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House of Lords

Wednesday, 6 January 2010.

3 pm

Prayers—read by the Lord Bishop of Bradford.

Mountain Rescue

Question

3.08 pm

Asked By ***Lord Dubs***

To ask Her Majesty's Government what support they are giving to the mountain rescue service.

Lord Faulkner of Worcester: My Lords, support for mountain rescue teams is a matter for the police authority and chief constable concerned as they have responsibility for co-ordinating inland search and rescue operations. Between them, police forces contribute almost £100,000 annually in direct support and additional amounts by way of support in kind. However, in recognition of the Mountain Rescue Council's concerns, I am pleased to say that my ministerial colleague in the Department for Transport, the Parliamentary Under-Secretary of State, the honourable Member for Gillingham, has offered to facilitate a meeting with my noble friend, interested parties and relevant government departments.

Lord Dubs: I am grateful to my noble friend for that very positive Answer and I look forward to such a meeting. Is he aware that during the recent floods in Cumbria the mountain rescue services were among the first on the scene and they did a fantastic job? They rescued perhaps up to 200 people and worked non-stop for many hours. Indeed, in the present climate difficulties they are working all over the country to help people who are isolated in the snow or in their vehicles. In the light of all that, does he agree that some additional support for these hard-pressed teams, who have had to replace much of their equipment for the reasons I have just stated, would be very welcome and would recognise the enormous contribution that they make not only in times of difficulty, such as the floods, but day in and day out for those of us who enjoy walking in the mountains?

Lord Faulkner of Worcester: It is for exactly the reasons that my noble friend expresses that we believe that this is the right time to have the meeting to which I referred in my first Answer. Certainly with the weather as it is, this is an appropriate time to pay the warmest possible tribute to the 3,500 volunteers who not only give their time to the mountain rescue service for free but also pay for the clothing and gear that they need to do this really important job. My noble friend referred to the mountain rescue teams in Cumbria. They played a very important part in the recent floods, particularly those from Patterdale and Keswick, who worked on search-related tasks co-ordinated by the Cumbrian police.

Lord Roberts of Conwy: My Lords, will the noble Lord join me in highly commending RAF Valley at Anglesey for the superb support that it provides for the mountain rescue services in Snowdonia and for the many lives that it has helped to save over the past few years?

Lord Faulkner of Worcester: My Lords, I am delighted to do that. As the noble Lord may be aware, the patron of the mountain rescue service, Prince William, will shortly be serving at Valley, and his involvement in the mountain rescue service is hugely appreciated.

Lord Burnett: My Lords, I should declare that I am president of the Dartmoor search and rescue group, a post that I am extremely proud to hold. I am sure that the Minister will want to join me in paying tribute to the courage, commitment and dedication of the volunteers in that group and all the other volunteers up and down the country. They raise their own funds. Surely they should not be penalised by having to pay value added tax on the equipment that they have to buy.

Lord Faulkner of Worcester: I echo entirely what the noble Lord has said about the role of the mountain rescue service on Dartmoor and indeed in all other parts of the country. He referred to VAT, which is a rather more difficult and controversial issue. I am afraid that it is not possible for the British Government unilaterally to change the bodies that are covered by VAT because that would require approval from the European Union. There are other ways in which we can help the mountain rescue service other than going down the VAT route.

The Lord Bishop of Bath and Wells: My Lords, as a former member of the Upper Wharfedale cave and fell rescue team and, dare I say, as an active caver this year, I thank the Minister for his earlier Answer in relation to the meeting that is to be held shortly. Is it time for budgeting to be included in the emergency services' budgets for the rescue teams around the country?

Lord Faulkner of Worcester: One feels a little inadequate replying to such distinguished participants in mountain rescue and other rescue services. The caving teams are very important too. The question of funding will be on the agenda for the meeting to which I referred. The right reverend Prelate is right to say that the rescue services do not just do mountain rescue; they now cover flood relief and searching for missing people as well. Their new slogan is "More than just mountains", and that is certainly true.

Lord Judd: Does my noble friend accept that while we all pay unlimited tribute to the courage and dedication of the mountain rescue teams, the message is that they are volunteers? That is a message to the country as a whole about what can be achieved by that kind of spirit. We must never take it for granted. Does he therefore agree that, in forthcoming meetings with Ministers, sensitive and appropriate ways should be found to support them in every way? Does he also agree that there is a responsibility on the public as a whole not to abuse that spirit of voluntary commitment by behaving irresponsibly on mountains or elsewhere?

Lord Faulkner of Worcester: My noble friend is correct. The importance of volunteers in so many areas of our national life cannot be underestimated, and perhaps the mountain rescue service is one of the best examples. I was speaking to the chairman of a branch of the mountain rescue service in the Black Mountains yesterday, and he made it clear to me that they are not at all interested in monetary reward for themselves; they do it out of a commitment to public service because they have a love of mountains, and they are mountaineers who want to help other mountaineers.

Lord Inglewood: My Lords, I declare an interest as chairman of the All-Party Group on Mountain Rescue, and I congratulate the Government on holding the meeting referred to by the Minister in his reply to the noble Lord, Lord Dubs. I would like to draw to the Minister's attention the fact that the Scottish Administration are substantially more generous to the mountain rescue services than are the Government south of the border. I urge him to put that issue firmly on the agenda for discussion at that meeting.

Lord Faulkner of Worcester: My Lords, I suspect it will not need me to put that on the agenda and that the mountain rescue service and my noble friend will ensure that it is covered. The funding of the mountain rescue service in Scotland is a devolved matter, and the decision that the Scottish authorities take to support it is a matter entirely for them. My noble friend on the Front Bench whispered to me that they have more mountains in Scotland than we do in England, so it is obviously a more relevant service in that part of the country.

Baroness Masham of Ilton: My Lords, does the Minister agree that the rescue dogs do a wonderful job too? They sometimes find people on mountains and in the snow when people cannot.

Lord Faulkner of Worcester: My Lords, the noble Baroness is absolutely correct. The role of dogs in rescue in all sorts of situations, particularly in the snow, is obviously of crucial value.

NHS: Feeding

Question

3.16 pm

Asked By ***Baroness Knight of Collingtree***

To ask Her Majesty's Government on what grounds decisions are made to forbid hospital staff and carers from helping patients to eat.

Baroness Thornton: My Lords, unless there are clinical reasons for withholding them, patients are entitled to food and drink of adequate quantity and quality and to help to ensure that they eat and drink. Hospital staff should ensure that a patient's oral nutrition and hydration are being provided in a way that meets the patient's needs, and that any problems, such as difficulty in swallowing, are managed effectively.

Baroness Knight of Collingtree: My Lords, is the Minister aware that following the admission of a Mrs Beryl Alice Waters to Queen's Hospital in Burton-upon-Trent on 30 September, her family were informed by a staff nurse Willis that nurses and carers were forbidden to help patients to eat. This information was given in front of a consultant and two other doctors in the course of a ward round, and they in no way denied it. Why are such orders issued?

Baroness Thornton: My Lords, the noble Baroness has been very concerned about this issue, and I agree with her that this can be very distressing indeed for families and carers. As I have already said, there may sometimes be clinical reasons for withholding food and drink from a patient. However, if such a message were ever given other than for clinical reasons, it would certainly not be endorsed by the Department of Health, and local managers would need to investigate and account for it. Ensuring that patients have adequate nourishment is part of the core caring of nursing.

Lord Brooke of Alverthorpe: My Lords, I declare an interest as a trustee of Community Service Volunteers. We have a fair number of our volunteers working in a variety of hospitals, doing a variety of tasks. Could the Minister tell me why they are not permitted to help people feed themselves?

Baroness Thornton: My Lords, my noble friend knows that we have long recognised and supported the enormous value of friends groups and volunteers, and the contribution they make to patients' experiences in the NHS. Indeed, some trusts are using volunteers to help patients to eat and drink. Volunteers who do this have to receive training and supervision, particularly when patients have difficulty chewing or swallowing. I believe that we should encourage voluntary organisations that provide this wide range of important services to encourage their members to receive this training, and to put pressure on their health authorities. If they have got volunteers who want to help in this way, they certainly should be able to do so.

Baroness Tonge: My Lords, the Minister must know that lack of help with feeding and, indeed, inadequate cleaning in a lot of our hospitals are often due to lack of time because of government-imposed targets and management rules. What advice would she give to NHS staff who face disciplinary action, suspension and often damage to their careers when they expose malpractice that has been imposed by their own managers?

Baroness Thornton: The noble Baroness knows—we have discussed this in the Chamber—that the NHS has a well developed procedure for dealing with whistleblowers and for protecting people who bring such problems to the attention of their hospital administration. We do not accept that there is a link between targets and issues of feeding and nourishment because, apart from anything else, this Government have increased the number of nurses by 89,000 since 1997.

Lord Trefgarne: My Lords, is the noble Baroness aware that the Answer that she gave to my noble friend Lady Knight was to some of us puzzling and disappointing? Is it not clear that such instructions as my noble friend referred to have been given, should not have been given and should now be countermanded?

Baroness Thornton: I hope that I gave the impression that I absolutely agree with that point and want the issue to be investigated.

Lord Carlile of Berriew: The example given by the noble Baroness, Lady Knight, was but one of certainly more than 100 that are available. Will the Government now invite the General Medical Council and the other regulators to create a code of practice so that these awful examples can no longer occur?

Baroness Thornton: I am not sure from where the noble Lord received the figure of 100; he might please let me know. However, I am glad to be able to inform him that from 2010-11 the Care Quality Commission will be operating a new registration system, which will cover both health and adult social care providers. One of the proposed registration requirements is ensuring that people get the nourishment that they need to prevent harm through lack of sufficient nutrition and hydration.

Baroness Howarth of Breckland: My Lords, does the Minister think that this is a question of training? What is being done to ensure that nourishment is on the training agenda? I declare an interest as the chair of Livability, a large charity that deals with disabled people. We have had the opposite experience of having our staff invited to go into the hospital to help with feeding because some hospital staff have been uncertain about how to treat some of our very disabled patients.

Baroness Thornton: The noble Baroness makes an important point. The Nursing and Midwifery Council has made it a requirement for nutrition principles to be taught and assessed in practice as part of the pre-registration nursing programme. Skills for Care and Development has undertaken a review of its occupational standards with the Food Standards Agency and is introducing nutrition and healthy eating standards. We have endorsed the British Association for Parenteral and Enteral Nutrition screening week, which establishes the extent of nutrition on admission to hospitals and care homes, for example. We acknowledge that there are issues, which we are trying to anticipate. We are trying to make sure that we minimise the effects of malnutrition as people come into hospital and certainly that they receive the right kind of nourishment while they are there.

Lord Lawson of Blaby: My Lords, in answer to my noble friend, the Minister appeared to be saying that hospital volunteers should not be permitted to help a patient to eat, however great the need, unless they had had special training. Does she really mean that?

Baroness Thornton: Yes, I think that we do mean that. The reason why we mean it is that, for example, someone who has had a stroke and has problems with swallowing will need specialist help with eating. A volunteer can certainly help that person—that is quite right—but they need to be taught how to do that in the proper way. Patient safety has to be at the heart of this, but we would like volunteers to do that.

Iran

Question

3.24 pm

Asked By ***Lord Corbett of Castle Vale***

To ask Her Majesty's Government what representations they have made to the Government of Iran about violence towards pro-democracy demonstrators.

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): My Lords, we admire the courage of the thousands of ordinary men and women who strive for recognition of their rights in Iran. We have consistently condemned the violence meted out against those who simply ask that their basic freedoms are respected. The Foreign Secretary made this clear in his statement on 28 December, as did our ambassador to Iran when summoned to the Iranian Foreign Ministry on 29 December. We will continue to seek an improvement in the human rights situation in Iran and speak out wherever and whenever we see such flagrant abuses of civil liberties.

Lord Corbett of Castle Vale: I thank the Minister for that response but is she aware that the anger over the stolen presidential election in June has now turned to demands for an end to the religious dictatorship by demonstrators, 11 of whom were killed on 28 December while thousands more have been arrested over the past few weeks and face torture? Will the Government signal our strong support for those demanding democracy and human rights by recalling our ambassador in protest at the violence used against the demonstrators and by supporting tighter sanctions against this menacing regime?

Baroness Kinnock of Holyhead: I thank my noble friend for those comments. We have repeatedly and consistently made clear our concerns about the deteriorating human rights situation in Iran. The Foreign Secretary's recent Statement was an extremely strong one. We have also been taking very strong measures to ensure that there is a response at EU and UN level. On sanctions on human rights abuses, we are, of course, prepared to look at all the options that may have a positive effect and make a difference to the lives of ordinary Iranians, such as seeking multilateral sanctions to get Iran to comply with Security Council resolutions on nuclear programmes. But this reflects wider international concern about the failure of the Iranian regime to live up to its international obligations. I do not think we should consider recalling our ambassador because those diplomatic contacts are extremely important and political dialogue has to play its part in trying to work towards the return to, or at least the establishment of, democratisation in Iran.

Baroness Afshar: My Lords, I thank the British Government for persisting in negotiations with the Iranian Government because I think that is the only

[Baroness Afshar]
way forward. I deplore the unwarranted arrest of the sister and the secretary of Shirin Ebadi for a sin of association and also the arrest last night of the entire editorial board of a magazine on culture and music without any reason. The best way forward is by negotiation and by the presence of foreign interest in Iran in order to be able to inform both the West and the Iranians about what is going on.

Baroness Kinnock of Holyhead: I thank the noble Baroness for her continuing commitment and interest in these matters. I think she would be very interested to know that the Foreign Secretary met Shirin Ebadi when she was in London and, of course, continues to condemn excessive use of force and the arrests of people who are only demonstrating and standing up for their rights. The situation in Iran is deplorable—according to Amnesty, it is the worst that has existed for 20 years. We remain committed to improving the human rights situation and we will continue to urge the Iranian Government to abide by the international human rights obligations they have actually signed up to.

Lord Waddington: Does the Minister agree that there have been attempts at negotiations with the Iranian regime for years now and that they have got precisely nowhere? The regime's promotion of terrorism abroad, its contempt for human rights at home and its determination to become a nuclear power make it highly improbable that any negotiations will get anywhere in the future. Surely what is needed now is tougher action by the international community and, in particular, tougher sanctions.

Baroness Kinnock of Holyhead: The noble Lord will recall that I have already said that under the United Nations there is consideration of a sanctions resolution. However, today on the BBC it was reported that China has already said that it will block such a resolution. It is encouraging and important to note that the human rights resolution was agreed by the UN Human Rights Council in December, because that also sends a clear message of international concern about the human rights situation in Iran. However, I do not underestimate what the noble Lord says and understand that we need to seek many more ways of dealing with this regime; it is facing the biggest ever challenge to its legitimacy, which we welcome.

Baroness Falkner of Margravine: My Lords, it is reassuring to hear the Minister talk about using all channels to deal with Iran, which is seldom brought to its knees through threats and use of force. Apropos sanctions, will the noble Baroness confirm that, despite what appears to be China's statement today, Her Majesty's Government will continue working with Russia, which seems to be re-evaluating its relationship, and with China to bring about successful sanctions resolutions in the UN Security Council, and will continue to keep channels of negotiation open with the Iranian Government?

Baroness Kinnock of Holyhead: I thank the noble Baroness. There was some hesitation about sanctions and movement on human rights because the international community was concerned about nuclear diplomacy and how that might be affected were we to take particular notice of human rights in Iran. However, the events that we have seen on the streets of Iran and the amazing courage of the people under terrible repression demand a suitable response. We are prepared to look at all options, but options which would be likely to have a positive effect on the lives of the people of Iran. We will seek multilateral sanctions, and we have done so at both EU and UN level. In December, the EU also took a strong stand on Iran and called for stronger sanctions. We will continue to pursue that course.

Lord Maginnis of Drumglass: Will the Minister—

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): My Lords, we are in the 24th minute; we must pass to the fourth Question.

Railways: Eurostar

Question

3.32 pm

Asked By ***Lord Berkeley***

To ask Her Majesty's Government what action they are taking in conjunction with the Government of France to investigate the delays in rescuing passengers in Eurostar trains which broke down in the Channel Tunnel on 18 and 19 December 2009.

Lord Faulkner of Worcester: My Lords, the Government have approved the terms of reference of an independent review, to be chaired jointly by Christopher Garnett and Claude Gressier, to report directly to UK and French Ministers in parallel with Eurostar.

The review will consider all aspects of the Eurostar service disruption, including the breakdowns in the tunnel, contingency planning, and communication with passengers. We expect the review to publish its findings around the end of January and the Secretary of State will make a Statement to Parliament at this point.

Lord Berkeley: I am grateful to my noble friend for that Answer. Is he aware that the original concession agreement between Eurotunnel and the Government required the company to remove all passengers in a stricken train within 30 minutes? That is rather different from the 17 hours that thousands of passengers suffered with no food, water, light or communication. What comfort can he give the House, especially at this time of snow—this always seems to happen when it is snowing—that the same kind of incident will not happen again?

Lord Faulkner of Worcester: My Lords, it would be a foolish person who said that such a thing could never happen again. All I can say on that point is that the precise mechanical problem which caused the five trains to break down has now been corrected and services are operating, albeit with a reduced service in the present very bad weather. The question that my noble friend raises about the evacuation time is very important and is one which we shall encourage the

intergovernmental commission, the organisation responsible for safety in the Channel Tunnel, to consider. This is a joint UK/French body and is the regulator for the Channel Tunnel. Following the events that occurred just before Christmas, the IGC issued a statement that the evacuation procedures put into operation on 18 and 19 December had been the subject of joint planning between railway undertakings and Eurotunnel before being submitted to the IGC for agreement and approval, and that they were more particularly adapted to fire risk. That, I think, is the reason for the 30-minute figure to which my noble friend referred. These matters will need to be looked at and will also need to be considered by the independent inquiry to which I referred.

Lord Bradshaw: The real essence of this is to not refer the matter to some independent commission that will report in so many years time. Will the Minister ask his colleague, the Secretary of State, to tell us what procedures are going to be put in place within a very short time and rehearsed regularly so that they are robust and not forgotten by the staff?

Lord Faulkner of Worcester: The independent inquiry is not going to take a year to report. We have instructed it to give us the report by the end of January, and there will then be a Statement to Parliament immediately afterwards. It is much more sensible to look at these matters properly and to consider the experiences of the passengers who were affected. We are encouraging people who were affected on the five Eurostar trains to write in to the inquiry. E-mail details are available on the website, so that all the experiences that they suffered can be properly examined. As a result of that we can have a method of operation, post the end of January, which will meet the requirements of the noble Lord.

Baroness Hanham: My Lords, as someone who was stuck in the Channel Tunnel—not on this occasion, but previously, for two hours—I endorse the fact that there is no communication when things go wrong. The Minister has mentioned this, but I ask that the inquiry addresses communication between the surface and the train driver, between the train driver and the train manager and then between the train manager and the passengers. The last is usually a disaster, but it seems as if there may be some gaps in the others. We need to ensure that that aspect is fully covered.

Lord Faulkner of Worcester: I can give the noble Baroness exactly that assurance. She has raised one of the most important and disturbing aspects of this whole unhappy story—the fact that passengers on the train were not being informed of what was going on. It is possible for the train driver to be kept informed from the Eurotunnel control. The inquiry is looking at why it was not then possible for the passengers to be kept in the picture. I appreciate what the noble Baroness has said. She may even wish to write to the inquiry, to Mr Garnett, and give her own experience of her previous delay.

Lord Elystan-Morgan: My Lords, will it be within the remit of the independent commission to find whether or not Eurostar was grossly negligent on this occasion?

Lord Faulkner of Worcester: I suspect the noble Lord is referring to a legal liability. I understand that the independent inquiry is concerned with what went wrong, and what needs to be done to put it right. It is not concerned with legal liability at this stage. However, if I am wrong about, I will write to the noble Lord and correct myself.

Lord Lea of Crondall: Was my noble friend assuring us in his previous reply that the operational interface between Eurotunnel and Eurostar is part of the scope of the inquiry?

Lord Faulkner of Worcester: I can give my noble friend that assurance. One aspect of this saga that surprised us was the Eurotunnel statement that was issued, perhaps in some haste, immediately after the series of incidents took place. In that statement, it appeared to contradict the evidence that it had already given to the IGC about safety issues. The interface between Eurotunnel and Eurostar is extremely important and it is something that is at the heart of the independent inquiry that Mr Gressier and Mr Garnett are conducting.

Arrangement of Business

Announcement

3.39 pm

Lord Bassam of Brighton: My Lords, in light of the inclement weather conditions today, and their impact on the transport system, the usual channels have agreed that it would be for the benefit of the House and staff if we rose earlier than planned. I propose that the House adjourns at a convenient point tonight, at around 7.30 pm, the time we would normally take dinner break business. This means that the Question for Short Debate in the name of my noble friend Lord Dubs will be postponed. However, I assure noble Lords that another suitable day will be found. I hope your Lordships will agree that this is a sensible way forward in the circumstances.

Liaison Committee: First Report

Motion to Agree

3.39 pm

Moved By ***The Chairman of Committees***

That the First Report from the Select Committee on a Joint Committee on the National Security Strategy (HL Paper 18) be agreed to.

Motion agreed.

Pharmacy Order 2010

Motion to Discharge Referral to Grand Committee

Moved By ***Baroness Royall of Blaisdon***

That the order of 3 December 2009 referring the draft order to a Grand Committee be discharged.

Motion agreed.

Digital Economy Bill [HL]

Committee (1st Day)

3.40 pm

Clause 1 : General duties of OFCOM

Amendment 1

Moved by ***Lord Lucas***

1: Clause 1, page 1, line 5, leave out subsection (2)

Lord Lucas: My Lords, Clause 3 of the Communications Act 2003 sets out the general duties of Ofcom. The first subsection describes Ofcom's general duties towards citizens and consumers, and the second subsection sets out its detailed functions. It is significant that on the plaque in the lobby of Ofcom's office only the second set of duties is commemorated. The duties to the citizen and to the consumer are missing. I think that that has been Ofcom's attitude throughout its life—that it feels that its principal duties are to itself and to the industry and that the inconvenient subsection (1) is to be ignored. So that is the attitude with which I approach subsection (2), which I wish to remove with Amendment 1.

It is of specific concern that we are loading on to Ofcom new duties to promote investment in electronic communications and infrastructure, and for the investment resulting from that to be efficient. Given Ofcom's open disregard of its duties to the citizen and to the consumer, that is putting too much emphasis on the wrong side of things. If we consider Ofcom's attitude combined with those words, we are creating something which over time will reduce competition and the breadth of services available to the consumer. It is also of concern to me whether it really is right that a body which is supposed to be an independent regulator should be responsible for promoting investment, a duty which is more commonly separated from that of regulation. This confusion of powers and principles is likely to cause problems over the long term.

Deletion, of course, is not the only solution to this problem. We could try to bring into these clauses something which reminded Ofcom that the citizen and the consumer are actually its principal concerns. We could bring in a requirement that, to keep these matters in its mind, Ofcom should report at intervals to Parliament or the Secretary of State on competition and on the breadth of services available to consumers. However, it seems to me that, as things are at the moment, loading these rather unusual duties on to a body which ought to be a regulator—which, as I say, has left some duties out of the plaque in its lobby and always been less than mindful of its duties to the consumer and the citizen—and to give it this additional bias in terms of industry and efficiency, at a time when the breadth of opportunities to the citizen seems to be exploding and when the industries that Ofcom regulates have in many instances dragged their feet and been slow to take advantage of these and tried to oppose the tide of change, is the wrong way to be looking. We ought to be looking to redirect Ofcom towards the consumer and the citizen and not to be focusing on the support of the industry. I beg to move.

3.45 pm

The Chairman of Committees (Lord Brabazon of Tara): I should point out that if this amendment is agreed to, I cannot call Amendments 2 to 5.

The Earl of Erroll: I want to reinforce what the noble Lord, Lord Lucas, has said. I have noticed that in various areas where we have amalgamated the roles of enforcer and helper, it has rarely worked, if ever, because the agency or body concerned finds it difficult to know which one it will do. The danger is that the Government will then say, "Don't worry, this is covered", when the body concerned is failing in the bit that it is not good at. In other words, Ofcom may be a good regulator but not a good promoter, but we will be told that the issue is covered because it is part of its duties, even if it is not doing it well.

It is difficult to set priorities because one role costs money and the other sometimes involves levying charges, so there can be great conflict. From this point of view, the first part of the proposal is that Ofcom should promote investment in electronic communications networks and infrastructure. Part of *Digital Britain*, which has been left out of this completely, was the concept that we should have a minimum level of broadband in every household in the country, so that the Government could reduce the cost of delivering services to the public—they have assigned a lot of money to this—by using the internet much more widely. A minimum level of 2 megabits per second would be required for that. I see nothing about that in the Bill. Do the Government intend to place a duty on Ofcom to bring that forward, and also perhaps to bash heads together so that BT and other local community initiatives for broadband come together properly? Or do the Government not see that as Ofcom's role? I think that there will be confusion, so I agree with the noble Lord, Lord Lucas, that subsection (2) should be left out of the Bill.

Lord Steel of Aikwood: I support the thrust of what the noble Lord, Lord Lucas, and the noble Earl, Lord Erroll, have been saying, particularly in reference to subsection (2)(a), which refers to promoting,

"appropriate levels of investment in electronic communications networks".

I should declare an interest—or a lack of interest, to be more accurate. I happen to live in an area that has no mobile telephone reception. Both my mobile telephone and the gadget which the House of Lords kindly provides me with to receive communications do not work. I have raised this in correspondence directly but Ofcom has tended to shrug it off by saying that it is not part of its responsibility. I should have thought that in this day and age there should be a general policy to ensure that where there is at least a reasonable population—I am not talking about the tops of mountains—and villages which do not yet have a telecommunications network, the companies that have not built the necessary masts should do so. In the case that I am thinking of only one more mast is needed. These companies are falling down in their duty. I should like to hear that the Government will take this matter seriously and that, where there is a reasonable population, the whole country will be covered by the mobile telephone network.

Lord Gordon of Strathblane: I wish to strike a slightly different note. It seems to me that the answer to what the noble Lord, Lord Steel, has just said lies precisely in subsection (2)(a). The reason for promoting investment in networks is precisely to ensure that people such as him can receive mobile reception. My contribution will be very brief. Basically, I think that Ofcom cannot put everything on its plaque. I forget how long the Communications Bill was, but it is a fairly weighty document. I do not think that it neglects the citizen or the consumer. After all, there is a difference between the citizen and the consumer, as the noble Lord, Lord Puttnam—who I am delighted to see in his place—pointed out when the communications legislation was going through. The clause is there precisely to remedy the lack of coverage, including broadband coverage.

Lord Puttnam: My Lords, as will probably become evident during the passage of this Bill through Committee, I am an all but unalloyed fan of Ofcom, but I support the noble Lord, Lord Lucas, in the broad thrust of what he said. I do not know whether the mechanism that he has chosen is the right one, but he makes a very good point. Noble Lords will remember that we dragged Ofcom, kicking and screaming, into its citizen obligations. I believe a severe error has been made in Ofcom not taking on board the spirit as well as the letter of those obligations that this House imposed on it. The truth is that it could do a lot more. These improvements could well be in the Bill, and although an alternative mechanism should be found I certainly support what the noble Lord, Lord Lucas, is seeking.

Lord Whitty: My Lords, while I, like my noble friend Lord Gordon, do not entirely accept the characterisation of Ofcom by the noble Lord, Lord Lucas, by and large it has not made a bad fist of balancing out its obligations to citizens and consumers—and I declare, as I will probably have to do later as well, that I am chair of Consumer Focus. In one sense, Ofcom has been relatively good among regulators —and that is, let us just say, a relative term—in terms of taking care of the consumer interest. Yet, without any counterbalance, this clause changes that balance. It insists that it is the role of the regulator to promote infrastructure, for whatever purpose, so that the economic responsibility to the industry is emphasised but not the responsibility to the citizen and the consumer.

Whether we do it in the general sense to which the noble Lord, Lord Lucas, referred or, following some of my later amendments, in a more explicit and specific sense in the terms to which the noble Lord, Lord Steel, referred, of something approaching a universal service obligation on the part of Ofcom, the balance in simply taking this clause will be wrong. At this stage, I am not explicitly supporting the noble Lord, Lord Lucas, should this be taken to a vote, but the Government need to look at whether, by adopting this clause, they are unbalancing what has hitherto been a balanced responsibility for Ofcom.

The Lord Bishop of Blackburn: My Lords, it is my view that removing these proposed new duties of Ofcom would strip the Bill of one of its most considerable assets. I urge your Lordships to consider carefully what message removing it at this stage would send out. My friend the right reverend Prelate the Bishop of Manchester, who is not in his place today, has suggested on quite on a number of occasions in this House that public service media content serves to foster specialist knowledge of various specific categories within the industry, which informs other programme-making and, in turn, permeates our culture. It is highly prized by viewers and listeners. At its best, such content can quite genuinely make a significant contribution to enriching the fabric of our shared society.

I do not wish to dwell on the importance of public service content, as I expect that this amendment was not born from a desire to see less of such material available to the public. However, the consequences of doing nothing to keep a closer eye on the trend in the provision of such content and in having a regulator that continually has that on its mind cannot be side-stepped. Part of PSB's power lies in its ability to touch mass audiences. Such content must therefore be available to as many as possible on as many platforms as possible: over the internet, and on mobile telephones. That point was repeatedly made during Second Reading, and I do not expect that many of your Lordships would disagree with the importance of ensuring that we do not create a two-tier digital Britain of haves and have-nots. Yet the consequence of removing this obligation of Ofcom to keep an eye on the investment going into building networks of the future would send a deeper message about our commitment to such a programme.

There is a real symbolic as well as a practical value to these proposed duties, and I hope that the amendment is resisted. Those who have the privilege of producing and transmitting public service media need to know how much it is appreciated by the British people, and ensuring that our regulator has it on the radar at all times is one way of doing so. Similarly, that radar should check whether we are preparing properly for the next evolution of Digital Britain. The message of the original *Digital Britain* report was that we were in danger of being left behind economically and socially unless major private and public investment were marshalled. Let us not forget that lesson.

Baroness Howe of Idlicote: I more than understand what the noble Lord, Lord Lucas, is aiming at. I have considerable sympathy with the point. However, as someone who has much admired the efforts of the noble Lord, Lord Puttnam, in regard to the Communications Act, ensuring that the citizen and the consumer had some degree of balance and that they were shown to have different needs and interests, it would be good to have that carried through to this Bill. From time to time, I have been equally critical of Ofcom for just that reason—not paying sufficient attention to content matters. Of course, I have a different sympathy in that respect because subsection (2)(b), as has already been said by the right reverend Prelate, is a very important aspect. We must ensure the continued availability, which we in the United Kingdom are used to, of high quality public service media content in many of the areas which some of us here today are currently looking at—children's programmes, drama and so on.

[Baroness Howe of Idlicote]

Equally, the noble Lord, Lord Steel, made a very important point. I, too, live in one of the completely hopeless reception areas. Enough gigabytes need to be available so that the level is acceptable right across the country. I fear that we did not have enough gigabytes in the first place so that we could compete with countries such as Japan and so on. That is one of the problems with which we have to live. In the mean time, I hope that the good aspects of the clause will not be removed totally because of our shared feelings. I shall be neutral in my support, one way or the other, until we hear what the Minister has to say.

Lord Maxton: I would like to ask the noble Lord, Lord Lucas, whether, if the amendment were carried, he can tell the Committee who would have the responsibility under Clause 1(2). It seems to me that someone has to have responsibility for promoting appropriate levels of investment in electronic communications networks. He did not suggest an alternative. Would it be the BBC? At present it has responsibility for the television digital switchover. The biggest telephone company in the country in terms of landlines is BT, and much of the electronic communication network will initially be down the landline network. Who will be involved in promoting this if it is not Ofcom? As this comes from the Benches opposite, I assume we will not have yet another new quango established to carry out this responsibility.

Lord Mackay of Clashfern: On the point made by the noble Lord, Lord Whitty, can the Minister help me about the use of the word "particular"? I am quite familiar with the phrase "have regard to" in relation to these matters, but in this case Ofcom is asked to have particular regard to these problems. I wonder how that affects the balance of the concern for the consumer. In some ways, the clause is there in the interests of the consumer, to ensure that the number of consumers is as large as it can be, within reason. I just wonder what the effect of the use of the word "particular" is in the clause.

4 pm

Lord Mitchell: My Lords, I was unable to be here for Second Reading—I was travelling. I had things that I wanted to say but cannot at this stage. I need to make a declaration. First, I am chairman of a charity called the e-Learning Foundation, which is responsible for all children in this country, especially those from socially disadvantaged backgrounds, having laptops. I am also a shareholder in a company called Syscap, which is an IT services company, and I hold a significant shareholding in Apple.

I have been in the IT industry for 43 years—I started in the very early days, and have seen a thing or two in my life—but the most dramatic thing to me is that the IT industry, instead of going into middle age and slowing down, seems to have reverted to adolescence and is growing faster and more frenetically than ever. Look at a product such as the iPhone. A year and a half ago, Apple announced the product called apps—applications—to go on the iPhone. Today, just 18 months later, there are 130,000 applications for the iPhone. I read yesterday that 3 billion downloads—that is one for every two people on this planet—have occurred. That is a measure of the truly phenomenal growth of this industry.

Yesterday, Google announced a smart phone product, and it is rumoured that Apple itself will in the next few weeks announce a totally different product, an iTablet. That all means that these handheld mobile devices will be gulping huge amounts of broadband capability; amounts that we cannot even contemplate. That will be truly massive. There will be a convergence of television broadcasting, books, movies and anything you care to mention available on those products.

The wording of the duties for Ofcom uses the word "appropriate". I think that the word "appropriate" is totally inappropriate for the requirements of Ofcom. "Appropriate" is a word that you might use for the steel industry, but not for an industry that is growing so fast. When the clause is redrafted, I ask my noble friend for some wording that recognises the sheer growth of this industry and its potential growth in future.

Baroness Buscombe: My Lords, first, I need to declare an ongoing and active involvement in the media as chairman of the Press Complaints Commission.

One of the difficulties surrounding the whole viability of the digital economy is that not only did the Communications Act not even refer to the existence of the internet, the principal focus of our debates regarding Ofcom's duties were the rights of citizens and consumers, together with the plurality of provision of services. We did not focus enough on how that plurality of provision of services would be funded. In some ways, the Communications Act was an anachronism before it began, before the ink was even dry on the statute book. We all knew that there would be the rapid evolution to which the noble Lord, Lord Mitchell, has just referred.

It is right that there is more of a focus in the Bill on investment. However, my concern about Clause 1, in supporting the principles behind the amendment, is that there is possible duplication here between the duties set out in the Communications Act and the duties set out in the Bill. As my noble friend said, under Section 3 of the Communications Act, there is already a duty on Ofcom to ensure efficient investment in infrastructure. I advise the Government by saying that it is really important to keep this simple and to keep it clear. There is already some confusion among various channels over what these duties really mean. Unless we keep it simple and clear, and focus on the provision of sufficient investment, there will be confusion. Confusion invariably leads to higher costs and they invariably fall on the consumer. If this clause is not otiose, can we ensure that there is real clarity?

I absolutely agree with everything said by the right reverend Prelate. However, it was all said during the passage of the Communications Act. In theory, it is already there, but there is a lack of enforcement of what we looked and asked for in 2003. Maybe it is symbolism and this is the Government gently wanting to nudge industry to do the right thing. That is good, but if in so doing they create confusion and a lack of clarity in the Act, the consumer will suffer.

Lord Howard of Rising: We on these Benches also agree with the concerns of my noble friend Lord Lucas about these provisions. Clause 1 adds to the general duties of Ofcom by amending the Communications Act 2003. While we support some of the aims of this clause, we are not convinced that such additions are necessary, as my noble friend Lady Buscombe has pointed out.

Taking each duty in turn, proposed new Section (1A)(a) deals with the duty to promote appropriate levels of investment in electronic communications networks. Both sides of the House would agree that we should do all we can to ensure that our communications infrastructure is equipped for the 21st century. We agree that this will require significant investment but are not convinced that this clause is the best way to go about it.

The Government's fact sheet on this section of the Bill states that this legislation will require Ofcom,

"to have particular regard in all cases to the need to promote appropriate levels of investment".

Ofcom already has a duty to encourage investment. As the Minister knows, under Article 8 of the access and interconnection directive 2002, which was subsequently transposed into Section 3 of the Communications Act 2003, Ofcom must encourage "efficient investment in infrastructure". This has been highlighted by Ofcom itself. Its chief executive stated to the Business, Innovations and Skills Committee on 24 November that,

"the notion that we do not concern ourselves with investment and infrastructure is obviously not the case; we do do that".

What would be different in Ofcom's approach if it were granted this extra duty? We are not convinced that there would be a significant shift in the levels of investment in communications infrastructure as a result of this duty.

There are a number of reasons why there may not have been the levels of investment which we would all have liked, particularly in next-generation broadband. Barriers include lack of access for other operators to BT's ducts, dark fibre and other infrastructure; a failure to make any progress on allowing the use of telegraph poles for overhead delivery of fibre; and business rate anomalies that favour incumbent operators. Her Majesty's Government should be addressing these issues. The idea that adding a duty to the regulator—if one has been added—will suddenly transform levels of investment in this sector is fanciful. As the Government's own impact assessment states,

"investment decisions by telecommunications companies depend on a variety of factors which may be specific to the company, the sector or the economy more widely".

If the Government believe that this duty is necessary, indeed, key, to any increase in the levels of investment in the communications sector, we do not share that belief. Indeed, it is worth noting that neither the Government nor Ofcom seem to know what the result of this duty would be. That is hardly surprising, given the doubt about whether there is an additional duty. The Government's impact assessment states:

"It is difficult to predict with complete certainty what the precise effect of this will be".

The chief executive of Ofcom optimistically looked to these Committee sessions for clarity when he told the recent joint hearing of the Culture, Media and Sport and the Business and Innovation and Skills Select Committees that that will be one of the things that emerges in the parliamentary debate. What does it actually mean? The only thing that the Government seem to know is that such a duty may lead to higher prices for consumers.

I turn again to the impact assessment, which states that this duty will,

"allow network providers such as BT to raise the prices".

We on this side of the House do not support a clause that is not necessary, unlikely to lead to the results the Government claim and is likely to mean consumers paying more for communications services.

New subsection 1A(b) requires Ofcom to have regard to the need,

"to promote appropriate levels of investment in public service media content".

Again, Ofcom already seems to have the appropriate legislative framework. Section 3(2)(c) of the Communications Act 2003 states that Ofcom must ensure,

"the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests".

Section 3(4)(a) further states that it must take into account,

"the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom".

Ofcom is already empowered to ensure a wide variety of television and radio services that fulfil public service duties. Does it really need a specific new duty to promote the public service content in general? We are particularly concerned that the definition of public service media provided in subsection (5) is far too broad. The fact sheet accompanying this subsection states that this new duty will extend Ofcom's duty to promote investment to specific web services meeting specific public service definitions only. However, Section 264(6) in the Communications Act defines public service as content that covers: education and entertainment; cultural activity; civic understanding; sporting and other leisure interests; science, religion and other beliefs; high quality and original programming for children and young people; and programmes made outside the M25 area. These are broad categories and are difficult to reconcile with the Government's statement that they will apply to specific web services only. Will Ofcom have a duty to promote investment in political blogs such as ConservativeHome or Guido Fawkes or, indeed, your Lordships' Lords of the Blog? Will Ofcom have a duty to promote investment in newspapers or university websites? Can the Government also confirm that this investment in online services will not be to the detriment of programming on core channels? It would also be helpful to know whether this would give Ofcom power over how the BBC spends the licence fee. Either way, with such a broad definition, the duty could be extended to such a vast number of websites as to become meaningless. The Government must clarify the specific web services they mean.

Finally, this clause raises a number of broader issues about the role of government versus that of the regulator. Surely the promotion of investment in one

[LORD HOWARD OF RISING]
market or another, or in one service or another, is a matter for Government not a regulator. A regulator's role is to protect the consumer and promote competition. I look forward to hearing the Minister answer these questions and those of my noble friends.

4.15 pm

Lord Young of Norwood Green: My Lords, Clause 1(2) builds on Ofcom's existing duties in the Communications Act 2003 regarding the desirability of promoting the fulfilment of public service purposes and encouraging investment in relevant markets. It requires Ofcom to consider in all cases the need to promote investment in communications networks and in public service media content. Subsection (2) places these considerations as the most important qualifier of Ofcom's main duties. I am aware of the misconceptions and concerns about the status of the qualifier and would like to reassure the noble Lords, Lord Howard, Lord De Mauley, Lord Lucas, and other noble Lords who expressed concern during this debate that this qualifier will not override Ofcom's principal duty to further the interests of citizens and consumers. Ofcom will be able to use its discretion to ensure that investment is promoted only where it would be appropriate and where it helps to deliver on the principal duty.

The communications market and infrastructure in the UK has changed substantially since the Communications Act was passed in 2003—the digital world has changed the landscape dramatically. There have been a number of examples during this debate. Therefore, it is very important that in performing its existing duties, Ofcom should give greater weight to the need to promote investment in electronic communications networks and in public service media content—as far as is appropriate to the benefit of consumers and citizens. Surely the overall objective is to ensure that in this country we do not have what has come to be known as the digital divide. The noble Lord, Lord Steel, and others expressed concern about access to services. There is a much more fundamental need to ensure that we get the infrastructure investment that the whole country needs and do not create a digital divide.

The UK increasingly relies on having a world-class communications network for every part of our lives. Our businesses rely on electronic communications to improve processes, to innovate, to control costs and to reach customers. Citizens rely on electronic communications to work, to shop, to train, to stay in touch with friends and family and to enjoy our world-class digital entertainment. Children rely on electronic communications to study and learn. Indeed, it is not only children. Increasingly every part of government relies on electronic communications to reach citizens. The health of infrastructure, over which all these electronic communications pass, is critical to the well-being of the UK. Many of our communications networks are being substantively upgraded—digital television, digital radio, high-speed broadband and next-generation mobile. It is important that Ofcom should be able to take into account, as far as is appropriate, the benefit to consumers and citizens that will result from these and other major investments.

It is important that this is properly recognised in the regulatory framework that impacts so much on what happens to communications infrastructure. There is a risk that if we do not invest more in our communications infrastructure, we will find that the networks and services that currently exist will deteriorate and that we will fossilise and fall behind our competitors as they invest for the future.

Before I continue, I want to deal with some of the questions raised during the debate. The noble Lord, Lord Lucas, said that the new duties imply an open disregard for consumers by Ofcom. We reject that and believe that we have the balance right between promoting infrastructure investment and the need to deal with the concerns of consumers. The noble Earl, Lord Erroll, was worried about the question of the commitment to megabit speed. We have not abandoned it by any means, but we do not need to enshrine the objective in legislation to achieve it. I can reassure him that the objective is still in place.

I have already addressed the concerns of the noble Lord, Lord Steel, about infrastructure; indeed further on in the Bill we talk about the importance of mobile coverage. To me, removing this subsection would actually act against the concerns he has expressed.

Lord Steel of Aikwood: Perhaps I could clarify that while I support the sentiments reflected in the submission of the noble Lord, Lord Lucas, I do not support the amendment for the reasons the Minister has just given. However, there was a fatal accident not far from where I live, and the sheriff who conducted the inquiry said that the employer ought to provide a shepherd operating a quad bike with a mobile phone. That would be completely pointless if there is no reception.

Lord Young of Norwood Green: I thank the noble Lord for his clarification about the amendment and I endorse what he said about the importance of universal coverage, a point reinforced by my noble friend Lord Gordon.

My noble friend Lord Whitty said that we do not have the balance right. We believe that we have. Let me reassure him that it is not a question of promoting infrastructure investment at the expense of consumers. Ofcom's duties have to cover both. I would ask my noble friend to reflect on this: if we do not have the right infrastructure in place, we will deny the very consumers about whom my noble friend cares so passionately access to the services they need to function in today's digital society. He is right to stress the importance of balance and we believe that we have it right.

I must admit that I was impressed with the contribution made by the right reverend Prelate the Bishop of Blackburn. His spiritual analysis was better than the temporal one, quite frankly. He understands the importance of getting investment into the infrastructure right and said that we do not want a two-tier Britain, which is another way of expressing what I call the digital divide. I absolutely endorse that. He also made points in relation to public service broadcast content and the ability for it to be available on a wide variety of platforms.

The noble Lord, Lord Howard, said that it is not necessary, but my noble friend Lord Maxton pointed out that if we do not ask Ofcom to do this, who is going to be responsible. That is a pertinent point. It is right that the regulator should be responsible for this. The duty is already there and we are enhancing its status. I want also to reassure the noble Baroness, Lady Buscombe, because I share her concern. We do not want to muddy the waters or obfuscate the issue—although it is a delight to hear it again, I shall not use the word "otiose". We do not believe that this provision is otiose because within this legislation we need to emphasise the increasing importance of getting the infrastructure right. It is necessary and there will be no duplication because we are doing this only once.

I was asked about the use of the word "particular", a point raised I believe by the noble and learned Lord, Lord Mackay. As I have said, Ofcom already has a duty to encourage investment. This may have been appropriate in 2003 when we were on the threshold of the digital era, but that emphasis is no longer sufficient. The new clause will affect its principal duties as in all cases Ofcom will have to have particular regard to the need to promote investment. Another noble Lord felt that even that word was not sufficient and that it should have an even higher priority. Again, it is a question of balance. We believe that we have got the balance right by raising the status of the requirement for infrastructure investment.

On the question of public service media content, the substantive upgrading of our communications network has also provided great opportunities for UK producers to offer innovative, original content that can meet new audiences' demands. Public service media content is therefore now increasingly being provided on electronic platforms such as on demand, on-line services and mobile devices. At the same time, these changes threaten the production of UK public service media content such as current affairs and high-end drama by shifting advertising revenues and challenging the economics of the production of such content. Commercial public service broadcasters have already reduced programme budgets in 2007 and 2008 in response to market conditions, and Ofcom's second public service broadcast review indicated that the total amount invested in programming is likely to fall, in real terms, by between £170 million and £350 million in the six years between 2006 and 2012.

The plurality of public service media content provides significant benefits for the UK. It provides healthy competition to the BBC and purely commercial content providers, which benefits citizens and consumers. Increased investment will ensure a variety of outlets for the different content produced by the UK's independent sector. This competition drives up the entire market and contributes to making our country a world leader in content and format exports.

As regards the concerns expressed by the noble Lord, Lord Howard, in relation to the duty to encourage investment, the new clause will affect the principal duties. Ofcom will have to have particular regard in all cases to the need to promote investment. This is not a statement of principle but a clear requirement on Ofcom to consider systematically the specific impact on investment of all its decisions. At the moment, Ofcom is simply required to have regard to the desirability of encouraging investment when it appears to be relevant in the circumstances.

The noble Lord asked whether the coverage of public service broadcast content would be too wide and I shall try to clarify that now. The amendments made by the clause recognise the importance of investment in public service media content. The digital age provides great opportunities for British producers to offer innovative, original content that can meet new audience expectations. However, as I have said, at the same time these changes threaten the production of UK public service media content such as current affairs and high-end drama by shifting advertising revenues and challenging the economics of the production of such content. As I have said already, commercial public sector broadcasters have reduced their investment.

The plurality of public service media content provides significant benefits for the UK, provides healthy competition to the BBC and purely commercial content providers, which benefits citizens and consumers. Increased investment will ensure a variety of outlets for the different content produced by the UK independent sector. This competition will drive up the entire market and contribute to making our country a world leader in content and format export.

I have not addressed the point about whether Ofcom will investigate every single blog. I doubt it because we have a defined view of the areas that Ofcom would investigate in relation to public service broadcasting. However, I will clarify that in writing because the noble Lord has made an important point.

We believe that it is a question of doing two things in these clauses: to recognise the importance of ensuring that we do not have a two-tier Britain, a digital divide, and that we have a truly universal UK infrastructure, while at the same time ensuring that Ofcom does not overlook the importance of services to consumers and addresses the concern expressed by a number of noble Lords. We believe that we have got that balance right.

The ability to introduce innovative new media services frequently depends on investment in communications infrastructure. The Government recognise that there is a potential, though by no means automatic, tension between a short-term regulatory goal of reducing prices and a long-term regulatory goal of promoting investment in the resulting innovation. We need to ensure that, even in the face of difficult market conditions, investment in infrastructure and the plurality of media continue. Subsection (2) takes steps to achieve that.

I hope that, in the light of that explanation, the noble Lord will feel able to withdraw the amendment and that the Committee as a whole will recognise the importance of ensuring that we truly have an infrastructure for the whole of the UK and healthy public sector content. For that, we need both these clauses.

4.30 pm

Lord Puttnam: Before the Minister sits down, I do not believe that he has fully addressed the underlying concern that the noble Lord, Lord Lucas, set out in his opening speech. Can I invite him to go back to the issue of balance? There are many people in this House, the noble Baroness, Lady Howe, probably being the

[LORD PUTTNAM]
most diligent, who over the past seven years have observed and been consistently disappointed by—I stress that I say this as a real supporter of Ofcom—the way in which it has addressed its obligations to citizens' interests, to digital literacy, to training and to other issues. The Bill offers a golden opportunity to rebalance what is at present an imbalanced situation and it would be quite foolish not to take advantage of it. That is what I think the noble Lord, Lord Lucas, is driving at, and it is what we should be attempting to achieve.

Lord Young of Norwood Green: I am sorry that my noble friend thought that that was not addressed; I thought that I had addressed it. I pointed out in my opening paragraphs that the qualifier in relation to promoting investment in the electronic communications network and infrastructure,

"will not override Ofcom's principal duty to further the interests of citizens and consumers".

That, surely, is a pretty emphatic statement; if the noble Lord is looking for balance, it is there.

Lord Puttnam: That would be the case if the Committee was convinced that that was already happening. I am suggesting that it is in these areas that Ofcom has badly let itself down over the past seven years.

Lord Young of Norwood Green: If my noble friend is saying that Ofcom has not yet risen to the challenge of being the protector of the consumer up to now—I would not necessarily support that view but I understand the concern—that still does not take away the need for us to ensure that we have a modern digital infrastructure that covers the whole of the UK. If we are not saying that we are going to place less importance on ensuring that—the noble Lord says that that is not what we are saying—and if we really care about consumers' interests, then Ofcom has a duty to deal with both those concerns.

I am giving an assurance today that this qualifier will not override Ofcom's principal duty to further the interests of citizens and consumers. We will take it away and see if we can further reinforce it, but there is no intention that the clauses as they stand will somehow devalue the importance of the interests of citizens and consumers.

Baroness O'Neill of Bengarve: Before the Minister completes his response, the worry on many sides of the Committee is not that Ofcom has failed to consider consumers' interests but that it has hyphenated the interests of citizens and consumers, and that what were laid down in the Act as two distinct duties were conflated. This, as the noble Lord, Lord Puttnam, said, is a golden opportunity to remedy that deficiency and to emphasise that these are distinct duties that have to be balanced against one another at certain times. No amount of going back to the importance of the investment in support of infrastructure really speaks to that issue. There is a gap here, and it is what goes into the gap that I take the amendment of the noble Lord, Lord Lucas, to be addressing.

Lord Young of Norwood Green: My Lords, with respect, I do not think that the amendment does address that. Taking away subsection (2) is still not going to deal with the problem that has been identified. I have indicated that we will look at the point in relation to concerns about citizens and consumers, but removing this subsection will not address the problem. What it will do is take away a really important duty of Ofcom in the current digital climate, which is to ensure that we have the right investment in not just the infrastructure but also public service broadcast content.

Lord Mayhew of Twysden: My Lords, perhaps I may ask for some help with the intended meaning of the formula,

"must have particular regard, in all cases, to the need",

which is then followed by paragraphs (a), (b) and (c). Does it mean that, among other things, it must have regard to the specified matters, or does it mean that it must have a special regard, which suggests a higher value, and that it must have perhaps even overriding regard where there is any conflict? We need rather clearer advice about that.

Lord Young of Norwood Green: My Lords, I have tried to clarify that position. Clearly, the reference to having "particular regard" is intended to indicate that the matters mentioned in new subsection 1A should be given more weight than those currently in subsections (3) and (4) of the Act. This will qualify, in particular, the requirement in the principal duty to further the interests of consumers by promoting competition wherever appropriate.

Lord Howard of Rising: My Lords, I thank the Minister for saying that he will write to me, and I look forward to hearing from him when he can clarify the Ofcom position on promoting web services. No one could possibly disagree with the Minister's comments on improving infrastructure, but he has not actually said what will be gained by what is in the Bill. The duty already exists, as I have pointed out, and I would like the Minister to tell us what will actually be done differently because of this.

Lord Young of Norwood Green: My Lords, the duty does exist but, as I indicated earlier, it is at a much lower level in that it talks just about sufficient investment. This duty was defined in the Communications Act 2003. Surely with the passage of time and the importance of infrastructure—and practically every contribution this evening has stressed its importance—are we really saying that that is a sufficient duty? We do not believe that it is. We need to heighten the importance of infrastructure investment and move from a position where Ofcom merely ensures that there is sufficient investment to one where it promotes investment. There is a real benefit to be obtained from that. Obviously, the proof of that particular pudding will be in the eating, but that does not gainsay the importance of ensuring that Ofcom gives more weight to infrastructure investment.

Lord Lucas: My Lords, I am very grateful to the many noble Lords who have spoken. I do not hold to the particular wording of this amendment. I very much hope that the Minister, in his replies, will not do the tiresome government trick of trying to treat every amendment as literal. Certainly, that is fine on Report,

but in Committee they are very much designed to elicit debate and draw out points of concern. I think that this amendment has succeeded from that point of view. I certainly shall not press it at Committee stage; I do not intend to press any of my amendments in Committee, unless I get a completely bananas answer from the Government, which I am sure I will not from the noble Lord. I am certain that we will return to this matter in a more directed and considered way on Report, particularly if the Government, as seems to be the case, show no sign of movement.

My principal concern with the clause is that it qualifies subsection (1) and not subsection (2). This amplification of the current duties would naturally fit in subsection (2), but it is put into the Communications Act as a direct, single and special qualifier of subsection (1); that is, it reduces the duties to the citizen and the consumer by taking on board the need to cuddle up to the industry in order to encourage greater investment. That is a dangerous thing for a regulator to do.

To answer the question asked by the noble Lord, Lord Maxton, I think that this sort of thing belongs with the department. That is where this sort of relationship ought to exist and where this sort of support ought to come from. The regulator ought to take a dispassionate view, judging between the consumer and the industry. In particular, as is set out in the Bill, it ought to put the citizen and the consumer first. The way in which the legislation has been structured directly threatens that. As several noble Lords mentioned, it strikes hard at the duties to the citizen and the consumer.

The use, twice, of the word "appropriate" puts Ofcom, which is supposedly a regulator, in the position of picking winners. That is a dangerous thing for a Government to do, let alone a regulator. The Minister looks puzzled, but how can Ofcom judge what is appropriate without getting into the business of deciding between one set of investment and another? Paragraph (c) contains the word "efficient", which, in the context of qualifying this, gives me considerable concern about how the investment is to be directed.

In his reply, the Minister referred to high-quality drama. I got the feeling when he was talking about that that the people who are briefing him are living in the world of six months ago and not the world of today; they are living in a world where somehow we can defend the old ways of doing things. I hope to live in the world that the noble Lord, Lord Mitchell, outlined—a world of extraordinary new opportunities. When I started looking at the Bill, I thought that it was ridiculous in many ways; the Government seemed to be trying to hold back a slowly rising tide of change and that just would not work. However, as the noble Lord, Lord Mitchell, pointed out, we are facing not a tide but a tsunami—the dam has broken. He outlined a world where there is the growth of apps, to be followed by a decent e-book, at last—I am dead certain that Apple will not produce anything other than that. This will create an enormous change, not only for this part of the Bill but certainly for Clauses 4 onwards. I declare an interest as someone who earns most of his money from selling copyright on the net.

It is wrong to see these things as a threat. They are an enormous opportunity. The way in which to harness an opportunity is not to live with the old monopolists and try to shore them up, doing cosy deals with the big beasts of the industry, but to encourage the underdogs and the people who are motivated to change. If the Minister had looked at the computer industry five years ago, how much money would he have put on Apple? I am afraid that I was not nearly as wise as the noble Lord, Lord Mitchell. I thought that Apple had a nice little niche to itself but that it had been defeated; it was hanging on somehow in a little cosy corner. Now it has come back and, goodness, it is making a change to the world. Will noble Lords continue to be refused iPhones? It is becoming impossible to see how, if I had the choice, I would wish to buy a Windows computer again. The world has changed. There is a sudden explosion of capability out of the back field, out of a neglected area. This clause, to judge from the noble Lord's speech, is aimed at imposing higher prices, which means shoring up the old monopolies and giving them extra money in return for investing rather than looking at new people and new ways of doing things. This has to be the wrong way of doing things and the wrong time to disempower the consumer and the citizen.

4.45 pm

Lord Young of Norwood Green: I have tried not to respond, but I shall just on that point. If you look at the range of competition on broadband or on mobile networks, you cannot say that we are just shoring up existing or previous old monopolies. There has been a huge growth in competition, as the number of offerings on broadband connections and mobile phones shows. We are not intending to shore up. There is a huge expanding market. We put a duty to promote competition in the 2003 Act. We may not have got everything right, but to say that in the UK we do not have a highly vibrant competitive market is not an appropriate description.

Lord Lucas: The noble Lord is taking my arguments too far. I was taking up his comment that prices would be higher. The only way you can impose higher prices on the consumer is to create a monopoly of some variety to inhibit competition. Otherwise, competition destroys any possibility of doing that.

If Dickens had been alive today, he would look at the iPhone not as a threat but as a wonderful opportunity to get out there with drama in ways that no one had ever thought of before. He was a great user of new media in his day. To regard drama as threatened merely because the old ways of consuming it are having a difficulty when we are suddenly being presented with all sorts of new ways of doing it is a great mistake. Governments are entitled to make mistakes, but what I regret in this clause is polluting a perfectly good regulator with something which gives it duties in an entirely inappropriate direction, rather than doing what ought to underlie the sentiments of the noble Lord, which is reinforcing Ofcom's interest in making sure that proper infrastructure is provided and that British Telecom gets off its butt and really gets at the quality of some of its old network. We were talking earlier about communications in the Channel Tunnel. Some of the mobile phone communication masts being put up now have 12 hours' reserve power. We are building extremely delicate, unrobust networks. This is

[Lord Lucas]
the sort of thing Ofcom ought to be caring about. It ought to be challenging the industry in the interests of the consumer. It ought to be clearing away obstacles which are being put in the way of progress by those who represent the old rather than the new.

That is the way we ought to be looking at the Bill. I very much hope that we can take the good parts of what the noble Lord is hoping to do in terms of making sure that we have a decent infrastructure in this country and put it in the proper context of the duties that we fought so hard to get into Section 3(1) of the 2003 Act. I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Lord Howard of Rising***

2: Clause 1, page 1, leave out lines 8 and 9

Lord Howard of Rising: Amendment 2 focuses on an unnecessary additional duty to promote infrastructure in electronic communications networks. I have mentioned a number of concerns already about this particular subsection, but they are worth reiterating. We on these Benches believe that Ofcom already has the legislative framework within the Communications Act 2003 to encourage investment in communications networks and the Government have not been clear as to what change this new duty would have when there already exists a requirement for efficient investment in infrastructure. If this paragraph will fundamentally change the way in which Ofcom works, the Government need to be a bit clearer about it. The only change that I can see with such a duty is to allow the incumbent operator to charge higher prices, both directly to consumers and indirectly through its wholesale pricing. If the Government think that this is necessary, or indeed a good thing, they should say so.

It is worth pointing out again that the Government's impact assessment states:

"It is difficult to predict with complete certainty what the precise effect of this will be".

If this is the case, I suggest it is best that the duty is not included in the Bill until we are certain of its impact. I beg to move.

The Lord Bishop of Blackburn: My Lords, diluting this part of the Bill seems to me somewhat unhelpful. Maintaining the duty for Ofcom to promote and monitor investment in the infrastructure that we need to help secure our economic and social prosperity in the future seems entirely sensible, even highly desirable. Identifying where the private sector is simply not going to deliver a next generation service to our hardest to reach communities, and plugging it with targeted public money to ensure that all households have equitable access to the internet, which will include a whole range of public service media content too, is surely, at least to my way of thinking, a reasonable duty for our communications regulator in a digital age.

I am also reluctant to concede that providing audiences with high quality public service media content is solely the responsibility of one or two broadcasters. The *Digital Britain* White Paper set out some unsettling truths about the shape of the broadcasting landscape at present and in the future. In this new world, the role of public service broadcasting cannot be left to chance, and cannot be left to the BBC and Channel 4 alone.

Ofcom's role in helping shape the future of a second strong public service broadcasting institution around Channel 4 is a vital one. The whole point is that the market, if left to its own devices, would not provide much of the content that helps sustain, reflect and inform our culture. Some ability for the regulator to recognise this in its activities is simply common sense. I do not get the feeling that Ofcom is likely to be profligate with the element of flexibility; the clause simply makes sure that its hands are not tied unnecessarily in seeking to deliver the goals of the Bill, or that it has to complete extensive audit trails simply to demonstrate that all its activities are wholly efficient. The new duties appear to me to be good seeds. From them mighty oaks might grow. I therefore resist this amendment in favour of the Bill as it stands.

Lord Young of Norwood Green: My Lords, I think that we covered a good deal of this in the previous debate but nevertheless I shall try to address a couple of the points that were made.

Paragraph (a) of proposed new subsection (1A) requires Ofcom to consider the need for investment and,

"to promote appropriate levels of investment in electronic communications networks".

This makes it a clear requirement on Ofcom to consider systematically the specific impact of its decisions and assessments relating to investment. Currently, Ofcom is simply required to have regard to the desirability of encouraging investment when it appears to be relevant in the circumstance. That clearly is not sufficient in today's digital environment. This will qualify in particular the general duty to promote competition. This amendment clarifies and substantiates the existing caveat,

"where appropriate by promoting competition",

by requiring Ofcom to consider the promotion of investment even in those circumstances, for example, where increased investment and competition might be at odds.

Let me try to reassure the noble Lord, Lord Howard, that it will not be a carte blanche for one of the network operators to make excessive profits. Ofcom will continue to be bound by its existing general duties in Section 3, which are very clear about the importance of promoting competition. In addition, it is important to remember that the functions that Ofcom derives from EU legislation will have to be carried out strictly in accordance with that legislation. Where that legislation does not recognise the importance of promoting investment, Ofcom will have to follow the EU provisions if there is a conflict between them and the new qualification to its general duties.

I concur with the conclusions of the right reverend Prelate the Bishop of Blackburn, who again has got the analysis right in terms of the importance of ensuring sufficient infrastructure investment in the current climate. We have covered most of this argument in the previous debate, so I would hope that in the

light of that debate, and given the importance of maintaining this clause, that the noble Lord will consider withdrawing the amendment.

Lord Howard of Rising: I agree with the right reverend Prelate about the need for an infrastructure that works and delivers, and I am not seeking to criticise that. My only point is that the power already exists; so what is the gain from the proposed legislation? I return to the government impact assessment. It is difficult to predict with complete certainty what the precise effect will be. If no one knows what gains there are going to be, why are we trying to introduce the legislation? I am sure that the Minister must have a better reason than the generalities he has expressed, but—

Lord Young of Norwood Green: If I can, I want to reassure the noble Lord that this new clause recognises the specific importance of investment in electronic networks at a time when many of our communication networks are being substantively upgraded—digital television, digital radio, high-speed broadband and next-generation mobile. It is vital that Ofcom should be able to take into account, as far as is appropriate, the benefits to consumers and citizens that will result from these and other major investments.

The amendment places the need to promote such investment as the most important qualifier of Ofcom's duties. Our policy objective as set out in the *Digital Britain* White Paper was clear, in that the general duties of Ofcom should be qualified by the need to promote investment. We concluded that the best way of achieving this is by the creation of proposed new subsection (1A), which would include a specific requirement on Ofcom, in performing its duties, to promote appropriate levels of investment in electronic communications networks. We believe that that is appropriate and necessary in the current climate if we are serious about having an infrastructure that will carry us into the 21st century.

Lord Howard of Rising: I thank the Minister for what he has said. I am not completely convinced, but I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3

Moved by ***Lord Howard of Rising***

3: Clause 1, page 1, line 10, leave out "public service"

Lord Howard of Rising: My Lords, I shall speak also to Amendments 4, 6, 7 and 31. These five amendments fall into a few different groups. Amendments 3 and 6 serve two purposes—first, to create a level playing field with respect to investment in media content, and, secondly, to highlight a further concern that this subsection may have on Ofcom's ability to function properly. By removing the phrase "public service" from this duty, we are attempting to create a level playing field in the media sector.

We on this side of the Committee want to attract investment into UK content in general, rather than just public service content. Without this amendment, such a duty may put off potential investment into the UK media sector, because it would create a fear that Ofcom may intervene to the detriment of those not producing public service content. We do not believe that the state should choose what type of content non-public service broadcasters invest in. Consumers value choice above all else, and these amendments would ensure that this is protected.

More broadly, it would be helpful if the Minister could clarify whether the Government have considered the potential impact of this subsection on the way that Ofcom functions. If Ofcom has a duty to promote investment in media content—public service or otherwise—is there not a danger that this could be used by companies to appeal against any regulatory decision that Ofcom makes? If, for instance, Ofcom decided to change the levels of advertising that ITV is allowed to show and ITV believed that this would result in a decrease in its income, it could argue that this would stop it investing in certain types of content. As such, Ofcom would have failed in its duty to promote investment in media content. How do the Government see this clause working in practice?

Amendments 4 and 31 move the focus in the other direction and define the content more narrowly. Ofcom's new duty is extended solely to content made by public service broadcasters. In tabling these amendments, I hope to draw out from the Minister a more precise explanation of the types of content that the Government hope this duty will cover. We believe that public service broadcasters should be encouraged to make their content available across all platforms. In today's digital age, the idea of public service content being just about broadcasting is becoming anachronistic. Video on-demand services are incredibly popular. The BBC iPlayer has more than 1.5 million download or stream requests a day, and 30 per cent of adults already watch content online. We accept that simply looking at broadcasting would not reflect the way that audiences consume content.

These amendments would mean that Ofcom's existing duties were updated whereby this shift in consumption was better reflected, but would limit this to broadcasters that were licensed to meet public service objectives. Rather than promoting investment in public service content by anyone meeting the general criteria contained in the Communications Act, Ofcom's duty would simply apply to online content made by the public service broadcasters.

Public service broadcasters exist to provide public service content, and it is right that Ofcom has a role in ensuring that this happens. However, without Amendment 4, Ofcom would have a duty to promote public service content from non-public service broadcasters. This would represent an unnecessary extension of Ofcom's powers into non-public sector broadcasting companies. Do the Government want Ofcom to regulate Sky whereby it must favour one type of programming over another? If not, can the Minister explain how this would not be the case? These amendments seek to ensure that we do not inadvertently enhance Ofcom's powers beyond that which is appropriate.

I admit that this is an attempt to make an unnecessary clause slightly more workable and we remain unconvinced about the need for the clause at all. However, if the

[Lord Howard of Rising]
Government insist on retaining it and do not accept the amendments, they need to be much clearer on the types of online content that they are talking about. I look forward to clarity from the Minister in due course.

Amendment 7 is simply a probing amendment to highlight the criteria contained in Section 264A of the Communications Act. As has been mentioned, these are so wide-ranging that I would imagine that almost any web service could be included within this definition. Assurances within the accompanying fact sheet that this applies only to specific web services is not sufficient to allay our concerns, although the Minister has said that he will communicate on this. I beg to move.

Lord Razzall: I resisted the temptation to intervene in your Lordships' personal grief over these amendments. In my experience, there is always a rhythm with regard to important Bills in which for the first hour and 20 minutes on Amendment 1, whatever the amendment may say, a number of noble Lords will wish to get off their chests the thing that most concerns them about the Bill. Had I been trying to do that, I would not have picked this clause as the one to which to devote this amount of time. Of course, at the end of the day, we have to realise that it comes down to electoral politics.

The noble Lord, Lord Howard of Rising, aided and abetted by the noble Lord, Lord Lucas, have tabled a series of amendments that would simply delete all the powers given to Ofcom under Clause 1, culminating with their intention to oppose the Question that Clause 1 stand part of the Bill. We have been going through the amendments one by one but that is really what they feel. I wondered why that was when I saw the amendments, but then I read what the Leader of the Tory Party said the other day about what he feels should happen to quangos should he get into power. Ofcom is on the list of quangos to be reviewed in the event of a Tory Government coming to power.

Underlying the debate is an attack on the role of Ofcom in the regulation of broadcasting and other services. The noble Lord, Lord Maxton, asked the $64 million question, that if Ofcom is not going to do this, who will, and he got a noble admission from the noble Lord, Lord Lucas, that in his view the ministry should do it. That is fine if that is what he thinks, but I am also reminded of an interview with Mr Cameron the other day in which he said that all Whitehall departments must accept a very serious haircut if the Tories get into power. There is a bit of a mismatch with what is being proposed in the amendments. Ofcom should lose these powers, which should be handed over to Whitehall, which in turn will be subject to a serious haircut. Whether that would extend to the powers that the noble Lords, Lord Lucas and Lord Howard of Rising, would wish the Government to have, who knows?

Noble Lords who follow the Bill's progress will bear in mind, I am sure, that this amendment, moved by the noble Lord, Lord Howard of Rising, is beloved of BSkyB, which has a serious concern about it and has lobbied everybody extremely hard. There are some fundamental misconceptions in both the approach of BSkyB and the noble Lord's argument. The concern is obviously that Clause 1 would have the effect of skewing Ofcom's decision-making so that it will favour the promotion of investment in public service broadcasters' content at the expense of investment in other content. The amendment is intended to stop that perceived fear.

However, there are two misplaced assumptions here. First—and the Minister may say this—the definition of public service media content makes it clear that such content means material included in media services generally, not just the services of the public service broadcasters. Secondly, for the content to qualify as public service media content it needs to meet one or more of the criteria set out in Section 264(6)(b) to 264(6)(j) of the Act, as amended by the Bill. When we look at that list, we see that it is very inclusive. It is not just cultural and educational content, but programming such as sports, feature films and news. There is not even a condition that it has to be on a free rather than a paid basis. In fact, a number of concerns that have been expressed, which reflect the BSkyB concerns, are to no avail and are not needed.

On the final point made by the noble Lord, Lord Howard of Rising, regarding a concern over Ofcom's decision being challenged, I suspect that there would be an even greater risk of challenge if his amendment were carried. If, as he suggests, this should apply to media content generally, Ofcom could be challenged, for example, on why it was not ensuring investment in pornographic, teleshopping or gambling content. That would provide a much wider opportunity for challenge, so I fear that we on these Benches cannot support the amendment .

Lord Maxton: Following on from what the noble Lord, Lord Razzall, has said, it seems to me that what is being proposed in this amendment actually limits public service media content to that provided by public service broadcasters. That is totally wrong; there is a large amount of content on the internet that is public service, in the strict sense, but is not provided by any public service broadcaster. An obvious example that might not be covered by Ofcom is those services directly provided by all government departments, which give the public—the citizen—information about all the government services available to them. That is equally true of local government and of many quangos. Public health quangos are a particular example—if you want public information, you go on the internet. Surely that is a public service which is not provided by public service broadcasters.

These amendments would limit Ofcom and not allow it, for instance, to say to local authorities, "Rather than each of you providing independent services on the internet, perhaps paying quite large sums of money, why don't you get together to invest in a common service that will give services across a much wider range of local authorities than just one?". That may be a simple example, but it seems to me that the proposers of this amendment have to be very clear. Are they saying that all they are interested in is public service broadcasters, and that they are not interested in any public services provided across the media in other ways to the public? Again, those are provided very much to the citizen rather than necessarily to the

consumer. I take the point of the noble Lord, Lord Razzall, about increasing concern regarding support from BSkyB in the political area.

Baroness Buscombe: I again declare my interest—as I think I am supposed to do every time now—as chairman of the Press Complaints Commission. I want to refer to Amendment 31 regarding unintended consequences that may arise, from what I think is a well-meaning clause, on public service broadcasting and other media services. My concern relates entirely to the question of impartiality. Again, this is something that I touched on at Second Reading.

We must not lose sight of the fact that the word "broadcast" is almost an anachronism and that within a few years there will be convergence. No one yet has talked about that but we have to keep it in mind throughout the passage of the Bill. As chairman of the Press Complaints Commission, my concern is that at the moment the commission regulates the press which is, at its very foundation, allowed to be partial. It exists for freedom of expression, something for which it has fought valiantly over the years. It must be absolutely clear that Ofcom will not extend its powers, either inadvertently or otherwise or through other regulations which may come as a result of another Clause—I think Clause 17—so that it is able to regulate newspapers. There is a real problem here.

Public service broadcasting at the moment must be impartial and the news provided must be impartial. I am particularly thinking about IFNCs, the new regional news providers which we understand are being piloted in the near future by the Government. There is a proposal for news companies and news corporations to be involved in the provision of regional news. What would happen if, inadvertently, that news had to be impartial? We have to think about that big problem. The noble Lord, Lord Mandelson, wrote to all of us who spoke at Second Reading to reassure us that that would not be the case but I urge the Government to think carefully about how, through the passage of the Bill, we ensure that whatever the Bill says in terms of provision, the importance of impartiality in relation to public service broadcast news does not, by regulatory creep, leak out into the newspaper industry as well.

5.15 pm

Lord Puttnam: May I pick up what the noble Baroness, Lady Buscombe, has said about impartiality? I do not want to pre-empt Amendments 234 and 235 in my name and that of my noble friend Lord Bragg. This is a crucial issue and I am seeking clarification from the noble Lord, Lord Howard. When he talks about the possibility of Ofcom's obligations being restricted to public service broadcasters, is he suggesting—I am sure he is not and certainly hope he is not—that Ofcom's obligations in respect of the impartiality of news broadcasts in this country should cease to range right across the whole of the broadcast media? One of the pivotal components of civil society in this country is that we have impartial broadcast news. I have spent a huge amount of my working life in the United States and no one in this Chamber would wish this country to go down the road which the Americans have opted for, irrespective of changes in technology. The point made by the noble Baroness, Lady Buscombe, is very important. In the bids for the Cumbria and North East television area there are two prime bidders: one is led by ITN, which has impartiality in its DNA—one does not have to remind ITN about the importance of impartiality; and the other is the Cumberland Newspaper Group which is a classic crusading newspaper group that does not have impartiality in its DNA. It is absolutely imperative that Ofcom has the right to insist, should the Cumberland Newspaper Group be successful, that it obligates itself to exactly the same forms of broadcast impartiality which traditionally have been one of the hallmarks and great successes of our British media ecology. Perhaps the noble Lord could clarify that he is not for one moment suggesting that we move away from impartiality of news provision in all broadcast media.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The noble Lord, Lord Howard, has introduced amendments which have raised some very interesting and challenging issues. However, I am unsure whether they raise contradictory issues. I presume it is an attempt to balance the whole matter, although it seems to me that, to a degree, they lurch from one position to another. However, I am grateful that the amendments raise some important issues. I have noted that the noble Lord, Lord Razzall, suggested that we are following our usual course of spending a great deal of time on Clause 1. However, he must confess that these amendments raise some substantial issues and, therefore, it might be helpful to clarify them as far as we can at this stage, as we know there are one or two other clauses which cause an element of concern and which might detain us for a short while later in Committee. I am aware that the House takes a keen interest in the issues of public service media content, so I am glad that we have this opportunity to discuss the issues now.

My noble friend Lord Young has already explained the objectives of Clause 1. It is a small but necessary change. It is not an epoch-making change, as was suggested in the debate which went on for almost an hour a little while ago and threatens to re-emerge; it is a small but necessary change in the way that Ofcom performs its existing duties which gives greater importance to the need to promote investment in robust and modern communications infrastructure and public service media content. My noble friend Lord Maxton waxes lyrical on these media issues whenever he gets the opportunity, and I am grateful to him for his contribution again today. We are all aware that technological change creates the exciting opportunities about which the noble Lord, Lord Lucas, waxed strongly. There are great opportunities, but there are also incumbent obligations, so we have an element of regulation effective and appropriate to the changes. That was the burden of our previous debate, so I do not have to reiterate the issues at great length.

The amendments would widen the qualifier on Ofcom's principal duty to require it to consider the need to promote investment in other kinds of media content besides public service media content. They define media content for the purposes of Clause 1 as

[Lord Davies of Oldham]
meaning material other than advertisements included in media services. They would represent a significant increase in the scope of Ofcom's responsibilities, and we do not believe that that is appropriate.

We are arguing the case for necessary marginal increases related to technological developments and opportunities; we are not arguing for radical change. The qualifier in Clause 1 builds on Ofcom's existing duty to have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting. The rationale for that specific requirement is simple, and it remains valid in the digital age. It is because public service media content has clear social and economic benefits for the UK. Plurality of public service media content provides healthy competition for the BBC and a bedrock of quality for purely commercial content. It drives the market up and ensures that the British public has a choice, including in genres where the market alone cannot sustain plurality—for example, for news in the nations, locally and in regions. It will be noted that the Government are greatly exercised about that in the Bill and in action to be taken elsewhere. I am grateful to my noble friend Lord Puttnam for emphasising our expectation of the impartiality that news must provide.

Losing that focus on public service media content would introduce new responsibilities for Ofcom that would be impractical and could have significant unintended consequences. As the noble Lord, Lord Razzall, emphasised, the amendments could conceivably require Ofcom to consider the need to promote investment in adult online content, American programming, Hollywood films or teleshopping. Is that what we expect Ofcom to get involved in by promoting investment? I take it that we agree that that is an issue for the private market, and therefore not investment that Ofcom will be expected to encourage or develop.

A vast amount of material in these categories alone is included in media services available in the UK already, which would surrender the responsibility to promote investment in media content. That is quite impractical for Ofcom. This amendment opens the door through which Ofcom could not possibly go; if it did there would be deleterious consequences for its role.

The Government also question whether it should be the role of the UK regulator to promote investment in this commercial content. We maintain that the qualifier should be limited to material that contributes or may contribute to clear public service objectives, set out in statute and formulated for the benefit of the UK public. That is the role we want Ofcom to pursue. Beyond that we consider that market mechanisms are the appropriate way to ensure that there is an optimal provision of purely commercial content. None of us underestimates the extent to which the market is making those provisions at the present time and with the most considerable growth possible.

I understand the concerns that limiting this qualifier to public service media content could be detrimental to other types of media content, but we believe that the definition set by Clause 1 is flexible and wide enough to embrace all content that has public value. It strikes the right balance between respecting market mechanisms where they are enough to provide for what is required and supporting all content that delivers public value, which is the proper responsibility of regulation. This definition includes content provided by non-public service broadcasters and from new media, which is why we need this extension. That is why the clause is drafted as it is.

It is worth reminding the Committee that Clause 1 maintains and modernises the existing requirement on Ofcom under Section 3(2) of the Communications Act to secure the widest availability of media services which taken as a whole are both of high quality and calculated to appeal to a variety of tastes and interests. Currently, this requirement applies only to television and radio services. Clause 1 is designed to widen that to media services, taking account of the digital age—on which the noble Lord, Lord Lucas, waxed so eloquently in the earlier debate. We all agree with him. The clause as drafted catches the intent of the amendment that all media content is important, but it also quite properly distinguishes between content that has a specific social and economic public value, and is particularly at risk, and purely commercial content which we can essentially leave as a matter for the market.

The noble Baroness, Lady Buscombe, introduced another dimension with her advocacy of Amendment 31. I am aware that there have been some misconceptions about the proposed changes to Ofcom's general duties introduced in this Bill. I am grateful to her and her Front-Bench colleagues for raising these issues and helping us to clarify the matter, though there is a certain contradictory element to them when compared with the previous opposition amendments.

It has always been our position that these changes to Ofcom's general duties enhance the regulator's current responsibilities rather than introduce new duties. I give the noble Baroness a clear assurance on that point. Clause 1 does not give Ofcom any new hard powers to regulate the provision of public service media content by public service broadcasters or other content providers. The qualifier on Ofcom's principal duty will not, for example, allow Ofcom to extend the scope of impartiality requirements to content providers not subject to them currently.

Lord Maxton: The problem that the noble Baroness, Lady Buscombe, rightly raises is that newspapers, particularly local newspapers, increasingly provide video content on their websites, therefore they become broadcasters. As such, are they not obliged to have applied to them the same rules on impartiality in terms of news provision as other broadcasters?

5.30 pm

Lord Davies of Oldham: The noble Baroness was talking about the role and independence of newspapers. None of us could conceive of any impartiality requirement upon newspapers. Their editorial line and content must be free. However, the Government are concerned that news content programmes provided through the new media will be subject to clear provisions with regard to the impartiality of news. My noble friend must recognise that there is a great distance between

the issues that the noble Baroness, Lady Buscombe, raised with regard to newspapers, on which I want to give the assurance, and the more limited point that my noble friend put forward.

Clause 1 qualifies the existing provision that Ofcom should exercise its principal duty where appropriate by promoting competition, by requiring Ofcom to have particular regard—I come back to the point that I know still exercises the noble and learned Lord, Lord Mackay—in all cases to the promotion of investment in electronic communication networks and in public service media content. The amendment restricts the scope of the qualifier in relation to promoting investment in public service media content to such content provided by the public service broadcasters.

It is widely accepted that plurality of public service media content delivers significant social and economic benefits to our country. The substantive upgrading of communication networks in the UK means that there are now more opportunities for content providers, other than PSBs, to provide public service media content. While the opportunities to provide content have increased, so has the accessibility of content from abroad provided, for example, on multichannel television and broadband. This, together with shifting advertising revenues and economies of production, is threatening the production of UK public service content. My noble friend quantified that in the earlier debate; it is a matter about which we should all be concerned.

To accept this amendment would ignore the new opportunities provided by increasingly popular electronic platforms and would restrict Ofcom's ability to promote investment to a narrow range of broadcasters. There would therefore be a higher risk of a loss of plurality and competition for the BBC in the provision of public service media content. Although I may have difficulty in taking the Opposition with me on some of the proposition, I feel reasonably secure when I emphasise effective and proper competition to the BBC in public service broadcasting.

In no way does Clause 3 give Ofcom additional regulatory powers. The clause extends the scope of Ofcom's existing reviewing and reporting duties to include content provided by providers other than public service broadcasters, but does not mean that Ofcom can regulate those providers in any way, nor do we intend that Ofcom should. I guarantee from the Dispatch Box that at any stage when this issue is raised, we will be as assertive as we can be in this refutation. I hope that reassure the noble Baroness.

However, Clause 3 requires Ofcom to review and prepare a report on the contribution of material included in media services to the fulfilment of the public service objectives. The clause does not limit media services to a particular provider, although they must be available to the public in the UK. The amendment would restrict Ofcom's wider reviewing and reporting obligation in relation to media services provided by public sector broadcasters only. Ofcom's previous public sector broadcasting reports have provided a very useful analysis of the state of public service television broadcasting in the UK. The reports support Ofcom's recommendations to the Government on public service broadcasting. The provision of public service content is now no longer restricted to PSBs. The substantive upgrading of the communications networks has increased the opportunities for more content providers. Accepting this amendment would therefore result in Ofcom making recommendations to the Government based on a partial assessment, which would be to the detriment of public service content provided beyond the PSBs. That is why I resist the amendment.

The wider reviewing and reporting duty of Ofcom will help to maintain and strengthen the fulfilment of the public services objective. It is crucial that Ofcom's future reports are able to take into account this wider delivery of public service content, to allow Ofcom to make accurate recommendations to the Government, on which the Government might then be able to act.

I hope the noble Lord, Lord Howard, will first of all recognise the heartfelt appreciation I have for him in having raised these issues. I hope he will also have noticed my significant self-denying ordnance, in a testing year, from indulging in political knockabout. The noble Lord, Lord Razzall, a great friend of mine on the Liberal Benches, may indulge himself, but from the Dispatch Box the noble Lord, Lord Howard, will have noticed that I have not engaged in such issues. Therefore, I hope he can feel that he can withdraw the amendment in the confidence that the Government have got it just about right.

Lord Lucas: I hope when my noble friend replies he will join me in refuting the calumny uttered by the noble Lord, Lord Razzall, that I am in some way in league with my own Front Bench. The problem may arise from the Stalinist discipline that the Liberals apply to their Back-Benchers. Our Front Bench is much more confident in the underlying rightness and consistency of our philosophy and is happy to allow Back-Benchers their own voice.

Lord Howard of Rising: I start by saying how much I appreciate all that the noble Lord, Lord Davies, has said this afternoon. It is always a pleasure to listen to him, especially when he is not being horrid to me. I say to the noble Lord, Lord Puttnam, that I have not proposed any changes in Ofcom's duties, and I say to the noble Lord, Lord Razzall, that the Conservative Party's view of Ofcom is only that it should restrict itself to its regulatory function and not get involved in policy-making.

One of the main thrusts of the amendments is to prevent an inadvertent increase in Ofcom's powers beyond what is appropriate, as indeed I said. Can the Minister confirm that I heard him correctly and that there will not be any such inadvertent increase? I disagree that my amendments would limit plurality. I am grateful for the assurance that the Minister gave to my noble friend Lady Buscombe about the extension of Ofcom's powers, and perhaps he could table an amendment to that effect. I leave that suggestion with him. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 4 not moved.

Amendment 5

Moved by ***Lord Howard of Rising***

5: Clause 1, page 1, line 12, leave out "wherever possible"

Lord Howard of Rising: My Lords, this amendment would ensure that investment is efficient at all times and not just "wherever possible". The Government's factsheet on this clause explains that at times it may be desirable for social reasons that investment is not efficient. It cites that many types of public service content are not efficient and would not happen if this was the only criteria by which investment was judged. We accept that this makes sense in terms of subsection (2)(b).

Some public service content is by its nature not provided for by the market and as such may represent inefficient investment. The clause therefore allows Ofcom leeway when considering issues of this nature. However, we are not certain that there are any areas in which investment in electronic communications networks should be inefficient. Are the Government thinking of investment in what the *Digital Britain* report called the "final third"? If so, I suggest that they should remove the barriers to investment that make this commercially unattractive before rushing to encourage inefficient investment. It would be helpful if the Minister could explain the circumstances in which inefficient investment into these networks would be encouraged by Ofcom. I beg to move.

Baroness Buscombe: My Lords, I rise to support my noble friend entirely on the basis that this makes the way ahead unclear for Ofcom. There is a real lack of clarity in the provision: what on earth does "wherever possible" mean? It could be read in a host of different ways and I am not sure that would be helpful to the citizen and the consumer in the long run, or even in the short run.

Lord Maxton: I may feel some confusion over the actual phrase used, but the implication that there should be occasions where investment would not be efficient is understandable. I refer to the first contribution made by the noble Lord, Lord Steel, in which he said that he does not have mobile phone coverage in his area. That is exactly the sort of investment that might have to be made by somebody to ensure that there is telephone coverage across the whole country, but some of that will not provide a return in terms of efficiency for a private company. For instance, if we look at what BT charges to put in a telephone line in a remote area, it is understandable that it would not be efficient for an individual to invest in it, and therefore someone else will have to do so if there is to be full coverage.

Baroness Buscombe: My Lords, perhaps that could be solved quite simply by adding the words, "in cases where there is an overwhelming public interest". That would satisfy the implication made by the noble Lord in the direction of ensuring the universal delivery of broadband as an example.

The Earl of Erroll: My Lords, I, too, am interested in the word "efficient" because I suspect it is being confused with the concept of commercial viability. Whenever I talk about investment in rural broadband, which would help hugely in terms of reducing traffic on the roads, the green agenda, working from home, teleworking and flexible working hours—over the past few days and particularly today, it would have been useful if certain key people could have been working straight from home—I am always told that it is not commercially viable. I note that the latest list, published yesterday, of over 100 exchanges that BT is upgrading, shows that they are all fairly major and not in rural and more distant areas. There is no intention at the moment, I think, of putting any investment into those.

That is not because of efficiency, and that is why the word is so odd, but because of the commercial viability of doing so. That is where I hope we will look at trying to co-ordinate activities between BT, the large incumbents and Virgin, and perhaps alter the rating system so that some of the dark fibre that is running alongside railway tracks could be lit commercially—again, because of the rating system, it cannot be—and integrate it all so that it is not about efficiency or commercial viability, but about putting in place a proper working infrastructure. That is why I think the word "efficient" is an odd one to use in this provision, although I suspect that, as ever with this clause, the intentions are right.

Lord Mackay of Clashfern: My Lords, I wonder how the point made by the noble Lord, Lord Maxton, fits in with this clause at all because his doubts in relation, for example, to the area in which the noble Lord, Lord Steel, lives, imply that Ofcom should in some cases have the responsibility of promoting inefficient investment, if efficient investment means that some profit is produced for those who make the investment. "Efficient" may mean something different, and I am not sure exactly what meaning the word has in this subsection. "Efficient" could mean that it carries out the purpose in which Ofcom is interested.

In some cases, it would not necessarily need to be a productive investment from the point of view of the person making it, but productive from the point of view of the person receiving the benefit of it. If Ofcom was to take up the problem of the neglected areas of coverage for media phones, the clause would need to require it to promote investment which might not be productive for the investor in certain cases.

5.45 pm

Lord Davies of Oldham: My Lords, I hope that we are not going to make a mountain out of this molehill because there is not much at stake with regard to the amendment. Although I am grateful to the noble Lord, Lord Howard, for having tabled it, I am even more grateful to my noble friend Lord Maxton for having stolen seven-eighths of my speech because he has indicated exactly the position and has, therefore, cut down my remarks.

The amendment would mean that Ofcom's principal duty would be restricted to only efficient investment. I listened carefully to what the noble and learned Lord, Lord Mackay, and the noble Earl, Lord Erroll, had to say about efficiency, but my noble friend Lord Maxton identified what we all understand by "inefficient" in this area. It will sometimes be in the interests of citizens and consumers for Ofcom to promote inefficient investment. Universal service conditions may promote inefficient investment to ensure that a service is universally available. The noble and learned Lord, Lord Mackay, may say that that is then being efficient because a service is reaching recipients who would not otherwise

be able to meet the costs or which it would not be in the interests of those supplying it to meet the additional marginal costs which the consumer cannot meet.

We are talking about the definition of efficiency in economic terms. All that has been indicated—the noble Earl, Lord Erroll, identified this just as clearly—is that there can be additional marginal costs which no one could take on as an investor sensibly and intelligently because they do not bring a reward commensurate with the outlay, but which achieve the essential public good of providing the universal service. That is the only issue at stake with regard to "wherever possible". It is not that Ofcom could conceivably be prodigal in its recommendations on how additional investment should be developed, but there are specific circumstances where inefficient investment—in the sense of not bringing a return to the investor—might need to be encouraged. I am merely emphasising the obvious fact that we need, wherever possible, a safeguard for that position. There is no more to the issue than that.

Lord Fowler: The concept of efficient investment is rather curious. The Minister almost put his finger on the point when he referred to economic investment. Would it not make more sense to say that the investment should be "economic" wherever possible rather than "efficient"?

Lord Davies of Oldham: My Lords, as ever, the noble Lord, Lord Fowler, is helpful. However, we are straining at a narrow point. All we are indicating—I hope there is agreement—is that we want investment on the whole, of course, to be efficient. However, a universal provision will carry at times a potential for marginal costs which do not meet the criteria of efficient, economic or any the other concepts we may use to demonstrate levels of efficiency. All that the "wherever possible" element introduces is some recognition that the public good might be served rather than the narrower concept of economic efficiency. The noble Lord, Lord Fowler, is better placed than anyone in the House to know the extent to which Ofcom has general duties with regard to the interests of the citizen and the consumer, an issue that was raised earlier today. This is merely recognition that at times this may condition investment that does not have an immediate and even potential direct payoff to investment.

Lord Mackay of Clashfern: My Lords, before the Minister finally sits down, is he satisfied that the structure of the Ofcom powers will allow it to give emphasis to cases where investment would not be efficient in the economic sense but would be important from the point of view of the consumers? That is my principal concern about the relationship between this clause and the main clauses of the 2003 Act. The noble Lord has already mentioned the use of the word "particular". We have to encourage efficient investment where it is possible but not encourage inefficient investment where that is necessary in the interests of the consumer unless the previous provisions of the 2003 Act take priority over this in relation to the interests of consumers and citizens.

Lord Davies of Oldham: Perhaps I did not interpret the noble and learned Lord's position as accurately as I ought to have done, but I reassure him that I am absolutely at one with him, and that is what the Bill actually represents. Of course we want investment to be efficient but there are circumstances, which he has identified, where the public good requires investment that is not narrowly efficient but is essential if we are going to meet our wider obligations in terms of universal service provision.

Lord Howard of Rising: It has become apparent that the whole debate is really about the definition of the word "efficient". The problem, with the greatest respect to the Minister, is that the use of the word in this context is perhaps not the right one. It must be more efficient for me to go home by car, but it would be a lot cheaper to go on foot. The substitution of the word "efficient" for "profitable" or "economically viable" was, perhaps, wrong. Having listened to everything that has been said, I suspect that we are all singing from the same song sheet. I therefore beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendments 6 and 7 not moved.

Amendment 8

Moved by ***Lord Gordon of Strathblane***

8: Clause 1, page 2, line 24, at end insert—

"(7) Before section 120 of the Enterprise Act 2002 insert—

"119C OFCOM to perform functions of the Office of Fair Trading in relation to media mergers

(1) In the case of a media merger, the provisions of this Part shall have effect as if the references to the Office of Fair Trading were references to OFCOM.

(2) The Office of Fair Trading will notify OFCOM as soon as it becomes aware that a merger situation is a media merger and from that time onwards the Office of Fair Trading will cease to exercise any functions in relation to the merger situation.

(3) Where the Office of Fair Trading has exercised functions in respect of a merger situation before becoming aware that it is a media merger, such functions shall be deemed to have been exercised by OFCOM.

(4) For the purposes of this section, a media merger is a merger situation in which at least one of the enterprises ceasing to be distinct consists in or involves broadcasting.""

Lord Gordon of Strathblane: My Lords, with the passage of the years, regrettably, any interests that I would have had to have declared are now in the past tense. None the less, in the interests of completeness, I make them now, but I hope it will be acceptable if I do not repeat them every time I intervene during the passage of the Bill. For 33 years I ran the company that was known as Scottish Radio Holdings by the time it was taken over in 2005. I was also director of Johnston Press for 11 years and retain a shareholding in that company. I have also held various representative posts in the broadcasting industry.

I assure your Lordships that it is not mere opportunism that leads me to move this amendment today, although I freely concede that the fact that the noble Lord, Lord Mandelson, straddles quite so many government departments makes it rather less likely that departmental territorial imperatives will block any dispassionate evaluation of my proposal. That proposal rests on some simple, almost self-evident truths. First, convergence is happening at an almost alarming rate. Noble Lords

[Lord Gordon of Strathblane]
have already alluded to that. Secondly, in those circumstances, mergers in the media sector are going to be rather more likely than less. Thirdly, since media is a very sensitive area in a democracy, it is right that any such merger must be referred to some regulatory body for clearance. Fourthly, in the interests in those in the industry, it is vital that the regulatory body concerned is both well informed as to the public interest as it affects the media sector and able to deliver its verdict in reasonable time. I contend that Ofcom meets those criteria better than the Competition Commission and that is why I propose the transfer of powers.

As noble Lords have recognised, Ofcom is the specific sector regulator brought about by the 2003 Communications Act. It already has considerable powers to deal with ownership matters, which it exercises through licence agreements with the various radio and television companies. It already has quite considerable concurrent powers, as I believe they are called, with the OFT in terms of making market investigation references, investigating infringements of Chapters 1 and 2 of the Competition Act, and carrying out market studies. However, those concurrent powers do not extend to merger regulation.

I concede that my amendment goes further than simply concurrent powers. It transfers the entire responsibility to Ofcom and away from the Competition Commission. It does so for two reasons. First, as I mentioned earlier, speed is of the essence. Delay in giving approval is almost as bad as a refusal of permission for a merger. For example, how long has it has taken for ITV to secure any kind of verdict on its contract rights renewal proposals, reached about three years ago? It has pretty well bled to death in the process. We cannot wait that long in future.

Secondly, I do not think that a purely competition-focused regulator is best equipped to make judgments on public interest. That judgment is best made by the specific sector regulator, part of whose job it is to keep the state of the industry under constant review. It is a regrettable fact—I do not want to pass any comment on the merits of the particular judgment—that the only time there has been a public interest test, Ofcom reached one conclusion and the Competition Commission reached the opposite conclusion. Irrespective of the merits of the subject under discussion, which happened to be the Sky shareholding in ITV, I would much rather put my money on Ofcom than on the Competition Commission.

I want to keep my remarks very brief, so in conclusion, if there is another way of achieving the result I seek, I will be very happy to back down and back another proposal, although it is worth noting that it was an amendment to the Enterprise Act 2002 that introduced the public interest test. So there is a good precedent for choosing the avenue I have chosen, but I am quite happy to change it. In the mean time, I beg to move.

Lord De Mauley: My Lords, in Amendment 8, the noble Lord, Lord Gordon, raises an issue which is critical to the future success of the United Kingdom's commercial media market but one that is sadly not yet addressed in the Bill. If our commercial media sector is to keep pace with technological developments and the resulting commercial pressures, then the media merger regime in the United Kingdom is surely in need of quite substantial reform. Recent examples of competition decisions have not always been helpful and, in some cases, have led to overseas rivals setting up similar services. I am thinking in particular of the decision concerning Kangaroo, which, to all intents and purposes, denied UK public service broadcasters an opportunity to move into the video on demand market. Instead, we are likely to see American versions such as Hulu offering similar services. This is one example, but there are others.

The result is that those contemplating entering into mergers, acquisitions or joint ventures in this country in the media sector face considerable regulatory uncertainty. This has the potential to harm the United Kingdom's reputation as an attractive place for investment, so we have a great deal of sympathy with the noble Lord, Lord Gordon, in raising the issue. However, I am not yet quite sure that his proposed solution is necessarily the right way forward; indeed, he gracefully admitted that there may be others. Simply moving the regulation regime from the Office of Fair Trading to Ofcom might not, I fear, ensure a more flexible and dynamic competitive environment, particularly if Ofcom is simply working under the same rules. Instead, we believe that it would make sense to look at updating the competition rules for media mergers, perhaps by examining the threshold levels and the criteria by which mergers are examined.

6 pm

Lord Fowler: My Lords, I wish to intervene briefly. If, like the noble Lord, Lord Gordon, one is to declare past interests, I should declare a past—regrettably—interest as chairman of two regional newspaper companies, one of which I think we sold to Johnson Press, of which the noble Lord was a board member.

I have great sympathy with the point that my noble friend has just made. The Kangaroo case raises important questions about what the national interest is. Whether or not the amendment moved by the noble Lord, Lord Gordon, is the correct way of putting it—it probably is not, as he has been modest enough to say—the issues that have been raised should certainly be considered by the Government. In the Kangaroo case, a proposal to bring a number of companies together in providing a service was not approved. The only result of that will be that companies from outside the United Kingdom will fill the gap that has been left. That cannot be in the national interest or the public interest, however it is that one wants to put it. Although the Minister will have all kinds of reasons why the amendment is not drafted correctly, I hope that he will at least recognise that there is a serious point here, which the Government—and only the Government can do this—will need to handle and concentrate on.

Lord Mackay of Clashfern: There is a lot to be said for Ofcom having responsibility in this area. As the noble Lord, Lord Gordon, said, it has the day-to-day acquaintance with the media that is essential to understand what the public interest is likely to be in this area. For my part, I would be keen to agree with the substance

of what the noble Lord, Lord Gordon, has proposed. I am not certain what the position would be about appeals under the Ofcom arrangement but, subject to that, I think that the proposal merits consideration by the Government and I hope that they will give it that.

Lord Young of Norwood Green: My Lords, the amendment moved by my noble friend Lord Gordon proposes that Ofcom should be given a whole new set of powers, responsibilities and duties, equivalent to all those that the Office of Fair Trading has in relation to merger control but applicable only in relation to mergers involving enterprises engaged in broadcasting. There has been some acknowledgement that this is not necessarily the perfect solution.

This proposal appears to stem from a belief that Ofcom, as a sector regulator, would be better placed than the OFT to identify such mergers and, where appropriate, undertake the initial phase 1 consideration of these. The role currently performed by the OFT for all UK mergers involves deciding whether or not to refer a merger to the Competition Commission to undertake a full phase 2 investigation into the competition effects of the merger. It must do this if it considers that a merger may be expected to result in a substantial lessening of competition. We are satisfied that the OFT is entirely capable of carrying out this function for all mergers, including those involving broadcasting enterprises. It has built up substantial expertise and experience in assessing whether or not a particular merger might result in a substantial lessening of competition and can draw on expert teams of economists and lawyers to help it reach such decisions. Ofcom does not currently have any such capability. It is not clear what purpose would be served by requiring it to attain such capability simply to duplicate a role already performed effectively by the OFT. This would appear unnecessary and would introduce wasteful duplication and undue complexity into the merger regime. It may be noted that the number of mergers involving enterprises engaged in broadcasting that may actually occur is likely to be very small and will represent only a tiny fraction of the mergers taking place in the economy.

The Government recently gave careful consideration to the merits of amending the role played by Ofcom in the merger control regime as it relates to mergers involving media enterprises. We decided no change to the statutory regime was appropriate. However, as was announced in the *Digital Britain* report, it was decided that the OFT would include in its updated guidance on merger control a specific commitment to consult Ofcom whenever it considers any merger involving enterprises engaged in newspaper publishing and/or commercial radio or television broadcasting. We are satisfied that this effectively ensures that the particular knowledge and expertise Ofcom possesses will be drawn on and properly taken into account whenever the OFT considers and takes decisions on media mergers, while avoiding burdening Ofcom with a whole new set of powers and all the duties, burdens and costs that would go with them.

I listened carefully to the points made by my noble friend Lord Gordon and the noble Lord, Lord De Mauley, when he himself recognised that this is not the right vehicle. Moving everything to Ofcom would not necessarily solve the problem and there may be a need to update competition rules. The noble Lord, Lord Howard, came to a similar conclusion as a result of the analysis of the Kangaroo case. I thank my noble friend Lord Gordon for expressing what is a genuine concern. I hope he recognises, as I think a number of noble Lords do, that this is not necessarily the right vehicle. I do not know what I can promise to do at this juncture to resolve what I am sure noble Lords will recognise is a very complex area of legislation, but I will reflect on the points made. In the mean time, I hope that the noble Lord will withdraw the amendment.

Lord Gordon of Strathblane: I feel that, in the light of the support from the other three speakers, the matter must be taken further. It clearly is not appropriate to press it this evening. I have no intention of so doing because I concede, despite the kind remarks of the noble and learned Lord, Lord Mackay, that there might be better ways of doing this. I would simply invite the Minister, before he reaches a conclusion on this, to ask the Department for Culture, Media and Sport if it is happy with the project Kangaroo decision. The department's feeling was that no public interest concerns whatever were raised by the decision, and yet the Competition Commission turned it down. We are not talking about the near future or what might happen. Channel 4 has already moved to YouTube so the flight of business to America is already taking place. I hope that once the Minister has done that, there might be a warmer response to a proposal that, after discussion with others, I will put forward at the next stage. In the mean time, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Debate on whether Clause 1 should stand part of the Bill.

Lord Howard of Rising: My Lords, we have been through Clause 1 in some detail. In summary, we on these Benches are concerned that this clause will inhibit Ofcom's ability to perform its current duties effectively while at the same time failing to achieve what the Government proclaim they are seeking to do. I am afraid that after listening to the responses to the previous groups of amendments, I remain unconvinced. If these new secondary duties have any effect on Ofcom at all, and are not just ignored, they would seem to be negative. I therefore oppose the Question that this clause should stand part of the Bill.

Lord Clement-Jones: My Lords, like my noble friend Lord Razzall, I am somewhat baffled by the excitement generated by Clause 1. However, I am breaking the Trappist vow that I made at the beginning of the debate. Sadly, we have only about an hour and a half of proceedings left today in which to underline the opposition on these Benches to the proposal made by the noble Lord, Lord Howard.

I certainly do not yield to the noble Lord, Lord Lucas, in his excitement at the prospect of the iTablet coming down the track. It is a perfect illustration of the convergence mentioned by the noble Baroness, Lady Buscombe. I think that another noble Lord also used the word "convergence". This clause is designed

[Lord Clement-Jones]
for the post-convergence age. Of course, the 2003 Act was pre-convergence. We on these Benches think that Ofcom has not done a bad job in the pre-convergence age. Of course, there will be quarrels with some aspects of it. It will probably be too slow in making sure that local loop unbundling happens quickly enough, and I am sure that we would all disagree with many other aspects. By and large, however, we believe that Ofcom has done a pretty good job in a very complicated pre-convergence age.

This clause is not the big bang to end all clauses; it is a very modest qualifier to the current duties of Ofcom. We believe that it is appropriate for the post-convergence age. We do not believe that it detracts from the duties of Ofcom towards the consumer. Indeed, we believe that the investment duties are designed to make it more responsive to the consumer. If this clause were not included, do we honestly believe that Ofcom would suddenly become more responsive to the consumer? Of course not. I think that the noble Lord, Lord Davies, talked about making sure that broadband was more universally available. Of course, that is one of the underlying objectives of the duties imposed on Ofcom. As the noble Lord, Lord Maxton, said—my noble friend Lord Razzall also mentioned it—if Ofcom does not have these duties, who does have them? It is not easy to distinguish between regulation and policy, as the noble Lord, Lord Howard, has done. As regards the expansion and coverage of mobile networks that my noble friend Lord Steel mentioned, where do policy and regulation respectively begin? It is not easy to make that distinction.

I am sure we all agree that there is a need to deliver the *Digital Britain* strategy. We on these Benches believe that Ofcom is an absolutely essential instrument to do that. Unlike the noble Lord, Lord Lucas, I do not believe that this clause is designed to allow Ofcom to cuddle up to the major players; that is not the essence of it at all.

I shall not continue at great length. Points have been teased out on the public service broadcast front. The right reverend Prelate made extremely cogent remarks on that on two occasions. It is not just about public service broadcasters; it is also about public service content and plurality. Plurality is the essence of the post-convergence age. I believe that Ofcom needs to have that duty as set out in Clause 1. If anybody wanted to illustrate the way in which public service content brought people together, they should give the example of the Christmas and New Year broadcasts. If anybody thought that the delivery of content was being so totally Balkanised that it did not bring us together culturally, the Christmas broadcasts such as "Strictly Come Dancing", "The X Factor", and "Dr Who", which were viewed by many people, would prove that they were mistaken. Millions watched those broadcasts. I forget which show had the largest audience; it was probably "The X Factor", which I believe was watched by some 20 million people. All that demonstrates the need for regulation, for somebody to hold the ring in this post-convergence era. I have continued for far too long, but I hope that the passion with which I have talked illustrates that we do need to preserve this clause in this Bill.

6.15 pm

Lord Whitty: My Lords, I am not going to support this clause either. Nor on this occasion am I declaring an interest, because this is a bit of friendly, personal advice to my noble friend the Minister. Will he talk to his officials and to parliamentary draftsmen about the wording particularly of subsection (2) of this clause? I felt that it was not a clear answer to the issue of balance. The further we went on in the debate on the amendment moved by the noble Lord, Lord Lucas, the more concerned I was about balance. The Government's intention may well be benign, but that is not clear from the wording. We know that for particular words—including the word "particular", which the noble and learned Lord, Lord Mackay, spoke about—we need to have clarity on what they mean, as we do with the word "appropriate" and the word "efficient". I am not opposing this clause at all, but the wording needs another look. I would be grateful if my noble friend the Minister at least undertook to consult his officials on whether he could express it better.

The Earl of Erroll: My Lords, very briefly, I would like to support what the noble Lord, Lord Whitty, has just said. The ideas behind this clause are good, but the exact wording is wrong. It is not ideal. The noble Lord, Lord Clement-Jones, has given me the opportunity of pointing out that he thinks that Ofcom has done extremely well in some ways, and he mentioned the local loop unbundling. The trouble with the local loop unbundling is that although it has done fine in the cities, where there is a lot of competition, but—and this is where the later amendments of the noble Lord, Lord Whitty, are going to be so important, and I support them very heavily—it has allowed the entire local loop to degrade in rural and distant areas to an almost disastrous extent. Investment in those areas is not commercially interesting, and this is where the word "efficiency" and the points made by the noble and learned Lord, Lord Mackay, come in.

Another example where Ofcom may have made a mistake is over the sharing of mobile telephone masts. That sounds very efficient, but it has allowed companies to reduce the number of masts in some areas. We now have such contention on some masts that you will find that your signal is not as good as it used to be in some areas, because they have taken out some masts in order to save money. It has not done what it was expected to do, which was to increase the amount of masts available and give us better coverage. We are getting worse coverage instead. I am not sure that Ofcom realises some of the unintended consequences of some of their policy decisions.

Lord Puttnam: I suggest to the Minister that the advice he has had from the noble Lord, Lord Whitty, is very, very good advice and I urge him to listen to it.

Lord Lucas: The noble Lord, Lord Whitty, seems to have encapsulated my arguments at much shorter length than I employed.

Lord Young of Norwood Green: My Lords, for which relief, many thanks. I thank the noble Lord, Lord Clement-Jones, for giving up his vow of silence

and providing such an excellent summary of the reasons why we need this clause. We had a very extensive debate and I do not intend to repeat all that again, because that would not be using the time and resources here in an efficient way. It would certainly not be economic.

Addressing the points of concern raised by my noble friend Lord Whitty and others, including my noble friend Lord Puttnam, I undertake to look at it again. However, Ofcom has a statutory duty to consider both the interests of citizens and consumers, with no hierarchy between the two. Ofcom is obliged to treat both equally. No doubt there are different views about how well it has done on particular issues, but the statutory position is clear. That is just one point. However, I understand the point that my noble friend Lord Whitty made when he said that he feared that the balance of interest would be detrimentally affected by the legislation. That is certainly not our intention and, if necessary, we will certainly make sure that that is clarified..

I could not help but be amused when the noble Earl, Lord Errol, said that he did not like the idea of mast-sharing. Nothing stirs my local residents association more than the erection of another mobile telephone mast, and I do not think that there is a popular vote out there for the idea that we should have more of them. We have to do two things, do we not? One reason why these clauses are important is that everyone is trying to ensure that—whether we are talking about broadband, mobile telephone networks and so on—we get genuinely universal coverage. It is not easy to achieve that, and there will be a number of different platforms. However, I think that mast-sharing has to be part of that solution.

The analysis of Ofcom offered by the noble Lord, Lord Clement-Jones, was about right. In a very complex area—convergence was emerging in 2003 but was nowhere near where it is now—Ofcom has done a reasonable job in ensuring that there is competition and a number of different offerings whether in broadband or mobile. There is a wide range of prices and services to serve people as a whole. As the noble Lord, Lord Clement-Jones, said, removing the clause would undermine Ofcom's role in an era when convergence has fully emerged. I therefore hope that the clause will remain and that the noble Lord, Lord Howard—it is probably a vain hope—will reconsider.

Baroness Buscombe: Notwithstanding what the Minister said, does he agree that it might be wise for him, prior to Report, to take away some of the points that have just been made on terminology by the noble Lords, Lord Whitty and Lord Puttnam, and by others? Does he agree that this is of fundamental importance? Terminology in itself means rather a lot and the clause as a whole might be acceptable with the right terminology.

Lord Young of Norwood Green: I thought that I had already given that assurance. The last thing we would want is to create any doubt about the importance of citizens and consumers, so we will look at the terminology.

Lord Howard of Rising: I am glad to hear that the Minister will look at it. As I should like to give him some decent encouragement to do so, I shall test the opinion of the Committee.

6.25 pm

Division on Clause 1 Stand Part.

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Clause 1 Stand Part agreed.

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6.33 pm

Clause 2 : OFCOM reports on infrastructure, internet domain names etc

Amendment 9

Moved by ***Lord De Mauley***

9: Clause 2, page 2, line 30, after "must" insert ", if requested to do so by the Secretary of State,"

Lord De Mauley: My Lords, Amendment 9 would provide that the new requirement for reports is rendered much more flexible and that the timetable is not set in stone. We support the principle of ensuring that Ofcom has the ability to provide expert, independent reports into the nature of the communications sector in the United Kingdom; indeed, one could argue that this is one of the principal reasons for having an independent regulator. However, there is a danger of Ofcom becoming something of a report-making monster.

The Bill contains numerous new reporting duties, many of which we feel are unlikely to be needed as regularly as the current drafting suggests. Clause 2 adds reports on communications infrastructure and services, and a report on the allocation, registration and misuse of domain names; Clause 3 adds reporting duties on public service media content; Clause 9 on the efficacy of obligations to tackle online piracy; Clause 10 on the efficacy of technical measures; Clause 22 on Channel 4's new duties; and Clause 26 on the viability of the teletext service. It seems that on almost every issue that the Bill addresses the Government's favoured solution is for Ofcom to provide a report on it.

Ofcom is mentioned 159 times in the Bill and 27 of the Bill's 49 clauses mention Ofcom on one or more occasion. In many cases, including that in Clause 2 on infrastructure, we acknowledge the benefit in having such reports, but if Ministers want a report, they should be able to ask for one. There is a precedent for such a format within the Bill, indeed within this clause. On page 4, line 25, new Section 134C states:

"OFCOM must, if requested to do so by the Secretary of State—

(a) prepare a report",

and so on. That seems to be a much more sensible and flexible approach to using Ofcom's technical expertise. It is entirely possible that in a fast-paced and ever-changing environment, the Secretary of State would want a report sooner than every two years. It is worth pointing out that the Communications Act 2003 set a fixed timetable for Ofcom's reports on public service broadcasting and that these had to be brought forward. It is more likely that after the first report, one may not then be needed for a period longer than two years, but no one knows. That is entirely the point of this amendment. Rather than tie the hands of a Minister, why not provide the flexibility to ask for such a report as and when one is required?

The Government's impact assessment states that although Ofcom is likely to incur increased administrative costs for carrying out this new reporting duty, the considerable uncertainties surrounding the precise scope and objectives of the report make it extremely difficult to quantify the costs accurately. However, it would seem obvious that there will be an increase in costs and that they will be passed on to the industry and eventually, indirectly, to consumers. As such, it makes sense, we suggest, to ensure that money is not spent on reports when they are not deemed necessary. I beg to move.

Baroness Buscombe: I support my noble friend's amendment. It seems to be a good one. It reminds me of the words—I shall not attempt to quote him directly—of the noble Lord, Lord Currie, speaking during the passage of the Communications Bill as the then chairman of Ofcom, pleading with noble Lords not to shackle Ofcom with unnecessary bureaucracy. There is nothing worse than having to deliver reports for the sake of it. It does not achieve very much. My noble friend's amendment makes a lot of sense.

In this age when technological advance—we are talking about convergence—is so fast-moving, the idea that we shackle Ofcom with these additional burdens for the sake of it to my mind seems nonsense. It would be far better to look on the whole regulatory function as something that needs to be very pragmatic and flexible to respond sensibly when necessary. There should be an assumption that the Secretary of State will have an eye on the issues at hand, in which case it will make sense for the Secretary of State to decide if and when a report is necessary. I believe that the Minister will accept that the current budget of Ofcom is already fairly enormous and that to add to that budget just for the sake of the administrative burdens proposed here to my mind is nonsense.

Lord Davies of Oldham: My Lords, I am grateful to the two noble Lords who have spoken, especially the noble Lord, Lord De Mauley, for moving the amendment, but we are of the view that we need reports to the Secretary of State at regular and known intervals on the UK's communications infrastructure and services. That regular summary will provide the Government with a clear indication of the state of health of the country's communications infrastructure and allow regular comparative assessments to be made. The report will, for example, highlight any longer term infrastructure planning issues and potential network and service

delivery problems, help to co-ordinate national and regional strategic development, and support in policy development.

The reports are intended to ensure that the Government have a comprehensive and up-to-date picture of the communications infrastructure of this country. By setting out in the legislation when both the first and subsequent reports should be produced, Ofcom and—of great importance—service providers will have the notice necessary to allow them to plan to meet the requirement. In this rapidly changing environment, and one of such critical importance, we think it important to include in the Bill the regularity of the reports to the Secretary of State. I therefore hope that the noble Lord will feel that he has probed the issue, but the Government think that there are great merits in the current drafting.

Lord De Mauley: My Lords, I am grateful to my noble friend Lady Buscombe for her support and to the Minister for his response. He did not address any of my arguments—specifically, those of flexibility and cost—but, in view of the weather and the hour, that is about as far as I am prepared to take the matter this evening. For this evening, I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10

Moved by ***Lord Davies of Oldham***

10: Clause 2, page 2, line 31, leave out "on" and insert "and each report must deal with"

Lord Davies of Oldham: I speak also to Amendment 11, in the name of the noble Lord, Lord Lucas, and Amendment 13. All the amendments relate to new Section 134A, which sets out the content, timing and definitional issues that relate to the preparation of the initial biennial and ad hoc reports. The matters to be covered in the reports are already outlined in subsections (1)(a) and (1)(b), but I want to make clear beyond doubt that those specific network and service matters are to be covered in the initial and subsequent biennial reports, to which we have just referred. I am grateful to the noble Lord, Lord Lucas, for his suggested amendment. It helpfully drew to our attention the fact that, as drafted, there was indeed ambiguity as to whether each report would cover all the matters in subsections (1)(a) and 1(b). However, we have difficulties with the amendment. I would like to have stood at the Box and accepted it. I am sure that that would have pleased him as much is me. However, his amendment clarified the situation only in respect of the initial report, and we feel that it is necessary to make the clarification in respect of all subsequent reports as well.

I might add that while we were looking at the drafting of the clause, we became aware that, as originally drafted, new Section 134A requires subsequent reports to relate to a "relevant period", but does not expressly require there to be a subsequent period for each relevant period. In theory, that could allow gaps to occur in the provision of reports. Because of that possible anomaly, we have tabled the two amendments and trust that they will provide clarity on the extent of each report and that there must be a report every two years. I am extremely grateful to the noble Lord, Lord Lucas, for having already improved the Bill—or at least having obliged the Government to make the necessary improvements. I beg to move.

Lord Lucas: I am always happy to bow to the superior style of the parliamentary draftsmen. I am grateful for what the noble Lord said.

Amendment 10 agreed.

Amendment 11 not moved.

Amendment 12

Moved by ***Lord Whitty***

12: Clause 2, page 2, line 40, after "State" insert ", Scottish Ministers, Welsh Ministers and Northern Ireland Ministers"

6.45 pm

Lord Whitty: I shall speak to the other amendments in this group as well. On reporting at least, these go to the heart of what we were discussing earlier—that the whole point of Digital Britain is to end the digital divide and digital exclusion, for both citizens and consumers in so far as there is a difference.

There is a differential exclusion and extension of networks in many of the areas regulated by Ofcom. The Minister's officials will have statistics on this. I would like to see a universal service obligation in this area, but understand some of the arguments against doing that given the range of technologies involved. I am not quite pressing that at this point, but we need to ensure that we get as close to a universal service provision as we possibly can. That has both geographical and social dimensions.

On the geographical dimension, it is true, as the noble Lord, Lord Steel, implied, that the different nations of Britain have somewhat different patterns, in particular in the rurality and distance involved in many areas of Scotland, Wales and Northern Ireland. There are similar areas in England as well, and it is important that part of the responsibility of Ofcom is to relate to the broader dimension of closing the digital divide in those parts of the United Kingdom. It is important that Ofcom has a relationship with the devolved Administrations and those administrations need to know what is going on. This in no way changes the UK dimension of the legislation but means that the resources, assets and networks that exist within the devolved nations could, jointly with Ofcom and the various digital media, be directed at closing the digital divide. It is important that those mechanisms are recognised in this Bill.

The first four amendments in this group relate to a reporting relationship between Ofcom and the devolved Administrations. It is not a responsibility relationship but a reporting one, which could lead to joint work in many areas. There are those who say that if we have a non-devolved area of responsibility the regulator cannot report to the devolved Administrations; I do not believe that to be the truth. I looked quickly behind me to see if the noble Baroness, Lady Young, was here; she is a former chief executive of the Environment Agency, on

[LORD WHITTY]
whose board I sit. We operate in England and Wales; most environment legislation is UK-wide but we have to report separately to the Welsh Assembly. I am sure there are plenty of precedents among other regulators where they report to the devolved Administrations. I have had dealings with the Minister's department on many different facets over the years—there are things they do well and things they do less well. They hardly do devolution at all. The role of the devolved Administrations needs to be reflected here.

The last three amendments in this group are probably the more important in that the digital divide, digital exclusion and lack of digital literacy impact differentially among different social groups. In particular, we have the issue of rural communities. The noble Earl, Lord Erroll, has already referred to the disadvantages found by both individuals and businesses in rural areas in access to the various digital arrangements. Although it may be true that in Norwood Green people do not want too many masts, I can assure the noble Earl that in rural Wiltshire and Dorset there is a considerable demand for them so that people living there can use the services we are hoping to make available to everyone more efficiently. Even in relatively populated parts of Dorset—where I was hoping to get tonight, but will not—although we have broadband it is pretty slow compared with the urban arrangements. There needs to be due consideration for people living in rural areas and in the more deprived parts of urban areas and for small business.

The other main dimension is that people who suffer from various disabilities and, to some extent, the elderly have not always been treated with full respect in relation to the new digital technologies. There is a batch of silver surfers, but there is also a batch of elderly people who are completely out of touch with various parts of the new technologies. Therefore, at least in the reporting sections, we need to do something to offset the imbalance I was fearing in Clause 1 by recognising that, in its reporting system at least, Ofcom has an obligation to identify and have regard to the interests of these various groups of disadvantaged consumers. I beg to move.

Lord Maxton: I shall comment briefly and give general support to the amendments tabled by my noble friend. However, on Amendments 21 and 25, as one of the elderly, I am not sure that I want to be linked in as one who needs special consideration in terms of the new media. My father-in-law, who is 86, also still uses a computer, although not particularly well.

When I initially looked at these amendments, particularly on the Scottish Ministers, Welsh Ministers and Northern Ireland Ministers, I had some reservations. The devolution Bill specifically excluded broadcasting from the remit of the devolved Parliaments, and I think that was right. However, as my noble friend explained, it is entirely a matter of reporting, and he may be right that we should report to each of the Parliaments. The Scottish Executive, under the previous Administration led by Mr Jack McConnell, undertook to ensure that remoter rural areas of Scotland were provided with broadband. That is being rolled out much faster in Scotland than elsewhere in the United Kingdom. My noble friend is quite right that it is probably easier for me to get broadband provision on the Isle of Arran than it is for the noble Baroness, Lady Howe, to get it in the remote rural area of England in which she lives. That is because there has been deliberate encouragement and funding by the Scottish Executive and Parliament to ensure that this happens in Scotland. I support my noble friend's amendments, although I ask him not to put all the elderly into one group.

Baroness Howe of Idlicote: I support the intentions behind Amendments 21, 22 and 25. These are important areas, and I certainly would be more than happy to be included in the elderly group because we do not all, alas, have the technical ability of the noble Lord, Lord Maxton, and his father-in-law.

The BBC was given the responsibility of helping some of these groups on switchover, although some of us were not happy about that. It has been assumed that not only will all these groups be happy by the time switchover occurs, but that there will be extra money available for other things. In view of all the areas that we already know will need some of this extra money, we shall wait and see. Therefore, it will be important that as part of the reporting we hear whether these groups have been dealt with satisfactorily, are happy at the changeover and have the support they need, so I support the amendment.

The Earl of Erroll: My Lords, I have already said that these are very important amendments. The noble Lord, Lord Whitty, put it extremely effectively and correctly. All I can add is that there are various things on this agenda. First, there is efficiency—we are trying to deliver government services electronically. We read that £1.3 billion is about to be allocated to it and that certain government services will be only available online. You cannot do that if you suddenly find a significant percentage of the population cannot access them. People say that there is 95 per cent coverage, for example. The remaining 5 per cent still makes up a significant actual number of people. You cannot deal with this in percentage terms. This will save money in the administration, which is hugely important.

Secondly, there is resilience. In some unexpected circumstances such as when the snow falls, as has just happened, you can still get access to key people who may be needed. You do not always need their physical presence, you need their brain power.

Thirdly, there is the green agenda and the environment. You reduce pollution by less travel because you can communicate properly and efficiently. Again you have to do it universally. The people who have to travel most are those who live furthest away from a city centre. You can use public transport in a city—you cannot if you live more than a couple of miles away from the station.

Fourthly, there is education and the people we rely on for the future. Some children live in non-urban areas and a lot of homework now involves trying to get access over the internet. You also have the ongoing lifelong learning, a lot of which is delivered over the internet.

This all comes down to money. Where savings are made, the people who see the benefits from it are not the people who put the money into developing the infrastructure. The people who are developing the infrastructure get no commercial benefit from doing it. The people who are going to benefit from it do not want to put money into it because their budgets are not big enough and they are busily cutting costs—everyone is going to have a very strong haircut, we hear. It is complicated. That is why these amendments are so important. There has to be someone in the middle to take money from A and give it to B. Someone has to be brave at central government level.

Lord Howard of Rising: My Lords, the first point to make in relation to these amendments is that we are dealing with matters that are reserved issues. Electronic communication networks and services are public policy matters that are looked after by Westminster. We on this side of the House have no appetite to change this arrangement as we believe these are matters correctly dealt with at a UK level.

Broadband networks, for instance, do not differentiate across borders. I state this more as a matter of record than anything else as I am sure the noble Lord is not suggesting such a change. It is worth mentioning simply because it could be interpreted in that way. More importantly, we are not certain that these amendments are strictly necessary. The Minister will correct me if I am wrong, but we were under the impression that the Secretary of State would be able to share these reports with devolved Ministers in the usual manner. If they raised issues of particular note for Scotland, Wales or Northern Ireland, then I am sure they would be passed on. More importantly—and this relates to an amendment we will be dealing with shortly—we assume that like most other Ofcom reports these will be made public. I hope that the Minister can shed some light on these assumptions.

Lord Davies of Oldham: My Lords, I am grateful to all noble Lords who have spoken in this debate and note the unanimity of approval for the amendment which my noble friend Lord Whitty moved, with the exception of the noble Lord, Lord Howard. The Government agree with noble Lord, Lord Howard, in this respect. As far as devolved Administrations are concerned, Ofcom currently sends its annual report to First Ministers. There is nothing which we would assume would change. The noble Lord, Lord Howard, indicated that broadcasting is a reserved matter. First Ministers in the devolved Administrations have a great interest in these issues. They are fully entitled to receive reports and Ofcom will carry on the practice of ensuring that those reports go to the First Ministers of the devolved nations. The Ofcom annual plan also does that. I can see no reason why established practice would change. Therefore I do not think that the amendments which relate to this and the devolved Administrations are necessary.

7 pm

Amendments 21, 22 and 25 deal with the specific groups identified by my noble friend as cause for concern. I am not surprised that there were several speeches in support of such amendments because I am sure they reflect the universal position of the House, and of course the Government have sympathy with the aim of the amendments. The ability of everyone in society to engage with and benefit from digital services is of the greatest importance and is part of the reason for the enormous amount of work put into these issues by the Government over recent years. Moreover, the *Digital Britain* report published in the middle of last year gave Ofcom a specific role leading the Digital Participation Consortium which brings together the Government, the private and the third sectors to work together on reducing the barriers that people face in getting online. So of course the Government are fully charged of the necessity to meet these objectives—in fact it is part and parcel of the strategy being pursued over recent years.

My noble friend has quite appropriately raised a very important matter in the context of the Bill, but I do not think that Amendment 21 is required, or indeed Amendment 22, which suggests that there are separate networks in rural and urban areas, because that is not the case. In any event, the extent to which rural and urban areas are covered and the nature of that coverage is already required within the report since Ofcom will need to consider availability and quality issues when it makes its report. It is also worth noting that Section 3(4) of the Communications Act 2003 requires Ofcom to "have regard" in performing its duties both to,

"the different interests … of persons living in rural and in urban areas",

and to the needs of the disabled,

"of the elderly and of those on low incomes".

All this is already part of our existing legislation in terms of Ofcom's overarching duties and obligations which will apply, of course, to the preparation of these reports.

I do not have in any way, shape or form anything but admiration for my noble friend for raising these issues and for those noble Lords who have supported him in objectives that we all share. I merely indicate that the Government are fully cognisant of them and, indeed, legislation already takes account of them. Again, I beg to agree with the noble Lord, Lord Howard, that it may not be necessary for these amendments to be pressed. I hope that my noble friend will think likewise.

Lord Whitty: Not quite. This is a new system of reporting on infrastructure and therefore we need to be quite clear that Ofcom actually does extend its reporting on this particular form of report to the groups outlined in the last three amendments in this group. I am quite happy for this to be expressed in a different way or to make sure that the existing Communications Act and other regulations ensure that Ofcom do this in relation to the new reports we are talking about here. But if the issue is not raised in this context, there is an opportunity for it not to do so.

Moreover, when we come to Scotland, Wales and Northern Ireland, I should make it absolutely clear that I am not seeking any change in the constitutional arrangements. However, the exercise in Scotland to which my noble friend Lord Maxton referred to try to close the digital divide involved not only the providers and Ofcom, but also the education service, the library

[LORD WHITTY]
service and other elements of public services that are either delivered in terms of education and information by the Scottish Government or local authorities in Scotland subject to that Government, or they are access for the community to those services which are the responsibility of the Scottish Government.

What I am implying is that there should be separate reports for Scotland, Wales and Northern Ireland. That may not be clear from the amendments, but the point is not covered simply by sending separate copies to the respective Secretaries of State. In order to tackle the digital divide, it is not only the regulated industry and the regulator which are important, but also the other services that are provided to the communities in those areas. The majority of those other services are controlled by the devolved Governments and therefore a specific strategy for closing the digital divide in Scotland is appropriate and ought to be reflected somewhere in the Bill. I do not say that this is the best way to do it, but a recognition of that reality is needed somewhere. For the moment, however, I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendment 13

Moved by ***Lord Davies of Oldham***

13: Clause 2, page 2, leave out lines 42 and 43 and insert—
"(3) A further report must—
(a) be prepared for each relevant period, and"

Amendment 13 agreed.

Amendment 14 not moved.

Amendment 15

Moved by ***Lord Razzall***

15: Clause 2, page 3, line 2, leave out "2" and insert "4"

Lord Razzall: My Lords, I should make it clear that we have no problem with and, indeed, support the principle of regular infrastructure reports. I am interested in the word "etc". Given the debates we have had on the Bill, I am surprised noble Lords have not wondered what "etc" means, but I am sure that we can assume knowledge of what it means for the purposes of the clause.

This is a probing amendment. As I said, we are totally supportive of the principle that there should be in the Bill a requirement for Ofcom to produce infrastructure reports, but we wonder whether a two-year cycle is too short and carries with it the danger found in an Australian general election where, as soon as the election has taken place, the campaigning for the next one starts because of the short period between elections.

Clearly these obligations will require not only a significant amount of work by Ofcom but, if the report is to be dealt with in a proper manner, significant input from the networks with regard to the provision and implications of data. The networks are more used—as is Ofcom—to having market reviews which are three to four years apart. In the light of the potentially onerous nature of the requirement on the networks and the workload on Ofcom, if these reports are to be meaningful, we wonder whether a four-year cycle rather than a two-year cycle would be more appropriate. I beg to move.

Lord Puttnam: My Lords, we rehearsed this discussion in the passage of the Climate Change Bill, in which many situations were similar; in a fast-changing situation the obligation on Ofgem was two years or four years. If my memory serves me correctly, we compromised on three years as being a reasonable amount of time in which change could take place. The terminology was "not more than three years". I suggest that not more than three years is both appropriate and reasonable. I cannot imagine that the Government would have a particular problem with that.

Lord De Mauley: My Lords, as I said earlier, we are of the view that the requirement for reports would be of most use if the Secretary of State had the flexibility to ask for them as and when he believed them necessary or useful. We would be concerned if this lack of flexibility was reinforced, as we fear it would be, if the period between reports was increased to a greater number of years than already provided for. Once again, I remind your Lordships of Ofcom's decision to bring forward its second review of public service broadcasting simply because things had changed more quickly than had been anticipated by the Communications Act. I do not believe that the Bill in its current form would allow such a decision to be made if four years looked like being too long an interval between reports.

I agree with the noble Lord, Lord Razzall, that in future, after the first period, a longer period would probably be appropriate. However, the simplest way of ensuring the most efficient use of the power would be for the Secretary of State to be able to request a report when he wants one.

Lord Davies of Oldham: My Lords, I am grateful to all noble Lords who contributed to the debate, although I am slightly perplexed by my noble friend Lord Puttnam; he has provided a compromise position, but the amendment before the House does not allow quite that degree of flexibility. I appreciate the sentiment, but I am glad that it is not going to be translated into action because it cannot, given the nature of the amendment. In fact I do not even appreciate the sentiment, because I am going to stick to the text of the Bill.

Our concern is that technology in this sector moves very quickly. The rationale behind reporting every two years is simply to guarantee that the Government are kept properly and fully informed about the state of the country's communications infrastructure, including all the issues that we have discussed on Clauses 1 and 2 in these intensive debates today—and I know that there are a great deal more to come. I emphasise that if the biennial report shows issues of concern that cannot be resolved through the normal operation of commercial arrangements or regulatory intervention, the Government will be well placed to consider whether further intervention of any sort is required.

With regard to the point that the noble Lord, Lord Razzall, made about the networks, they are going to be involved in the compilation of these reports; it will be their assessments, evidence and contributions that

will help to inform Ofcom. The industry will know the timetable that it is working to. It is not as if, within that framework, things are going to be sprung upon the industry at short notice. We think that, within a rapidly changing environment, there is great value in having reports of what is recognised as conspicuous regularity.

The burden of the noble Lord's amendment is that the reports could be reduced to every four years, but in this industry four years could see a significant change in technology, which is why we wish to defend the biennial reports. My noble friend Lord Puttnam has already indicated a compromise position, but I am not convinced of that, although I hear what noble Lords have said about the virtues of a longer period of time. I also listened to what the noble Lord, Lord De Mauley, said, that the Secretary of State might be able to demand the reports. The problem is that that looks a good deal more arbitrary than does the regular reporting to which the industry will be accustomed.

We think that we have got it right. We would not want to risk an extension of the period, certainly not to four years, and I hope that the noble Lord, Lord Razzall, having aired the issue, will feel able to withdraw his amendment. The Government have considered this carefully.

Lord Razzall: I thank the Minister for his comments. I hope that, before we get to Report, he will take this away and think a little further about it. Two things have come out of his remarks that are relevant. First, there seems to be an assumption that, until the report comes, there will be no action taken by either Ofcom or the Government in relation to technological developments that have occurred, but, as he has admitted, that will clearly not be the case. In the light of significant technological developments, Ofcom will be in consultation with the networks and indeed with the Government if it feels that action needs to be taken, so the "technological development" argument does not really hold water here.

I am more concerned with his second point. As he indicated, the networks will be well involved with both Ofcom and the Government to react to technological developments, but it is the networks that have lobbied strongly for this amendment. Indeed, one of the major networks is extremely concerned about the timeframe and the amount of work involved in carrying out a market review on a two-year timescale.

I have a lot of sympathy with the amendment of the noble Lord, Lord Puttnam, and I am sure that, were he to bring it forward at a later stage, he might find support from these Benches, or indeed he and I might join together to bring it forward on Report. In the mean time, while asking the Minister to reflect on this, and particularly on the lobbying we have had from one of the major networks here, I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Amendments 16 to 18 not moved.

Amendment 19

Moved by ***Lord Lucas***

19: Clause 2, page 3, line 17, at end insert—

"( ) The Secretary of State must make reports prepared by OFCOM under this section available to the public in a timely manner, subject to such redaction as he may consider necessary."

7.15 pm

Lord Lucas: Amendment 19 is grouped with Amendment 28.

The Earl of Erroll: I do not trust people to put reports into the public domain. There is a long history of these things being suppressed. We end up with Freedom of Information requests to get the information out of the Government after a lot of difficulty. It is a very good idea to have it in the Bill to clear things up. These sorts of things should go in the public domain.

Lord Howard of Rising: My Lords, we on these Benches entirely agree with my noble friend's Amendment 19. It is worth noting that the reports that Ofcom currently produces are published for all to see. For instance, Section 264(10), in relation to Ofcom's reports on the fulfilment of the public service remit, explicitly states:

"Every report prepared by OFCOM under this section must be published by them".

That is significantly different from the reports under Clause 2 of the Bill, which states that they must be sent to the Secretary of State. There is crucially no mention of publication. If these reports are to be useful contributions to the public policy debate on such an important issue, they should be made public as soon as possible. The amendment provides the Secretary of State with the ability to make redactions if these are necessary, so fears of commercial confidentiality should be addressed. It is important, if these reports are to retain the confidence of both the industry and consumers, for everyone to be able to see them.

We certainly want to hear some assurances from the Minister that this will indeed be the case even if he does not accept this particular drafting. It would also be helpful if the Committee could be told whether these reports will be subject to release under the Freedom of Information Act. If so, it would seem to make more sense simply to publish them with as much detail as possible. Ofcom and the Government are used to producing reports that are based on commercially sensitive information and we see no reason why these reports should not be dealt with in the same manner.

We also support Amendment 28. As I have previously stated, we on these Benches believe that for these reports to be of most value, they need to be published for all to see. Parliamentary scrutiny of these reports would greatly enhance their worth.

Lord Young of Norwood Green: My Lords, Clause 2 amends the Communications Act by inserting new sections requiring Ofcom to report to the Secretary of State at regular intervals on the UK's communications infrastructure and services. One such report is where there is a significant change in connection with the matters listed in new Section 134B(1) or (2). It requires that, should Ofcom become aware of a marked change

[Lord Young of Norwood Green]
which has a significant impact on business or the public in any of the reporting areas and which it considers should be brought to the attention of the Secretary of State, it should write a further report as soon as practicable. We have not been prescriptive as to when these reports will be prepared. This will ensure that, if there are developing problems or constraints on the UK's infrastructure, the Government will get advance warning of this from the regulator and, as appropriate, will be able to consider whether any action is needed.

Your Lordships will no doubt appreciate that the persons or organisations from which information will be gathered are likely to be very sensitive to disclosure, since much of the information will be commercially confidential, as the noble Lord, Lord Howard, recognised. Disclosure could prejudice network security issues, for example. Because of commercial confidentiality, we believe that the information that Ofcom would obtain will be exempt under Section 44 of the Freedom of Information Act. This is because it is information relating to a particular business, which is subject to the prohibitions in Section 393 of the Communications Act 2003.

For the reasons stated, we do not believe that these reports should be made available to the public. However, I assure the noble Lord that we propose to publish an account of the broad information on the overall state of health of the UK's communications infrastructure, detailed in both the initial and biennial reports. I mentioned earlier that it is our intention to set out in a note for your Lordships how we expect this reporting process to work in practice in a number of areas. I will ensure that that note includes our expectation that the conclusions of these reports will be made public wherever possible.

The purpose of the second amendment in this group is to require that all reports to the Secretary of State on domain names are made public by laying a copy in both Houses. I understand what this amendment might be trying to achieve. However, it is likely that Ofcom will itself publish any report on domain names. This might satisfy the noble Lord. The Government are open to transparency and would expect to see any reports published save in exceptional circumstances, where, for example, matters of security or commercial confidentiality would make it inappropriate to publish. Therefore, there just might be cases where the Secretary of State could choose not to publish the report. I would expect this to be the exception rather than the rule, but nevertheless it should be left to the Secretary of State's discretion. Once again, I will ensure that this is covered in the note that I spoke of earlier. In the light of that assurance, I hope that the noble Lord will feel able to withdraw the amendment.

Lord Lucas: My Lords, as I have said, I will certainly withdraw amendments at this stage, but I think that there are matters to come back on. On Amendment 19, I accept that there will be elements of confidentiality, which is why I built in the ability to redact. I concede that that might be cumbersome, but the noble Lord will be faced with it in the end; when he gets a Freedom of Information Act request, he has to publish the report with the bits that he thinks should be left out redacted. That is what will happen under the Freedom of Information Act, so he might as well do it anyway. It is merely tiresome of officials to insist on acting otherwise and then to be compelled to do it in the FoI fashion later.

On Amendment 28, I should like a presumption of publication. If we are not to have automatic publication, I should certainly like the fact of the commissioning and receipt of a report to be made public, so that people know that something has been commissioned and received and that therefore there is something to expect and discuss.

In both instances, I should like to think further and perhaps for the Government to go a bit further. I will write to the noble Lord to suggest what I should like to see. On Amendment 28, we are not talking about things that come within the Government's purview; we are talking about the Government seeking to extend their purview into something that is currently a private matter. Therefore, the Government's activities should be known; this should not take place in secret, with the Secretary of State commissioning and receiving a report without anyone else ever knowing what is happening. However, for now I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Lord Faulkner of Worcester: I beg to move that the House be now resumed.

Lord Razzall: Before that Motion is put, can I make the point that there are three parties in this House and it would be a matter of courtesy if that discussion had taken place not only with the noble Lord, Lord De Mauley, but also with me or the noble Lord, Lord Clement-Jones?

Lord Faulkner of Worcester: I apologise to the noble Lord, Lord Razzall. I did pass a signal across to the noble Lord, Lord Clement-Jones.

Lord Clement-Jones: Before the Motion is put, I point out that mine is the next amendment. Therefore, I had a particular interest, and if the Minister had bothered to ask me, I would have said that probably we would have dispatched this amendment in five minutes, which would have brought us up to exactly half past. So I am not happy with the moving of the Motion at this particular moment, and I assure the Minister that we will make the same point over and over again if he does not consult these Benches.

House resumed.

House adjourned at 7.26 pm.

Grand Committee

Wednesday, 6 January 2010

Cluster Munitions (Prohibitions) Bill [HL]

Committee

3.45 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall): My Lords, I remind the Committee that if a Division is called in the Chamber while the Committee is in session, we will adjourn for 10 minutes from the moment that the Division Bell is first heard.

Clause 1 : Munitions to which Act applies

Debate on whether Clause 1 should stand part of the Bill.

Lord Howell of Guildford: My Lords, I should make it clear at the outset of these amendments that we on this side are strongly in favour of the Bill. We want to see its purposes carried forward and, indeed, to see it have a speedy passage first to the other place and then on to the statute book. At the same time, I hope that your Lordships will agree that no Bill is absolutely perfect and that we have a role and a duty to ensure that we know exactly what we are legislating for and, indeed, that we know the precise coverage and scope of the Bill so that we can offer our advice and recommendations to the other place and improve the legislation.

That brings me straight to the Question of whether Clause 1 should stand part, because that is the clause which raises the issue of the weapons covered in the Bill. There is an easy answer, which I am sure will be avoided, and that is that what is covered in the Bill is what is defined in the Convention on Cluster Munitions. However, anyone who has studied the convention will see that it has a whole range of exclusions in Article 2, including weapons designed to dispense flares or smoke, have air defence capabilities and, according to the convention, electronic effects. I am not sure whether that means electronic self-destruct mechanisms or electronic impact on particular targets.

The convention also excludes weapons with less than 10 explosive submunitions, which to the inexpert, such as myself, certainly seems rather high when we are trying to down cluster munitions as a class. Therefore, I ask the Minister whether the exclusions also include the German SMArt-155, the French BONUS munitions or the American SADARM munitions, which I think were used in Iraq—certainly around 2003 if not later. That is one question that seems to hang in the air.

There is also the question of weapons not yet in service. Does the convention, or the Bill, if we carry it forward, cover larger weapons that are said to be coming along which have sensor-targeting and two failsafe systems? I have in mind here—I have taken this from the briefing—the 155 millimetre fused munition, BSFM, which is an artillery round. Indeed, are land-fired weapons of this kind covered at all? I think that the Israelis fired by artillery means a number of these cluster weapons in the 2006 Lebanon war. The convention seems to imply that we are talking only about air carriage and air-dropped weapons, but what can the Minister say about artillery-discharged clusters?

There is then the broader point that the convention is rightly aimed at—indeed, its central purpose is—banning weapons which "cause unacceptable harm" to civilians. At Second Reading I raised the question of bomb clusters designed not to harm civilians and individuals but to knock out facilities, such as electricity transmission or mobile communications, which were used, so I am informed, in the Kosovo war in bringing Belgrade to a halt. The intention then was to disrupt our systems by producing short-circuits on high-voltage power lines and at sub-stations. There is obviously a balance to be made here. There is a need to consider whether these kinds of weapons, which are not intended to harm civilians and are targeted, are a good or a bad thing.

Can we please have a few answers on these matters of definition and coverage of the Bill before we move on to further clauses?

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): My Lords, I thank the noble Lord for his comments. I hope that I can clarify to his satisfaction the issues that he has raised. Clause 1 defines the prohibited munitions to which the Bill will apply. These are cluster munitions and relevant explosive bomblets, the definitions of which we have been careful to take exactly from the Convention on Cluster Munitions, as set out in Article 2. I can assure the noble Lord that these definitions are comprehensive. Needless to say, they capture all those munitions that present significant humanitarian risk and cause unacceptable harm to civilians.

As noble Lords will be aware, the convention and therefore the Bill do not apply to munitions which have all of the following characteristics: each munition contains fewer than 10 explosive submunitions; each explosive submunition weighs more than four kilograms; each explosive submunition is designed to detect and engage a single target object; each explosive submunition is equipped with an electronic self-destruction mechanism; and each explosive submunition is equipped with an electronic self-deactivating feature. It was agreed at Dublin that munitions with these characteristics avoid indiscriminate effects and the humanitarian risk posed by unexploded submunitions. The military may therefore maintain necessary capability through their use. Article 2 of the convention excludes munitions with electronic effects.

I know that the noble Lord, Lord Howell of Guildford, expressed concern at Second Reading that in prohibiting cluster munitions we did not limit the technical capability of our Armed Forces. In particular, he mentioned the CBU-94/B, which scatters fibres to short-circuit electricity systems. I can reassure him that this will not be the case and can confirm that the convention's, and therefore the Bill's, prohibitions do not extend to munitions designed to produce electrical or electronic effects such as the CBU-94/B.

[Baroness Kinnock of Holyhead]

Amendment 1 would remove from the Bill key definitions, including of prohibited munitions, thereby making the Bill extremely difficult to apply. On this basis, I hope that the noble Lord will withdraw his amendment.

Lord Howell of Guildford: My Lords, I am a little puzzled, because I have not yet moved Amendment 1; I have only spoken to Clause 1 stand part. I am grateful to the Minister for her reply to Clause 1 stand part, particularly as to electronic cluster weapons which do not harm civilians, but I should like to move Amendment 1 in a moment at the proper time.

Clause 1 agreed.

Clause 2 : Offences

Amendment 1

Moved by ***Lord Howell of Guildford***

1: Clause 2, page 1, line 21, at end insert—

"( ) directly or indirectly provide monies that are used for the development or production of a prohibited munition or component thereof,"

Lord Howell of Guildford: My Lords, it is worth noting both for ourselves and for future discussions in another place that we are dealing with an extraordinarily complex situation in which 34 countries have produced 210 different types of cluster bomb, manufactured from an enormous range of different components from many factories and plants all around those 34 countries and in others as well. Therefore, I think that we recognise that finance for the production of these items is complex and diffuse.

I also recognise that the provision of direct finance for cluster bomb manufacture is clearly made illegal under the convention, but that the indirect issue is much more complicated. The Minister has just spoken a few words about it. During Second Reading, she also made a Written Ministerial Statement, as did her colleague in the other place, Mr Bryant, about the need to prohibit indirect financing of cluster munitions manufacture. The suggestion was that this would be dealt with in due course. In this amendment, I am suggesting that it might be worthwhile having these requirements in the Bill. Without the risk of asking the Minister to repeat herself, will she explain a little more about how the Government plan to work with the financial sector, non-governmental organisations and other organisations to prevent this process? Do they intend further legislation as well? I beg to move.

Baroness Kinnock of Holyhead: My Lords, as noble Lords will know, the Convention on Cluster Munitions makes no mention of the provision of moneys in regard to cluster munitions development or production. It is not one of the prohibitions included in the convention. The Bill is designed to implement the convention and therefore does not include specific mention of such financing or investment.

However, in response to the valid interest of concerned parliamentarians and civil society, I clarified the Government's position on such financing in a Written Ministerial Statement on 7 December 2009. The issue was also debated at Second Reading. If it would be helpful, I am happy once again to outline the Government's position and to reassure your Lordships of our commitment to preventing the financing of cluster munitions production.

Under the Bill, the direct financing of cluster munitions production or development would be prohibited. In addition, we are committed to working with interested parties to promote a voluntary code of conduct to prevent indirect financing by the private sector. We will also review public investment guidelines to the same end. While reserving the right to legislate in the future, if necessary, I feel strongly that this is the most constructive way forward. It would certainly place the UK once more in the forefront of international action. Only a minority of states parties that have so far ratified have explicitly set out positions on financing. None of these has gone so far as to try to prevent direct and indirect financing in both the public and private sectors.

I do not need to tell your Lordships that some of the financial products that could be covered by a prohibition on indirect financing, such as syndicated loans or participation in revolving credit facilities, can be very complex. They can often involve multiple parties, cross jurisdictions and have ultimate beneficiaries several times removed from the originator. I understand that it can be difficult and costly to exit these arrangements. I therefore fear that legislating without significant prior consultation might place some institutions automatically in breach of the prohibitions once they become law. In addition, we have not had the opportunity to assess the impact of this action on the UK's financial sector.

This is why we have preferred the voluntary route initially and I am confident that we can make a difference. As noble Lords know, our priority is the passage of this Bill and the ratification of the convention. I am eager, as I know many of your Lordships are, to ensure that the UK becomes a state party as soon as possible. Once this has been achieved, we will be able to work on the consultation process for the private and public sectors. I would therefore hope that the noble Lord will withdraw his amendment.

4 pm

Lord Hannay of Chiswick: I should like to ask the Minister a question, following her very helpful statement. I understand entirely the arguments that she has advanced for not changing the Bill as proposed in the amendment. However, would she confirm, as I believe is the case from what she said, that the Government in no way preclude at some much later stage, if it were to prove necessary, amending the Bill to bring direct and indirect financing within the criminal scope of the Bill, but that now is not the time to do it? Could she confirm that the Government are moving to ensure that direct and indirect financing does not take place, and that nothing in the Bill prevents that happening at a later stage?

Baroness Kinnock of Holyhead: I thank the noble Lord for asking for that clarification. It is indeed the case that if we do not preclude that eventuality there would be legislation at some later stage. However, at this stage, rather than hold up the process, we think that we should move forward and that noble Lords should be reassured that we take that position clearly at this time.

Lord Elton: For the sake of clarity, I think that the noble Lord, Lord Hannay, referred to an amendment at a later stage of this Bill. In fact, I suspect that he had in mind a new piece of legislation after this Bill reaches the statute book.

Lord Hannay of Chiswick: Yes.

Baroness Kinnock of Holyhead: That was the presumption that I made also.

Lord Howell of Guildford: My Lords, the Minister's remarks are entirely constructive and helpful and clarify the Government's mind on this matter. I note the thought that we may be faced with further legislation but, if that is necessary, so be it. Clearly this is a complex matter that cannot be rushed. We need to work out how a more effective grip can be achieved on the many channels through which indirect finance will, I am afraid, continue to be supplied for a time to activities that could lead to the assembly and fabrication of cluster bomb munitions of the prohibited kind. But in the light of the Minister's remarks, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 2 agreed.

Clauses 3 to 5 agreed.

Clause 6 : Other purposes permitted by Convention

Amendment 2

Moved by ***Lord Howell of Guildford***

2: Clause 6, page 4, line 43, at end insert—

"( ) The Secretary of State shall publish guidance setting out the maximum number of prohibited munitions that may be considered necessary for permitted purposes."

Lord Howell of Guildford: We come to Clause 6, which deals with other purposes permitted by the convention—permitted purposes, in other words—by which cluster munitions may continue to be held and treated. I am not sure whether they continue to be assembled as well, but the Minister may be able to clarify that.

The amendment would simply put a little more definition and precision into the question of the amount of munitions that may be necessary for certain permitted purposes. The one in my mind is how many may be kept for research, experiment and development. To what degree will the research and experimentation need to match further weapons development, however regrettable that may be, in countries that are not signatories to the convention and that may continue to want to use these horrific weapons—and not only countries but non-state actors as well, along with certain countries that are irresponsible and do not respond to or act in accordance with the higher aims of global co-operation behind this convention? That is why the amendment is here, and I should be grateful if the Minister could comment on it.

Lord Boyd of Duncansby: My Lords, following on from the noble Lord's remarks, it is also important that munitions are kept for training those who may have to deal with disposing of them. It may be that in some guidance greater clarification can be given to that purpose.

Lord Ramsbotham: My Lords, very much in the spirit of the previous intervention by my noble friend Lord Hannay, I suspect that the figures for this sort of requirement have not yet been worked out. Indeed, I think it took a long time for the figures to be worked out as to what was appropriate in the landmines treaty. The French, in particular, did a great deal of work on this. Again, my question is whether this is something which, in future, could be added to the Bill if it is not possible to work out what the requirements are now. It is something that must be kept under review particularly because, in all the countermeasures that have to be worked out, you cannot do without the weapons themselves.

Baroness Kinnock of Holyhead: I thank the noble Lord. I hope that I can offer some of the definition and precision asked for on this matter. The convention includes the assembly of cluster munitions, so that is clearly there. As your Lordships are aware, as a state party to the Convention on Cluster Munitions, we will be permitted to retain a limited number of munitions for certain permitted purposes. I elaborated on what these were in winding up the debate on Second Reading. We were in the process of determining exactly how many we need to retain for training, detection, clearance and destruction techniques, as well as the possible development of countermeasures. The convention does not stipulate any maximum number that may be retained by states parties. Article 3(6) requires that this number should be limited and should not exceed the minimum number absolutely necessary for permitted purposes. That is absolutely clear. I assure your Lordships that this is the Government's intention.

It is difficult to anticipate how many cluster munitions we may need to retain for the training and development of countermeasures. The number may change depending on current circumstances. The number of anti-personnel mines retained has increased in recent years due to the need for training and development in countermeasures against improvised explosive devices, or IEDs. To set a fixed number in the Bill would make it inflexible and difficult for us to meet such needs.

In implementing the convention, the Bill reflects this restriction. Under Clause 6, the Secretary of State may authorise only the possession or transfer of cluster

[Baroness Kinnock of Holyhead]
munitions in numbers necessary for permitted purposes. It is important to note that in doing so the Bill mirrors similar provisions in the Landmines Act 1998. The number retained will also be publicly available for scrutiny. It will be included in our transparency report under the convention, as is the case with the anti-personnel mines that are being retained. On this basis, I hope that the noble Lords will withdraw their amendment.

Lord Lee of Trafford: I have one question on overseas stockpiles. I think we are talking in particular about US stockpiles. I am not quite clear whether there is an obligation on the United States or on any other country that may have such a stockpile to provide details of those stockpiles, or to give a continuous update on their destruction. What information has to be made available by the United States in this regard?

Baroness Kinnock of Holyhead: We will be permitted to require them to make such information available to us. The United States is not a signatory to the convention but is obliged to give that information. The Secretary of State will request it, should that be appropriate.

Lord Howell of Guildford: My Lords, I am grateful to the Minister. On the last point, I was coming to the question of those of our allies who regrettably are not yet signatories to the convention and who hold stockpiles of cluster munitions, and how we cope with that, particularly when they are on British soil. Perhaps I can return to that, if the opportunity arises, when we look at later clauses.

I am satisfied with what the Minister says about the guidance sought by our amendment to Clause 6, but the noble Lord, Lord Ramsbotham, makes the very good point that as the thinking evolves—we are in a new area in many ways, although there are similarities with the landmines legislation—it may be possible to have a clearer definition of the amounts and the nature of the weapons and the nature of the systems by which they are stored and held for the future in circumscribing them with the necessary legislation. Perhaps that lies in the future. In the mean time, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Clause 6 agreed.

Clauses 7 to 8 agreed.

Clause 9 : International military operations and activities

Debate on whether Clause 9 should stand part of the Bill.

Lord Howell of Guildford: My Lords, we come to really quite difficult parts of this basically excellent Bill, and I would value clarification in debating whether this clause should stand part of the Bill.

I have heard it suggested, and I feel that there is validity in the suggestion, that greater clarity is needed about the legal status of our forces when they are in contact with cluster munitions and when working with other forces who belong to countries that have not signed up to this convention and that are still using cluster munitions of various kinds, or indeed kinds that may not yet have been developed but that will be brought on to the weapons scene in the future.

I am sure that the Minister and your Lordships would all agree that it is undesirable that those of our fighting forces on the front line and in difficult and tense situations should be unclear at any point about what they are and are not allowed to do, especially when there is a shadow over them that they may be involved in illegal action if they take the wrong course or the wrong decision, even when under intense pressure and having to act at high speed. How will this interoperability, which is what we are talking about in Clause 9, and co-operation with visiting forces, allied forces or third countries be policed? What will the ramifications be if it is learnt that UK personnel are working with troops who are using cluster munitions due to the fact that the forces with whom they are operating still use these munitions? The convention explicitly attempts to aim at banning this type of situation, but here we are, legislating, so that we can sign this convention. Does our Bill do the same thing, or does it provide a loophole?

The Minister in another place said at one stage that the convention, and therefore also the Bill,

"does not alter our ability to work with coalition partners".

We know that in the real world at present our coalition partners tend to be our American allies, but we may be moving into a world in which our partners will be from all sorts of other countries—they have been, to some extent, in Iraq: for example from Japan and the Ukraine. It is even conceivable in the world into which we are moving that we will have a more unified global approach to rogue activities and work with Russian troops or any others; I do not know. These are no longer quite the fantasies that they were.

How do we ensure that our operations with our coalition partners proceed smoothly in the light of this new legislation? Are we sure that what the Minister said about our ability to work with our allies, particularly the Americans, being in no way compromised or altered is really so? I return to the question asked by the noble Lord, Lord Lee, a moment ago about how we continue to discourage the United States from its own continuing role in stockpiling cluster munitions in UK territories such as Diego Garcia. What will be the procedure by which the pressure of discouragement is brought to these situations? Will the Minister elaborate on how that will develop? Those are my reasons for seeking to question whether the clause should stand part.

4.15 pm

Lord Boyd of Duncansby: My Lords, Clause 9 deals with the issues that arise when our Armed Forces co-operate in a joint operation with those of non-convention countries. It is right that we do everything that we can to protect those of our forces who may find themselves acting with those of other countries

that still use cluster munitions. We should not be too sanctimonious about this—after all, it is only very recently that the United Kingdom has come to the view that it should accede to this convention. Other countries will take longer, but will hopefully come to the same view. I accept also that defences should be reasonably widely drawn so that officers do not find themselves inadvertently in a position where they are operating with officers from other countries who may be using cluster munitions. I accept that the defences should be widely drawn. Nevertheless, I have some concerns, and perhaps the Minister will address these in her reply.

Clause 9 makes it a defence for a person charged with an offence specified in the schedule that the person's conduct took place in the course of a joint military operation. Schedule 2(1) refers to offences under section 2(1)(e) or (g). Schedule 2(2) refers to,

"an offence under subsection (2) of section 2 of assisting, encouraging or inducing another person to engage in any conduct mentioned in paragraphs (a) or (e) to (g) of subsection (1) of that section".

Clause 2(1)(a) makes it an offence to use a prohibited munition. Clause 2(1)(b) makes it an offence to develop or produce a prohibited munition. Clause 2(1)(c) makes it an offence to acquire a prohibited ammunition. Various other dealings with such weapons are listed as offences. Clause 2(2) deals with assisting, encouraging or inducing. It will encompass the offence of assisting, encouraging or inducing the use of a prohibited weapon—a cluster munition. I accept that inadvertently our Armed Forces might find themselves in a position where, looked at with a cold legal eye, they might be said to be assisting, albeit that they are acting properly and appropriately. They might even be described as encouraging. However, Clause 2(2) goes further by mentioning inducement. It might be said that an officer could legally say, in the context of a joint military operation: "We do not have cluster bombs—we are prohibited from using them—but you can use them, and if you do, we could assist you in some other operation." That would be the inducement. That would be wholly contrary to what we would expect our forces to do. It would also be wholly contrary to the spirit of the convention. Furthermore, I doubt whether it would fully implement the convention, notwithstanding the terms of paragraph 3 of Article 21.

I am sure that that is not what the Government intend by these provisions. It may be that there can be reassurance on the way in which instructions and orders are given to our forces when they are in a joint military operation with a non-convention country. Echoing the words of the noble Lord, Lord Howell, I believe that we need greater clarification not only in terms of our troops and officers for whom we hold a responsibility but also our wider international obligations.

Lord Hannay of Chiswick: My Lords, I share the views expressed by the noble Lord, Lord Howell, on interoperability and I go along with everything he said. It seems clear to all of us who followed the convention process that if we had stuck in the UN route which required unanimity, we would not now have a convention banning cluster munitions. Of course, in those circumstances, interoperability would not have arisen, but there would not have been a ban.

In order to obtain the ban, the Government—correctly, in my view, and with a little encouragement from others of us—went down this other route which inevitably and inescapably raises the issue of interoperability. You cannot avoid that. The only problem I have with the noble Lord, Lord Howell, is that I cannot for the life of me see how his amendment to leave Clause 1 out of the Bill assists his argument. I hope that he will not insist on it because, although I happen to share exactly the views he has expressed, I came to the opposite conclusion.

Lord Dubs: My Lords, I agree with what the noble Lord, Lord Hannay, has said. I draw further comfort from the way in which the Ottawa Convention operated. Although some countries did not sign up to the ban on antipersonnel landmines, there has been a significant reduction in their use. Some of the key countries which owned them have not used them at all—the United States, for example. I hope that I am right in that—it is certainly my understanding. I therefore hope that the Americans, although they are still in possession of large stockpiles of cluster munitions, will refrain from using them or regarding them as a main weapon.

That goes further than anything that has been said, and it is an expression of hope. The Ottawa Convention precedent ought to help us a bit there. Of course, there are also arguments within the United States that it, too, should ban these weapons. I know that some leading Senators take that view, but whether they will succeed in persuading the Administration of that I am not sure. I must concede that other countries, such has Russia, have not signed up and have used them. I understanding that cluster munitions were used by both sides in the conflict in South Georgia a couple of years ago. My argument does not hold water in respect of all countries, but I would hope that it will have some weight as regards the United States.

Lord Ramsbotham: My Lords, I, too, go along with everything said by the noble Lord, Lord Howell, in particular the importance of clarity in the legal status of members of the Armed Forces. That is essential. My concern about this clause is not so much on whether it should stand part, because provision setting that out, however imperfect it may seem, is essential, but about the use of the words "operation" and "co-operation". By its definition, an international operation is co-operation between those taking part. Is it semantics?

I wondered whether there was confusion over whether a military operation implied something like peace enforcement, where force was being used, and that co-operation implied other activities such as post-conflict reconstruction, in which it was not. Of course, the people taking part in post-conflict reconstruction are hardly likely to be using cluster munitions; they would be clearing them up. That is something that needs to be tidied up, but I took heart from what the noble Baroness said at the beginning: that the Government's intention was not, as it were, to stick by every letter of this for all time but to be prepared to amend as we go along. In the interests of the clarity requested by the noble Lord, Lord Howell, this point should be considered and then made clear to those who will have to abide by it.

Lord Elton: My Lords, I join the chorus of concern on this issue because the confidence of our own troops in our own law is absolutely essential. There needs to be an authoritative statement, possibly not in this Room but in the Chamber of the House, setting out the Attorney-General's understanding of the meaning of this which can be taken as a guideline for our troops.

Baroness Kinnock of Holyhead: I thank noble Lords. I understand very well why the noble Lords, Lord Hannay and Lord Howell, raised this issue. I thank the noble Lord, Lord Hannay, for the realism that he showed in his earlier response and my noble friend Lord Dubs for reminding us of the example that the progress that we made on landmines set us on these matters.

Our ability to continue operations alongside coalition partners who will not be states parties to the convention was raised by a number of colleagues in our Second Reading debate. It occurs to me, as it did then, that the MoD would hardly be likely to have agreed with the points made in the Bill were their points not taken care of in the Bill. It occurs to me very forcibly that the MoD's position takes into account many of the points and concerns that noble Lords have raised.

Interoperability is about the UK, and similarly placed states, being able to continue operating effectively with and alongside coalition partners in all potential situations. It will enable us to play our full and necessary part in coalition operations. That vital security requirement was recognised by countries negotiating the Convention on Cluster Munitions and was expressly provided for by Article 21 of the convention. Clause 9 implements this vital provision, providing the necessary defence for conduct that takes place in the course of military co-operation and operations with non-states parties.

This defence is necessary to ensure that our service men and women are properly protected from prosecution as they work and fight alongside coalition partners who are not yet ready to join the convention. It is right that this protection is comprehensive and covers all appropriate circumstances, including the most exacting combat situations.

While permitting co-operation with non-states parties, Article 21 of the convention also sets clear boundaries on what should be permitted. These restrictions are also reflected in Clause 9. Notably, as I was glad to state at Second Reading, nothing in the Bill will permit UK nationals to develop, otherwise acquire, stockpile, transfer or use cluster munitions. In addition, I made it clear that no UK national will be permitted to request the use of cluster munitions when the choice of munitions to be deployed is within their exclusive control.

Article 21 also obliges states parties to encourage non-states parties to ratify or accede to the Convention on Cluster Munitions, to notify Governments of non-states parties of their obligations under the convention—a point of concern raised by many noble Lords—and to use their best efforts to discourage non-states parties from using cluster munitions. Those obligations are not covered in the Bill, as they do not require legislation to be implemented, but I am happy once again to assure your Lordships that the Government will actively fulfil these obligations.

4.30 pm

The noble Lord, Lord Ramsbotham, raised the issue of "operation" and "co-operation". They are terms taken from the convention and they are defined in the clause. Operation means active, in-the-theatre activities and co-operation is wider military activity that may be in support of the operation. I hope that that clarifies that point.

As I said at Second Reading, the Government's aim is a global convention and we are actively working towards that goal. The noble Lord, Lord Ramsbotham, also raised the point about inducements in joint operations. That is not what is intended, but we could be involved in logistical planning that involved cluster munitions. That is necessary as a part of high-level strategic co-operation.

The noble Lord raised another point about UK personnel. They will be permitted to call for fire support that may involve the use of cluster munitions by non-state parties, except that they must not expressly request their use where the choice of munitions is within their exclusive control. That is essential to protect the lives of our service personnel, particularly during intense combat where rapid life-and-death decisions may need to be made.

I can give some reassurance to my noble and learned friend Lord Boyd that prohibition on the UK's use of cluster munitions will be reflected through operational policy documents that will outline how UK Armed Forces will operate with coalition partners. Restrictions on the use of weapons and national caveats imposed during coalition operations are, as I am sure many noble Lords are aware, a normal part of a coalition-building process. Those directives will include the national, operationally specific rules of engagement, profiles and national caveats, which will ensure that any action is within the parameters of UK law. Furthermore, a Chief of the Defence Staff directive is issued to all individual embedded personnel explaining the UK's legal position on all the relevant matters.

I would like to clarify another point that was raised. UK commanders and staff officers engaged in military operations should continue to operate in accordance with current practice except that they must not expressly request or direct the use of cluster munitions to achieve a task where the choice of munitions is within the UK's exclusive control.

On whether we asked the US to remove its stockpiles, since the UK adopted the Convention on Cluster Munitions in May 2008, there have been ongoing discussions with the US with regard to their cluster munitions stockpiles and the necessity of having stockpiles on UK territory.

I hope that I have covered those points. As I said, the aim is to achieve ratification of this global convention. We must be able to work alongside coalition partners effectively. That was accepted in the decisions that were made in Dublin and elsewhere. Therefore, I hope that noble Lords will agree that the clause can stand part of the Bill.

Lord Howell of Guildford: My Lords, I am grateful to the Minister. I have a secret to share with the noble Lord, Lord Hannay. Sometimes, opposition spokesmen move amendments that they do not necessarily want

to see passed. In this case, the intention was clearly to seek reassurance and clarification from the Minister. There were indeed invaluable inputs both from the noble Lord, Lord Hannay, and others on this complex situation and to some extent those reassurances have been given.

I hope that the clarity of the convention and the clarity of the Bill provide the right protection for our Armed Forces. The trouble is—and we have this in other areas of legislation—you can put things with great clarity on paper or on the statute book, but in the heat of battle anything can happen. Tensions are enormous and decisions have to be taken with immense rapidity, often without adequate and full information. That is the nature of warfare and operations—increasingly so in this age of asymmetric activity and sudden, unplanned and even unforeseen actions of great violence and danger. That is an area in which it becomes a little difficult to find the right documents to prove that something is legal or illegal. However, one understands the difficulties. I should like to think that as a result of this exchange the Government's thinking will continue and, as the noble Lord, Lord Ramsbotham, suggests, will find a way in which to make this clearer and easier in an increasingly complicated world for military operations. Contenting myself with that reassurance, I withdraw my intention to oppose this clause stand part.

Clause 9 agreed.

Clauses 10 to 15 agreed.

Clause 16 : Power to enter premises and destroy immobilised prohibited munitions

Amendment 3

Moved by ***Lord Howell of Guildford***

3: Clause 16, page 12, line 32, at beginning insert "there is evidence that"

Lord Howell of Guildford: My Lords, to be frank with your Lordships, I have a feeling that this amendment might have been better positioned against Clause 12, which also deals with powers of entry, than Clause 16, although the intention behind it would be the same wherever it appeared. It is simply a reaction, which I hope will come as normal to your Lordships or to any legislative Chamber in a democracy, that whenever we give new powers of entry or powers to authorise the Secretary of State to issue warrants of this, that and the other, we should pause and look carefully at the power that we are giving. There is a general presentiment, which we have covered in other debates in your Lordships' House in the past few years, that the rights and powers of authorities of all kinds to enter private premises and people's homes and dwellings are getting a little too extensive. We need to watch that we ration those powers proscribed to our ruling Secretaries of State, Governments and authorities very carefully. When one sees in any Bill that new powers are to be awarded and granted, it is perhaps the time to pause and discuss whether we have got it right.

The proposal behind the amendment is to strengthen the wording to make it harder for the Secretary of State to authorise entering a premises without sufficient evidence-based cause. That is what the wording in the amendment does. I beg to move.

Baroness Kinnock of Holyhead: My Lords, I thank the noble Lord and will make every effort to offer the clarification that he requests. Amendment 3 seeks to strengthen the test in Clause 16 for issuing a warrant authorising entry into a premises where there are prohibited munitions. I do not believe that that is necessary, as the current provisions sufficiently provide for such a safeguard. As subsections (3) and (4) of Clause 16 stand, before issuing a warrant authorising a person to enter premises and destroy prohibited munitions, the Justice of the Peace must be satisfied on the basis of information and evidence given on oath that the appropriate conditions for doing so are satisfied. These conditions are established in subsection (3) and comprise a prior warning notice being affixed to the relevant property and the Secretary of State's decision being obtained.

At Second Reading, the noble Lord, Lord Howell, expressed concern about granting more powers to enter people's homes. I assure him that in drafting the Bill much thought was put into ensuring that individual's rights were protected. To that effect, the Bill contains various safeguards—that is the important point—to ensure the most appropriate use of these powers. For instance, entry under a warrant must be effected within one month of the date of issue and there can be entry on only one occasion, and entry other than under a warrant is limited to premises that the public can access or to premises that are occupied by a person who consents to the entry. In addition, whether entry is under a warrant or under an authorisation granted by the Secretary of State, the requirements in Clause 27 will still apply. These provide that evidence must be produced by the person authorised to enter the premises of their identity; that a copy of the warrant must be produced and given to the occupier; that entry must be at a reasonable time; and that unoccupied premises must be left as secure as they were found.

I would also note that a memorandum on the Bill was submitted to the Joint Committee on Human Rights. It included detailed analysis of the Bill's powers of search and entry. I am happy to say that the committee is fully satisfied that the Bill does not give rise to any human rights issues. On the basis of the assurances that I have given today, I hope that the noble Lord will withdraw his amendment.

Lord Howell of Guildford: My Lords, I thank the Minister and I am reassured as to the concern for individual rights and the careful safeguards which the Minister has mentioned. In the light of that, I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Clause 16 agreed.

Clauses 17 to 19 agreed.

Clause 20 : Information and records for Convention purposes

Amendment 4

Moved by ***Lord Howell of Guildford***

4: Clause 20, page 15, line 19, at end insert—

"( ) Notwithstanding any other provision of this section, the Secretary of State shall issue a notice to any person in possession of cluster munitions for permitted purposes requiring that person to report not less than annually on the quantity and the reasons they are being held."

Lord Howell of Guildford: My Lords, this amendment is part of a general concern about how the authorities, Parliament and the public can keep track of what is happening; for example, whether the convention has been signed, the laws have been passed or the signatories have signed. The question will then hang in the air as to how we ensure that things are happening: for example, that stockpiles are being reduced, that manufacturing is ceasing and that these horrific weapons are being banished from the face of the earth, except for the permitted purposes which we discussed earlier in our debate. This amendment would require the Secretary of State to have from everyone who holds cluster munitions, for the various permitted purposes under Clause 6 et cetera, a mandatory report not less frequently than annually on the quantity being held and the reasons why, including whether the reasons given in the first place are still valid. This might make it easier to monitor who has these munitions, why they are being kept and the numbers, which would improve transparency and the ability to review the permissions and licences to retain cluster munitions each year. Overall, the intention is to ensure that cluster munitions are not being kept unnecessarily and that the pattern of reduction and elimination is being pursued.

I realise that Article 7 of the convention places a duty on each states party to report progress on implementing the convention no less than 180 days after its entering into force. All states parties are required to meet under the UN Secretary-General within one year of entry into force. Those are grand occasions when Governments and signatories will meet together to say what has been done. In the mean time, we need to see a flow of information to the separate states parties—in our case to our Secretary of State—about what is really happening. When these grander occasions occur our Government would be able to put forward a clear statement of where we have got to, the progress we have made, the difficulties that have been encountered, any reservations that we may have and how the whole spirit of the convention is being turned into realistic and genuine progress. I beg to move.

4.45 pm

Lord Hannay of Chiswick: My Lords, I support the views expressed by the noble Lord, Lord Howell, on this matter, because, as was said at Second Reading, the convention will need very careful watching. I think that we assume—and the Government have given good evidence of it in the Bill—that we will apply it rigorously, but an awful lot of other signatories to the convention may apply it with something less than what we would describe as full rigour. There is no machinery at present to monitor that or any kind of international inspection process to ensure that they are sticking to their obligations.

I know that the Minister gave a helpful response to this point that which is provided for in the convention, and I do not wish to go down that road again. However, one factor in being able really to press all the signatories to be rigorous in their application is our being able to demonstrate that we are extremely meticulous in our application, which is where the amendment would help.

I am not saying that the only way in which one can do it is by changing the Bill; the Minister might say in her reply that we will require people who are permitted to keep cluster munitions to report regularly so that we can fulfil to the letter our obligations under the convention. I hope that she will say we will be meticulous. It is not really to do with us; it is to do with how we try to get other people to take as tough a line as we do.

Baroness Kinnock of Holyhead: I thank noble Lords. I can of course reassure the noble Lord, Lord Hannay, that we intend to take a meticulous and rigorous approach to the implementation of the convention when it is ratified.

The purpose of Clause 20, as the noble Lord, Lord Howell, clearly said, is to implement Articles 3(8) and 7 of the Convention on Cluster Munitions, which require all state parties to submit annual reports regarding national implementation measures and other details, including any cluster munitions retained for permitted purposes. That is already an obligation and we shall pursue it vigorously with other state parties.

Clause 20 facilitates meeting this requirement by conferring on the Secretary of State the power to require people to maintain records and provide information needed for the purposes of the convention. Under subsection (3), the Secretary of State will have the power to specify the form of information and the time within which it should be provided in any notices served for these purposes. The existing provisions in the Bill are therefore sufficient to ensure that we can obtain the necessary information on any cluster munitions retained for permitted purposes. As I have stated previously, this information will be available for scrutiny in the public domain.

It is also worth noting that our reporting requirements under the Convention on Cluster Munitions mirror faithfully those for anti-personnel mines under the Ottawa convention. The Landmines Act 1998 includes similar provisions to those in Clause 20; there is no explicit provision on obtaining information on anti-personnel mines retained for permitted purposes. However, under the authorisation mechanism for permitting retention, the MoD requires that individuals provide annually details on the quantity retained. That provision would apply under the convention. We intend that the mechanism for retained cluster munitions will be the same and that we will follow the same process.

I hope that I have clarified the points raised and that the noble Lord will therefore withdraw his amendment.

Lord Elton: Perhaps I may first ask the Minister how the Secretary of State will satisfy himself that the returns being made are truthful.

Baroness Kinnock of Holyhead: I imagine that it will be done in the same way as with the landmines convention. The same processes will be applied and I am sure that benchmarks will be clearly set for the Secretary of State to follow to ensure that the information meets the requirements. I can find out for the noble Lord but, as I said, this is the process that we follow under the landmines convention and, as nothing has gone wrong and no difficulties have been created since the process was implemented, I assume that if we follow the same process, it will be fine.

Lord Howell of Guildford: I thank the Minister for her comments and am reassured by her statement that the Ministry of Defence will require information on an annual basis. That goes some way to meeting the concern behind this amendment. We hear that the Ministry of Defence has a very large number of information officers, although noble Lords here may know more than I do about that. Perhaps some of them could divert their activities from "information outwards" regarding the Ministry of Defence and its affairs to "information inwards" and collecting details about the remaining cluster bombs being held under permitted purposes. That suggestion may be regarded as unhelpful but I make it from the point of view of a layman in these affairs. With the satisfaction of the assurances from the Minister, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Clause 20 agreed.

Clauses 21 to 33 agreed.

Clause 34 : Commencement and short title

Amendment 5

Moved by ***Lord Howell of Guildford***

5: Clause 34, page 21, line 34, at beginning insert "Subject to the Secretary of State issuing a statement on the compatibility of this Act and the Export Control Order 2008,"

Lord Howell of Guildford: My Lords, your Lordships will be pleased to hear that this is the final amendment that I wish to raise in line with certain concerns about the Bill before we send it to another place.

The concern here is with the export control order and compatibility between the requirements of the convention and of the Bill and the order itself. I defer to the noble Lord, Lord Hannay, who specifically raised this matter at Second Reading when he urged a bit more rigour in ensuring compatibility than is found in the provision in the Bill. He asked the Minister to look at this matter again because there is an obvious danger in having two sets of obligations which run in parallel and may not meet each other or reinforce each other in the way that we all want to see. That is the matter as simply stated by the noble Lord and by me, and I should very much like reassurance from the Minister, who touched on this at Second Reading, that this problem can be dealt with effectively and that it will not lead to further loopholes and difficulties in the future which we would look back on and regret. I beg to move.

Lord Hannay of Chiswick: My Lords, very briefly, I am most grateful to the noble Lord, Lord Howell, for having raised a point which I introduced at Second Reading. I thought that the Minister's response at Second Reading was helpful but what I am really seeking is a statement—as on the record as possible, if not in the Bill—that there is complete compatibility between the 2008 order and the provisions of the Bill. I am not sure how best this can be done, although it could be through a parliamentary Question or something such as that. When the Minister rises to her feet in this Committee and says that it is so, I do not doubt for one minute that it is indeed so. It would be helpful to the Government as well as everyone else if it was made absolutely clear that these two provisions, which could be construed in slightly different ways, are identical.

Baroness Kinnock of Holyhead: Again, I thank the noble Lords for the points that they have raised. I understand that ensuring the compatibility of provisions in the Bill with the export control order is a concern, and rightly so. We all want to ensure that the prohibitions are watertight. We debated this matter at Second Reading. The noble Lord, Lord Hannay, referred to that. I gave assurances that we had worked closely with the Department for Business, Innovation and Skills to ensure the compatibility of these two pieces of legislation. Several noble Lords kindly accepted this assurance at Second Reading, but requested a double check to make absolutely sure. I am happy to say that we have checked again and I remain confident that there are no gaps in the provisions.

The export control order makes it illegal to export cluster munitions—to supply, to agree to supply or to do any act calculated to promote the supply of cluster munitions. This latter restriction covers a wide range of activities known as ancillary services. These include providing financial services for trade in cluster munitions, providing transportation services, and generally promoting this trade. The Bill creates offences of assisting, encouraging or inducing anyone to engage in prohibited activity. The provision of ancillary services, according to the order, could be classed as assisting or encouraging activity under the Bill. The prohibitions in the order and the Bill are therefore complementary and reinforcing.

I think this will address further the point of the noble Lord, Lord Hannay. I hope that noble Lords will not now need further statements of reassurance from the Government on this matter, as envisaged by the amendment, especially since the requirement in the amendment would place an additional stage in the UK's ratification of the convention. This would increase the risk of delay to our becoming a state party. On the basis of those remarks, I hope the noble Lord will withdraw his amendment.

Lord Elton: I do not wish to protract proceedings, but will the definition of cluster munitions be the same in both the order and the Bill?

Baroness Kinnock of Holyhead: It must be and I think I can assure the noble Lord that it is.

Lord Howell of Guildford: My Lords, speaking for myself, the reassurances that the noble Lord, Lord Hannay, specified have been given. They were certainly behind my thoughts in moving the amendment. In light of those, I am content to withdraw the amendment.

Amendment 5 withdrawn.

Clause 34 agreed.

Schedules 1 to 3 agreed.

Bill reported without amendment.

Committee adjourned at 4.58 pm.

Written Statements

Wednesday 6 January 2010

Health: Teenage Pregnancy

Statement

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): My right honourable friend the Minister of State for Children, Young People and Families (Dawn Primarolo) has made the following Written Ministerial Statement.

I would inform the House that the Independent Advisory Group on Teenage Pregnancy has published its annual report for 2008-09. Copies will be placed in the House Libraries.

Iraq: Reserve Forces Call-out

Statement

The Minister for International Defence and Security (Baroness Taylor of Bolton): My honourable friend the Minister of State for the Armed Forces (Bill Rammell) has made the following Written Ministerial Statement.

A new call-out order has been made under Section 56 of the Reserve Forces Act 1996 so that reservists may continue to be called-out into permanent service to support operations in the region of Iraq and the Gulf. The order takes effect from 5 January 2010 and ceases to have effect on 4 January 2011.

Although the main body of the UK's Armed Forces were withdrawn from Iraq last June, a number of operational tasks remain including: the Royal Navy training team set up under the UK training and maritime support agreement; RN patrols to protect offshore oil platforms and shipping lanes; staff and liaison posts; the NATO training mission (training of Iraqi army officers). Reservists may be called out to support any of these tasks although we envisage that the majority will be from the Royal Naval Reserve to support the maritime operations.

Members of the reserve forces have made an important contribution to the UK's operations in Iraq and the Gulf and their continued support is greatly appreciated and valued.

NHS: Pay Review Body

Statement

Baroness Thornton: My right honourable friend the Secretary of State for Health (Andy Burnham) has made the following Written Ministerial Statement.

I am responding to the letter and supporting paper received from the NHS Pay Review Body (NHSPRB) on 10 December 2009. Copies of the letter and supporting paper have been placed in the Library and copies are available to honourable Members from the Vote Office. I am grateful to the chair and members of the NHSPRB for their work in support of the three-year deal and the other issues they have considered this year.

I welcome the NHSPRB's decision not to seek a remit from me to review the 2010-11 pay uplift for NHS staff on the three-year pay deal. This means we can fulfil our commitment to implement the deal in full.

The NHSPRB did not make any formal recommendations but suggested parties reconsider its recommendation in its 24th report that pharmacists employed in the NHS and paid at Agenda for Change pay band 6 and 7 should receive a short-term national recruitment and retention premium (RRP). The NHSPRB "expect to return to the matter in 2010".

I am content that the actions we have been taking in England, described in my Written Ministerial Statement of 3 July, are the right ones to address the pharmacist recruitment and retention challenges. I am keeping the situation under review.

The NHSPRB concluded that available evidence does not support the case for a national RRP for building craft workers put forward by the Union of Construction Allied Trades and Technicians but suggested they were included in the review of national RRPs being conducted by the NHS Staff Council. That is a matter for the NHS Staff Council which is responsible for overseeing Agenda for Change pay, terms and conditions which cover about 1.1 million NHS staff.

I note the NHSPRB's concerns about the lack of sufficiently detailed workforce statistics relating to building craft workers and other non-clinical staff in the NHS. My department is working with the NHSPRB's Secretariat (the Office for Manpower Economics) and the NHS Health and Social Care Information Centre to agree how to improve workforce statistics available for these staff groups.

Prison: Ex-Servicemen

Statement

The Minister for International Defence and Security (Baroness Taylor of Bolton): My honourable friend the Parliamentary Under-Secretary of State for Defence (Kevan Jones) and my honourable friend the Minister for the National Offender Management Service, the Member for Liverpool Garston (Maria Eagle), have made the following joint Written Ministerial Statement.

The MoD and the Ministry of Justice (MoJ) have been working to provide up-to- date and authoritative data on the number of veterans in prison in England and Wales. We can today confirm that the Defence Analytical Services and Advice (DASA) of the MoD has estimated that ex-service personnel in prison represent almost 3 per cent of offenders in prison.

The estimate was determined by matching a database of prisoners aged 18 and over in England and Wales from the MoJ against a database of service leavers held by the MoD. The analysis does not include reservists nor those who had left the service prior to 1979 (Navy), 1972 (Army), and 1968 (RAF). Further work will seek to quantify the likely effect of the incompleteness of the MoD database. DASA estimates that a more complete database is unlikely to increase the estimated proportion of offenders who are ex-service to more than 4 per cent. This is because reservists have other

employment and it is possible that it makes them less likely to come into contact with the criminal justice system; and, because evidence from previous studies suggests that crimes tend to be committed soon after discharge from service.

The 3 per cent figure compares with the Home Office survey of 2,000 nationally representative offenders at the point of release in 2001, 2003 and 2004, which reported the Armed Forces proportion to be 6 per cent, 4 per cent and 5 per cent respectively.

The next stage in this project will be to evaluate the ex-service prison population in terms of demographic and service variables such as age, gender, service branch, length of service, rank, deployment history, time since discharge, and offence type. This qualitative analysis should allow for informed policy decisions to be made where necessary to ensure that resources are better targeted at appropriate groups of offenders. The MoD will also investigate where relevant improvements could be made in-service to minimise contact with the criminal justice system once personnel are discharged from the Armed Forces.

The Howard League for Penal Reform in November 2009 launched an independent inquiry into former Armed Forces personnel in prison. We understand that the inquiry will take a year to conclude, but we intend to work closely with Sir John Nutting QC and his team and have offered to share the findings of our analysis with them.

We will keep the House informed of developments.

Taxation: Corporation Taxation

Statement

The Financial Services Secretary to the Treasury (Lord Myners): My right honourable friend, the Financial Secretary to the Treasury (Stephen Timms), has today made the following Written Ministerial Statement.

I am announcing today the Government's intention to present to Parliament proposed legislative changes to the corporation tax rules for capital gains of companies for inclusion in Finance Bill 2010. The changes, which have immediate effect from 6 January 2010, will ensure that a postponed charge on gains arising where assets of an overseas branch are transferred to a non-resident company is brought back into charge at the appropriate time.

The changes will affect UK companies that transfer assets of an overseas branch to a non-resident company in exchange for securities consisting of shares or loan stock. In these circumstances corporation tax on gains arising from the transfer are postponed until the disposal of the securities.

In some situations, however, the security received in exchange can be an exempt asset. Where loan stock is received it can fall within the definition of a qualifying corporate bond (QCB). Section 115 of the Taxation of Capital Gains Act 1992 exempts QCBs from tax on capital gains. As a result any postponed gain arising from a transfer of an overseas branch's assets is exempt on the subsequent disposal of a security received in exchange where that security is a QCB. This can create unintended outcomes in the treatment of postponed gains.

The proposed legislative change will correct this defect in the current rules. Where a gain on the transfer of an overseas branch's assets to a non-resident company in exchange for securities has been postponed, the change will ensure that the disposal of securities will create a deemed gain that is chargeable to tax. Instead of treating the postponed gain as additional consideration for the disposal of an exempt asset, a separate chargeable gain equal to the postponed gain will be deemed to accrue at the time of disposal of the securities. This change will apply where the securities themselves are exempt from a charge to tax.

HM Revenue and Customs will today publish a technical note on its website setting out further detail, including the draft legislative amendments.

Taxation: Double Taxation

Statement

The Financial Services Secretary to the Treasury (Lord Myners): My right honourable friend, the Financial Secretary to the Treasury (Stephen Timms), has today made the following Written Ministerial Statement.

An arrangement amending the 1947 double taxation arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Montserrat was signed in London on 9 December 2009.

After signature, the text of the arrangement was deposited in the Libraries of both Houses and made available on HM Revenue and Customs' website. The text will be scheduled to a draft Order in Council and laid before the House of Commons shortly.

Written Answers

Wednesday 6 January 2010

Air Quality

Question

Asked by ***Lord Berkeley***

To ask Her Majesty's Government following the European Commission on 11 December not extending the United Kingdom's deadline to comply with air quality laws to 11 June 2011, what action they will take to remedy the situation. [HL846]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The Commission decision of 11 December makes clear that further information is needed to demonstrate that compliance with the daily limit values would be achieved in London by 2011. However the decision recognised that additional time to meet the limit values in seven other parts of the UK, and the annual limit value in London was no longer required as those limit values had now been met.

We are working with the Mayor of London and Greater London Authority with a view to presenting as soon as practicable evidence which will satisfy the Commission that the limit values in London will be met by 2011.

Armed Forces: Dogs

Question

Asked by ***Lord Lee of Trafford***

To ask Her Majesty's Government how many dogs that have been deployed with British armed forces in Afghanistan have (a) been killed, and (b) gone missing. [HL582]

The Minister for International Defence and Security (Baroness Taylor of Bolton): In our operations in Afghanistan since 2001, one military working dog has been killed in action. None has gone missing.

Asked by ***Lord Lee of Trafford***

To ask Her Majesty's Government how many dogs that have been deployed with British Armed Forces in Iraq have (a) been killed, and (b) gone missing. [HL583]

Baroness Taylor of Bolton: In our operations in Iraq since 2003, one military working dog has died as a result of an accident while carrying out search operations. None has gone missing.

Autism

Question

Asked by ***Lord Astor of Hever***

To ask Her Majesty's Government whether the adult autism strategy will contain a commitment that all frontline JobcentrePlus staff have basic training in autism. [HL729]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): Following the recent consultation exercise on the Autism Bill, the Department for Work and Pensions is working closely with the Department of Health and others on the planned autism strategy.

Jobcentre Plus is committed to supporting disabled people, including people with autism. There are a number of learning products currently available to frontline staff, with signposts to sources of specialist help such as disability employment advisers. Jobcentre Plus staff have also been encouraged to access telephone tutorials on autism, led by the Employers Forum on Disability.

Asked by ***Lord Astor of Hever***

To ask Her Majesty's Government what steps they are taking to ensure that all young people with autism have the opportunity to undertake work experience. [HL730]

Lord McKenzie of Luton: The Department for Work and Pensions is represented on the Department of Health-led steering group, working with the National Autistic Society, the Department for Children, Schools and Families and other organisations following the recent consultation *A better future: a consultation on a future strategy for adults with autistic spectrum conditions* and the Public Accounts Committee report, published on 15 October 2009 *Supporting people with autism through adulthood*. A formal response to the consultation is expected to be published early next year.

Work Preparation and WORKSTEP can support disabled people thinking about entering work by helping them gain work experience, and where possible, progress into paid employment. This provision continues to be available for people with autism.

From 6 April 2009, customers starting a work trial became eligible to apply for Access to Work support. Work trials are used to establish an individual's suitability for a particular job vacancy by giving them an opportunity to try the job. Work trials can last between one day and six weeks.

Pathways to Work is a pan-disability programme, available for recipients of employment and support allowance, offering flexible support according to the needs of the individual. This could include a work placement where this is thought to be beneficial.

There is support available for all young people through all stages of a jobseeker's allowance claim, including a guaranteed job offer and meaningful activity (work experience), before they reach the 12 month stage of their claim. From January 2010 the guaranteed offer will come at the six month stage and by the 10 month stage it is expected that an offer would have been accepted. This will be a mandatory requirement from April 2010.

In 2008 the Department for Children, Schools and Families funded the establishment of the Autism Education Trust, which works closely with the department to improve outcomes for those with autism. The department recognises that high quality-work experience can make a real difference to aspirations.

In January 2010 the work experience placement element of Backing Young Britain goes live, offering young jobseeker's allowance claimants aged between 18 and 21 a short-term work experience placement.

Care Services

Question

Asked by ***Lord Warner***

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 8 December (*WA 114–15*), what assessment they have made of whether local authorities' assessments of people as ″critical″ under Fair Access to Care Services current guidance are consistent. [HL880]

Baroness Thornton: In 2008, the Commission for Social Care Inspection (CSCI) reviewed the eligibility for social care. In their review *Cutting the cake fairly*, they asked people what needed to be changed about the Fair Access to Care Service (FACS) guidance which was launched by the department in 2003. The findings in paragraph 3.62 of the commission's review shows that the top proposal for improving FACS was "More consistent implementation". A copy of the document has been placed in the Library.

As a result of the CSCI report, the department is revising the FACS guidance. A consultation ended on 6 October 2009. The intention is to bring forward revised guidance in the new year and a set of training materials that will help councils apply the criteria more consistently.

Child Maintenance and Enforcement Commission

Question

Asked by ***Lord Kirkwood of Kirkhope***

To ask Her Majesty's Government what discussions they have had with the Child Maintenance and Enforcement Commission about its future information technology strategy. [HL633]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): The part played by IT systems in the difficulties experienced by the CSA is well documented. The Child Maintenance and Enforcement Commission is currently undertaking a major programme which includes the development and deployment of new information technology and systems. The new IT systems are intended to provide significant improvements in efficiency and in client experience, overcoming the shortcomings of the existing systems.

The strategy for these new systems was based upon some initial feasibility work and upon the proposals of Tata Consulting Services (TCS), which was appointed in March 2009 to design and build these systems. Rather than build bespoke applications, the commission's IT strategy is based on commercial off-the-shelf packages, which are widely used in banking and other industries, which it is configuring and integrating. This will ensure that it maximises the re-use of existing and proven functionality while ensuring that it meets specific needs.

Given that the commission has selected to adhere to the hosting, network, desktop, application maintenance and service integration strategies of the Department for Work and Pensions, relevant parts of its IT strategy were discussed with the department. In addition, the commission's future systems programme has been reviewed by the Office of Government Commerce and the department's Risk Assurance Division. The commission has also discussed its IT strategy with other government departments in the context of its plans to interface with their data and systems.

Asked by ***Lord Kirkwood of Kirkhope***

To ask Her Majesty's Government what is their forecast of the annual capital cost of the Child Maintenance and Enforcement Commission's information technology system over the next three years. [HL634]

Lord McKenzie of Luton: The Child Maintenance and Enforcement Commission currently expects to capitalise around £8 million of its forecast expenditure, based on current plans, on the IT systems supporting the new child maintenance scheme in the three-year period from 2010-11 to 2012-13 inclusive. Of the £8 million, £6.7 million is expected to be capitalised in 2010-11 with the remaining £1.3 million to be capitalised in 2011-12.

Climate Change

Question

Asked by ***Lord Pearson of Rannoch***

To ask Her Majesty's Government whether any agreement signed at the Copenhagen climate change conference or any subsequent meeting of parties to the conference will be put before both Houses of Parliament for approval. [HL811]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): As was done for the ratification of the Kyoto Protocol, and in accordance with the Ponsonby rule, any treaty signed at the Copenhagen climate change conference or any subsequent meeting of parties to the conference will be laid before Parliament for 21 sitting days before ratification.

Council Tax

Question

Asked by ***Lord Oakeshott of Seagrove Bay***

To ask Her Majesty's Government what would have been the financial effect by income decile had council tax been frozen for the past year for which information is available. [HL499]

The Financial Services Secretary to the Treasury (Lord Myners): We estimate that the average change in income by income decile of all UK households as a result of holding 2008-09 rates of council tax constant in cash terms in 2009-10 would be as shown in the table below.

Income decile	*Average change for those effected (£ per year)*
Bottom	+35
2nd	+35
3rd	+35
4th	+35
5th	+35
6th	+40
7th	+35
8th	+40
9th	+40
Top	+45

These estimates have been calculated from HM Treasury's tax and benefit static micro-simulation model using Family Resources Survey 2007-08 data uprated to 2009-10 levels of prices and earnings. Figures have been rounded to the nearest £5.

Counterterrorism

Question

Asked by ***Baroness Neville-Jones***

To ask Her Majesty's Government what was the original estimated cost of the Whitehall Streetscape Improvement; what is the current estimated cost; and what proportion of that cost relates to counter-terrorism precautions. [HL792]

Baroness Crawley: The Whitehall Streetscape Improvement project in its entirety is designed to provide physical protection to establishments considered to be at increased risk of attack, particularly from the threat of terrorism.

The original published estimated cost for delivery of the core scheme of the Whitehall Streetscape Improvement Project is £25 million; this figure consisted of:

initial payments covering all stages of project design and the required local authority planning application and listed building consents; and

staged grant payments to Westminster City Council for phased delivery of the project.

An additional sum of £5,500,000 was made available from Home Office CONTEST funds and paid as staged grant payments to Westminster City Council to deliver additional physical security measures previously unaffordable under the original core scheme.

The project remains on target to be delivered within the grant that has been paid and by the completion date of December 2010 and that disaggregation is not possible.

Cyprus

Question

Asked by ***Lord Kilclooney***

To ask Her Majesty's Government whether they propose to transfer part of the sovereign base areas in Cyprus to assist a political settlement in the island. [HL864]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): On 10 November 2009 the Government made an offer to the UN Good Offices Mission to cede 45 square miles, almost 50 per cent, of its sovereign base area land to a unified Cyprus. This offer would come into effect in the event of a solution, and it would be up to the two leaders to negotiate what happens to this land.

The land transfer would have no adverse impact on the functioning of the sovereign base areas.

Asked by ***Lord Kilclooney***

To ask Her Majesty's Government whether they are considering ceasing to be a guarantor power in Cyprus. [HL865]

Baroness Kinnock of Holyhead: The Government will be happy to discuss the issue of guarantees at the appropriate stage of the negotiations. We do not envisage being an obstacle to a solution proposed by the two leaders.

Employment: Discrimination

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government whether they will place in the Library of the House a copy of the European Commission's reasoned opinion relating to employment for the purposes of religion. [HL554]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): There is an understanding between the European Commission and member states that a reasoned opinion in infraction proceedings remains confidential. The Commission publishes the fact that a reasoned opinion has been sent, but not the letter itself. The Government will therefore not be placing in the Library of the House the reasoned opinion which the Commission sent to us on 20 November 2009.

Energy: Nuclear Power Stations

Question

Asked by ***Baroness Neville-Jones***

To ask Her Majesty's Government how many incidents involving an explosive or incendiary device have occurred on the premises of the 31 licensed civil nuclear sites in the United Kingdom in each year since 2001. [HL487]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): None.

Asked by ***Baroness Neville-Jones***

To ask Her Majesty's Government what were the five incidents referred to on page 4 of the Director of Civil Nuclear Security's report The State of Security in the civil nuclear industry and the effectiveness of security regulation April 2008 to March 2009 that "warranted further investigation and subsequent follow up action". [HL491]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): This information is not releasable for national security reasons.

The criteria for determining whether information is releasable are described in the *Finding a Balance* document published on the Health and Safety Executive website. The objective of this document is to prevent the disclosure of sensitive nuclear information that could assist a person or group planning theft, blackmail, sabotage and other malevolent or illegal acts. It identifies categories of information which should not be disclosed, provides reasons for protecting this information and indicates the appropriate protective marking to be afforded to such information.

Fishing: Tonnage

Question

Asked by ***Lord Teverson***

To ask Her Majesty's Government what was the total tonnage of fish caught by the United Kingdom-registered fishing fleet from species regulated by Common Fisheries Policy quotas in the past year for which the figure is available; and what was the total tonnage of those fish that were discarded. [HL833]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): UK fisheries laboratories send observers to sea to record the quantity of fish discarded and retained by fishing vessels. This sampling is intended to provide estimates of discards of the main commercial species, but at present is not representative of all UK fisheries. It is also only possible to sample a proportion of the vessels participating in any fishery. As a consequence, estimates of total discards are subject to uncertainty.

Around 440,000 tonnes of quota stocks were landed by UK vessels in 2008. These were caught in a wide range of different areas and fisheries, many of which were not sampled by scientific observers. Estimates of discards for 2008 are available for the following fisheries:

Fleet—English and Welsh vessels over 10 metres in length.

Areas—North Sea (ICES area IV), and waters to the south and west of England and Wales (ICES area VII).

Species—Demersal quota species (Cod, haddock, plaice, sole, anglerfish etc.).

Estimated 2008 catches—37,000t, of which 27,600t were landed and 9,400t discarded.

Fleet—Scottish vessels over 10 metres in length.

Areas—North Sea (ICES area IV), and west of Scotland (ICES Division VIa).

Species—Cod, haddock, whiting and saithe.

Estimated 2008 Catches—91,700t of which 56,600t were landed and 35,100t discarded.

Fleet—UK vessels fishing for pelagic species.

Areas—All areas.

Species—Mackerel, horse mackerel, herring, sprat, blue whiting.

Estimated 2008 Catches—203,200t of which 198,300t were landed and 4,900t discarded.

In total these fisheries are estimated to have caught around 332,000t of the relevant species in 2008, of which 283,000t was landed and 49,000t were discarded.

Food: Advisory Committees

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government which food advisory committees deal with matters covered by the Official Secrets Acts; and why the Acts were applied in those cases. [HL834]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): It would not be in the national interest to identify whether issues relating to national security might be discussed within the context of food advisory committees.

Food: Infant Milk

Question

Asked by ***Lord Avebury***

To ask Her Majesty's Government whether they will discuss with the United Nations High Commissioner for Refugees the desirability of entering into a new partnership agreement with Nestlé, with reference to the International Code of Marketing of Breast-milk Substitutes and subsequent relevant World Health Assembly resolutions. [HL378]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We fully support the principles of the International Code of Marketing of Breast-milk Substitutes and subsequent resolutions adopted by the World Health Assembly and are committed to the promotion and encouragement of breastfeeding for infants. We have spoken with the United Nations High Commissioner for Refugees and understand that they are in the process of considering their position.

Freedom of Information Act 2000

Question

Asked by ***Lord Tyler***

To ask Her Majesty's Government whether they will extend the application of the Freedom of Information Act 2000 to activities of the BBC which impose charges on individual members of the public. [HL884]

Lord Davies of Oldham: Except for information held for the purposes of journalism, art or literature, which is expressly excluded, the BBC is subject to the provisions of the Freedom of Information Act. There are no plans to amend the current provisions.

Gilts

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what steps they will take to prevent other European Union member states' government bond yields and prices affecting the sale of United Kingdom gilts. [HL920]

The Financial Services Secretary to the Treasury (Lord Myners): The majority of demand for United Kingdom gilts is from domestic sources such as pension funds and insurance companies, and this demand is likely to be sustained over the medium term. The UK also benefits from being the only regular issuer of sovereign sterling debt instruments.

Health: Continuing Care

Question

Asked by ***Baroness Greengross***

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 3 November (*WA 42–5*), whether there was any change in the variation between primary care trusts of the numbers receiving NHS continuing care in the first two quarters of 2009–10. [HL842]

Baroness Thornton: Analysis of the numbers receiving National Health Service-funded continuing care in the first two quarters of 2009-10 shows a slight reduction in the variation in rates receiving continuing care per 10,000 population between primary care trusts, from a standard deviation of 4.5 in quarter 1 to a standard deviation of 4.2 in quarter 2.

Asked by ***Baroness Greengross***

To ask Her Majesty's Government what assessment they have made of the extent to which primary care trusts in which few people are receiving continuing care are meeting their obligations. [HL843]

Baroness Thornton: The department has raised this issue with strategic health authority (SHA) directors of performance.

SHAs have responsibility for working with primary care trusts (PCTs) on performance issues. All SHAs have arrangements in place for obtaining detailed performance data from their PCTs in relation to continuing care.

Since the issuing of the National Framework for National Health Service Continuing Healthcare (CHC) in 2007, the variation in eligibility levels for continuing care between PCTs has reduced significantly, and continues to reduce.

Practice guidance for CHC is presently being developed by the department and key stakeholders for issuing in 2010.

Health: Neo-natal Services

Question

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what progress they have made in implementing the recommendation in the NHS Toolkit for high-quality neonatal services, that "Every effort is made to keep a mother and her baby/babies in the same hospital during their respective admissions". [HL874]

Baroness Thornton: The *Toolkit for High Quality Neonatal* Services was launched on 4 November 2009. National Health Service regions, together with neonatal networks are holding implementation events to review what actions they may need to take to implement this best practice toolkit locally.

The NHS Operating Framework for 2010-11 also highlights to the NHS that the toolkit can be used to support them in improving their neonatal services. Networks and Commissioners will be reviewing capacity within their areas as part of the unit designation process, which should also take account of transfer issues.

Health: Thalidomide

Question

Asked by ***Lord Morris of Manchester***

To ask Her Majesty's Government what recent developments there have been in addressing the problems and needs of those suffering the effects of thalidomide prescribed by the National Health Service; and what further action they will be taking. [HL924]

Baroness Thornton: The Minister of State for Health has announced, on 23 December, details of a £20 million three-year pilot scheme to explore a more personalised way of meeting the health needs of Thalidomide survivors in England.

Under the scheme, the department will provide the Thalidomide Trust with grant funding, which it will distribute to its beneficiaries to invest in adaptations and other preventative interventions to help reduce their long-term health needs and improve their quality of life.

Infrastructure Planning (Applications, Prescribed Forms and Procedures) Regulations 2009

Question

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government why the definition of "special category land" in regulation 2 of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (SI 2009/2264) differs from the definition in article 30(3) of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (SI 2009/2265). [HL711]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): These statutory instruments serve different purposes. The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 govern the process of making an application for development consent and so the definition of "special category of land" captures all land which is potentially relevant.

The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 sets out guidance for the types of provision which might be included in an Order granting development consent. The model provision at article 30 suggests a reference to the book of reference as it is in existence when an Order granting development consent is made.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

Question

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government what is the definition of "significant" in the definition of "EIA development" in regulation 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263); and what guidance will be issued on its interpretation. [HL852]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 transpose the requirements of EU Directive 85/337/EEC (the EIA Directive, as amended) to the regime established by the Planning Act 2009. The word "significant" in the definition of "EIA development" in regulation 2 of those regulations has the same meaning as in Article 1 of the EIA Directive. Guidance on EIA is available on the Communities and Local Government website. The regulations under Schedule 3 provide selection criteria for screening Schedule 2 development in order to assess whether a development is likely to have significant effects.

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government whether regulation 4(2)(a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263) means that any applicant preferring to take a proposed development to the Commission may do so provided it is covered by one of the descriptions of development in Schedule 2 and is considered by the applicant to be significant. [HL853]

Lord McKenzie of Luton: Regulation 4(2)(a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 enables an applicant to determine that their development is subject to EIA without the need to first obtain a screening opinion. This allows the screening step to be skipped where the applicant is confident that the EIA regulations apply.

Whether or not a proposed application falls within the scope of the Planning Act, and must therefore be examined by the IPC, is determined by reference to the thresholds set out in Part 3 of the Act, once the relevant threshold has been commenced.

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government in what circumstances the Secretary of State may give a direction under regulation 5(2)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263). [HL854]

Lord McKenzie of Luton: The Secretary of State may give a direction where the IPC has accepted but not decided an application, and he judges that a direction is an appropriate course of action.

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government whether regulation 5(5)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263) will remove any development from all planning procedures. [HL855]

Lord McKenzie of Luton: Regulation 5(5)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 empowers the Secretary of State to direct that a project falling within its scope is not subject to EIA, for the purposes of those regulations only. It has no bearing on any other planning procedures that may apply to the project, including the procedures established by the Planning Act 2008.

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government whether regulation 5(5)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263) may apply to developments instigated by departments other than the Ministry of Defence. [HL856]

Lord McKenzie of Luton: Regulation 5(5)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 applies to any project falling within its scope, irrespective of the party promoting the project.

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government whether the Secretary of State is required to make public his reasons for issuing a direction under regulation 5(5)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263). [HL857]

Lord McKenzie of Luton: Where the Secretary of State issues a direction under regulation 5(5)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, he is not required to make public his reasons for doing so.

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government whether the periods of 21 days in regulation 6(6), and 42 and 28 days in regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263) exclude national holidays. [HL887]

Lord McKenzie of Luton: The periods of time referred to in regulations 6(6) and 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 do not exclude public holidays. This is in line with similar provisions in existing consents regimes.

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government whether paragraph 15(c)(vii) of Schedule 3 to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263) will create a presumption against national infrastructure projects in densely populated areas, including where they concern waste disposal or power generation. [HL888]

Lord McKenzie of Luton: Schedule 3 to the regulations sets out selection criteria for screening Schedule 2 development to assist an authority in reaching a decision about whether a development is subject to EIA. The criteria are transposed directly from the EIA Directive.

The fact that EIA is (or is not) required does not create a presumption for or against development taking place.

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government what will be the effects of the Commission or the relevant authority not adhering to the timetable laid down in regulation 6(6) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263). [HL889]

To ask Her Majesty's Government what will be the effects of the Commission or the relevant authority not adhering to the timetables laid down in regulation 8(6), (7) or (8) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263). [HL890]

Lord McKenzie of Luton: There are no legal penalties which apply should the Commission or relevant authority fail to adhere to the deadlines specified in regulations 6(6) and 8(6), (7) or (8) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. However, the Government expect the IPC to comply fully with its statutory obligations under the Planning Act 2008 and subordinate legislation. Performance against statutory timetables for EIA scoping and screening decisions are amongst the IPC's key performance indicators, as set out in their interim corporate plan. The Government have given a firm commitment to carry out a two year review of the effectiveness of the IPC.

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government with reference to regulation 5(4) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263), how the Secretary of State will be made aware that there has been a screening opinion to the effect that the proposed development is not an EIA development. [HL891]

Lord McKenzie of Luton: Where a proposed development has been the subject of a screening opinion to the effect that it is not EIA development, it is the Government's expectation that the IPC will make the Secretary of State aware of this decision in the normal course of its business.

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government what elements of cost will be included in the charge made under regulation 9(5) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263); whether the charge will be fixed by each body listed in regulation 9(3) for all applications over a set period; and whether the applicant will be able to access the charge rate before deciding whether to notify the Commission under regulation 6(1)(b). [HL892]

Lord McKenzie of Luton: A body consulted under regulation 9(3) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 must provide information that is relevant to the preparation of an environmental statement for a proposed project, subject to certain exemptions. Under regulation 9(5), that body may require a charge to be paid for the costs reasonably incurred in providing such information.

It is for the relevant body to set any charge, which would vary depending on the information to be provided.

Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

Question

Asked by ***Lord Taylor of Holbeach***

To ask Her Majesty's Government why a limit is set for the completion of works under the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (SI 2009/2265), while in Schedule 4 to the Order the limit concerns the commencement of the works. [HL626]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): Both provisions relate to ensuring that any works granted development consent under the Planning Act 2008 commence and complete in a timely manner. Such provisions avoid prolonged disruption and the unnecessary eyesore of unfinished works as well as, to some extent, deterring blight.

Iraq: Chilcot Inquiry

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what steps they will take to ensure that the Chilcot Inquiry does not regularly withhold evidence from publication. [HL921]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): Should the inquiry wish to disclose any government information, the process for doing so is set out in the information protocol agreed with the inquiry and published on the Cabinet Office's website on 29 October.

Lisbon Treaty

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government how they will follow up the ratification of the Lisbon treaty with an information programme for the British public about the enhanced legislative role of European Parliament. [HL783]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): A fact sheet of the changes that the Lisbon treaty brings, including the greater role of the European Parliament in agreeing legislation, is available on the Foreign and Commonwealth Office's website (http://www.fco.gov.uk/en/global-issues/institutions/britain-in-the-european-union/eu-lisbon-treaty1/what-the-lisbon-treaty-will-do). The UK Office of the European Parliament runs a range of information programmes for the British public on the European Parliament, details of which can be found on its website (http://www.europarl.org.uk).

Local Government: Water Management

Question

Asked by ***Lord Rooker***

To ask Her Majesty's Government how many government offices in the south-east of England are fitted with rainwater harvesting systems for flushing water closets. [HL896]

The Financial Services Secretary to the Treasury (Lord Myners): Information on the use of rainwater harvesting systems by departments is not collected centrally.

Minister for the Olympics: Overseas Visits

Question

Asked by ***Lord Patten***

To ask Her Majesty's Government further to the Written Answer by Lord Davies of Oldham on 9 December (*WA 135*) which referred only to costs, what were the destinations, purposes and names of those in each official party of overseas visits on ministerial business undertaken by the Minister for the Olympics in (a) 2008, and (b) 2009 to date. [HL722]

Lord Davies of Oldham: The annual list of all ministerial travel costing over £500, referred to in my previous Answer on 9 December 2009 (*Official Report*, col. (*WA 135*), includes the cost, destination and purpose of the trip. It also provides information on the number of officials who accompanied the Minister.

National Audit Office

Question

Asked by ***Baroness Noakes***

To ask Her Majesty's Government further to the remarks by Lord Davies of Oldham on 7 December (*Official Report*, House of Lords, col. 952), what is the source of the statements that "the National Audit Office … noted that projects across the programme are making significant improvements to the efficiency of public services" and "our £26.5 billion SR04 savings … meet the most robust data category of the National Audit Office". [HL672]

The Financial Services Secretary to the Treasury (Lord Myners): The National Audit Office's review of the SR04 efficiency programme *The Efficiency Programme: A Second Review of Progress* noted that, "projects across the programme are making significant improvements to the efficiency of public services".

At the end of the Gershon programme departments reported their savings against criteria based on those used by the National Audit Office and only reported savings that met these criteria. HM Treasury reported these savings in November 2008 in *2004 Spending Review: final report on the efficiency programme*.

Asked by ***Baroness Noakes***

To ask Her Majesty's Government further to the remarks by Lord Davies of Oldham on 7 December (*Official Report*, House of Lords, col. 952) saying that "the National Audit Office … noted that projects across the programme are making significant improvements to the efficiency of public services", how that statement relates to the finding of the National Audit Office in their report *The Efficiency Programme: A Second Review of Progress* that only 26 per cent of claimed efficiency savings "fairly represent efficiencies made". [HL673]

Lord Myners: The National Audit Office's review of the SR04 efficiency programme *The Efficiency Programme: A Second Review of Progress* noted that "projects across the programme are making significant improvements to the efficiency of public services".

The review rated 26 per cent of the savings reported as fulfilling NAO criteria. A further £6.7 billion of savings were said to represent efficiencies but were carrying some measurement issues. Additionally the NAO review stated "It is also important to note that problems with measurement mean that it is possible that in some areas of the programme efficiency gains are being understated".

In response to the NAO's review departments focused on strengthening the reporting and measurement of savings.

HM Treasury produced a final report on the SR04 efficiency programme in November 2008 *2004 Spending Review: final report on the efficiency programme*. Treasury reported the £26.5 billion of savings that departments had declared against criteria based on those used by the National Audit Office and only reported savings that met these criteria.

NHS: IT Strategy

Question

Asked by ***Lord Warner***

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 20 October (WA 62), what were in March 2007 and March 2009 and what are forecast to be in March 2010 the total number of front-line systems installed by the NHS National Programme for IT under the headings (a) electronic prescription service, (b) choose and book, (c) general practitioner systems, (d) Map of Medicine, (e) GP2GP record transfer, (f) Acute Hospital Trust Patient Administration Systems, (g) Picture Archiving and Communications Systems, (h) radiology systems, (i) theatre systems, (j) accident and emergency systems, (k) community systems, (l) child health systems, (m) mental health trust patient administration systems, (n) prior systems, and (o) other systems; and what is the estimated number of further systems under each heading required to complete the National Programme for IT after March 2010. [HL829]

Baroness Thornton: The information is in the following table.

	March 2007	*March 2009*	*March 2010* [1]
Electronic Prescription service (EPS) - GP	1,812	6,583	6,987
EPS - Pharmacy	2,790	8,836	9,247
Choose & Book	6,984	7,464	7,532
General Practitioner systems	591	904	1,122
Map of Medicine	149	273	331
GP2GP record transfer	613	4,958	5,209
Acute Hospital Trust Patient Administration Systems [2]	19	43	62
Picture Archiving and Communication systems [3]	258	304	304
Radiology systems [3]	44	71	71
Theatre systems	21	33	54
Accident and Emergency systems	16	37	42
Community systems	42	43	70
Child Health systems	44	64	113
Mental Health Trust Patient Administration systems [2]	18	25	26
Community Patient Administration Systems [2]	59	78	82
Prior systems	n/a	n/a	n/a

Notes:

(1) Forecast deployment information is accurate as at 31 December 2009, but is subject to change.

(2) Figures include deployments of the Lorenzo Care Management deployment unit/module.

(3) Figures are for the number of site installations within Trusts. The final deployments as part of the national programme took place prior to 31 March 2009.

Plans for the pace and scale of future deployments beyond 2009-10 are currently being reviewed in the light of announcements made in the Pre-budget Report, and of the evolving information technology needs of the National Health Service.

Asked by ***Lord Warner***

To ask Her Majesty's Government what were the total financial savings and the annualised recurring savings from the NHS National Programme for IT at (a) 31 March 2007, and (b) 31 March 2009. [HL831]

Baroness Thornton: In March 2008, the Department published the *National Programme for IT in the NHS: Benefits Statement 2006/07*. The document included an appendix listing actual reported, and annualised recurrent, cash-releasing savings attributable to the programme as at 31 March 2007, totalling £208 millions and £119 millions respectively.

In response to a report on the programme published in January 2009 by the Public Accounts Committee (PAC), the department is reassessing the methodology used to capture the programme's benefits. The department is committed to finding a new approach with the aim of combining publication of the annual benefits statement with a first Annual Report of Progress on the Programme to 31 March 2010. This will include reliable estimates of overall costs and benefits and will be auditable.

Personal Care at Home Bill

Question

Asked by ***Lord Warner***

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 8 December (*WA 115–16*), why their estimate of the year-to-year increase in the cost of the Personal Care at Home Bill makes no provision for an increase in demand; whether that takes account of evidence from the Scottish Government suggesting that demand increases when personal care at home is made free; and whether the forecast price increases of two per cent per year takes account of that evidence's suggestion that costs rise at a higher rate. [HL879]

Baroness Thornton: Estimates of the cost of extending free personal care at home to all those with the highest needs, as presented in the Impact Assessment for the Personal Care at Home Bill, incorporate three specific demand effects.

First, the number of older people who would otherwise have entered residential care, but who choose instead to receive free personal care at home, has been estimated. Secondly, older people whose needs would otherwise be classed as critical under *Fair Access to Care Services* were it not for their receipt of informal care may in future decide to withdraw from their informal care in order to qualify for free personal care. An estimate of the number of such individuals has been included in the estimated costs. Thirdly, the Personal Social Services Research Unit's estimate of the number of older people who would in future qualify for free personal care at home, but who currently neither receive free personal care nor make a means-tested contribution, includes those with unmet need. It is therefore not just an estimate of the number of older people who pay for all of their own care now; it also includes those who are not fully meeting their needs privately.

The Scottish experience of extending free personal care differs in respect of coverage, in that it is not limited to those with the highest needs and it includes people in residential care. In addition, the relative prices of residential and home care, eligibility criteria and preferences may also differ. For these reasons, it was not considered appropriate to extrapolate changes in demand for personal care in Scotland to the English context.

Asked by ***Lord Warner***

To ask Her Majesty's Government whether local authorities may use the £550 million saving that the Pre-Budget Report required them to make by 2012–13 to meet their share of the costs of implementing the Personal Care at Home Bill. [HL881]

Baroness Thornton: The Pre-Budget Report announced that councils will make £250 million efficiency savings by 2012-13 from reducing the significant variations in the proportion of funding that councils spend on residential care provision through supporting more people to live for longer in their own homes.

These efficiency savings will be used to help meet the ever-growing pressure on budgets from demographic changes and to support more people to live in their homes through the offer of free personal care for those with the greatest need. These savings may be used alongside the funding made available by the department to deliver the proposals of the Personal Care at Home Bill.

Asked by ***Lord Warner***

To ask Her Majesty's Government whether assessments made by a local authority under the Personal Care at Home Bill will be made available to another authority should a person move area. [HL882]

Baroness Thornton: The proposals for regulations and guidance under the Personal Care at Home Bill are being consulted upon. The department plans to develop a national assessment tool for all authorities to use to ensure a consistent application of the eligibility criteria for free personal care at home. Comments on this, along with the potential portability of any assessments is a matter for the consultation, *Personal Care at Home: a consultation on proposals for regulations and guidance.*

The consultation document has been placed in the Library and on the department's website at:

www.dh.gov.uk/en/Consultations/Liveconsultations/DH_109139.

Somalia: Pirates

Question

Asked by ***Lord Tebbit***

To ask Her Majesty's Government whether in any encounters between Royal Navy units and suspected pirates operating off the coast of Somalia hostages were being held; and, if so, whether they were released following the Royal Navy's intervention. [HL525]

The Minister for International Defence and Security (Baroness Taylor of Bolton): Since October 2008, Royal Navy units have carried out compliant boardings on three suspected pirates vessels where hostages were subsequently found on board. In all three cases the hostages were released following the Royal Navy's intervention.

Asked by ***Lord Tebbit***

To ask Her Majesty's Government whether the Royal Naval forces off the coast of Somalia have given any aid, advice or sustenance to suspected pirates; and, if so, whether it was subject to conditions.
[HL526]

Baroness Taylor of Bolton: To date there have been four instances where water, fuel or food has been provided to suspected pirates in line with our duty under international law to render assistance to ensure safety of life at sea. In these cases, following detailed analysis of all physical evidence, suspects were released as it was assessed that there was insufficient evidence to be reasonably confident that a successful prosecution could be undertaken. Any suspected pirate equipment was destroyed to prevent its future use.

Sport: Budgets

Question

Asked by ***Lord Moynihan***

To ask Her Majesty's Government how much has been spent by each of the Regional Sports Boards in each year since 1987; and what have been the annual operating budgets for each of the boards.
[HL483]

Lord Davies of Oldham: Sport England has supplied the information below. Regional Sport Boards were officially formed in 2004 and disbanded in 2008 therefore the following information is for that time period.

Regional Sports Board Operating Expenditure

Department Description	*2004-05*	*2005-06*	*2006-07*	*2007-08*	*2008-09*
North East Region	£13,215	£14,952	£16,921	£15,446	£5,094
Yorkshire Region	£6,392	£5,963	£5,330	£2,484	£1,457
East Midlands Region	£685	£4,247	£2,754	£6,599	£616
East Region	£13,803	£16,656	£8,354	£7,072	£6,366
London Region	-	£2,281	£1,251	£2,888	£324
South East Region	£7,161	£10,148	£9,508	£6,315	£3,353
South West Region	£15,012	£16,353	£19,213	£15,203	£3,011
West Midlands Region	£,1168	£2,284	£6,252	£10,792	£3,273
North West Region	£3,509	£7,978	£15,626	£18,535	£7,489
Totals	£ 60,944	£80,861	£85,208	£85,333	£30,983

Chairman Remuneration		*Salary Band £'000*				
Board Member	*Appointments held*	*2004-05*	*2005-06*	*2006-07*	*2007-08*	*2008-09*
Ged Roddy	Vice Chair until Oct 2008, Board Member from Feb 2007 to Jan 2009, RSB Chair from Dec 2005 to Dec 2008	n/a	-	10-15	20-25	10-15
Andy Worthington	Board Member from Feb 2007 to May 2008, RSB Chair from Jun 2006 to Dec 2008	n/a	0-5-	10-15	10-15	5-10
John Brewer	RSB Chair from Oct 2007 to Dec 2008	n/a	n/a	n/a	0-5	5-10
Stephen Castle	RSB Chair from Aug 2005 to Dec 2008	n/a	-	10-15	5-10	5-10
Len Jackson	RSB Chair from Dec 2005 to Dec 2008	n/a	-	10-15	10-15	5-10
Mary McAnally	RSB Chair from Dec 2005 to Dec 2008	n/a	0-5	10-15	10-15	5-10
Paul Millman	RSB Chair from Jan 2008 to Aug 2008 (interim for Mary McAnally)	n/a	n/a	n/a	-	5-10
Rauf Mirza	RSB Chair from Jun 2006 to Dec 2008	n/a	-	5-10	10-15	5-10
Peter Price	RSB Chair from Dec 2005 to Dec 2008	n/a	-	10-15	10-15	5-10
Peter Rowley	RSB Chair from Nov 2007 to Dec 2008	n/a	n/a	n/a	0-5	5-10
Philip Lewis	RSB Chair from Apr 2004 to Sep 2007	-	-	10-15	5-10	0-5
Tim Cantle-Jones	RSB Chair from Jan 2003 to Dec 2007	0-5	0-5	10- 15	5-10	0-5

* All figures are taken from the relevant annual report & accounts of the English Sports Council

* Remuneration band reflects total of all appointments held

Telephone Polls

Question

Asked by ***Lord Tyler***

To ask Her Majesty's Government what consideration they have given to introducing a requirement that the full results, including the total votes cast and how many for each option, be published for telephone polls conducted by (a) the BBC, and (b) commercial broadcasters. [HL883]

Lord Davies of Oldham: The Government have no plans to introduce such requirements either for the BBC or for commercial broadcasters. Under the terms of the statutory framework and the BBC Charter, the public service broadcasters are independent of Government and there is no provision for Government to intervene in such matters. Similarly, there is no provision for Government to intervene in such matters in relation to other broadcasters.

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