of a particular property owner. I welcome the Minister's comments on what he envisages for such extreme cases, where entry would be agreed for the purpose of species control. Indeed, this is made clear in paragraph 18(4) of the new schedule, which states that:

"The authority may carry out the operation itself or carry out such further work as is necessary".

Paragraph 18(5) states that:

"The authority may recover from the owner any expenses reasonably incurred by it in doing so",

but sub-paragraph (6) refers to a previous provision in the new schedule, stating that:

"The authority is not required to make any payment provided for under paragraph 13(2)(b)".

Paragraph 13(2)(b) sets out the payment that may be made by an environmental authority to an owner—that

[Dr Whitehead]

is to say, a local authority presumably may, out of the goodness of its heart, decide to provide some compensation to the owner. However, it is not clear in the schedule whether that compensation is based on the property owner co-operating with the species control order, or resisting it. Indeed, to confuse matters further, paragraph 25 enables the Secretary of State to

"make arrangements for the payment of compensation to an owner...in respect of financial loss resulting from…a species control order."

In the new schedule we appear to have two carrots and one stick. There is possibly an arrangement whereby the environmental authority—the local authority—may provide compensation, but is presumably not in its turn compensated by the Government for having compensated the owner. Separately, it appears that the Secretary of State may set up a compensation fund, but it is unclear how that fund will operate. We do not know whether it operates in parallel with the local authority arrangement, or whether it is the local authority arrangement, or whether the local authority may apply to the fund set up by the Secretary of State to provide compensation, the powers for which are provided under paragraph 13. It is clear that the arrangement made by the Secretary of State,

"may secure that compensation is payable only for financial loss above a specified amount".

Presumably, that amount is specified by the Secretary of State and not by the local authority, which may have made compensation payments separately. If there is a specified amount, there is no mechanism in the new schedule for deciding what it is. It would be interesting to hear whether the Minister considers that he would decide what the specified amount is, and whether the specified amount is such that it could cut across the fact that the local authority might separately have made arrangements to compensate the owner at a different level.

10 am

I am attempting to establish whether the new schedule is coherent in what it does as far as the operation of species control orders is concerned. In doing so, let me say that I support the idea that there should be species control orders and recognise that there should be mechanisms by which such orders can be enforced, if necessary against the resistance of a landowner or property owner. However, it is clear that the balance of punishment and reward, as it were, needs to be properly spelled out and set in protocol as far as the environmental authorities are concerned, as they actually have to apply these orders. As the schedule is currently drafted, it is unclear whether that balance has been attained.

I am keen to hear whether the Minister considers that balance to have been attained; whether he considers that there may be further issues to discuss to get that balance right in the schedule; and indeed whether he would be willing to look further at how the schedule might work, to see whether it could clarify further who has responsibility for what and at what point various responsibilities cut across each other. Will he have a look at the schedule again and come back, perhaps at a later stage of our proceedings, to see whether some of those issues can be resolved before the Bill is passed into law?

The Chair: For clarification, I have now satisfied myself that the hon. Gentleman is entirely in order, because—exceptionally and unusually—this is not a schedule to this part of the Bill, but a schedule, contained within the clause, to another Act of Parliament. Under those circumstances, it is entirely proper that it should be debated. That being so, and given the breadth of the debate we have had, I do not propose to hold a clause stand part debate. I say that now, in case it affects any other hon. Member's interests or wish to intervene.

Andrew Miller: In addition to my hon. Friend's observations, I wanted to say that because—as you said, Sir Roger—the schedule is to another Act of Parliament, it is important when the Minister responds that he explains how it fits in with that Act and what it does to it.

I struggle with some of the language in the schedule. Paragraph 2(3)(b)(i) says:

"in the case of a species of animal, it is a species—

(i) whose natural range does not include any part of Great Britain".

In that context, does the Minister mean "does not" or "did not"? Are we clear about the use of English there? Similarly, paragraph 2(3)(b)(ii) says:

"which has been introduced into Great Britain or is present in Great Britain because of other human activity."

An interesting observation would be: "When was it introduced?" What are we dealing with? I know that in the south-east the ring-necked parakeet has appeared. Amazingly, there was one in my garden in Cheshire a few weeks ago, which I took a photograph of. Whether or not that species is extending its range, I do not have a clue. However, it seems that we need a "when" in the explanations. Similarly, because of the gap that my hon. Friend the Member for Birmingham, Northfield pointed out, we need a "when" for paragraph 3(a)(ii), which says

"which has ceased to be ordinarily resident in, or a regular visitor to, Great Britain in a wild state".

My hon. Friend referred to beavers as an obvious positive example, and one hopes that the Bill would not define them as a non-native species. Paradoxically, it seems that the Bill could include the mink but exclude the beaver, which I do not think is what the people who drafted the Bill intended. Can we have some clarity on how that fits and on precisely what is behind the Government's intentions? I do not think there is much between us, but we have to get it right in the interests of some of our endangered wildlife.

Mr Hayes: May I belatedly wish you, Sir Roger, and all Committee members a happy new year? Let us hope that we can continue to scrutinise this important matter alongside the other important matters in the Bill in the spirit in which we began before the holiday. Once, Britain ran wild with bears, boars and wolves. Some would say only bores remain, but as the shadow Minister said, that is not an avenue that I intend to explore in our consideration today.

The purpose of the matters we are debating today are well understood. As the hon. Member for Southampton, Test said, they have been debated at considerable length prior to today. Indeed, the Environmental Audit Committee, of which he is a distinguished member, also considered

this matter in some detail, as he said. I have its report here and, as I gather from reading the transcript of those meetings, he was an important contributor. One of its key recommendations was that the Government should indeed strengthen the law and take the powers necessary to deal with these matters with rather more vehemence than is possible currently. In essence, that is what this part of the Bill does. It reflects the concern of that Committee about the effect that non-native species can have, both environmentally—I will deal with all these matters in the course of the debate today—and on other species. That is a well reported effect and a largely deleterious one.

Jim Shannon: I seek clarification from the Minister—the debate has become very wide-ranging; perhaps this question is within the parameters of the legislation. The shadow Minister referred to capercaillie, at one time a numerous bird across the whole United Kingdom, but not today, while the wild boar is a much more prevalent beast than it was in the past few years. Is there opportunity or scope in the legislation to realise the sporting potential and possible harvest of, for example, either of those species?

Mr Hayes: That is an interesting question. Of course, wild boar are shot in a number of countries across Europe; indeed, people travel to Europe for that sporting purpose. It is not a matter that I have given detailed consideration to, but I will as a result of the hon. Gentleman's inquiry. Maybe I can deal with it in the course of my peroration; if not, I will do so subsequently. There is an interesting issue associated with the question he raises, about which I do not want to comment in detail now, but that I will give further thought to. Certainly in legislative terms this part of the Bill has no effect on sporting rights, but I think the hon. Gentleman is making a slightly different point about whether sporting potential is within the bounds of that consideration. That is a matter for debate to which I will give further thought.

Essentially, the amendment moved by the hon. Member for Birmingham, Northfield would remove species of community interest as defined in the habitats directive that are not part of Great Britain's natural range from the scope of the provisions. While all native species are already excluded from the scope of the provisions, the amendment would effectively remove a number of former native species, including the beaver, lynx, wolf and brown bear.

Wolves have not stalked Britain for a considerable time. The hon. Gentleman mentioned C. S. Lewis, and he knows that I am a great admirer of not only Lewis's works of fiction, but his works of fact, too. I therefore thought that I would respond by quoting Macaulay, because we have not heard enough from Macaulay so far in our considerations—I know that you are concerned about that, Sir Roger. He said:

> "The pass was steep and rugged,
> The wolves they howled and whined;
> But he ran like a whirlwind up the pass,
> And he left the wolves behind."

Collectively, as a people, we left wolves behind some time ago—or perhaps they left us behind. We recognise, however, that in some circumstances reintroductions of former native species can be merited and desirable. That may not be true of the wolf, but it certainly is true of some other species; indeed, the hon. Gentleman mentioned some of them. The red kite is an obvious example. In fact, one occasionally sees red kites in my part of the world, in Lincolnshire.

As the hon. Gentleman acknowledged, we made amendments in the other place to remove those animals from the provisions where they had been reintroduced lawfully following consideration of their likely impact by a licensing authority. We also introduced the additional requirement that before using the provisions for any formerly native species, the environmental authority must be satisfied that it has no appropriate alternative way to address such an adverse impact. The hon. Member for Southampton, Test raised that point, which, as the shadow Minister and others will know, was also raised in the other place. Essentially, the separation of that category of species from the general assumptions places an additional check on the exercise of the powers.

However, when a former native species has been reintroduced unlawfully, without proper consideration of its impacts, it is entirely appropriate for us to use those powers. To ensure clarity of our intention not to use species control provisions on licensed reintroductions, we will give further consideration to the merits of listing the European beaver alongside other former native species in proposed new part IB of schedule 9 to the 1981 Act. As a direct result of the overtures from the shadow Minister and others, I will return to that on Report. Given the circumstances that he described in Devon and the consideration that Natural England is giving to how it responds to the approach made to it, it will be appropriate to debate this matter again.

The view of some local people and organisations that the shadow Minister mentioned is that there may be a case for adding the beaver to the list, and, as I said, I will consider that point—he may be right. I should add that the Royal Society for the Protection of Birds, the Wildfowl and Wetlands Trust, the National Farmers Union, the Country Land and Business Association and the Angling Trust all support the Bill's provisions—as does the hon. Member for Southampton, Test as a matter of principle—which are very much in line with the Environmental Audit Committee's report.

I must also point out that the application of the provisions to a species of community interest in limited circumstances is entirely consistent with the habitats directive. While the directive provides strict protection for some species of community interest, such protection is not absolute. The directive allows for derogations from protection in certain circumstances, including the reasons for public health and environmental protection. The new provisions do not affect the existing licensing requirements in place in respect of this species. Any action that could affect such a species would still require a licence, in accordance with the habitats directive requirements.

10.15 am

I will now go through a number of points—as speedily as is reasonable—that have been raised in our consideration so far. A question was raised about whether the provisions are in breach of the habitats and birds directives. As I have already said, the provisions are consistent with those directives.

An issue was raised about whether we consulted on adding the European beaver. I have mentioned the beaver already. DEFRA and the Welsh Government consulted on proposals to add the species to schedule 9, as the shadow Minister will know. If the species were added, it would become an ordinary resident of Great Britain and the release could therefore be regulated in England and Wales only by inclusion in schedule 9. Again, the hon. Gentleman knows that. That consultation took place in 2013 and most of the consultees supported the listing, so there is popular support for adding the beaver and, indeed, some local support in Devon.

Views are mixed there: there is considerable local support, for all kinds of reasons. One view is that beavers may assist when there is flooding, by reducing water flow from high ground to lower. The view has been expressed that they can co-exist with other species. Obviously, there are concerns about the otter, but the evidence seems to suggest, at least on the ground in Devon, that beavers co-exist with otter populations, which has been re-established over a considerable time following their demise 30 or 40 years ago. There is also some support for the beaver on the grounds simply that it adds to wildlife diversity. As the hon. Member for Birmingham, Northfield described, the beaver is a creature that is widely regarded as edifying and efficacious, certainly from an aesthetic perspective.

However, the hon. Gentleman was also right to raise the issue of disease. We need to be clear about that. The UK currently is free from the disease that he mentioned, EM—I will not attempt to pronounce the long title.

Richard Burden: That is why I abbreviated it.

Mr Hayes: It is far too complex and far beyond me, too.

It is important that we test for that disease, because it has quite dramatic effects. We know that in other countries it has created considerable problems. Ironically, where beavers are located in the wrong places, they can have an adverse effect on flooding, notwithstanding what I said about their reducing water flow. There have been reports in France, Germany, Poland, Slovenia and Denmark that they can cause such problems with flooding. Returning to the issue of disease, several of the beaver populations in those countries show signs of EM. Echinococcus—no, I will not go there, although I was tempted for a moment. In respect of control of that disease and its spread to other species, it can be transmitted to human beings. Essentially, it is contracted via a parasitic worm, which, although typically does not affect the rodent that carries it, can cause cysts on multiple organs of the body, including the heart, lungs and brain, and can prove fatal, so these are not inconsiderable risks and they must not be taken lightly.

Testing of beavers needs to be done as locally as possible. Because I know that concerns have been raised about where the testing takes place, that is another matter we are considering, and Natural England will respond on it. Understandably, the idea of capturing a beaver and sending it to a distant location to be tested is causing worry and doubt. I could go into all kinds of invasive species, but I do not want to prolong the Committee's consideration unduly. Nevertheless, we are aware of the important issue of the killer shrimp, which was raised by the hon. Member for Southampton, Test.

The problem is that species control orders are not an ideal vehicle for dealing with a whole range of aquatic nuisance or menace, because of the nature of the beast, as it were. Eradication is not a viable option, and the provisions are largely drawn up to deal with those creatures that we can contain. We did not get into it, but there is also the signal crayfish, which the hon. Member for Southampton, Test mentioned briefly, and a number of others. In those kinds of circumstances, the most effective means of dealing with such species is to promote good biosecurity practice, such as through the "Check, Clean, Dry" campaign to slow the spread of a species when it arrives.

In the case of the killer shrimp, that kind of good practice has been reasonably effective in restricting its spread—it is identified in only four locations. It arrived in 2010 and has not had quite the dramatic effect that some feared it might. I do not want to be complacent about that, but we need to apply the right method to deal with different sorts of potential menace that originates with invasive species.

I was asked whether the provisions can extend to widespread species, which was also a matter raised in the Select Committee report. The measures are designed primarily to support national eradication programmes to deal with newly arrived species. In general, it would not be appropriate to use the powers, because it would not be an effective use of resources, apart from anything else, on invasive non-native species that have become widespread. Notwithstanding that, there may be some limited circumstances in which it may be appropriate to use a species control order on widespread species—for example, where the widespread species is being removed by the environmental authority or as part of a local, regional or national eradication programme, or where a widespread species has newly arrived in a geographical area and eradication remains viable. A good example of that would be knotweed which, although it is widespread, has not extended to every locality and where the orders can be used to keep it out of places where it has yet to arrive—they could be, but they are not primarily designed for that purpose.

As the hon. Member for Southampton, Test knows, local authorities are not environmental authorities in the terms described in the Bill. While co-operation with local authorities will become an important part of good practice, in legislative terms they do not form part of what we are considering or scrutinising today.

The other matter that caused concern was compensation paid to landowners. There is a discretionary power to compensate for financial loss resulting from any agreement or order. The circumstances where that may be appropriately set out in a ministerial code of practice include where incidental damage is caused as a result of any operations. That may be a circumstance where compensation would be appropriate.

I will drop a note to hon. and right hon. Members about that, alongside a note picking up some of the specific points raised by other hon. Members in terms of drafting. They were good points, and although it is probably not appropriate to go into great detail about them during the course of this consideration, they seem important and considered. The hon. Member for Ellesmere Port and Neston, for example, raised some specific semantic points about the orders, and I will deal with those. The hon. Member for Southampton, Test also

raised some queries about the details of the legislation's wording and the implications for its scope and effectiveness, about which I am happy to write to him.

With that, as well as the commitment I have given on beavers and our clear view that the provisions can sit comfortably with the habitats directive requirements, I hope that the hon. Member for Birmingham, Northfield might seek to withdraw his amendment. Just to encourage him to do so, I will also deal in the note with the other matter that the hon. Member for Southampton, Test raised, about how this affects other legislation, which is a perfectly good point. That is better set out authoritatively in some detail in a further note to the Committee.

Richard Burden: We have had an interesting and, as you said, Sir Roger, wide-ranging debate on the amendment and the questions that it raises. As the remarks of my hon. Friend the Member for Southampton, Test illustrated perfectly, the ramifications of this part of the Bill are very wide indeed. I concentrated my remarks on mammals and birds and the ramifications of what may or may not be covered. We heard about Japanese knotweed, and the hon. Member for Strangford reminded us about killer shrimp. Even though it initially caused some mirth, for understandable reasons, it is a serious issue for many communities. The hon. Gentleman also raised the important question of compensation. My hon. Friend the Member for Ellesmere Port and Neston brought out some important definitional points: for example, when we are dealing with species that were present in Britain in the past and were eradicated—by hunting, for example—and then reintroduced, questions of whether we use the past tense or the present tense in this part of the Bill are not simply matters of semantics; they are important definitions that could make a difference. My hon. Friend made some very good points on that.

On both of those points and indeed in response to my remarks, the Minister, with his customary courtesy, agreed to look again, and I welcome that. On the matters, such as compensation, raised by my hon. Friend the Member for Southampton, Test, on my question about where testing can reasonably take place, and on the specific question of the beaver, which I talked about at some length in my opening remarks, I welcome the Minister's offer to come back to those points on Report. However, I am afraid that I will have to disappoint him in relation to the amendment. Even though all of those things are welcome, they do not alter the fact that the amendment is necessary.

10.30 am

It is critical that this piece of domestic legislation cross-references the habitats directive. As a member state, we are not opposed to the directive; we think it is a good thing. The two have to cross-reference. That would provide us with ways of overcoming some, albeit not all, of the problems associated with this part of the Bill. The amendment is designed only to cross-reference the European directive and our domestic legislation. I do not think the Minister is right to be worried that incorporating reference to the directive in the Bill could lead to unfortunate consequences in terms of protecting species and preventing the authorities from controlling them where there is a real risk. He himself said that the directive contains within it the facility for derogation on specific grounds, particularly public health, so I do not see why we should not have something relating to the directive in the Bill.

I am not being churlish, as if we were rejecting his agreement to look again at various matters. I think his offer is very well meant and we welcome it, but let us also cross-reference with the directive. There is no reason why we cannot do that. I wish to push the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 12.

Division No. 4]

AYES

Blackman-Woods, Roberta	Miller, Andrew
Burden, Richard	Raynsford, rh Mr Nick
Greatrex, Tom	Ruane, Chris
Jones, Graham	Whitehead, Dr Alan

NOES

Browne, Mr Jeremy	Kwarteng, Kwasi
Burt, rh Alistair	Newmark, Mr Brooks
Coffey, Dr Thérèse	Parish, Neil
Hayes, rh Mr John	Rudd, Amber
Heaton-Harris, Chris	Williams, Stephen
Jenrick, Robert	Zahawi, Nadhim

Question accordingly negatived.

Clause 20 ordered to stand part of the Bill.

Clause 21

NATIVE AND NON-NATIVE SPECIES ETC

Mr Hayes: I beg to move amendment 28, in clause 21, page 23, line 4, at end insert—

"NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account."

This secures that the scientific name of the animals listed is determinative.

The Chair: With this it will be convenient to discuss Government amendment 29.

Mr Hayes: The Government are making two minor amendments to clarify that, should a dispute or legal proceedings arise, the scientific name of a species listed in new parts 1A and part 1B of schedule 9 to the Wildlife and Countryside Act 1981 is determinative, rather than its common name. The wording introduced by the amendment is consistent with that that already appears in the list in schedule 9 and other schedules to the 1981 Act.

Richard Burden: In principle, we do not object to the amendments. They are relevant to the offers that the Minister has already made, particularly on the questions of definition, and provide further evidence of the need to look again at some points.

We have referred to the evidence submitted by Friends of the Earth and others. The National Farmers Union of England and Wales has also submitted evidence.

[Richard Burden]

Although it supports the early eradication and containment of non-native species, it is concerned about the lack of clarity in certain provisions. The NFU feels that the proposals do not outline how the "environmental authority" will decide whether it is necessary to use the powers to tackle invasive non-native species. The NFU says that there are 282 known forms of those species in Great Britain, some of which cannot be eradicated because no method to do so has been found. That indicates the importance of knowing the criteria by which a species control order or agreement will be issued. We know that species control agreements and orders will entail costs. The NFU is asking the Government for clarity on where the costs will fall—a point made earlier by my hon. Friend the Member for Southampton, Test. It is also asking for clarity on how long control orders will last and how they will be terminated.

We will return to this matter. The Government's amendments help, but areas that need to be covered further remain, and we will perhaps return to them on Report. Will a code of practice covering these areas and other issues raised be published following enactment of the Bill, and if so, when; or will we be able to see a code of practice before debate finishes on Report?

Mr Hayes: To respond briefly, with some species the common name might be a generic term covering a variety of species. For example, water fern is listed in part 2 of schedule 9, but there are two distinct types of water fern, one of which is considered invasive and the other not. The definition of the particular type is significant in dividing what the provisions might apply to and what they would not affect. The hon. Gentleman is right to say that those definitions need to be clear. Much of that will be set out in the code of practice, which we are discussing with non-governmental organisations to make it as effective as possible. That includes discussion with the NFU.

I accept that these are challenging matters, but we are determined to get them right. They will require clarification in the detailed code of practice, which we will produce.

Andrew Miller: On the code of practice, will the Minister confirm that there will be provision for better understanding of the definitions? Taxonomists over the years have identified sub-species within families. It is important that the Bill does not exclude a reclassification, so it is the scientific name currently in force that the Minister refers to, and if a name is subsequently changed, the name in force will take precedence over what is in the Bill.

Mr Hayes: That is an extremely good point, because there are two types of dynamism associated with this. The first is the most obvious: by their nature these species spread and new species arrive. By its nature, this is an implicitly dynamic matter. The other kind of dynamism is the way species are described, categorised and identified, which of course changes over time in the way the hon. Gentleman describes. That is precisely why the dynamism needs to be reflected in the code of practice, and why that code of practice should be subject to as much consultation as possible. That is to ensure that as much local understanding and expert knowledge as necessary can feed the process to make the provisions effective.

The other requirement is that what we do here is consistent with other legislation. There is a risk of inconsistency because of the dynamism I have described. When we are dealing with a rapidly changing set of circumstances, provisions in legislation are not always changed readily or speedily enough. It is important that we keep a close eye on the need to review and, if necessary, amend legislation to ensure that all the mechanisms put in place are coherent and consistent. The hon. Gentleman is right to raise those issues.

As a result of this short debate, I will ensure that there is full consultation on the code of practice outside the House and inside, too. As soon as we can reasonably produce a draft reflecting our current thinking, we should do so, and it would be good to do that before the Bill reaches its conclusion. Certainly, early thoughts can be made available, even if we are still in discussion with those third parties. I do not want to over-promise, but it would certainly be helpful if we had as much information as possible on all the matters that have been raised.

Amendment 28 agreed to.

Amendment 29 agreed to.

Clause 21, as amended, ordered to stand part of the Bill.

Clauses 22 and 23 ordered to stand part of the Bill.

Clause 24

Two-person Panels

Question proposed, That the clause stand part of the Bill.

Roberta Blackman-Woods (City of Durham) (Lab): May I say what a pleasure it is to serve under your chairmanship, Sir Roger. I wish you and all members of the Committee a very happy new year. As we come to debate part 4 and a series of changes to planning regulations, I am not sure that I can promise the excitement of killer shrimps, but we will probably have a lot of "wild bores"—we will see how we get on.

We have no real quibble with clause 24. The Government clearly set out the rationale for changing the number on the Planning Inspectorate panels to allow for two-person panels in the review of the nationally significant infrastructure planning regime. I have a couple of clarifying questions for the Minister. The response from the Government to the NSIP review was not clear about the triggering factors for a two-person as opposed to a one-person or three-person panel. It would be helpful if the Minister reminded us what the triggers will be. Secondly, will the lead member in a two-person panel always be a more senior inspector, and if not, how will the lead member be chosen?

The Parliamentary Under-Secretary of State for Communities and Local Government (Stephen Williams): Good morning to you, Sir Roger, and to members of the Committee. As the shadow Minister said, we come now to part 4, which deals with matters less exciting

than invasive non-native species, but none the less does some important things to speed up the development of our infrastructure.

The purpose of clause 24 is to amend the Planning Act 2008 to allow the examining authority that examines nationally significant infrastructure projects to be comprised of two-member panels said. The number of inspectors who are assigned to an examination is decided on a case-by-case basis—I hope that that answers the question about what triggers it—taking into account the complexity of the case and the level of public interest in the outcome. So a number of factors will be taken into account in deciding whether one inspector is sufficient or whether there needs to be an additional inspector, given those criteria.

10.45 am

Currently, the law, as tightly defined back in 2008, allows only for examinations to be carried out by a single inspector or by panels of three, four or five inspectors. Applicants pay an examination fee based on the number of inspectors and the number of days that those inspectors sit. The Planning Inspectorate has reviewed its records and looked at the applications it expects to receive in the coming months and it estimates—it is quite a precise estimate—that 18% of applications would be suitable for examination by two inspectors if that option were made available. The proposal was consulted on in the Government's review of the regime last year and received support from across the spectrum of users. It will provide much more flexibility in the way applications are examined and will ensure a better match between inspectors and work load.

Roberta Blackman-Woods: I thank the Minister for those comments. I shall not press the matter further this morning, but it would be helpful to have some indication of the criteria that are employed when deciding on the number of panellists. I do not think that the Minister answered my second question about how the lead member in a two-person panel will be chosen. I hope that the Minister will reflect further on these points and enlighten us at a later stage.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

CHANGES TO, AND REVOCATION OF, DEVELOPMENT CONSENT ORDERS

Roberta Blackman-Woods: I beg to move amendment 48, in clause 25, page 24, line 29, leave out "or" and insert

"to exercise a discretion, or with the consent of the Secretary of State to allow".

The Opposition are pleased that the Government accept that, in general, the provisions of the Planning Act 2008 are working to speed up the development and delivery of our national infrastructure, something that is much needed at present. Like the Government, we accept that the process can be tweaked to make it quicker and to remove major hold-ups in the system. I will say more about that when I speak to new clause 11.

Amendment 48 is largely a probing amendment. It seeks clarification from the Minister on the safeguards that will be employed with regard to changes made to development consent orders. Paragraph 12 of the Department's briefing note on nationally significant infrastructure projects, produced in June 2014, notes that consultation responses to the Government's review of the working of the nationally significant infrastructure planning regime commented that existing procedures for making changes to applications, once approved and subject to a development consent order, had not yet been tested, but

"were likely to be onerous and in many cases disproportionate".

The paragraph also makes it clear that although there was

"strong support for making changes to procedures to simplify them",

there was also very strong support for providing additional guidance on the procedures that would be employed. I shall come back to that very important point.

People seemed to feel that if changes were made to development consent orders, it might be quite an onerous system. However, because the system had not been sufficiently tested, there was no evidence on which to base such comments. We need to consider that the changes are being made without any evidence at all. If no evidence is available, we need to be clear about how those changes will operate in practice so that there is a good understanding of what they mean. They need to be transparent and underpinned by transparent procedures.

The Minister will know that the issue was raised by my noble Friend Lord McKenzie of Luton in the other place, and Baroness Stowell gave a degree of reassurance about how the changes proposed in clause 25 will apply differently depending on whether a non-material or material change to a development consent order is being proposed.

Lord McKenzie also asked about progress of applications as a result of applying the national infrastructure plan regime and he received a surprising answer about the effectiveness of the current system. In July, he was told that 20 applications had gone through the system; 19 had been granted consent; a further 56 were in the pre-application stage, and more were in other parts of the system. Will the Minister update us on progress made on applications since July so that we can set the changes proposed in clause 25 in proper context? That would be useful.

The general view from information given in the other place is that the system is working well, but we need to be clear about what is meant by a material or non-material change, given that the proposed changes could water down the consultation required depending on how such changes are classified.

The Department for Communities and Local Government's response to the consultation reported general support for clarification of what was meant by material and non-material changes, and we concur. In particular, we agree with the point in paragraph 12 about guidance. That is, however, where the Government's case falls down. In responding, they failed to produce the guidance that people wanted, but said that

"it is not possible to set out precise, comprehensive and exhaustive guidance on whether a change is material or non-material as this will depend on the circumstances of individual cases."

[Roberta Blackman-Woods]

Therefore, rather than the detailed guidance that the respondents wanted in order to support changes to development consent orders, instead we are given quite difficult semantics. Three different circumstances are given in which something would be considered to be non-material if that does not involve something. The use of double negatives is never helpful.

I think that that means that a change is likely to be material if it requires an update to the environmental statement that was carried out when the original development consent order was made and will therefore need to take into account any likely significant effects on the environment. The second criterion offered is that there would be a need for a habitat regulations assessment or a need for a new or additional licence in respect of a European protected species. The third criterion is that it would involve compulsory acquisition of any land that was not authorised through the existing development consent order. Given the rather strange way in which we are dealing with material and non-material classifications, perhaps we could have a degree of clarification from the Minister.

As the Minister also knows, in response to the consultation respondents suggested a number of other characteristics that could be used to help determine whether or not a change was likely to be non-material. These included changes to the height and design of buildings that had been given building consent and a development consent order; what particular effect any changes proposed to the order would have on residents; what impact changes would have on businesses and any nearby housing developments; whether changes would involve moving a highway or stopping up a public right of way; and whether they would encroach on a major hazards installation. It would be very illuminating to hear from the Minister why these important criteria—which came out quite strongly in the consultation—have been rejected. That is especially important for the Committee because the Government appear to have rejected the criterion of changes that could impact on neighbourhoods and local communities for inclusion in the definition of what is material. There is some concern about this. Perhaps the Minister could explain for us why these factors have been rejected.

Could the Minister tell us where the relevant Department is up to with producing regulations on what is meant by a material change? It would also be helpful to know by what process the regulations—once they appear—are to be dealt with. Are they to go through the affirmative or the negative procedure? These are very technical issues, which a lot of people who will subsequently have to operate this system need to be able to get their heads around. Will there be adequate consultation? Will this be publicised effectively? If this is done by an affirmative procedure, as I sincerely hope it will be, will the Minister ensure that there is debate in the House so that the full impact of the changes can be properly considered?

I also wish to hear from the Minister what process will be put in place to check that the changes, where they are deemed to be non-material, are being properly consulted on and publicised effectively. Paragraph 23 of the response to the consultation paper states that this is to be done with a notice being sent to the Secretary of State, along with a statement setting out how the requirements have been met. Is there any intention to check this at all, even on the basis of random sampling? From the information given in paragraph 23, it would appear not. Surely this is a major shortcoming in the approach. With that, I will leave this issue for the moment and wait to hear what the Minister has to say.

The Chair: The hon. Lady has gone much wider than the amendment in her introductory remarks. That is perfectly in order. I have no problem with that, so long as we understand that that militates against a stand part debate at the end of the clause. I mention that now in case other hon. Members wish to avail themselves of the opportunity to talk on matters other than those related directly to this amendment but, most certainly, related only to the clause.

11 am

Stephen Williams: I am grateful to the hon. Lady for tabling the amendment and raising her points, all of which I will try to answer.

In our technical consultation on planning measures last summer, we proposed a number of changes to help simplify the regime for making changes to development consent orders for nationally significant infrastructure projects. For non-material changes, that included making the applicant responsible for the existing requirements on consultation and publicity, rather than the Secretary of State, which is the current position. There was strong support for that proposal in the consultation, with 80% of respondents in favour. We indicated our intention to take the change forward in our response to the consultation, which was published in November.

The current requirements on consultation for a non-material change require the Secretary of State to consult all persons and organisations notified of the original application for development consent, by sending them a copy of the notice that is published to advertise the application. There are no proposals to change those requirements. The applicant for a non-material change will still need to consult organisations and individuals in respect of an application for a non-material change to a development consent.

Additionally, the Secretary of State is currently required to consult any person they consider should be consulted. In our consultation last year, we proposed that that should be amended so that the applicant would need to consult persons or bodies who may be directly affected by a change. That will provide a more proportionate approach, given that applications for non-material changes have, by their nature, limited impacts or no impacts at all.

The current regulations state that the applicant need not consult someone they are otherwise required to consult if the Secretary of State is satisfied that that is not necessary and publishes the reasons for reaching that view. I understand that this might seem slightly strange, given that the applicant currently has no role in carrying out the consultation. The current provision, as drafted in 2008, simply reflects the fact that the Secretary of State is effectively consulting on the applicant's behalf in respect of non-material changes. However, our proposals will make the applicant responsible for the consultation. That provision will therefore be retained, meaning that the consultation requirements for non-material changes

will be framed in precisely the same terms as the amendment sought by the hon. Member for City of Durham. An applicant for a non-material change will have to consult persons set out in the legislation, unless they obtain a dispensation from the Secretary of State not to do so.

The shadow Minister raised some questions. First, she asked whether guidance would be issued and whether there could be more of it. The clause enables secondary legislation to be introduced later this year, and the Department intends to provide additional guidance at the time when that legislation comes into effect. The statutory instrument will be subject to the negative resolution procedure—I am sorry to disappoint her on that front.

The hon. Lady asked for some statistics, going wider than the terms of the amendment. At the moment, 31 decisions have been made and have gone all the way through the NSIPs process. Consent has been granted for 30, so there has only been one refusal. If she is curious, the refusal was made in respect of the Preesall gas storage facility. That project is being re-determined following a judicial review. I hope that that enlightens her and other Committee members.

The hon. Lady's other questions were about the concept of materiality. Materiality is quite a nebulous and difficult concept to define, which is probably why it is not defined in statute at the moment. Prior to 2005, when, like her, I was elected to this place, one of my professional duties was to audit sections of company accounts. Materiality, of course, is a concept that any auditor or tax consultant, as I was at the time, will be familiar with, but it is difficult to define and varies greatly. If the accounts of, say, a major mobile phone company are audited, and its turnover is in billions and a discrepancy of £10,000 is found, that is quite clearly immaterial, but £100 million would probably be considered material. However, finding a £10,000 discrepancy in the accounts of a high street baker in the city of Durham or Bristol would be material. Obviously, there is a gradation in between.

It is also the case that we are considering a huge range of large, nationally significant infrastructure projects, from power stations to watercourses, roads, railways and so on. They will vary in size and in the number of people and interests they affect. I guess that is why the framers of the Planning Act 2008—the hon. Lady's colleagues—did not seek to define what is and is not material.

In the consultation that we published and responded to last year, we gave some examples. For instance, if a change proposed by a developer will have a significant adverse impact on the environment that was not identified when the original application was made, or if there is a need to compulsorily acquire additional land, then it is likely to be considered a material change. I am sure we could come up with other examples of what would be material, but all of them would be germane to the particular circumstances of a particular application. Changing the source of power of a power station from, say, gas to coal would obviously be material, but changing something to do with the internal design of the power station itself would quite clearly be non-material. I am sure we could come up with plenty of other examples, but examples are something that we should always avoid having in a Bill.

I hope that I have answered the hon. Lady's questions, and I invite her to withdraw the amendment.

Roberta Blackman-Woods: I thank the Minister for that response. The points he makes about consultation are helpful and reassuring to a degree. I would invite him to ponder further on who, if anyone, is going to check that the applicant who is responsible for publicising non-material changes is actually doing that properly and effectively. Perhaps he could come back to us with a specific answer to that point.

I am also very grateful to the Minister for the update on the number of applications that have now gone through the NSIPs regime. As we can see, things have moved along very well since July. Nevertheless, I hope these changes will help to speed up the system. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Roberta Blackman-Woods: I beg to move amendment 49, in clause 25, page 24, line 31, at end add

"after consultation with the National Infrastructure Commission".

The Chair: With this it will be convenient to discuss new clause 11—*National Infrastructure Commission*—

'(1) There shall be an independent National Infrastructure Commission.

(2) The Secretary of State may by regulations provide for the appointment, duties, functions and staffing of the National Infrastructure Commission.

(3) Regulations made under subsection (2) may make provision for any consequential matter that the Secretary of State considers is necessary to establish the National Infrastructure Commission.

(4) Regulations made under subsection (2) shall be made by statutory instrument.

(5) A statutory instrument under this section shall not be made unless a draft of it has been laid before and approved by both Houses of Parliament."

Roberta Blackman-Woods: Amendment 49 and new clause 11 both deal with the need to shake up the way in which we progress national infrastructure matters. Both raise the need for the UK to have an independent national infrastructure commission.

In the other place, my noble Friend Lord Adonis raised some concerns about how we progress national infrastructure projects. I want to highlight, using new clause 11 in particular, the fact that the Government could have used the Bill to really improve current infrastructure policy.

A recent survey by the CBI showed that, despite some advances in policy on national infrastructure, the UK is still some way off delivering the transformational upgrades that the country needs. The CBI's survey of 443 senior business leaders showed that in keys areas of competitiveness, such as energy and transport, 67% and 57% of businesses respectively expect infrastructure to worsen, not improve, in the next five years. In some ways that is a quite shocking result. Worryingly, respondents see the UK's infrastructure as internationally weak, too—lagging behind Australia, North America and the EU. They also note that they have seen little improvement since 2011. Some policies, such as the UK Guarantees scheme, are seen as increasing the attractiveness of the

[Roberta Blackman-Woods]

UK, but almost all businesses think that political intervention leading to a start-stop approach to delivering infrastructure is problematic.

What was especially interesting about the survey was that businesses showed overwhelming support—a massive 89%—for the creation of an independent national infrastructure commission, as recommended by Sir John Armitt, to help determine what infrastructure the UK needs and when it needs it. In fact there was massive support for the measure set out in amendment 49 and new clause 11. The CBI deputy director general said:

"Progress on infrastructure has been a case of two steps forward and three steps back for too long…The vast majority of businesses back the creation of an independent body to assess the UK's long-term infrastructure needs."

John Horgan, the managing director of URS, said:

"There is a strong desire for a new approach to infrastructure that extends beyond the five-year electoral cycle. Business is overwhelmingly calling for the establishment of a neutral body to assess the UK's long-term infrastructure needs. This would transform how infrastructure is planned and delivered across the UK, enabling capacity to be a step ahead of demand."

The Minister will know that in the other place, my noble Friend Lord Adonis set out the reasons why Labour set up the Armitt review and why we think the establishment of an independent national infrastructure commission is so important. The response in the other place from the Parliamentary Under-Secretary of State, Lord Ahmad, was shockingly disappointing and, I thought, rather complacent. I really hope that the Minister does not follow that form this morning. The Minister in the Lords stated that the Government are set on rejecting the Armitt proposals, which is a pity given the considerable evidence from the business community in support of them. Apparently the Government believe that everything is just fine and dandy with regard to infrastructure planning and delivery in this country, despite the fact that we have considerable evidence to show that the upgrading of national infrastructure is in fact rather weak. The Minister in the other place stated that the Government's national infrastructure plan and capital settlement were enough to meet infrastructure needs, but clearly they are not.

It also appears that the Government are somewhat concerned about what introducing a degree of independence in the infrastructure planning regime would mean, as Lord Ahmad stated in the other place. Therefore, if the Committee will forgive me, I am going to have another go. I hope that the Minister will embrace the positive spirit that a new year brings and be more optimistic than his colleagues in the other place about what can be gained from an independent infrastructure commission.

11.15 am

I also hope that the Minister will accept that we need to move away from the stop-start approach to planning and delivering national infrastructure projects which for too long has characterised and delayed our national infrastructure delivery. Establishing political consensus in key areas, such as airports and energy in particular, is what we hope can be gained from an independent commission.

The role of an independent commission, as outlined in the Armitt review, emphatically would not be to replace Government, Parliament or the democratic process, but to strengthen them. An independent national infrastructure commission would carry out an evidence-based assessment of the country's infrastructure needs over a span of 25 to 30 years, focusing on nationally significant infrastructure, as defined by the Planning Act 2008. It would look at energy, transport, water, waste and telecommunications, and it would look at them together, so that their interconnectedness could be properly assessed.

At this stage, we are not proposing that the commission would go into areas of commerce, as set out in the Growth and Infrastructure Act 2013. However, the commission would enable projections of economic and population growth and of technological advances to inform the cross-sectoral approach, as would the need to address environmental obligations. Those obligations could also be considered by the independent commission, as could the impact on other climate change issues.

The results of the commission's findings would form a national infrastructure assessment to be submitted to the Chancellor, who would have a statutory duty to bring it before Parliament within six months, accompanied by any amendments the Government might propose. Ministers would not be bound by the commission's findings, but changes made by the Government to the commission's assessment would have to be clear and transparent, and subject to full parliamentary and public scrutiny. If the assessment were approved, there would be a 12-month period in which individual Government Departments would be required to produce sectoral infrastructure plans, outlining specific schemes and projects that the Government would promote in order to meet the needs outlined in the assessment.

Proposed sources of funding, time frames for implementation and preferred delivery vehicles will be required in the plans to provide real delivery momentum, credibility and confidence for investors. Together, these sector plans would form a national infrastructure plan. Critically, however, before there could be a vote in Parliament, the Government of the day would have to issue a statement commenting on whether the proposals were consistent with identified infrastructure needs and highlighting any area in which departmental plans fell short.

It is hoped that such an approach would focus minds on delivery and that the national infrastructure plan would contain projects intended to be delivered within specific time scales, rather than the wish list that currently exists as part of the national infrastructure plan. How can the Minister disagree with such a common-sense approach?

Chris Heaton-Harris (Daventry) (Con): I am very interested in what the hon. Lady is saying. I read the report of the debate in the House of Lords. Could she give us an example—using, say, High Speed 2—to show how the national infrastructure commission would operate differently from the system we have now?

Roberta Blackman-Woods: Actually, HS2 is a very good example. What would have happened prior to HS2 coming to Parliament? The independent infrastructure commission would have set out, very clearly, whether HS2 was needed, based on all the factors that I outlined earlier—population projections, demographic change,

changes in the economy and advances in technology—and, if so, over what time scale it would be needed. It would then have been up to the Government to decide whether to put HS2 into a plan to be voted on in the Commons. It would also have been up to particular Departments, working together, to produce the central infrastructure plans to decide whether or not the plan would go ahead.

The commission is about ensuring that we move ahead with national infrastructure plans based on proper evidence and therefore likely to get cross-party support, to ensure that bits of infrastructure are not agreed by one Government and subsequently turned over by another. I hope that answers the hon. Gentleman's question.

Chris Heaton-Harris: I thank the hon. Lady for giving way a second time. Will she say something about how the national infrastructure commission will work and what its timetable will be? HS2 is an extended programme. If the national infrastructure commission had existed and HS2 had gone through the process she outlined, would there be spades in the ground now, or would it have been delayed for longer?

Roberta Blackman-Woods: We are talking about something that we want but does not yet exist. It will clearly take time for an independent national infrastructure commission to set out what it thinks the infrastructure needs are. That is likely to take two or three years because it must gather the proper evidence.

My point is very serious. Almost all business organisations support the Armitt proposals because an independent commission will set out without political bias what it thinks the country's infrastructure needs are and how they should be delivered. It will help all politicians understand those infrastructure needs. Currently, we do not think about what will happen if we do not deliver a particular piece of infrastructure and how it will reduce our international competitiveness. An independent commission could be charged with making clear what will happen if particular bits of infrastructure do not proceed at the speed that it indicates in its report.

There is widespread support for this approach from the industry and other organisations. It will promote better public understanding of the country's key infrastructure needs by gathering evidence about the nation's assets, the projected impact of key economic and demographic trends and the implications of delayed investment. It will set out what doing nothing will mean for this country's economic development. We need a joined-up, evidence-based approach to national infrastructure. How could the Minister possibly refuse this proposal?

Chris Heaton-Harris: It is a pleasure to serve under your chairmanship, Sir Roger. Like other Committee members, I wish you a happy and prosperous new year.

I rise to say a few words about the exchange I just had with the hon. Lady about the national infrastructure commission. I am not one of those people who is wary of everything that the CBI likes. I like anything about which the CBI consults its members, because it gets such high returns—440-odd high-profile business people returning the survey is a good return. I have issues with how much money the CBI takes from the Government and the European Commission, and I wonder how independent that makes it, but that is an argument for another day.

How will the national infrastructure commission get different results to those of the current system? If, as the hon. Lady said, its discussions will not replace Parliament and Ministers will not be bound by its decisions, it will be just another quango, or a talking shop for the great and the good that will take powers away from this place, to which people are directly elected to make such decisions.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.